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Industrial Dispute Resolution in India in Theory and Practice

Abstract

[Excerpt] The recent tragic incident at the Union Carbide Plant in Bhopal, India has focused international attention on some of the problems of industrialization in developing countries. Of particular interest has been the issue of whether the cases filed against Union Carbide should be tried in Indian or American courts. Disputes of this nature indicate the increasing necessity for world-wide comprehension of the laws and regulations governing industry in developing countries, particularly for the developed economies that invest in countries with developing economies.

India is one example of a developing economy that has recently opened its doors to international investment. Following the November 1984 election of Prime Minister Rajiv Gandhi, considerable incentives have been given to attract foreign investors into the country. Consequently, there have been a plethora of technical collaborations, including foreign investment in plant and machinery for large factories. It has therefore become important, especially for potential investors outside India, to have a basic understanding of Indian industrial law.

This article highlights the legal and practical aspects of industrial dispute resolution in India, to help potential investors analyze how industrial disputes between employers and employees are actually resolved.

Keywords

dispute resolution, industrial relations, India, economic development

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Comments

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Industrial Dispute Resolution In India In Theory And Practice

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The recent tragic incident at the Union Carbide Plant in Bhopal, India has focused international attention on some of the problems of industrialization in developing countries. Of particular interest has been the issue of whether the cases filed against Union Carbide should be tried in Indian or American courts. Disputes of this nature indicate the increasing necessity for world-wide comprehension of the laws and regulations governing industry in developing countries, particularly for the developed economies that invest in countries with developing economies.¹

India is one example of a developing economy that has recently opened its doors to international investment.² Following the November 1984 election of Prime Minister Rajiv Gandhi, considerable incentives have been given to attract foreign investors into the country.³ Consequently, there have been a plethora of technical collaborations, including foreign investment in plant and machinery for large factories.⁴ It has therefore become important, especially for potential investors outside India, to have a basic understanding of Indian industrial law.

This article highlights the legal and practical aspects of industrial dispute resolution in India, to help potential investors analyze how industrial disputes between employers and employees are actually resolved.

I. The Legal Framework Behind Industrial Disputes In India

Three important pieces of legislation have played a major role in shaping industrial relations in India: 1) the Trade Unions Act of 1926,⁵ 2) the Industrial Employment "Standing Orders" Act of 1946,⁶ and 3) the Industrial Disputes Act of 1947.⁷

The Trade Unions Act of 1926 deals with the formation and registration of trade unions, but does not deal with recognition of unions by employers for the purpose of collective bargaining.⁸

The Industrial Employment "Standing Orders" Act of 1946 provides rules and regulations governing the general terms and conditions of employment between the employer and the employee. Employers and employees must agree on a set of rules and regulations governing the contractual employer/employee relationship.⁹ The main purpose of the Act is to ensure that certain

1 See Westbrook, *Theories of Parent Company Liability and the Prospects of an International Settlement*, 20 *Tex. Int'l L. J.* 321 (1985).

2 See Encarnation, *The Political Economy of Indian Joint Industrial Ventures Abroad*, 36 *INT'L ORG.* 31, 33 (1982).

3 Eason, *India Opens Import Doors*, *NATION'S BUS.*, Aug. 1985, at 12.

4 *Id.*

5 Trade Unions Act (Act XVI of 1926), 33 *INDIA A.I.R. MANUAL* 689 (1979).

6 Industrial Employment (Standing Orders) Act (Act XX of 1946), 23 *INDIA A.I.R. MANUAL* 84 (1979).

7 Industrial Disputes Act (Act XIV of 1947), 22 *INDIA A.I.R. MANUAL* 590 (1979).

8 Trade Unions Act (Act XVI of 1926), 33 *INDIA A.I.R. MANUAL* 689 (1979) (any seven people may join to form a trade union).

9 Industrial Employment (Standing Orders) Act (Act XX of 1946), 23 *INDIA A.I.R. MANUAL* 84 (1979).

minimum standards of employment will be maintained without a weak labor movement having to fight for them.

The Industrial Disputes Act of 1947 governs industrial dispute resolution procedures. Both the Industrial Disputes Act and the “Standing Orders” Act predate Indian independence.¹⁰ They are legacies of British rule and a continuation of the British wartime legislation aimed at regulating industrial conflict and boosting production. The basic assumption in the acts is that the union is weak and will continue to be weak; the legislation is intended to supplement the effort of a weak labor movement in its dealings with the employer.¹¹ A large portion of the Industrial Disputes Act has been adapted from the British laws on the subject.¹²

The Industrial Disputes Act (which shall be the major focus in this article) applies to a variety of establishments. The definition of the term “industrial establishment” is used in the widest possible sense, bringing almost all economic activity within the ambit of the Act.¹³ The Act applies to all “workmen” employed in these industries, some 9,000,000 according to very conservative estimates,¹⁴ but does not apply to employees employed in a supervisory capacity and drawing more than 1,600 rupees per month or employees whose work is supervisory or administrative in nature.¹⁵ The definition of “workman” does not make it clear whether supervisors are actually covered by the Act, and recent court decisions have given conflicting opinions regarding their status.¹⁶ Employers tend to adopt the view that supervisors drawing less than 1,600 rupees per month are “workmen” for the purposes of the Act. However, the broad coverage of the Act makes it one of the most widely applied acts in the country.

While the Act has been basically enacted for “the investigation and settlement of industrial disputes,”¹⁷ there has been some controversy about what constitutes an industrial dispute, despite the Act’s expansive definition. Specifically, one dilemma focused upon whether an individual could raise an industrial dispute, since the Act uses the term “workmen”.¹⁸ A subsequent amendment to the Act provided that individuals could raise industrial disputes only when the dispute was connected with the discharge, dismissal, termination or retrenchment of an individual worker.¹⁹ This implies that an individual’s grievance not related to a dismissal or discharge will not constitute an industrial dispute. For example, an individual worker’s grievance that his seniority was overlooked when a promotion decision was made will not constitute an industrial dispute, but instead may be redressed through the grievance procedure existing in the establishment. Including selective individual disputes as industrial disputes protects the individual worker from being victimized and losing his source of livelihood in the process, especially where he was not a member of the union.²⁰

10 The Standing Orders Act was enacted on April 23, 1946. The Industrial Disputes Act was enacted on March 11, 1947. India attained its independence on August 15, 1947.

11 S. NAGARAJU, *INDUSTRIAL RELATIONS SYSTEM IN INDIA* 277-78 (1981).

12 E. RAMASWAMY & U. RAMASWAMY, *INDUSTRY AND LABOR: AN INTRODUCTION* 195 (1981).

13 Industrial Disputes Act (Act XIV of 1947) § 2(j), 22 INDIA A.I.R. MANUAL 689 (1979); *see also* 2 V. SUBRAMANIAN, *FACTORY LAWS APPLICABLE IN TAMIL NADU* 26 (1983) (discussing Bangalore Water Supply Sewerage Board v. A. Rajappa and others, a case decided by the Supreme Court in 1978); Prakash, *Law Relating to Industrial Relations in India: Achievements and Problems*, 11 INT’L BUS. LAW. 146 (1983).

14 DEP’T OF LABOR, GOV’T OF INDIA, BULL. (1975).

15 Industrial Disputes Act (Act XIV of 1947) § 5, 22 INDIA A.I.R. MANUAL 590 (1979).

16 The term “workman” has been defined as any person engaged in any industry, “to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied.” Industrial Disputes Act (Act XIV of 1947) § 2(s), 22 INDIA A.I.R. MANUAL 590 (1979). This definition does not apply to members of the armed forces, the police service or employees of prisons. *Id.* Furthermore, this definition does not include those employees who are employed in a supervisory capacity drawing wages exceeding 1600 rupees, or who, by the nature of the duties assigned to him, functions mainly in a managerial or administrative capacity. *Id.*

17 *See* Industrial Disputes Act (Act XIV of 1947) preamble, 22 INDIA A.I.R. MANUAL 590 (1979); *see also* P. MALIK, *THE INDUSTRIAL LAW* 449 (1966).

18 Industrial dispute has been defined as “any dispute or differences between employers and employees, employers and workmen, workmen and workmen, which is connected with the employment, nonemployment or terms of employment or the conditions of labor of any person.” Industrial Disputes Act (Act XIV of 1947) § 2A (as amended), 22 INDIA A.I.R. MANUAL 590 (1979).

19 Industrial Disputes Act (Act XIV of 1947) § 2A (as amended), 22 INDIA A.I.R. MANUAL 689 (1979); *see also* 2 V. SUBRAMANIAN, *supra* note 13, at 38 (discussing Swapan Das Gupta and others v. Foust Labour Court, West Bengal, and others, decided in 1976).

20 P. MALIK, *supra* note 17, at 451.

Consequently, in view of the “industrial dispute” definition, no real distinction exists between interest and grievance disputes as exists in the United States.²¹ Although a negotiated grievance procedure exists in most organizations, any collective grievance may become an industrial dispute if it is not solved at the bilateral level.²² Individual grievances, on the other hand, become industrial disputes only where the subject matter of the grievance relates to discharge, dismissal, retrenchment or termination of the individual employee.²³

II. Major Causes of Industrial Disputes in India

Industrial disputes arise in a myriad of ways. A dispute could arise as a result of any demand raised by the workers to which management does not agree, irrespective of the nature of the demand. Therefore, even highly unreasonable demands made by unions, for example “all workers should be given cars,” will be the subject matter of an industrial dispute, since they are connected, however remotely, to terms and conditions of employment. Demands made by unions prior to negotiating a long term contract are a common cause of major industrial disputes.

Industrial disputes could also arise as a result of a union grievance alleging that the employer is not following or adhering to the terms of the contract. There have been many disputes pertaining to the nonimplementation of contract terms, even after the contract has been signed.²⁴

A major source of industrial disputes relates to recognition of unions. There is no law mandating union recognition in India; furthermore, there is no provision in any law providing that in any unit or establishment, there can be but a single bargaining unit. Consequently, there are a number of unions in each factory and nonregulation of any union will lead to an industrial dispute.²⁵ Despite the fact that there is no law on recognition of unions, there exists a code of discipline entered into by representatives of employers and employees in 1956 that gives guidelines on recognition.²⁶ Under the terms of the code, a union that is formed must remain in existence for one year and must have membership corresponding to at least fifteen percent of the total workforce in the unit to be eligible for recognition. After a year of existence, a membership verification is conducted. An employer is then bound by the code to recognize the union if it is found to have the necessary membership. Until its formal recognition as a bargaining agent, the union may only discuss with management grievances of an individual nature which affect its own members; it has no “locus standi” to bargain on collective issues.²⁷

Frequently, unilateral changes in various existing practices in the factory may give rise to an industrial dispute raised by the

21 Industrial Disputes Act (Act XIV of 1947) § 2(k), 22 INDIA A.I.R. MANUAL 590 (1979); *see also* P. MALIK, *supra* note 17, at 457.

22 The Industrial Disputes Act is intended to provide that any interest or rights dispute which is not settled between the parties must go to a third party. *See* Industrial Disputes Act (Act XIV of 1947) § 10, 22 INDIA A.I.R. MANUAL 590 (1979).

23 Industrial Disputes Act (Act XIV of 1947) § 2A (as amended), 22 INDIA A.I.R. MANUAL 590 (1979); *see also* 2 V. SUBRAMANIAN, *supra* note 13, at 38.

24 In many cases, after a long term contract has been signed, it may not be possible for the employer to immediately implement terms of the contract that are not directly related to wages and benefits.

25 E. RAMASWAMY & U. RAMASWAMY, *supra* note 12, at 195-200; *see also* G. KOTHARI, LABOUR LAW AND PRACTICE 291-99 (1964).

26 In 1956, due to the problem of multiplicity of unions, the government initiated an agreement between the employers association and the trade unions regarding union recognition for bargaining purposes. Under the code, a newly formed union must have been in existence for a period of one year and must represent at least fifteen percent of the workforce of the factory or establishment to achieve recognition at the end of the year. During the year of review, the union presents grievances affecting its members, but it is not allowed to sign a collective bargaining agreement. S. DAYAL, INDUSTRIAL RELATIONS SYSTEM IN INDIA 79-83 (1980) (discussing the Code of Discipline adopted by the Indian Labour Conference in 1958).

27 E. RAMASWAMY & U. RAMASWAMY, *supra* note 12, at 195-200.

union. The unions tend to argue that certain practices which were in existence at the time of signing the contract cannot be changed without due notice and discussion during the lifetime of the contract.²⁸ Unless there is a specific clause in the contract giving management the right to change practices, work schedules, etc., any such change can be the subject matter of an industrial dispute. These practices could be related to: period and mode of wage payment, allowances, leave granting procedures, alteration of work and shift timings and schedules, classification of jobs by grades, withdrawal of any customary concession, privilege, or change in usage of such custom or privilege, introduction or alleviation of rules of discipline, change or rationalization, standardization or improvement of plant or technology that could have retrenchment repercussion on employees, or increases or reduction in the number of persons on any shift.²⁹ Employers tend to adopt the view that these are basically the rights and responsibilities of management subject to any worker's right to raise a grievance,³⁰ yet this accounts for many industrial disputes. Disputes would also arise if there is a change in labor law, and the employer or workmen do not agree or implement the provisions of the new law.³¹ Most of the latest labor law changes have been favorable to labor,³² and since employers often appeal against the law,³³ they prefer to wait for a decision on their appeal before implementing the law. Trade unions will demand immediate implementation and this may be another reason for an industrial dispute.

Interpretations of contract language also gives rise to disputes. Management and unions tend to interpret contract language differently which can lead to an industrial dispute if the parties do not come to an interpretive agreement. It is the style to couch the contract terms in language that is deliberately difficult to understand.³⁴ Contract language in India is not as explicit as it is in the United States.³⁵

The Indian labor statistics, published by the government of India, have cataloged all disputes that resulted in strikes or lockouts into seven narrow causal categories: wages, bonus, personnel, leave, hours of work, violence and indiscipline, and others. These categories attribute strikes to their immediate cause although an intensive analysis of strikes has shown that the immediate cause is often the final spark that ignites simmering tensions. Results available for selected years are shown in table 1 below.

28 Industrial Disputes Act (Act XIV of 1947) § 9(A), 22 INDIA A.I.R. MANUAL 590 (1979); *see also* 2 V. SUBRAMANIAN, *supra* note 13, at 47 (discussing Shakti Eletro Mechanical Industries Pvt. Ltd. v. F.N. Lala, decided in 1974).

29 Industrial Disputes Act (Act XIV of 1947) § 9(a), 22 INDIA A.I.R. MANUAL 590 (1979); *see also* K. SRIVASTAVA, THE INDUSTRIAL DISPUTES ACT, 1947 at 452 (1966).

30 *See generally* K. SRIVASTAVA, *supra* note 29.

31 The Indian government has tended to enact protective labor legislation. When such legislation is enacted, employers tend to challenge the validity of the legislation if they feel it impinges on their rights. Consequently, employers may choose to file a petition in the courts in order to postpone the implementation of the legislation. Unions, on the other hand, will demand immediate compliance with the legislation and will raise noncompliance as an industrial dispute. In other cases, employers may seek clarifications of the legislation before it is implemented. This will also cause a delay. Even in this situation, the unions are likely to raise the delay as a dispute.

32 *See, e.g.*, Workmen's Compensation (Amendment) Act (Act XXII of 1984), 35 INDIA A.I.R. MANUAL 1128 (1985).

33 This is consistent with all appeals taken under the India Code of Civil Procedure.

34 G. KOTHARI, *supra* note 25, at 5-6.

35 *Id.*

TABLE 1
PERCENTAGE DISTRIBUTION OF STRIKES
BY CAUSE

<u>Year</u>	<u>Wages</u>	<u>Bonus</u>	<u>Personnel</u>	<u>Leaves/hrs work</u>	<u>Indis- cipline</u>	<u>Others</u>	<u>Total no. of disputes that resulted in strikes</u>
1951	29.4	6.8	29.3	8.2	NA	26.3	1026
1955	24.6	17.3	32.6	5.2	NA	20.3	1124
1960	37.1	10.5	24.7	2.4	NA	25.3	1506
1965	33.5	9.9	27.3	2.5	—	26.8	1825
1970	37.1	10.6	25.6	2.1	3.8	20.8	2843
1973	34.1	10.3	24.3	1.5	5.7	24.1	3296

These statistics refer only to those disputes that have resulted in a strike. Government estimates indicate that the number of disputes that result in a strike represents about one-fiftieth of the total number of disputes in the country.³⁶ A dispute is reported only after bilateral negotiation fails and third party intervention is called for.³⁷ Many of the disputes that have resulted in a strike are not reflected in these statistics since, many strikes, especially in the private sector tend to be resolved without any third party intervention.³⁸ Consequently, these figures are, at best, conservative estimates.

35. *Id.*
 36. E. RAMASWAMY & U. RAMASWAMY, *supra* note 12, at 217-29.
 37. Industrial Disputes Act (Act XIV of 1947) §§ 10(A), (B), 22 INDIA A.I.R. MANUAL 590 (1979).
 38. S. NAGARAJU, *supra* note 11, at 271-72, 274.

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36 E. RAMASWAMY & U. RAMASWAMY, *supra* note 12, at 217-29.
 37 Industrial Disputes Act (Act XIV of 1947) §§ 10(A), (B), 22 INDIA A.I.R. MANUAL 590 (1979).
 38 S. NAGARAJU, *supra* note 11, at 271-72, 274.

III. Dispute Settlement Process

Section 10 of the Industrial Disputes Act, provides that when an industrial dispute occurs or is apprehended, the appropriate government may:

1. refer the industrial dispute to a conciliation officer or board of
2. conciliation officers for promoting a settlement, or
3. to a court of inquiry, or
4. to a labor court of adjudication, or
5. to an industrial tribunal for adjudication.

Therefore, theoretically, any employer or workman must write in the prescribed form to the appropriate government, informing the appropriate government that an industrial dispute exists. The appropriate government may then refer the dispute to conciliation, labor courts, or tribunals. Invariably, the appropriate government is the Secretary of Labor of the state. As a matter of practice, however, this procedure is not always strictly followed, as is evident from the procedures outlined below.

A. Conciliation

Although it is the duty of the appropriate government to refer the dispute to conciliation,³⁹ the convention allows either party to submit a request in writing to the conciliation officer in his district, requesting the officer to start the process.⁴⁰ The government maintains a system of conciliation officers at the district level, regional level and at the state level, to serve as conciliation officers.⁴¹ People who serve as conciliation officers are normally recruited to the state government service by means of a public service examination. The applicant must have the basic qualification of a bachelor's degree, and perhaps a diploma in industrial relations or social work.

The conciliation officer is empowered to inquire into the dispute and suggest possible solutions to bring the parties into an agreement.⁴² His responsibility is basically an effort of mediation, and in the case of the private sector, his solutions need not be accepted by the parties.⁴³

The process of conciliation is invariably time consuming. Although by statute a conciliation proceeding is supposed to be completed within fourteen days,⁴⁴ this is rarely achieved. The conciliation officer normally calls a meeting of the parties, and if his efforts are not successful, he may decide to call another conference at a later date.⁴⁵ On occasion, conciliation meetings last a whole day when the subject matter of the dispute involves much discussion. The strategy is to try to ascertain each party's bargaining and actual positions and to suggest suitable compromises in order to settle the dispute.⁴⁶

39 Industrial Disputes Act (Act XIV of 1947) §§ 4(1), 5(1), 22 INDIA A.I.R. MANUAL 590 (1979); *see also* S. MEHROTRA, LABOUR PROBLEMS IN INDIA 623-24 (2d ed. 1976).

40 S. NAGARAJU, *supra* note 11, at 282.

41 *See* Form "C" of the Industrial Disputes (Central) Rules, 1957, *reprinted in* 2 V. SUBRAMANIAN, *supra* note 13, at 222.

42 S. MEHROTRA, *supra* note 39, at 624.

43 S. NAGARAJU, *supra* note 11, at 282.

44 In actual fact, Section 12 of the Industrial Disputes Act does not specify that conciliation should be completed within fourteen days, but only provides that the conciliation officer should submit his report of results within fourteen days of the commencement of conciliation proceedings. Sending the report does not impose any bar on the continuation of the conciliation proceedings. Industrial Disputes Act (Act XIV of 1947) § 12, 22 INDIA A.I.R. MANUAL 590 (1979).

45 Industrial Disputes Act (Act XIV of 1947) § 11, 22 INDIA A.I.R. MANUAL 590 (1979).

46 S. NAGARAJU, *supra* note 11, at 282.

If his conciliation efforts are not successful, the officer may decide to call meetings at a later date, or may submit a failure report of the meeting with his recommendations to the appropriate government. The appropriate government may make a decision to refer the dispute to a labor court or national tribunal for adjudication⁴⁷ While this procedure may work in theory, in practice, after a failure report is filed, the conciliation officer at the regional level normally calls a conference of the parties and tries to mediate the dispute.⁴⁸ He may call one or two different conferences before submitting the failure reports and, consequently, the conciliation process often takes weeks or months, since the conferences are usually held at the rate of one conference per week or every two weeks.⁴⁹ There are so many disputes pending conciliation that officers rarely have the time for continuous sittings on each dispute.⁵⁰ A failure at the regional level implies that the conciliation officer at the state level will become involved in the dispute.⁵¹ The conciliation officer is normally the additional labor commissioner, or the labor commissioner of the state. Therefore, as disputes move up the hierarchy of conciliation officers, the chances increase that they will get settled. A failure of conciliation proceedings at the state level implies that the state labor minister will become involved in the dispute. Normally, disputes get settled at this level, mainly due to the power and authority exercised by the minister that forces the parties to accept a reasonable compromise. A failure at the state level implies that the appropriate government will refer the dispute for adjudication.⁵²

Not all industrial disputes go through all the levels discussed above. Only those disputes involving a large number of workers, or union presidents who are well known politicians, or management that is well known, or disputes that have already resulted in a strike tend to go through these various levels.⁵³ In smaller disputes, after the regional level, a reference to adjudication is generally made. It is interesting to note that the law empowers appropriate governments to make a reference to adjudication at any stage of conciliation,⁵⁴ but that is rarely used, since adjudication is normally used as a last resort. Both management and labor generally do not favor adjudication, because it robs them of the opportunity to obtain their own objectives through the use of force or direct action.⁵⁵ Also the fact that the dispute will be decided by a third party is not acceptable.⁵⁶ Furthermore, adjudication involves considerable time, and waiting for an adjudicated decision might only worsen the industrial relations situation at the factory. As a result, both parties tend to rely more on conciliation efforts.

The disadvantage of the process of conciliation is that it is time consuming, and may go on for months. However, the fact that conciliation talks are in progress acts as a deterrent to workers from taking any direct action to gain their ends.⁵⁷

The major advantage of conciliation is that the appropriate government has the authority to prohibit any strike during the pendency of conciliation proceedings.⁵⁸ Employers tend to use conciliation mainly because strikes may be banned, and even if not banned, the strike that continues during the pendency of conciliation proceedings becomes an illegal strike. In an illegal strike, workers

47 Industrial Disputes Act (Act XIV of 1947) §§ 12(4), (5), 22 INDIA A.I.R. MANUAL 590 (1979).

48 Industrial Disputes Act (Act XIV of 1947) § 11, 22 INDIA A.I.R. MANUAL 590 (1979).

49 The time involved in the conciliation process varies from state to state, and depends on the number of disputes that are assigned to each conciliation officer.

50 S. NAGARAJU, *supra* note 11, at 286-88.

51 The system is designed so that an officer at the regional level may send the dispute directly to adjudication if necessary.

52 Industrial Disputes Act (Act XIV of 1947) §§ 7(1), 10, 22 INDIA A.I.R. MANUAL 590 (1979).

53 Large, complex strikes tend to feed the system and progress up all the levels of settlement. See E. RAMASWAMY & U. RAMASWAMY, *supra* note 12, at 237-39.

54 Industrial Disputes Act (Act XIV of 1947) § 10(A), 22 INDIA A.I.R. MANUAL 590 (1979).

55 S. NAGARAJU, *supra* note 11, at 301.

56 *Id.* at 302.

57 Industrial Disputes Act (Act XIV of 1947) § 22, 22 INDIA A.I.R. MANUAL 590 (1979).

58 Industrial Disputes Act (Act XIV of 1947) §§ 22, 23, 22 INDIA A.I.R. MANUAL 590 (1979).

will not receive any payment, even if it is found that the strike would have otherwise been “justified” thereby permitting the workers to demand payment.⁵⁹ However, if a settlement is reached in the course of conciliation proceedings, it is a binding settlement.⁶⁰

Invariably, conciliation is the first process adopted by the parties after failure of bilateral negotiations irrespective of the nature of the dispute. Labor courts and industrial tribunals deal only with specific kinds of disputes,⁶¹ which shall be dealt with later in this article.

There are many disadvantages to conciliation. First of all, the process takes an extraordinary amount of time. In certain states the time between conciliation conferences can be more than a month. If a dispute goes through all the stages of the conciliation procedure, it could easily take six months for the dispute to be resolved. This long time gap leads to tensions at the work place. Where direct action by workers is expected, the conciliation officer tries to arrange conferences in rapid succession; however, the large number of disputes awaiting his attention makes it impossible to do so effectively. Depending upon the concentration of industry in the area, a heavily industrialized district may yield as many as 200 disputes at the same time, with only two or three district level conciliation officers and one regional labor commissioner to handle the workload.⁶² Consequently, conciliation officers do not have enough time to thoroughly study the disputes and to offer innovative solutions.

Secondly, conciliation officers generally do not receive any organized training in conciliation.⁶³ They are sent to occasional training programs, however, most of the training must be done on the job. However, since the number of disputes is so large, precious little training ever actually gets done.⁶⁴ Furthermore, they are not kept abreast of disputes settled in other areas, so they are unable to use solutions used in other cases/areas as a basis for settlement of future disputes. There is no newsletter or bulletin reporting the number and kinds of disputes that are settled.⁶⁵ They also do not have adequate knowledge of the latest developments in industrial and labor case law and there have been many instances in which the unions or management representatives bring the latest decisions to the attention of the conciliation officer during the discussions.

Thirdly, there is the issue of commitment. Being part of a large bureaucracy, with guaranteed job security and promotions based on length of service provides little incentive for a conciliation officer to take a great interest in his job. There is no formal system of performance evaluation (in terms of disputes settled and time taken) and even if such a system existed, it will not be tied to any reward system, as is the practice in most government administrative organizations. There is also no professional code of ethics or performance for conciliation officers. Occasionally, when newsworthy disputes come to a conciliation officer, he might take a special interest in the dispute, hoping to be mentioned in the newspaper if a satisfactory settlement is reached.

Furthermore, union presidents and management representatives of large organizations pay little attention to district level conciliation officers and tend to bypass the procedure in favor of having their dispute settled at the regional commissioner level. Consequently, district level conciliation officers handle only small and relatively insignificant disputes, which further affects their

59 Although the Act does not make any distinction between justified and unjustified strikes, subsequent cases have made such a distinction. Accordingly, a strike becomes “justified” when it occurs as a result of some illegal act by the employer, and the traditional methods of dispute settlement have proved ineffective. In such a justified strike, workers are paid for its duration. *See generally* 2 V. SUBRAMANIAN, *supra* note 13.

60 Industrial Disputes Act (Act XIV of 1947) §§ 4, 11, 12, 22 INDIA A.I.R. MANUAL 590 (1979).

61 Industrial Disputes Act (Act XIV of 1947) §§ 10, 11, 22 INDIA A.I.R. MANUAL 590 (1979).

62 *See supra* note 51.

63 S. NAGARAJU, *supra* note 11, at 297.

64 *Id.*

65 The Act does not provide for any formal process of reporting by the various levels of conciliation on disputes settled and, hence, reporting on settled disputes does not occur.

morale and motivation.

Conciliation officers are rarely viewed as a totally impartial third party. Frequently, union presidents, who are invariably politicians, possess enormous power over conciliation officers by threatening transfers and interfering with career advancement. Consequently, they tend to try to stay on the good side of these politicians, and this affects their neutrality in dispute settlements. Even though the unions are invariably governed by internal union leaders, the president is invariably a political figure that enables the union to have lobbying power at the state government level. Politicians are also careful and try to agree to union demands even if they are unreasonable, since the union represents a large number of votes. Consequently, they exert political pressure on conciliation officers to try and talk management into compromising their positions. The extent of political involvement in unions is extensive in some states.⁶⁶ For example, recently in the state of Kerala, the state electricity and power minister was also the leader of the electrical workers' union.⁶⁷ Management also tries to bring pressure on conciliation officers by using their political contacts. Unlike the United States, India has not implemented a time limit for conciliation. The introduction of strict time limits to dispute settlement procedures would considerably speed up the process of resolution of disputes through conciliation.

B. Voluntary Arbitration

Under section 10(a) of the Industrial Disputes Act, the parties may agree to refer the dispute to arbitration at any time before the dispute is referred for adjudication. The statute requires the parties to sign an arbitration agreement specifying the terms of the reference and the names of the arbitrator or arbitrators.⁶⁸ Once the arbitration agreement is signed, the government has the power to terminate and prohibit any strikes and lockouts or the continuation of any strikes and lockouts in connection with the dispute. An arbitrator has the power to bind unions and workers who are not parties to the arbitration agreement if he is satisfied that the union represents the majority of the workers in the unit.⁶⁹

The Act does not provide any rules to structure the arbitration procedure. The normal procedure used is that the arbitrators request both parties to support their arguments in writing. The arbitrator studies the case and arguments put forward by both parties. If further evidence is needed, the arbitrator may call either party for a hearing, after which he gives his decision or award.⁷⁰ The arbitration award is required by law to be passed to the appropriate government. The award is then published in the official government gazette thus obtaining legal validity.⁷¹ Private arbitration pursuant to an agreement between the parties is also authorized. However, in this case, the award will be binding on the parties in the establishment, even though only some of the labor

66 E. RAMASWAMY, INDUSTRIAL RELATIONS IN INDIA 73-80 (1978); *see also* M. HOLMSTROM, INDUSTRY AND INEQUALITY 291 (1984).

67 M. HOLMSTROM, *supra* note 66, at 290.

68 Generally, only one arbitrator is used. Occasionally, however, it becomes very difficult for both management and labor to agree on one neutral arbitrator. Consequently, they select two arbitrators who then select a third one to act as an "umpire." The decision of the third arbitrator is final if the other two do not agree. Industrial Disputes (Central) Rules, 1957, *reprinted in* 2 V. SUBRAMANIAN, *supra* note 13, at 187.

69 Industrial Disputes Act (Act XIV of 1947) § 18, 22 INDIA A.I.R. MANUAL 590 (1979); *see also* P. MALIK, *supra* note 17, at 482-83.

70 An arbitrator generally studies the demands and positions of both parties before rendering his decision. The Act does not specify the methods by which he should decide the dispute. However, the normal practice is to combine the lists of demands from the parties and make a suitable decision. This practice contrasts with the Iowa Public Employment Procedure, where the arbitrator must choose between the lists of demands submitted by the parties. Industrial Disputes (Central) Rules, 1957, *reprinted in* 2 V. SUBRAMANIAN, *supra* note 13, at 187.

71 An agreement or statute is not legally valid in India until it is published in the gazette of the central or state governments. Consequently, an award issued in January may not be implemented until March because there is generally a two to three month delay in the publication process. Industrial Disputes Act (Act XIV of 1947) § 17, 22 INDIA A.I.R. MANUAL 590 (1979).

unions in the establishment may be a party to the dispute.⁷²

Although the government makes industrial tribunals and presidents of labor courts available as arbitrators for private sector industrial disputes, they are rarely used. Rather, parties usually select arbitrators whom they know well and trust. These arbitrators tend to be well known public figures, retired judges, or in some cases local municipal officers.⁷³ Unlike in the United States, well known academicians are not presently used in India as arbitrators.

Arbitration is probably the quickest method of labor dispute settlement in India. However, it is not used very much mainly because the parties can rarely agree on the choice of the arbitrator. Agreement as to an arbitrator is difficult primarily because unions feel that management will influence the arbitrator. Such suspicions are symptomatic of the distrust unions have for management in the private sector. In addition, the lack of a trained body of professional arbitrators with a well defined code of ethics further hinders the use of arbitration. Finally, the government bodies who act as arbitrators (i.e., the labor court, industrial tribunals, etc.) are too few in number to be of use.⁷⁴

While employers and employees may agree to resolve the dispute through an arbitrator who is a private individual, the parties cannot exercise the same freedom with conciliation. A private individual acting as a conciliation officer does not have the powers of the conciliation officer appointed by the government. However, even in the case of arbitration, the general tendency is to use the government agencies, rather than private individuals.⁷⁵

C. Courts of Inquiry

The Industrial Disputes Act establishes the court of inquiry to investigate any matter connected with a dispute. The court's only purpose is to inquire into the dispute and submit its findings to the appropriate government. The court of inquiry, like labor courts and industrial tribunals, has powers equivalent to those of a civil court.⁷⁶

Consequently, as distinguished from conciliation officers, courts of inquiry have a certain validity and position in law. Also, as distinguished from other forms of dispute resolution, the court of inquiry has a time limit of six months from the commencement of the inquiry within which it must submit its report to the appropriate government.⁷⁷ The act or the rules do not specify a procedure or set of standards for the court appointment, but rather leave that entirely to the judgment of the appropriate government.

In actual practice, courts are seldom used. While conciliation officers, boards and tribunals are equally capable of ascertaining the facts and recommending solutions, the courts may only submit a report of the facts, not having any recommendatory powers.⁷⁸ However, the government occasionally uses the courts to buy time or to cool off hot-headedness that might arise from an industrial

72 Industrial Disputes Act (Act XIV of 1947) § 18, 22 INDIA A.I.R. MANUAL 590 (1979).

73 Industrial Disputes Act (Act XIV of 1947) § 10(A), 22 INDIA A.I.R. MANUAL 590 (1979).

74 The number of disputes referred to arbitration approximates the number that is referred to conciliation. See S. NAGARAJU, *supra* note 11, at 286-88.

75 Private individuals are generally unavailable in the area of arbitration.

76 The powers of a civil court that are shared by the labor courts, the courts of equity and the industrial tribunals are: enforcing the attendance of a person and examining him under oath; compelling the production of documents and material objects; and issuing commissions for the examination of witnesses.

Industrial Disputes Act (Act XIV of 1947) § 11, 22 INDIA A.I.R. MANUAL 590 (1979).

77 Although the statute provides for a fourteen day time limit within which conciliation should be affected, it is rarely enforced. In contrast, the six month time limit given to the courts of inquiry is generally always enforced. Industrial Disputes Act (Act XIV of 1947) § 10(c), 22 INDIA A.I.R. MANUAL 590 (1979).

78 Industrial Disputes Act (Act XIV of 1947) §§ 14, 16, 22 INDIA A.I.R. MANUAL 590 (1979).

dispute. This is normally done by announcing the reference to a court of inquiry, whereby strikes or lockouts are banned by statute during the pendency of investigation.⁷⁹

D. Labor Courts

Under Section 10(c) of the Act, the appropriate government may also refer disputes to a labor court for adjudication. Only matters covered in the Second Schedule of the Industrial Disputes Act⁸⁰ may be dealt with by labor courts. The schedule includes, *inter alia*, matters connected with disciplinary action taken by the employer or his workmen, illegal lockouts and strikes and interpretation of standing orders. Generally, a labor court consists of a single person, with specified qualifications,⁸¹ who is vested with the plenary powers of a civil court.⁸²

The labor court basically inquires into a dispute referred to it. After examining all relevant documents and conducting detailed hearings complete with the examination of witnesses, the court issues its decision. In addition, by means of a legislative amendment in 1971,⁸³ labor courts were given additional powers to give appropriate relief to any worker wrongfully discharged (including authority to set aside the order of discharge dismissal) and to impose a lesser punishment if appropriate. Prior to this amendment, courts were empowered only to decide whether the discharge or dismissal was correct or wrongful.⁸⁴

Labor courts are used extensively in India in connection with all matters concerning the second schedule. Although the appropriate government has to refer the dispute to the labor court to officially confer jurisdiction, in practice, a petition filed in the labor court by either party under copy to the appropriate government is sufficient for the court to commence its operations.⁸⁵

Decisions of the labor court may be appealed by either party in the high court of each state.⁸⁶ Consequently, a labor court ruling often takes considerable time to be implemented since the court's decision is not necessarily final. Normally, the appeals process takes the following form. The decision of the labor court may be appealed before a high court (single bench). If the single bench decision is not satisfactory to either party, an appeal may be taken before the full bench of the high court. If that decision is similarly unsatisfactory, the appellate stage proceeds before a single bench of the Supreme Court. Further stages include a three bench and, finally, the full bench of the Supreme Court. A decision of the full bench of the Supreme Court is final and terminates the appeals process.

79 Industrial Disputes Act (Act XIV of 1947) § 23(B), 22 INDIA A.I.R. MANUAL 590 (1979).

80 The second schedule of the Industrial Disputes Act deals only with the following matters: the propriety or legality of an order passed by the employer under the "Standing Orders"; the application and interpretation of "Standing Orders"; discharge or dismissal of workmen, including reinstatements or grants of relief to workmen wrongfully discharged.

81 The minimum qualifications of a labor court presiding officer are prescribed by the Industrial Disputes (Central) Rules, 1957. He must have been: a judge of the high court, or a district judge or additional district judge for a period of three years, or has held the office of chairman or member of the Labor Appellate Tribunal or National or Industrial Tribunal for at least two years, or has held any other judicial office in India for at least seven years.

Industrial Dispute (Central) Rules, 1957, *reprinted in* 2 V. SUBRAMANIAN, *supra* note 13, at 187.

82 G. KOTHARI, *supra* note 25, at 276; *see also* Industrial Disputes Act (Act XIV of 1947) § 11, 22 INDIA A.I.R. MANUAL 590 (1979).

83 The purpose of the amendment was to make it easier for workmen to obtain relief and full compensation for being wrongfully discharged without incurring additional litigation expenses. Industrial Disputes Act (Act XIV of 1947) § 11(A), 22 INDIA A.I.R. MANUAL 590 (1979).

84 V. PATEL & B. PATEL, A COMMENTARY ON THE INDUSTRIAL DISPUTES ACT, 1947 at 151 (2d ed. 1967).

85 It is the individuals involved in the dispute who inform the government of the circumstances which ultimately set the dispute resolution machinery in motion.

86 G. KOTHARI, *supra* note 25, at 267.

Matters referred to the labor court can take considerable time for resolution. For instance, the labor court generally takes a minimum of three to four months to make a decision.⁸⁷ The parties can then prolong the proceedings further by requesting postponements. To compound the situation, the backlog of the labor courts is so severe that many cases taken up for hearing on any particular day get adjourned.⁸⁸ Generally however, employers and workers refer a matter to a labor court if the dispute involves points of law or if they do not want to exercise direct protest means such as a strike or lockout. Therefore, despite the delay, the labor courts have had a very important “cooling effect” and have been of great value as a settlement method.

E. National and Industrial Tribunals

The Industrial tribunal, under the Industrial Disputes Act,⁸⁹ is constituted by the appropriate government to adjudicate industrial disputes in connection with matters referred to in the second or third schedule of the Industrial Disputes Act. The appointment of persons, their powers, the mode of referral to a tribunal and, to a certain extent, the qualifications of persons eligible to be appointed on industrial tribunals is similar to those of labor courts. National tribunals are tribunals appointed by the central government to adjudicate matters of national importance, or disputes that are likely to affect industrial establishments in more than one state.⁹⁰

The tribunals have been set up to complement labor courts. Therefore, the tribunals are allowed to deal with matters specified in the second and third schedules. The labor court’s jurisdiction is limited to matters specified in the second schedule only, and to that extent, an industrial tribunal has greater prestige and power.⁹¹ The matters specified in the third schedule are:

- a) wages including the period and mode of payment;
- b) compensatory and other allowances;
- c) hours of work and rest intervals;
- d) leave with wages and holidays;
- e) bonus, profit sharing, provident fund, and gratuity;
- f) classification by grades;
- g) rules of discipline;
- h) rationalization;
- i) retrenchment and closure of the establishment; and
- j) any other matter as may be prescribed.⁹²

Consequently, it is evident that the industrial tribunals have jurisdiction over all substantive points of the employer-employee relationship, in addition to the areas under the jurisdiction of the labor courts.

A tribunal may consist of a single person and it has all the powers of a civil court under the Code of Civil Procedure and certain sections of the Code of Criminal Procedure.⁹³ The tribunals created under the Act are required to follow general principles relating to pleading followed in all civil courts. However, the industrial tribunals are barred from adjudicating any matter not mentioned in the

87 See generally A. AGGARWAL, INDIAN AND AMERICAN LABOR LEGISLATION AND PRACTICES (1966).

88 S. NAGARAJU, *supra* note 11, at 286-88.

89 Industrial Disputes Act (Act XIV of 1947), 22 INDIA A.I.R. MANUAL 590 (1979).

90 V. VENKATACHALAM & R. SINGH, THE POLITICAL, ECONOMIC, AND LABOR CLIMATE IN INDIA 103 (1982).

91 Industrial Disputes Act (Act XIV of 1947) § 7(A), 22 INDIA A.I.R. MANUAL 590 (1979).

92 N. PRASAD, THE INDUSTRIAL DISPUTES (AMENDED) ACT 58-59 (1964).

93 The Industrial Tribunal is vested with the powers of a judge or magistrate in the civil courts.

terms of reference and is not free to enlarge the scope of the reference.⁹⁴ Admittedly, the tribunal has wide powers in connection with the employer/employee contractual relationship, and can even recommend wages to be paid in an establishment. Like labor courts, by way of section 11(a), tribunals also have the power to give appropriate relief in cases of wrongful discharge or the dismissal of workers.⁹⁵

Under Section 17, an award made by the labor court or industrial tribunal shall be final and binding “and shall not be called in question by any court in any manner whatsoever.”⁹⁶

However, it is possible to obtain special leave to appeal to the Supreme Court, if there is a change in condition after the dispute has been adjudicated or if the other party asserts that the award is *ultra vires* of the Act. Therefore, parties tend to appeal the awards of tribunals also; however, they must first implement the award.

F. Effectiveness of Dispute Settlement Machinery

How effective has the dispute settlement machinery been? Table 2 below gives incidences of strikes and man-days lost for selected years until 1975 (latest data available).⁹⁷

TABLE 2
MAN-DAYS LOST PER 1000 WORKERS IN
MANUFACTURING INDUSTRIES

<u>Year</u>	<u>No. of man-days lost (in thousands)</u>	<u>Estimated Employment (in thousands)</u>	<u>Man days Lost Per 1000 Workers</u>
1961	376	3716	1022 (100.0)
1963	2525	4146	609 (118.7)
1965	4756	4505	1056 (103.3)
1967	12401	4539	2732 (267.3)
1969	13297	4580	2903 (284.1)
1971	11343	4929	2301 (225.1)
1973	16152	5437	2971 (290.7)
1975	19682	5486	3588 (351.1)

Note: 1) Figures in brackets indicate the index on base 1961 = 1000.
2) Again, these are conservative estimates since the number of unreported strikes is large.⁹⁸

98

The above table makes it clear that the increase in industrial conflicts has in fact been more than proportionate to the increase

94 “The jurisdiction of a Tribunal under this Act is no doubt wide in dealing with terms of contract between the employer and the workmen . . . [b]ut it has no power to do anything which will have the effect of amending a statutory provision.” 2 V. SUBRAMANIAN, *supra* note 13, at 71 (discussing *Bharat Bank Ltd. v. Its employees*, decided in 1950).

95 Industrial Disputes Act (Act XIV of 1947) § 11(A), 22 INDIA A.I.R. MANUAL 590 (1979).

96 This basically implies that there is a “total bar imposed with reference to maintainability of suits questioning the validity or binding nature of adjudications under the provisions of the Act.” 2 V. SUBRAMANIAN, *supra* note 13, at 87 (discussing *A.D. Loganathan v. R. Bheema Rao*, decided in 1980).

97 The information for the table was compiled in 1976 by the Labor Bureau of India and listed in INDIAN LABOR STATISTICS.

98 E. RAMASWAMY & U. RAMASWAMY, *supra* note 12, at 217-29.

in industrial employment.

The continuous escalation of conflict, as shown by the above figures, does not speak well for the efficiency of India's dispute resolution system. In fact, the system has not been successful in preventing strikes and lockouts, although that was the intended purpose of the Industrial Disputes Act.

The system has been more efficient in expeditiously terminating disputes once a strike has already broken out. The table below shows the percentage of strikes by durations for selected years.⁹⁹

TABLE 3
DURATION OF STRIKES

Year	> 1 day	< 1-5 days	6-10 days	11-20 days	21-30 days	30 days	Total No. of Disputes Resulting In strikes
1951	41.9	28.5	12.0	6.9	3.5	7.2	1001
1953	41.8	27.7	10.4	9.4	3.4	7.2	723
1955	37.4	25.4	18.5	7.3	2.7	8.7	1105
1957	36.6	30.0	12.6	9.3	4.4	7.1	1583
1959	39.8	26.9	12.8	6.6	5.0	4.7	1490
1961	31.2	32.2	12.5	10.2	6.0	7.9	1299
1963	36.1	35.6	13.6	6.2	3.8	4.7	1417
1965	31.2	30.8	13.3	9.6	5.6	9.5	1796
1967	26.2	29.0	13.8	12.2	6.5	12.3	2655
1969	27.8	28.3	12.4	16.2	6.7	10.0	2491
1971	25.4	25.1	14.8	15.3	5.8	13.6	2670
1973	24.7	25.1	12.2	13.4	9.7	16.7	3116
1975	22.6	23.0	13.8	11.0	6.2	23.4	1853

It must be noted that the duration of a strike is not an absolute indicator of the labor department's effectiveness, since many of these strikes are solved without intervention by the labor department. Furthermore, the large number of strikes lasting one day can be attributed to strikes and "bandhs" called by politicians, which are basically intended to be of a day's duration only.

Another issue is whether the industrial relations machinery is capable of resolving all the disputes referred to it. The following table lists data on dispute disposal in seven major industrial states in the country (Maharashtra, West Bengal, Tamil Nadu, Bihar, UP, Punjab and Hayana).¹⁰⁰

99 The information for the table was compiled in 1976 by the Labor Bureau of India and listed in INDIAN LABOR STATISTICS.
100 The information for the table was compiled in 1976 by the Labor Bureau of India and listed in INDIAN LABOR STATISTICS.

TABLE 4
RESOLUTION OF DISPUTES

<u>Year</u>	<u>Referred for Conciliation</u>	<u>Failed at Conciliation</u>	<u>Referred for Arbitration</u>	<u>Referred for Adjudication</u>
1967	33989	6852 (20.1)	200 (2.9)	3952 (57.6)
1968	36422	7446 (20.4)	69 (0.9)	3823 (51.3)
1969	30365	7322 (24.1)	131 (1.7)	4368 (59.6)
1970	21512	6377 (29.6)	133 (2.0)	3934 (61.6)
1971	38450	8962 (23.3)	280 (3.1)	6106 (68.2)
1972	29279	9520 (32.5)	124 (1.3)	5918 (62.2)
1973	45293	11588 (25.2)	93 (0.8)	8519 (73.2)
1974	48123	12182 (25.5)	109 (0.8)	7804 (64.0)
1975	46452	13488 (29.0)	152 (1.1)	9025 (66.9)

It would appear from the above table that roughly thirty percent of the disputes that are referred to the labor department routinely defy solution through conciliation. Arbitration seldom steps in to take over. Although adjudication is the only means left to resolve these disputes at this stage, a substantial number are not referred to adjudication. Therefore, approximately ten percent of all the cases that come up before the labor department are simply abandoned. In absolute terms, between 3,000 and 4,500 disputes meet with this fate every year.

The explanation often given by labor authorities is that these abandoned disputes do not merit reference for adjudication because they deal with inconsequential issues or because the parties to the dispute have not seriously tried to reconcile their differences on their own or through conciliation.¹⁰¹ In that case, there must be other reasons why the parties are indifferent to the reconciliation of their differences.

The reason for this is partly found in the system itself. The system discourages vigorous bilateral collective bargaining because the parties tend to rely on the easily available alternative of government sponsored conciliation.¹⁰² The American system of mediation/compulsory arbitration has also been criticized in that it has a "narcotic effect" because parties tend to rely on third party intervention. Kannappan and Myers¹⁰³ note that many conciliators tend to intervene too early in disputes, not giving the parties enough time to settle their differences through bipartisan negotiations. Additionally, the statutory provision of compulsory adjudication has caused labor and management to take a very legalistic view of industrial relations disputes. Consequently, there has been a "narcotic effect" leading to a marked preference for adjudication rather than bipartisan methods.¹⁰⁴

G. Differences in Procedures Between the Private and Public Sector

In actual fact, the Act does not make a distinction between the public and private sectors. The distinction is made between "public utilities" and other industries. However, public utilities are defined in very wide terms,¹⁰⁵ making it possible for the appropriate

101 S. NAGARAJU, *supra* note 11, at 286-88.

102 *Id.* at 269, 276-77.

103 *See generally* C. MYERS & S. KANNAPPAN, *INDUSTRIAL RELATIONS IN INDIA* (1970).

104 S. NAGARAJU, *supra* note 11, at 269, 276-77.

105 Section 2(n) of the Industrial Disputes Act defines Public Utility Service as

i. any railway or transport service for the carriage of passengers or goods by air;

government to include virtually all public sector firms and organizations under the definition of public utility. However, it is still theoretically possible for a public-sector organization not to be included in the public utility class. Schedule I¹⁰⁶ of the Act provides a listing of the public utility industries.

Regarding the dispute settlement process per se, there is no difference in the way the conciliation system is applied to private or public utility companies. In practice, however, reference to conciliation is promptly made by the managements of public utilities when a dispute arises, and the government generally uses its power to ban strikes and lockouts in that industry pending conciliation, arbitration, or adjudication if a strike has already commenced.¹⁰⁷ However, if the strike has not commenced, and if the workers issue a notice of strike (workers in public utilities are bound by law to give a notice of strike), then conciliation proceedings are automatically invoked, even if their management or union has not made a request to the government for a reference to conciliation.¹⁰⁸

Additionally, public utilities face more stringent strike rules. Unlike a private organization, unions in a public utility service must give the employers at least fourteen days notice prior to a strike. Likewise, the employer must give at least fourteen days notice of its

-
- ii. any section of an Industrial Establishment, on the working of, any major part of dock;
 - iii. any section of an Industrial Establishment, on the working of which the safety of the establishment or the workmen therein stands;
 - iv. any postal, telegraph or telephone service;
 - v. any industry that supplies power, light or water to the public;
 - vi. any system of public conservatory or sanitation;
 - vii. any industry specified in the first schedule which the appropriate court may, by notification, declare to be a Public Utility Service for the purposes of this Act.

Industrial Disputes Act (Act XIV of 1947) § 2(n), 22 INDIA A.I.R. MANUAL 590 (1979).

106 The First Schedule of the Industrial Disputes Act identifies the industries which may be declared to be Public Utility Services under sub-clause (vi) of clause (n) of Section 2.

1. Transport (other than railways) for the carriage of passengers or goods (by land or water).
2. Banking.
3. Cement.
4. Coal.
5. Cotton textiles.
6. Foodstuffs.
7. Iron and Steel.
8. Defence establishments.
9. Service in hospitals and dispensaries.
10. Fire Brigade service.
11. India Government Mints.
12. India Security Press.
13. Copper Mining.
14. Lead Mining.
15. Zinc Mining.
16. Iron Ore Mining.
17. Service in any oil-field.
18. (item 18 omitted).
19. Service in the Uranium Industry.
20. Pyrites Mining.
21. Security Paper Mill, Hoshangabad.
22. Services in the Bank Note Press, Dewas.
23. Phosphorite Mining.
24. Magnesite Mining.
25. Currency Note Press.

First Schedule to the Industrial Disputes Act, *reprinted in* 2 V. SUBRAMANIAN, *supra* note 13, at 181-83.

107 Industrial Disputes Act (Act XIV of 1947) §§ 12(1), 22, 22 INDIA A.I.R. MANUAL 590 (1979).

108 Industrial Disputes Act (Act XIV of 1947) §§ 12(1), 22, 22 INDIA A.I.R. MANUAL 590 (1979).

intention to lockout.¹⁰⁹ Once notice is given, a strike or lockout may be commenced only after the expiration of the fourteen day period. In addition, once a notice of strike or lockout is received by the management or union, it is supposed to inform the appropriate government of the receipt of the notice within five days.¹¹⁰ Thus, in cases of a strike or lockout, the appropriate government receives information about ten days in advance of the intended lockout or strike and may take steps to avoid a confrontation by referring the dispute to conciliation, adjudication, or inquiry, and by banning strikes until an award is given. Although the government frequently intercedes in the above manner, unions often strike despite the government ban. Such strikes are deemed illegal, and the union may be prosecuted with its leaders, fined, or imprisoned for a period of six months to a year.¹¹¹ However, union leaders are confident that appropriate governments will not fine or imprison them for an illegal strike since they are able to use their political influence to ensure that this does not happen. Consequently, although the Act provides adequate measures to avoid work stoppages in the public sector, the measures are rarely enforced, thus rendering them ineffective.

One or two states have made different rules regarding strikes for public utilities.¹¹² For example, the state of Tamil Nadu has evolved a compulsory arbitration clause whereby the state government will refer a dispute to arbitration and simultaneously order employers and employees to observe a set of terms and conditions evolved by the state, which terms may impact wages and benefits.¹¹³ Since the state always recommends a higher wage or better conditions, this serves to pacify the unions until the arbitration award is published, and consequently prevents a large and costly strike in the industry. Tamil Nadu, however, is prepared to take stern action against union leaders who persist in calling strikes despite the state government's actions. However, the reason for this position is that Tamil Nadu has an extremely stable government with strong popular support and, thus, is able to control its union leaders effectively. Nevertheless, although Tamil Nadu stands out as an example worth emulating, few other state governments have followed its example. This may be because in most other states, the state governments do not have a high degree of stability and, consequently, government leaders have to acquiesce to the wishes of union leaders who represent potentially important vote banks.¹¹⁴ In most states, the government tends to be more pro labor for this reason and, consequently, is unable to discipline unions. Since eighty percent of the work stoppages are caused by strikes¹¹⁵ and only twenty percent by lockouts, it is clear that it is the unions who should be controlled in order to reduce work stoppages.

IV. A Comparison of India and the United States

Although labor laws in both the United States and India are derived primarily from British labor legislation,¹¹⁶ there have been significant differences in the way the laws of the two countries have evolved over time. American legislation has been largely influenced by the free enterprise management philosophy, resulting in the fact that collective bargaining is not a compulsory but an optional process. In the Indian situation, labor legislation was designed to prevent employer-employee conflicts from hindering rapid

109 Industrial Disputes Act (Act XIV of 1947) §§ 22, 23, 22 INDIA A.I.R. MANUAL 590 (1979).

110 Industrial Disputes Act (Act XIV of 1947) § 22(6), 22 INDIA A.I.R. MANUAL 590 (1979).

111 Section 26 of the Industrial Disputes Act provides that

Any workman who commences, continues, or otherwise acts in furtherance of a strike which is illegal under this Act, shall be punish[ed] with imprisonment for a term which may extend to one month, or with which may extend to fifty rupees, or with both.

Industrial Disputes Act (Act XIV of 1947) § 26, 22 INDIA A.I.R. MANUAL 590 (1979).

112 See Tamil Nadu Industrial Disputes Rules, 1958, §§ 22, 59, reprinted in 2 V. SUB- RAMANIAN, *supra* note 13, at 270-71, 285.

113 See Tamil Nadu Industrial Disputes Rules, 1958, §§ 26, 27, 42, reprinted in 2 V. SUBRAMANIAN, *supra* note 13, at 272, 273, 278.

114 Lansing & Kuruvilla, *Job Reservation In India*, 37 LAB. L.J. 653, 658 (1986).

115 E. RAMASWAMY & U. RAMASWAMY, *supra* note 12, at 195.

116 *Id.*, see also D. TWOMEY, LABOR LAW & LEGISLATION 4-6 (6th ed. 1980).

economic development.¹¹⁷ In addition, the Indian legislation is based on the assumption that labor unions are weak and will remain weak. Consequently, the legislation and collective bargaining framework that have evolved are designed to protect labor.

A. Mediation and Conciliation

For example, in the private sector in the United States, the process of mediation is very similar to the Indian conciliation system described earlier in this article. Like the Indian conciliator, the American mediator also does not have the power to dictate a binding settlement on the parties, but instead tries to arrive at an agreement by persuasion, discussion and the subtle use of pressure on both parties.¹¹⁸ Mediation is the first form of intervention in most disputes in the private and public sectors. The difference between the two systems lies mainly in the fact that in India, once conciliation proceedings are instituted, the conciliation officer often may prohibit strikes during the pendency of conciliation proceedings. In the United States a mediator does not have this authority.¹¹⁹

The United States Federal Mediation and Conciliation Service is a commendable organization that provides a *well trained* body of mediators, with enough time to handle various disputes, thus rendering the service effective. In contrast, the Indian conciliation officers lack quality training, infrastructural support systems such as information, legal and administrative support, and time to be effective.¹²⁰ Because of time constraints, an interest dispute referred to conciliation could take almost six months to solve through the Indian conciliation system, especially since it goes through various levels of conciliation by different conciliation officers.¹²¹ In the United States, there is only one level of mediation and, consequently, decisions are reached much quicker.¹²²

B. Fact Finding

Fact finding in the United States' system and in the courts of inquiry in India are also very similar in that their role is restricted to the investigation and presentation of the facts. However, fact finding in the United States assumes a broader function in that it not only investigates and presents facts, but also has power to make recommendations. In contrast, the Indian courts of inquiry do not possess these powers. Fact finding in the United States also involves an effort to identify an acceptable compromise settlement¹²³ that the parties can use as a basis for negotiating an agreement.

In India, courts of inquiry are used very rarely in the private sector, and in the case of public sector disputes, they are generally used to buy time, in order to let the emotions of the unions cool off. The government may ban strikes while the inquiry process is instituted in India. In the United States, although a majority of the states that have enacted bargaining legislation still have fact finding as an important part of their impasse procedures, the bulk of the evidence suggests that its effectiveness, both in avoiding strikes and in achieving settlements, has declined during the last two decades.¹²⁴ It would appear that in most states in the United States, failure of mediation proceedings or bilateral negotiations will generally result in the dispute ending in arbitration, rather than fact finding.¹²⁵

117 See generally D. TWOMEY, *supra* note 116; E. RAMASWAMY & U. RAMASWAMY, *supra* note 12, at 195.

118 D. TWOMEY, *supra* note 116, at 4-6; see also 3 Lab. L. Rep. (CCH) 6401 (1987).

119 Industrial Disputes Act (Act XIV of 1947) § 22, 22 INDIA A.I.R. MANUAL 590 (1979); 3 LAB. L. REP. (CCH) (| 6401 (1987).

120 S. NAGARAJU, *supra* note 11, at 296-97.

121 3 Lab. L. Rep. (CCH) 6401 (1987).

122 3 Lab. L. Rep. (CCH) H 6401 (1987).

123 A. AGGARWAL, *supra* note 87.

124 Gatewood, *Factfinding in Teacher Disputes: The Wisconsin Experience*, 97 MONTHLY LAB. REV. 47 (Oct. 1974).

125 Kochan, *Dynamics of Dispute Resolution in the Public Sector*, in PUBLIC-SECTOR BARGAINING 150 (B. Aaron, J. Grodin & J. Stem eds. 1979) (strike

C. Voluntary Arbitration - Private Sector

In India, almost any kind of dispute may be brought before arbitration. In the United States, it is primarily grievance disputes that reach the arbitration process, after the dispute goes through the steps of the grievance procedure.¹²⁶ Arbitration is very rarely used in India, primarily because there is no corps of arbitrators available, and because management and unions rarely agree on an arbitrator. It is possible that if there was a professional corps of arbitrators available in India with voluntary arbitration rules and a code of ethics, there might be an increase in the use of the arbitration procedure as a means of settling disputes in the private sector.

The process of initiating arbitration proceedings and the actual arbitration are similar in both countries. However, in India, where arbitration is used in rare cases, conciliation officers, or Industrial Tribunals are normally used as arbitrators. Since they are employees of the government, they do not charge a fee for their services. In the United States, frequent use of the American Arbitration Association members could prove expensive to the parties, especially to the unions who do not always have the large funds available to management.¹²⁷ An arbitration award in both countries is binding upon the parties. However, there is a subtle difference since in the United States there is generally only one bargaining representative for the entire firm and, consequently, an arbitration award may be said to be binding on the whole firm. In India, laws do not restrict the number of bargaining agents in any firm or industry and, consequently, an arbitration award by a private person (not an employee of the government) is binding on the parties to the dispute only.

However, if the arbitration is conducted by one of the government officials, such as the conciliation officers or industrial tribunals, the award will be binding on the whole firm, irrespective of the number of unions that were the parties to the dispute. Consequently, this is a reason why private arbitration has not been popular in India, unlike in the United States, where learned academicians, professors and other persons may be frequently used as arbitrators. However, if the dispute is referred to a private arbitrator as a result of conciliation proceedings, then the agreement subsequently arrived at will be binding on the whole firm. However, in firms where there is only one bargaining agent, a private arbitrator's award is generally acceptable.

D. Compulsory Arbitration

In the United States, many states have introduced compulsory arbitration in connection with public utility industries, in the event that there is a strike threat or strike.¹²⁸ In India, the government has the power to refer any dispute in the public utility industry to compulsory arbitration, adjudication of the labor courts, or the industrial tribunals.¹²⁹ Generally, depending on the nature of the dispute, a reference is made to labor courts or tribunals since there is no separate cadre of arbitrators.

However, most contracts in the public utility services in India contain a clause providing that disputes arising out of interpretation of contract terms will be left to the arbitration of a conciliation officer or industrial tribunal. The primary difference between arbitration awards and the labor courts and industrial tribunals in India, is that an arbitration award is final and binding, while

record under arbitration in the public sector has been better than the strike record under fact finding).

126 A. MEYERS & D. TWOMEY, LABOR LAW AND LEGISLATION 364 (1975).

127 3 Lab. L. Rep. (CCH) fl 6403 (1987).

128 See N.Y. PUBLIC EMPLOYEES FAIR EMPLOYMENT ACT § 209 (consol. 1984); Wisconsin Municipal Employment Relations Act, Wis. STAT. ANN. § 111.70 (West 1974).

129 Industrial Disputes Act (Act XIV of 1947) § 10, 22 INDIA A.I.R. MANUAL 590 (1979).

the decisions of the labor courts and tribunals are legal decisions that may be either appealed or used as precedent in other cases.

There is only one process of arbitration in India, unlike in the United States where there are several variants of the arbitration process.¹³⁰ For example, final offer arbitration exists where the arbitrator does not make an award based on demands made by both parties, but chooses between one or the other list of demands for his award.

Arbitration is generally a time bound procedure in the United States making it one of the most effective and speedy methods of solving disputes. There is no fixed time frame for arbitration in India, but a time may be specified when the government refers a public utility dispute to arbitration. Arbitration is more widely used than any other method of dispute resolution in the public sector in the United States.¹³¹

It has been argued that the extensive dependence of the parties on the arbitration process in the United States has had a “chilling” and “narcotic” effect on bilateral negotiations.¹³² The parallel in India is that such effects are due to excessive dependence on adjudication through labor courts and tribunals.

In terms of overall effectiveness of the dispute settlement machinery, figures reported regarding the number of disputes successfully settled in India do not indicate a very high rate of success.¹³³ It is felt that labor legislation must undergo significant changes in order for this machinery to be more effective. One of the greatest sources of disputes stems from rampant interunion rivalry resulting from the multiplicity of unions. A law regarding the recognition of a single bargaining agent in each organization will go a long way toward reducing industrial disputes. Although a bill to this effect was introduced in Parliament in 1978, it did not receive Parliament’s support. Politicians, understandably, will be reluctant to support a bill of this nature, since it will restrict the number of trade unions on whom they largely depend for their support.

V. Conclusion

This article is designed to be an informative guide to the practical aspects of industrial dispute settlement in India. By providing the reader with information regarding the legal framework of industrial relations laws, this article should prove helpful to those firms which are contemplating the establishment of businesses or factories in India. Salient features of the dispute settlement processes in both India and the United States were compared in order to highlight the vast legal differences regarding the settlement of industrial disputes in both countries.

The article also demonstrates the salient weaknesses of Indian labor legislation. First, the legislation allows for a multiplicity of unions thereby resulting in an intense interunion rivalry that generates a large number of industrial disputes. Second, the dispute resolution machinery has increasingly failed to bring about timely agreements and reduce the number of workdays lost due to work stoppages. Finally, there seems to be a need to encourage parties to use collective bargaining, rather than rely on third party dispute resolution.

A comparison with the American system of industrial dispute settlement procedures indicates that India would benefit substantially if certain aspects of United States’ legislation were adopted in that country. Introduction of the United States system

130 3 Lab. L. Rep. (CCH) fl 6403 (1987).

131 Wheeler, *Compulsory Arbitration: A Narcotic Effect*, 14 INDUS. REL. 117 (1975); see also Wheeler, *How Compulsory Arbitration Affects Compromise Activity* 17 INDUS. REL. 80 (1978).

132 Feuille, *Selected Benefits and Costs of Compulsory Arbitration*, 33 INDUS. & LAB. REL. REV. 73 (1979).

133 S. NAGARAJU, *supra* note 11, at 322.

which recognizes only one bargaining agent in any bargaining unit would go far in reducing the problems caused by the multiplicity of unions and interunion rivalry. In addition to “beefing up” the conciliation machinery, the introduction of final offer arbitration as an option in the dispute resolution machinery may also serve as an incentive for voluntary settlement thus reducing the dependence on the existing dispute settlement machinery.

Whether the Indian government will introduce these changes is yet unknown. However, there is a feeling of optimism in the country, in the wake of Prime Minister Rajiv Gandhi’s initiation of sweeping economic and administrative reforms which are designed to attract foreign investment, stimulate local investments and remove much of the bureaucratic hurdles to initiating new industries. It is only a matter of time before the current industrial relations laws receive increased attention, since the labor relations climate also plays an important role in the decision of foreign investors to establish industries in India.