UNIT – II

MACHINERY FOR PREVENTION AND SETTLEMENT OF INDUSTRIAL DISPUTES IN INDIA

2.4.0 OBJECTIVE

After completion of this chapter the student will be able to

- Understand Machinery for prevention and Settlement of Industrial Disputes in India

STRUCTURE

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2.4.1 INTRODUCTION

If industrial peace is the backbone of a nation, strikes and lockouts are cancer for the same as they effect production and peace in the factories. In the socioeconomic development of any country cordial and harmonious industrial relations have a very important and significant role to play. Industry belongs to the society and therefore good industrial relations are important form society's point of view.

Now-a-days, industrial relations are not bipartite affair between the management and the work force or employees. Government is playing an active role in promoting industrial relations. The concept of industrial relations has therefore, become a tripartite affair between the employees, employers and the government concerned.

It is possible to settle the industrial disputes if timely steps are taken by the management. Such disputes can be prevented and settled amicably if there is equitable arrangement and adjustment between the management and the workers.

2.4.2 PREVENTIVE MACHINERIES USED FOR HANDLING INDUSTRIAL DISPUTES IN INDIA

Some of the major preventive machinery for handling industrial disputes in India are as follows:

I. Worker's Participation in Management
II. Collective Bargaining
III. Grievance Procedure
IV. Tripartite Bodies
V. Code of Discipline
VI. Standing Orders

Lasting industrial peace requires that the causes of industrial disputes should be eliminated. In other words, preventive steps should be taken so that industrial disputes do not occur. But if preventive machinery fails, then the industrial dispute settlement machinery should be activated by the Government because non-settlement of disputes will prove to be very costly to the workers, management and the society as a whole.

The preventive machinery has been set up with a view to creating harmonious relations between labour and management so that disputes do not arise.

2.4.2.1 Worker's Participation in Management:

Workers' participation in management is an essential ingredient of Industrial democracy. The concept of workers' participation in management is based on Human Relations approach to Management which brought about a new set of values to labour and management. Traditionally the concept of Workers' Participation in Management (WPM) refers to participation of non-

managerial employees in the decision-making process of the organization. Workers' participation is also known as 'labour participation' or 'employee participation' in management. In Germany it is known as co-determination while in Yugoslavia it is known as self-management. The International Labour Organization has been encouraging member nations to promote the scheme of Workers' Participation in Management.

Workers' participation in management implies mental and emotional involvement of workers in the management of Enterprise. It is considered as a mechanism where workers have a say in the decision-

The philosophy underlying workers' participation stresses:

1. democratic participation in decision-making;
2. maximum employer-employee collaboration;
3. minimum state intervention;
4. realisation of a greater measure of social justice;
5. greater industrial efficiency; and
6. higher level of organisational health and effectiveness.

It has been varyingly understood and practiced as a system of joint consultation in industry; as a form of labour management cooperation; as a recognition of the principle of co-partnership, and as an instrument of industrial democracy. Consequently, participation has assumed different forms, varying from mere voluntary sharing of information by management with the workers to formal participation by the latter in actual decision-making process of management. It is a method whereby the workers are allowed to be consulted and to have a say in the management of the unit. The important schemes of workers' participation are: Works committee, joint management council (JMC), shop council and joint council.

2.4.2.2 Collective Bargaining:

"Collective Bargaining" is the process of negotiating terms of employment and other conditions of work between the representatives of management and organised labour. When it is free of intimidation and coercion and is conducted in good faith, collective bargaining culminates in a workable contract i.e., labour contract.

A labour contract is a collective agreement between the representatives of labour and management for the sale of labour services at designated wage rates, hours of work, and other terms of employment and conditions of work for a stated period of time.

The contract usually calls for joint enforcement and administration of the agreement. Responsible labour leaders and employers are increasingly settling their differences around the conference table rather than through industrial warfare. The process of bargaining the settlement of disputes is often facilitated through outside assistance in the form of conciliation, mediation, or arbitration.

Requirements for Successful Negotiations:

The representatives or spokesmen of management and labour must have sufficient authority to bind each side in the negotiation. The representatives must have a thorough knowledge of the company's wage scale and the wage scales of the industry and the area.

They should be well versed in all points at issue and know past court decisions relating to similar cases. They should study all the proposed clauses to the contract and arrive at tentative agreements. The negotiators sign an agreement only after all outstanding issues are settled.

Contract provisions in labour agreements generally stipulate details concerning union membership; the duration of agreement; the procedure for termination or amendment; wages and hours; overtime; shift differentials; insurance and other benefits; seniority; grievance procedure; and conditions for hire, promotion, or dismissal.

Role of the Personnel Director:

Collective bargaining, a top management function, is generally the responsibility of operating executives, with the personnel director participating in a merely advisory capacity. When the personnel director takes an active role in negotiations, he should be given the title of vice-president. After a labour contract has been signed, the personnel director plays an active role in implementing the agreement, usually interpreting the contract provisions to foremen and supervisors, handling or participating in the grievance procedure, reviewing discharge and transfer cases, and activating various labour-management committees..

Bargaining Strategies Needed for Resolving Industrial Dispute

The four bargaining strategies needed for resolving industrial dispute are as follows:

1. Distributive Bargaining
2. Integrative Bargaining
3. Attitudinal Bargaining
4. Intra-organizational Bargaining.

1. Distributive Bargaining:

Distributive bargaining, perhaps the most common form of bargaining, takes place when labour and management are in disagreement over the issues in the proposed contract, such as wages, bonus, benefits, work rules, and so on. It involves haggling over the distribution of surplus.

In it, the gains of one party are achieved at the expense of the other. So to say, a wage increase won by labour may be considered a loss suffered by management as reduction is profits. Therefore, this form of bargaining is sometimes referred to as win-lose bargaining. Under it, each party is preoccupied with narrow sectorial gain of grabbing the bigger share of the cake. It, thus, lacks holistic approach.

2. **Integrative Bargaining**

The purpose of integrative bargaining is to create a cooperative negotiating relationship that benefits both parties. In such bargaining, both labour and management win or gain or at least neither party loses. The issues of bargaining involved in such strategy may be such as better job evaluation process, better training programmes, better working conditions, etc.

Such negotiations result in increase in the size of cake and, in turn, larger share for each party. This is considered the best bargaining strategy. Although integrative bargaining is not nearly as common as the distributive process, signs seem to indicate a steadily growing trend toward this cooperative form of bargaining.

3. **Attitudinal Structuring:**

Such a bargaining involves shaping and reshaping of attitudes to positive and cooperative. Examples of attitudinal structuring and shaping may be from hostile to friendly, from non-cooperative to cooperative, from un-trust to trust, and so on.

The need for attitudinal structuring or shaping is understood by the fact that any backlog of bitterness between the parties leads to bargaining impasse by erupting and destroying negotiations. Therefore, attitudinal structuring is required to maintain smooth and harmonious industrial relations. The attitudinal structuring helps achieve 'good-faith bargaining'.

4. **Intra-organizational Bargaining:**

In practice, there are different groups in an organization by department-wise and level - wise. At times, different groups may perceive the outcomes of collective bargaining process differently. For example, the unskilled workers may feel that they are neglected or women workers may feel that their interests are not taken into consideration. Not only that, there may be differences even within the management.

While personnel manager may support increase in wages, the finance manager may oppose the same on the ground that it will disturb the company's financial position. Given such situation, intra-organizational consensus is required for the smooth acceptance of the agreements arrived at collective bargaining. Thus, intra-organizational bargaining involves maneuvering to achieve consensus with the workers and management.

According to Dale Yoder, "Collective bargaining is the term used to describe a situation in which essential conditions of employment are determined by a bargaining process undertaken by representatives of a group of workers on the one hand and of one or more employers on the other."

Collective bargaining not only includes negotiation, administration and enforcement of the written contracts between the employees and the employers, but also includes the process of resolving labour-management conflicts.

The role of collective bargaining for solving the issues arising between the management and the workers at the plant or industry level has been widely recognized. Labour legislation

and the machinery for its implementation prepare a framework according to which industrial establishments should operate.

But whatever labour laws may lay down, it is the approach of employers and trade union leaders which matters. Unless both are enlightened, industrial harmony is not possible. Therefore, the solution to common problems can be found directly through negotiation between both parties and in this context, the scope of collective bargaining is very wide.

2.4.2.3 Grievance Procedure:

Grievances are symptoms of conflicts in the enterprise. So, they should be handled very promptly and efficiently. Coping with grievances forms an important part of a manager's job. The manner in which he deals with grievances determines his efficiency in dealing with the subordinates. A manager is successful if he is able to build a team of satisfied workers by removing their grievances. This would help in the prevention of industrial disputes in the organisation.

A grievance procedure specifies the steps involved, the persons to be associated at each step and the method of their selection, the manner in which grievances are to be placed, the extent of authority vested at each level, the sanction behind decisions and the rights and obligations of the parties.

Importance of Grievance Procedure:

Establishment of grievance procedure in industrial or other organizations has several advantages, the more notable among these are as follows:

1. It does away with the uncertainty involved in locating the authority or person to be approached for the redressal of the grievance. In absence of a formalized procedure, there will be no wonder if the aggrieved employee approaches the supervisor, departmental head, manager, union leader and fellow workers all at a time.
2. Both the workers and the management are relieved of the tension and worry, which might otherwise, would have resulted from haphazard handling of grievances.
3. As most grievance procedures involve the participation of workers' representatives and those of the management, the decisions taken have a greater amount of acceptability. These also instill confidence in each other.
4. A grievance procedure also contains elements of fairness and objectivity. In absence of the procedure, the decision of the authority empowered to take decisions may be arbitrary and biased.
5. The procedure ensures uniformity in the handling of grievances. All concerned including the aggrieved workers, supervisors, managerial personnel and union leaders know well that grievances would be processed through the established channels, and no other method could be invoked.
6. As the procedure is generally adopted under collective agreements, statutory provisions, tripartite conclusions or standing orders, it has also the element of permanence.

7. Grievance procedure also minimizes the time and effort in the processing of grievances. Unplanned handling of grievances involves unnecessary wastage of time and energy.

2.4.2.4 TIRPARTIES BODIES

The purpose of tripartite consultative machinery is to bring the parties together for mutual settlement of differences in a spirit of cooperation and goodwill. These committees have been constitute to suggest ways and means to prevent disputes. It includes Indian Labour Conference, Standing Labour Committee, Industrial Committees and Tripartite Committee on International Labour Organisation Conventions. The representatives of workers and employers are nominated to these bodies by the Central Government in consultation with all India organisations of workers and employers.

Purpose of Tripartite Body:

a. Bring the aggravated parties together for mutual settlement of differences, and encourage a spirit of cooperation and goodwill.

b. Promote uniformity in labor laws and legislation.

c. Discuss all matters of All India importance as between employers and employees.

d. Determine a plan for settlement for all disputes.

Fundamentals of Industrial Settlement:

1. Tripartite bodies have to realize that the country is breaking away from the past, and this is going to put continuous pressure on the quality of man-power and demands from human resources.

2. Tripartite bodies have to realize that to run a successful and profitable business, team work is extremely important. This gives rise to timely response and supply of goods to the society.

3. Tripartite bodies accept the charters of "Human Resources Policy" summarized below:

   a. Individuals must make every effort to improve their job skills through training and participating in developmental activities
   b. Each employee must keep his/her job skills up-to-date with changing business practices and operations.
   c. Machineries should be used throughout the year with trained staff readily available to operate it.
   d. Indirect employees may be converted to direct employees for increasing business efficiency
   e. Absenteeism and unnecessary delays must be reduced through planning.
   f. Short-term employment must be avoided. Long-term employment should be encouraged and highly trained employees must be hired.
   g. The above steps must be utilized to increase company productivity; exploitation of employees must be disallowed.

h. High emphasis must be placed upon the quality of work. The Zero Defect policy must be always followed.
i. Employees must make a stand to follow the "Human Resources Policy" individually or collectively.
j. Both the parties should closely and routinely monitor change in productivity, and take necessary steps to avoid undesirable consequence.

2.4.2.5 Code of Discipline:

Over the years, a number of measures have been adopted in India to maintain and promote discipline and harmony between the employees and the employers. With this in view, the Second Five Year Plan suggested that a voluntary code of discipline must formulate and then abide by the same. Following this, the Indian Labour Conference in its fifteenth session held in 1958 evolved a Code of Discipline in industry.

This code was duly ratified by the national labour organizations like INTUC, AITUC, HMS, and UTUC and also by the employers' associations such as EFI, AIOE and AIMO with effect from June 1, 1958. According to the Code of Discipline, both employees and employers voluntarily agree to maintain and create an atmosphere of mutual trust and co-operation in the industry.

The code of Discipline provides for that:

1. Strikes and lockouts cannot be declared without prior notice.
2. No party should take any direct action without consulting the other.
3. The existing machinery for the settlement of disputes should be followed

In India, the Ministry of Labour and Employment has evolved a comprehensive code of Discipline to maintain discipline and harmony in the industries. However, the code does not have any legal sanction. Only moral sanctions are behind it. By now, the Code of Discipline has been accepted by 200 employers and 170 trade unions.

When industrial disputes could not be prevented even after adopting various preventive measures, as just discussed, disputes occurred need to be settled at the earliest possible so as its impending costs are minimized. This calls for a discussion on "settlement of industrial disputes".

Code of Discipline is a set of self-imposed mutually agreed voluntary principles of discipline and good relations between the management and the workers in industry. In India, Code of Discipline was approved by the 16th Indian Labour Conference held in 1958.

It contains three sets of codes which have already been discussed later in this book. According to National Commission on Labour, the Code in reality has been of limited use. When it was started, very favourable hopes were thought of it; but soon it started acquiring rust.

Main reasons for the lapses on the part of the employers and employees to secure harmonious relations through the Code may be listed as below:

(i) There was absence of self-imposed voluntary restraint on the part of the parties.

(ii) The worsening of economic situation led to the erosion of real wages of the workers
(iii) The rivalry among labour representatives.
(iv) Conflicts between the Code and the law.
(v) The state of indiscipline is the body politic, that is, the whole set up is charged with indiscipline and the Code could not work.
(vi) The employers could not implement the Code in many respects for reasons beyond their control

2.4.2.6 Standing Orders:

The very purpose of having Standing Orders in the organisation is to regulate industrial relations. Essentially, the term 'Standing Orders' refers to the rules and regulations which govern the conditions of employment of workers. These standing orders are binding on the employer and the employees.

The first legislative enactment, which incidentally sought to regulate the making of Standing Orders, was the Bombay Industrial Disputes Act, 1932. Recognizing the need for the standardised conditions of employment in factories to develop industrial peace in the country, the Industrial Employment (Standing Orders) Act was passed in 1946.

This Act provides for the framing of standing orders in all industrial undertakings employing 100 or more workers. The Act covers employment matters like classification of employees, i.e., permanent, temporary, probationers, etc., shift working, hours of work; attendance and absence rules; leave rules; termination, suspension, and disciplinary action, etc. The Labour Commissioner or the Deputy Labour Commissioner or the Regional Labour Commissioner certifies the Standing Rules.

Once the Standing Orders are certified, it is binding on the employees and the employers to abide by these Orders. Violation of Orders mentioned therein invites Penalties. The Industrial Employment (Standing Orders) Act, 1946 has been amended from time to time. As per the recent amendment made in the Act in 1982, there has been a provision for the payment of a subsistence allowance to workers who are kept under suspension.

The terms and conditions of employment have been a bone of contention between labour and management since the advent of factory system. To prevent the emergence of industrial strife over the conditions of employment, one important measure is the Standing Orders. Under the Industrial Employment Standing Orders Act, 1946, it was made obligatory that Standing Orders would govern the conditions of employment.

The Standing Orders regulate the conditions of employment from the stage of entry in the organization of the stage of exits from the organization. Thus, they constitute the regulatory pattern for industrial relations. Since the Standing Orders provide Do's and Don'ts, they also act as a code of conduct for the employees during their working life within the organization.

The Standing Orders define with sufficient precision the conditions of employment under the employers and hold them liable to make the said conditions known to workmen employed by them. These orders regulate the conditions of employment, discharge, grievances, misconduct, disciplinary action, etc. of the workmen employed in industrial undertakings.

These issues are potential problems in industrial relations. Unresolved grievances can become industrial disputes; and disciplinary action in the wake of disciplinary proceedings against misconduct may also lead to industrial dispute.

2.4.3 GRIEVANCE SETTLEMENT AUTHORITIES

Experience shows that in the day-to-day running of business the disputes between the employer and workman are resolved by administrative process referred to as a grievance procedure. The Indian Labour Conference has also adopted a similar concept of a grievance in its following recommendations. Complaints, affecting one or more individual workers in respect or their wage payments, overtime, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissal and discharge would constitute grievance. Where the points of dispute are of general applicability or of considerable magnitude, they will fall outside the scope of grievance procedure.

The aforesaid definition has also been adopted in the guiding principles for a grievance procedure appended to the Model Grievance Procedure in India. Further, clause 15 of the Model Standing Orders in Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946, specifies that "all complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the manager or the other person specified in this behalf with the right to the employers." Moreover, the State Government have framed rules under the Factories Act, 1948 requiring welfare officer to ensure settlement of grievances.

The Voluntary Code of Discipline adopter by the Sixteenth Session of the Indian Labour Conference in 1958 also provided that: (a) the management and the unions will establish, upon mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement, and (b) they will abide by the various stages in the grievance procedures.

However, there is no legislation in force which provide for a well defined and adequate procedure for redressal of day-to-day grievances in industrial establishment. In order to meet th shortcoming, the Industrial Dispute Act, 1982, provides for setting up of the Grievance Settlement Authorities and reference of certain individual disputes to such authorities. Section 9C of the Amendment Act provides:

1. The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the proceeding twelve months, shall provide for, in accordance with the rules made in that behalf under the Act, a Grievance Settlement Authority for the settlement of industrial dispute connected with an individual workman employed the establishment.

2. Where an industrial dispute connected with an individual work man arises in an establishment referred to in sub-section (1), workman or any trade union of workman of which such workman is a member, refer, in such manner as may be prescribed such dispute to the Grievance Settlement Authority provided for by the employer under that sub-section for settlement.

3. The Grievance Settlement Authority referred to in sub-section (1) shall follow such procedure and complete its procee4dings which such period as may be prescribed.

4. No reference shall be made under Chapter III with respect to any dispute referred to in this section unless such dispute has been referred to the Grievance Settlement Authority concerned and the decision of the Grievance Settlement Authority is not acceptable to any of the parties to the dispute.

The Industrial Dispute (Amendment) Act, 1982, we have seen elsewhere excludes hospitals, educational institutions, institutions engaged in any charitable, social or philanthropic services, khadi or village industries and every institution performing sovereign function. For these institutions, the Hospitals and other Institutions (Settlement of Disputes) Bill, 1982, enjoins upon an employer to constitute within a specified period, a Grievance Settlement Committee for the resolution of individual disputes and Consultative council and a Local Consultative Council for the resolution of industrial disputes of a collective nature. The Bill also provides for the arbitration of disputes not resolved by Grievance Settlement Committee or the Local Consultative Council or Consultative Council. However, these provisions of the industrial dispute (Amendment) Act, 1982, has not yet been enforced presumably because the Hospitals and other institutions (Settlement of Disputes) Bill, 1982, has not so far received the colour of the Act. Further no riles have been framed under the unenforced Section 9C.

The following is the machinery for prevention and settlement of industrial disputes:

The nine types of machinery for prevention and settlement of industrial disputes are as follows: 1. Works committees 2. Conciliation officers 3. Boards of conciliation 4. Court of enquiry 5. Labour courts 6. Industrial Tribunals 7. National Tribunal 8. Arbitration. 9. Joint Management Council.

2.4.3.1 Works committees:

As per the provisions of the Industrial Disputes Act, 1947, organizations employing 100 or more persons have to set up works committees at unit level. These committees have equal number of representatives from the workers and the employers. Works committees are purely consultative in nature and have been regarded as the most effective agency for the prevention of industrial disputes. This committee represents workers and employers. Under the Industrial Disputes Act 1947, works committees exist in industrial establishments in which one hundred or more workmen are employed during the previous year. It is the duty of the works Committee to promote measures for securing and preserving amity and good relations between the employers and workers. It also deals with certain matters viz. Condition of work, amenities, safety and accident prevention, educational and recreational facilities.

THE OBJECTIVES OF WORKS COMMITTEES ARE TO:

1. Remove the causes of friction in the day-to-day work situation.
2. Foster amity and harmonious relationship between the parties.
3. Create an atmosphere for voluntary settlement of disputes and frictions.

Issues relating to wages, benefits, bonus, terms and conditions of employment, hours of work, welfare measures, training, development, promotion, transfer, etc. fall under the purview of works committees. In countries like Britain and the USA, works committees have been very

popular agencies to prevent industrial disputes. In India, works committees are set up through legislation.

In India, TISCO was the first to set up works committee way back in 1920. By 1952, 2075 works committees came into existence in the country. However, only 530 works committees were operational due to various reasons at the end of 1987. Reasons like vagueness regarding their exact scope, functions, inter-union rivalries, union opposition and employees' reluctance to utilize these for prevention of disputes rendered works committees ineffective.

FUNCTIONS OF WORK COMMITTEE

The main function of the works committee is "to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters". The works committees are normally concerned with problems of day-to-day working of the concern and are not intended to supplant or supersede the union for the purpose of collective bargaining, they are not entailed to consider real or substantial changes in the conditions of service; their task is only to reduce friction that might arise between the workmen and management in the day-to-day working. By no stretch of imagination can it be said that the duties and functions of the works committee include the decision on such an important matter as an alteration in condition of service".

2.4.3.2 Conciliation Authorities

1. **Constitution of Conciliation Authorities:** a) ***Appointment of Conciliation officers:***

One of the authorities under the Act is the conciliation officer. The law provides for the appointment of Conciliation Officer by the Government to conciliate between the parties to the industrial dispute. Under section 4 the appropriate Government is empowered to appoint conciliation officers for promoting settlement of industrial disputes. These officers are appointed for a specific area or for specified industries in a specified area or for one or more specified industries, either permanently or for a limited period. The Conciliation Officer is given the powers of a civil court, whereby he is authorized to call the witness the parties on oath. It should be remembered; however, whereas civil court cannot go beyond interpreting the laws, the conciliation officer can go behind the facts and make judgment which will be binding upon the parties.

On receiving information about a dispute, the conciliation officer should give formal intimation in writing to the parties concerned of his intention to commence conciliation proceedings from a specified date. He should then start doing all such things as he thinks fit for the purpose of persuading the parties to come to fair and amicable settlement of the dispute. Conciliation is an art where the skill, tact, imagination and even personal influence of the conciliation officer affect his success. The Industrial Disputes Act, therefore, does not prescribe any procedure to the followed by him. The conciliation officer is required to submit his report to the appropriate government along with the copy of the settlement arrived at in relation to the dispute or in case conciliation has failed, he has to send a detailed report giving out the reasons for failure of conciliation. The report in either case must be submitted within 14 days of the commencement of conciliation proceedings or earlier. But the time for submission of the report

may be extended by an agreement in writing of all the parties to the dispute subject to the approval of the conciliation officer.

If an agreement is reached (called the memorandum of settlement), it remains binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and continues to be binding on the parties after the expiry of the period aforesaid, 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 one of the party or parties to the settlement.

b) *Constitution of Board of Conciliation*: under the Act where dispute is of complicated and require special handling the appropriate Government is empowered to constitute a Board of Conciliation. The boards are preferred to conciliation officers. However, in actual practice it is found that Boards are rarely constituted. Under Section 10(1) (a) the appropriate government is empowered to refer the existing or apprehended dispute to a Board. The Board is constituted on an ad hoc basis. It shall consist of an independent person as Chairman and one or two nominees respectively of employers and workman. The chairman must be an independent person. A quorum is also provided for conducting the proceedings.

2. **Qualifications and experiences**: unlike the adjudicating authorities the Act does not prescribe any qualification and/or experience for conciliation officer or member or a Board of Conciliation. A report of the study committee of National Commission on Labour, however, reveals that one of the causes of failures of conciliation machinery is lack of proper personnel in handling the dispute. The officer is sometimes criticized on the ground of his being unaware of industrial life. He is also criticized on the ground of his not received the requisite training. It has been suggested that the Act should prescribe a qualification for conciliation officer. Further, he should be subject to proper and adequate training. Moreover, he should have adequate knowledge of handling labour problems.

Conciliation Officers are appointed by the government under the Industrial Disputes Act, 1947.

The duties of conciliation officer are given below:

(i) He has to evolve a fair and amicable settlement of the dispute. In case of public utility service, he must hold conciliation proceedings in the prescribed manner.

(ii) He shall send a report to the government if a dispute is settled in the course of conciliation proceedings along with the charter of the settlement signed by the parties.

(iii) Where no settlement is reached, conciliation officer sends a report to the government indicating the steps taken by him for ascertaining the facts, circumstances relating to dispute and the reasons on account of which settlement within 14 days of the commencement of the conciliation proceedings.

2.4.3.3 Boards of Conciliation:

In case Conciliation Officer fails to resolve the differences between the parties, the government has the discretion to appoint a Board of Conciliation. The Board is tripartite and ad hoc body. It consists of a chairman and two or four other members.

The chairman is to be an independent person and other members are nominated in equal number by the parties to the dispute. Conciliation proceedings before a Board are similar to those that take place before the Conciliation Officer. The Government has yet another option of referring the dispute to the Court of Inquiry instead of the Board of Conciliation.

The machinery of the Board is set in motion when a dispute is referred to it. In other words, the Board does not hold the conciliation proceedings of its own accord. On the dispute being referred to the Board, it is the duty of the Board to do all things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement. The Board must submit its report to the government within two months of the date on which the dispute was referred to it. This period can be further extended by the government by two months.

The government can also appoint a Board of Conciliation for promoting settlement of Industrial Disputes. The chairman of the board is an independent person and other members (may be two or four) are to be equally represented by the parties to the disputes.

The duties of the board include:

A Board to which a dispute is referred must investigate the dispute and all matters affecting the merits and the right settlement thereof and do all things for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute without delay. If a settlement is arrived at, the Board should send a report to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. If no settlement is reached, the Board must send a full report together with its recommendation for the determination of the dispute.

In case of failure of settlement by a Board, the "appropriate Government" may refer the dispute to a Labour Court, Tribunal or National Tribunal. The Government is however not bound to make a reference. But after receiving a report from a Board it must record and communicate to the parties concerned its reasons for not doing so. A Board is required to submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government. The time-limit for the submission of a report can be extended by the appropriate Government or by agreement in writing by all the parties to the dispute.

(a) To investigate the dispute and all matters affecting the merits and do everything fit for the purpose of inducing the parties to reach a fair and amicable settlement.

(b) A report has to be sent to the government by the board if a dispute has been settled or not within two months of the date on which the disputes were referred to it.

2.4.3.4. Court of Enquiry:

A procedure similar to the constitution of Board of Conciliation is provided for bringing into existing Court of inquiry as well. While a Board of Conciliation may be constituted for promoting the settlement of an industrial dispute the purpose for which a Court of Inquiry may be constituted is "for enquiring into any matter appearing to be connected with or relevant to an industrial dispute". The ideal of a Court of Inquiry is borrowed from the British Industrial Courts Act, 1919. This Act enables the minister on his own motion and irrespective of the consent of the parties to a dispute, to set up a Court of Inquiry into the report on the causes and

circumstances of any trade dispute, together with such recommendations as the Court may make for the resolution of the dispute. Perhaps because of the extended field of operation of the Court of Inquiry the Legislative thought fit to allow the parties to use instruments of economic coercion during pendency of proceeding before it. In case of the failure of the conciliation proceedings to settle a dispute, the government can appoint a Court of Inquiry to enquire into any matter connected with or relevant to industrial dispute. The court is expected to submit its report within six months. The court of enquiry may consist of one or more persons to be decided by the appropriate government.

The court of enquiry is required to submit its report within a period of six months from the commencement of enquiry. This report is subsequently published by the government within 30 days of its receipt. Unlike during the period of conciliation, workers' right to strike, employers' right to lockout, and employers' right to dismiss workmen, etc. remain unaffected during the proceedings in a court to enquiry.

A court of enquiry is different from a Board of Conciliation. The former aims at inquiring into and revealing the causes of an industrial dispute. On the other hand, the latter's basic objective is to promote the settlement of an industrial dispute. Thus, a court of enquiry is primarily fact-finding machinery. The government may appoint a Court of enquiry for enquiring into any industrial dispute. A court may consist of one person or more that one person and in that case one of the persons will be the chairman. The Court shall be required to enquire into the matter and submit its report to the government within a period of six months.

***Duties of the Court**:* it is the duty of the Court of Inquiry into matters referred to it and submit its report to the appropriate Government ordinarily within six months from the commencement of its inquiry. This period is, however, not mandatory and the report even after the said period would not be invalid.

2.4.3.5 Labour courts:

The appropriate government may, by notification in the official gazette constitute one or more labour courts for adjudication of Industrial disputes relating to any matters specified in the second schedule of Industrial Disputes Act. They are:

- Dismissal or discharge or grant of relief to workmen wrongfully dismissed.
- Illegality or otherwise of a strike or lockout.
- Withdrawal of any customary concession or privileges.
- Where an Industrial dispute has been referred to a labour court for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such a dispute, submit its report to the appropriate government.

A labour court consists of one person only, who is normally a sitting or an ex-judge of a High Court. It may be constituted by the appropriate Government for adjudication of disputes which are mentioned in the second schedule of the Act.

The issues referred to a labour court may include:

(i) The propriety or legality of an order passed by an employer under the Standing Orders
(ii) The application and interpretation of Standing Orders.
(iii) Discharge and dismissal of workmen and grant of relief to them.
(iv) Withdrawal of any statutory concession or privilege.
(v) Illegality or otherwise of any strike or lockout.
(vi) All matters not specified in the third schedule of Industrial Disputes Act, 1947. (It deals with the jurisdiction of Industrial Tribunals).

The government sets up Labour Courts to deal with matters such as:

i) The propriety or legality of an order passed by an employer under the standing orders.
ii) The application and interpretation of standing orders passed.
iii) Discharge or dismissal of workmen including reinstatement, grant of relief to workers who are wrongfully dismissed.
iv) Withdrawal of any customary concession of privilege
v) Illegality or otherwise of a strike or lockout, and all other matters not specified in the third schedule .

2.4.3.6 Industrial Tribunals:

The appropriate government may, by notification in the official gazette, constitute one or more Industrial Tribunals for the adjudication of Industrial disputes relating to the following matters:

- Wages
- Compensatory and other allowances
- Hours of work and rest intervals
- Leave with wages and holidays
- Bonus, profit-sharing, PF etc.
- Rules of discipline
- Retrenchment of workmen
- Working shifts other than in accordance with standing orders

It is the duty of the Industrial Tribunal to hold its proceedings expeditiously and to submit its report to the appropriate government within the specified time.

A Tribunal is appointed by the government for the adjudication of Industrial disputes.

Like a labour court, an industrial tribunal is also a one-man body. The matters which fall within the jurisdiction of industrial tribunals are as mentioned in the second schedule or the third schedule of the Act. Obviously, industrial tribunals have wider jurisdiction than the labour courts. Moreover an industrial tribunal, in addition to the presiding officer, can have two assessors to advise him in the proceedings; the appropriate Government is empowered to appoint the assessors.

The Industrial Tribunal may be referred the following issues:

1. Wages including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest intervals.
4. Leave with wages and holidays.
5. Bonus, profit sharing, provident fund and gratuity.
6. Shift working otherwise than in accordance with the standing orders.
7. Rule of discipline.
8. Rationalisation.
9. Retrenchment.
10. Any other matter that may be prescribed.

2.4.3.7. National Tribunal:

A National tribunals is constituted by the Central government for Industrial Disputes involving question of national importance. The Central Government may constitute a national tribunal for adjudication of disputes as mentioned in the second and third schedules of the Act or any other matter not mentioned therein provided in its opinion the industrial dispute involves "questions of national importance" or "the industrial dispute is of such a nature that undertakings established in more than one state are likely to be affected by such a dispute".

The Central Government may appoint two assessors to assist the national tribunal. The award of the tribunal is to be submitted to the Central Government which has the power to modify or reject it if it considers it necessary in public interest.

It should be noted that every award of a Labour Court, Industrial Tribunal or National Tribunal must be published by the appropriate Government within 30 days from the date of its receipt. Unless declared otherwise by the appropriate government, every award shall come into force on the expiry of 30 days from the date of its publication and shall remain in operation for a period of one year thereafter.

The central government may, by notification in the official gazette, constitute one or more National Tribunals for the adjudication of Industrial Disputes in matters which are of a nature such that industries in more than one state are likely to be interested in, or are affected by the outcome of the dispute.

It is the duty of the National Tribunal to hold its proceedings expeditiously and to submit its report to the central government within the stipulated time.

2.4.3.8. Arbitration:

The employer and employees may agree to settle the dispute by appointing an independent and impartial person called Arbitrator. Arbitration provides justice at minimum cost.

Arbitration: A process in which a neutral third party listens to the disputing parties, gathers information about the dispute, and then takes a decision which is binding on both the parties. The conciliator simply assists the parties to come to a settlement, whereas the arbitrator listens to both the parties and then gives his judgment**.** There are two types of arbitration:

1. **Voluntary Arbitration:** In voluntary arbitration the arbitrator is appointed by both the parties through mutual consent and the arbitrator acts only when the dispute is referred to him

2. **Compulsory Arbitration:** Implies that the parties are required to refer the dispute to the arbitrator whether they like him or not. Usually, when the parties fail to arrive at a settlement voluntarily, or when there is some other strong reason, the appropriate government can force the parties to refer the dispute to an arbitrator.

2.4.3.9 Joint Management Council :

In India, the joint management council (JMC) came into existence due to the provisions in this regard made by the Industrial Policy Resolution, 1956. These councils were set up to enable workers to participate in management and infuse a spirit of cooperation between the workers and the management.

The salient features of the JMCs are as follows:

(i) The scheme is a voluntary one.

(ii) The minimum and maximum number of its members are 6 and 12 respectively consisting of equal number of representatives of workers and employers.

(iii) The JMCs deal with matters like information sharing, consultative, and administrative.

(iv) The decisions taken by the JMC should be unanimous ones.

(v) The JMCs can be set up in the units employing 500 or more persons and having strong trade unions

In India, industrial units like Hindustan Insecticides, HMT, Indian Airlines, Air India, in the public sector and TISCO, Arvind Mills, Modi Spinners and Weaving Mills, in the private sector, have been pioneers to introduce the JMC scheme. Past experience indicates that whenever the JMC schemes have been setup, there have been better industrial relations, more satisfied work force, increase in productivity, better profits, etc.

This scheme has been introduced at the shop floor and plant level in 236 public sector undertakings by September 1994. However, like the works committees, the functioning of the JMCs in India is also plagued by the factors like reluctance of workers, union rivalries, the management's lukewarm attitude, etc.

2.4.4 SELF ASSESSMENT QUESTIONS

1. Describe various preventive machineries used for handling industrial disputes in India?
2. Explain the machinery available for the settlement of Industrial disputes?
3. What is conciliation? Explain the qualities and roles of a conciliator.

2.4.5 REFERENCES

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