

THE INDIAN MERCHANTS' CHAMBER
BOMBAY

Social Science Intelligence Series

No. 4

CONCILIATION AND ARBITRATION

Published by

J. K. MEHTA, M.A.

SECRETARY, INDIAN MERCHANTS' CH

JEHANGIR WADIA BUILDING,

ESPLANADE ROAD, FORT, BOMBA

1938

SOCIAL SCIENCE INTELLIGENCE SERIES

Already Published :

- (i) Holidays with Pay (Factory Labour)
- (ii) Hours of Work (Shop and Commercial Employees)
- (iii) Sickness Insurance

In Press :

Indianization of Public Services

Telegraphic Address :
" INCHAMBU "

Telephone No.
25212.

Indian Merchants' Chamber

With the Secretary's Compliments.

*Jehangir Wadia Bldg.,
Esplanade Road.
Fort, Bombay.*

FOREWORD

The Committee of the Indian Merchants' Chamber have arranged to publish a series of brochures on different questions affecting Labour, the fundamental object being to get all such questions properly studied by all those who have the interests of industries at heart. With the setting up of autonomous Governments in different Provinces, there has naturally set in a movement for ameliorating the condition of Labour and for a forward Social policy. It is desirable that all the pros and cons of different questions be set forth by people who have studied these questions from a comparative point of view, and it is hoped that this series will be useful in inducing a study of such questions.

The previous brochures in the series dealt with the questions of "Holidays with Pay" (factory labour), "Hours of Work" (shop and commercial employees), and "Sickness Insurance." The series is supplied free to all the Chambers of Commerce, Commercial Associations and to the Press. Extra copies can be had at a nominal price of *annas four* each from the Office of the Chamber.

While they are sponsoring these studies, the Committee of the Chamber may not necessarily be in agreement with the views contained therein which, however, being the views of men who have studied these questions, deserve all attention.

J. K. MEHTA

Secretary,

Indian Merchants' Chamber.

Bombay, July, 1938.

CONTENTS

CHAPTER I	PAGES.
Introduction & History	1—2
CHAPTER II	
Theory of the Subject Proper	2—8
CHAPTER III	
Practical Applications of the Methods of Conciliation and Arbitration	9—12
CHAPTER IV	
Criticism & Conclusion	12—13
CHAPTER V	
Tables I, II & III.	14—16
(Table I—Showing <i>p. c.</i> of stoppages of work in various countries due to wage disputes.)	
(Table II—Comparative statement of days lost per annum per '000 of population between 1919—1924.)	
(Table III—Some industrial disputes in which settlement was reached by Conciliation, arbitration <i>etc.</i> India 1928—36).	
Appendix—(A) Summary of provisions of a Bill to “Aid in the Prevention of Strikes and Lock-outs, in Factories and Industrial Establishments,” (Government of Bombay 1938.)	17—18
(B) Views of the Indian Merchants' Chamber on a Bill to Prevent Strikes and Promote Settlement of Trade Disputes.	19—21
BIBLIOGRAPHY	22

CONCILIATION AND ARBITRATION

In the concluding remarks of his Survey on the System of Conciliation and Arbitration, Mr. Gilchrist, pathetically remarks that the method of conciliation and arbitration, as a means to settle industrial peace has established one central truth, viz. that there is no absolutely successful method of preventing industrial strife. "It is true, however", observes the writer, "that the various systems which have been analysed have not exhausted the possibilities of such methods."

Let us then in the light of this criticism approach first to analyse the methods in detail, and review the situation after we have thoroughly studied it.

Introduction.

The development of modern industries has brought in its train an increase of industrial strife all over the civilised world. Generally speaking, it may be stated that the nature and method of disputes have changed with the introduction of modern industry. Under the feudal system, *e. g.* in Japan, when manufacture of goods, as the etymology of the word suggests was really "hand-making" instead of a mechanical process and when production depended not upon the large-scale system of factory organization, but on individual craftsmanship and home industry or small guilds of craftsmen at most labour disputes, as the term is understood to-day, did not exist to the magnitude as they exist to-day. Individual bargaining prevailed then, whereas now, with the growth of a distinct class of wage-earning workers, the situation has changed. Collective bargaining is now replacing individual bargaining, though the spread of this form is not as rapid as might be supposed, owing to the tardy development of trade-unionism in some of the countries of the East. The increase of labour disputes, nonetheless seems as a general rule to be an inevitable phenomenon accompanying the expansion of industry all over the world.

Measures for conciliation and arbitration of industrial disputes are, therefore, a necessary adjunct to modern organizations of production. Stoppages of work, although, in themselves of a considerable and increasing economic significance are on the whole, however, less important than the industrial unrest of which they are a manifestation. This unrest, it may be mentioned, is primarily due to a number of psychological and economic causes and is greatly accentuated by the cyclical fluctuations to which an industry is subject. The five main methods explained here of preventing and settling disputes have all their advantages and disadvantages. In no sense can any one of them be looked upon as a panacea for industrial unrest and in any case two of the chief elements in the problem—(i) basic human unrest and instinctive pugnacity on the psychological side (ii) the business cycle on the economic side—are out of the range of methods as instruments to prevent and settle industrial disputes.

History

Historically speaking, in older countries, the methods for securing industrial peace had been of three types. In the first stage there were irregular negotiations. These negotiations were the result of interruptions of work caused by strikes or lock-outs. In this stage, both parties were unorganised. Each party tried to use force as it possessed to obtain its own terms and the result usually favoured

the employer, as he was the staying power. At this stage each party tried to get a drastic cure for an evil.

The second stage took recourse to methods of conciliation and arbitration. In this stage, an attempt was made by discussion and argument, to reach amicable settlement either before or after the intervention of the forcible measures of strikes and lock-outs. Prevention and cure came at this stage.¹ The third and final is compulsion or compulsory prevention of lock-outs and strikes with recognised principle for cure.

These three stages, writes Mr. Gilchrist, represent similar stages in social psychology. The first stage is the primitive notion that might is right, that the stronger must survive and the weaker go to wall. The second and more advanced stage represents the recognition of common interests. Conciliation is possible only when the feeling that the interests of masters and men are antagonistic is replaced by the idea that their interests are complementary or common. The third stage represents the still more advanced notions of a homogeneous community, when the interests of all sections are bound up together in an organic unity. In actual practice, however, few countries have passed through these three stages.²

Recent Development

Since the end of the War, the world has not had sufficient time to settle down into well defined channels and the most notable of post-war social troubles have been connected with labour conditions. The events of recent years show three separate lines of developments, viz. (i) The organization of machinery for dealing with industrial disputes. (ii) The organization of labour as a whole, and (iii) The democratisation of industry.

The nature of post-war strike has also undergone a change due to changes brought about by the Great War. The prewar "irritant" strike of the Syndicatsists e.g. has been varied by the new "intermittent" strike—also the Italian metal workers' strike called the lock-in or forcible occupation of the factory has equally undergone a change.

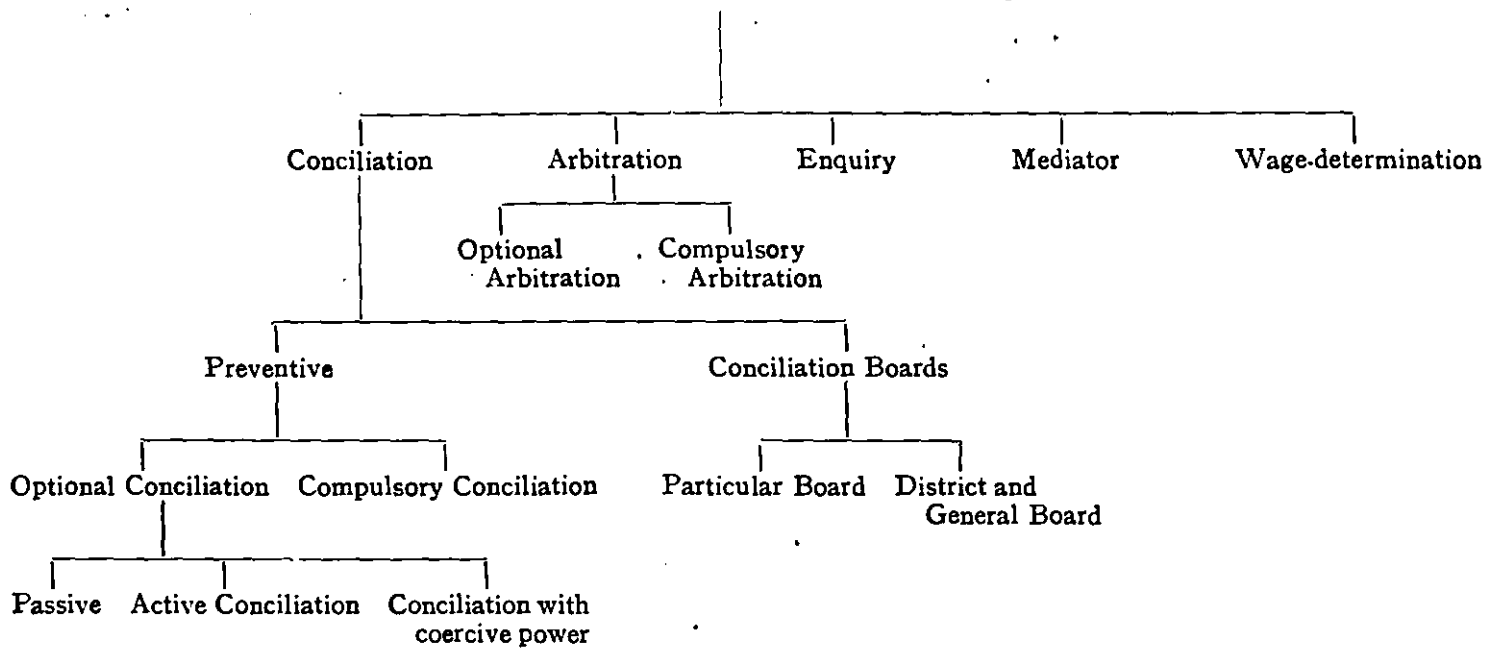
Theory of the Subject Proper

The problem of devising appropriate machinery for preventing and settling disputes in industrial organization is one of considerable complexity. The study of the question from an international point of view—i. e., the comparative study of the experiments made in various countries, while increasing rather than lessening the complexity of the question—is nevertheless of very great interest. It is true that to draw positive conclusions from these experiments is practically impossible. For one thing, there is no absolute method by which the exact results of any particular system can be appraised; for another, there is no means of telling precisely how far a system successful in one country will be successful if applied elsewhere.

A review of the system of conciliation and arbitration, however, in various countries gives the general impression that on the whole these systems have been devised with the psychological range of problems. The initial step towards the prevention and settlement of labour disputes is to get the parties to meet and to confer in a suitable frame of mind, and to effect this the psychological obstacles in the way must be first overcome.

¹ & ² Conciliation and Arbitration by Mr. Gilchrist, p. 7.

Methods to Prevent and Settle Industrial Disputes*



* These methods are qualified according as they are optional or compulsory ; permanent or "Ad Hoc".

As we said, there are several ways to which recourse has been taken and is taken to settle disputes in industrial organizations. The chart given on page 3 graphically describes the methods utilised to prevent and settle disputes. In the course of our study we shall endeavour to explain those methods that need explanation.

The chart gives us the knowledge that there are optional methods as well as compulsory methods, there is a permanent as well as an "Ad hoc" machinery to which nations take recourse to settle and prevent disputes.

Let us now explain the methods given on page 3.

Conciliation, its Nature

Voluntary agreements between the parties at issue is the essence of conciliation. Usually the term is limited to agreements arrived at under some more or less definite form of procedure such as that of a conciliation board or a conference, or as a result of good offices of some outside person. In effect, it is a natural expression of collective bargaining where the seriousness of the questions at issue calls for some special action either on the part of the employers and workers concerned or on the part of some external authority or individual³.

Types of Conciliation

Various types of conciliation exist. There is first of all what might be termed preventive conciliation, such as that of the joint Industrial Council, which aims at bringing the two sides together regularly to deal in conjunction with matters of common interest and incidentally to settle many possible disputes before they arise. In contradistinction to preventive conciliation, there is the type of conciliation which aims at the settlement of disputes that have actually arisen. This type may again be divided into two varieties—(i) Optional Conciliation (ii) Compulsory Conciliation. Optional Conciliation again may itself be divided into what might be termed (a) passive conciliation (b) active conciliation, and (c) conciliation with coercive powers.

- (a) *Passive Conciliation*:—It consists in setting up of some machinery but leaving the two parties to decide for themselves whether they will have recourse to it. The system established by the French Act of 1892 for conduct of conciliation proceedings during the stages prior to any cessation of work may be cited as an instance of this method.
- (b) *Active Conciliation* is the type existing in a large number of countries where professional conciliators, such for instance as officials of the Ministry of Labour, urge the parties to have recourse to whatever conciliation machinery is provided and do their best to facilitate a settlement.

³ An American definition of conciliation and mediation (that of Dr. Commons and Andrews), although interchanging the terms, brings out the particular function of mediation.

"By mediation or conciliation is usually meant the bringing together of employers and employees for a peaceable settlement of their differences by discussion and negotiations. The mediator may be either a private or an official individual or board and may make inquiries without compulsory powers, trying to induce the two parties by mutual concessions to effect a settlement. The successful mediator never takes sides and never commits himself as to the merits of a dispute. He acts purely as a go-between seeking to ascertain, in confidence, the most that one party will give and the least that the other will take without entering on either a lock-out or a strike. If he succeeds in this he is really deserving the bargaining power of both sides and brings them to the point where they would be if they made any agreement without him."

- (c) "*Conciliation with coercive powers*" is the name where the parties are obliged to meet at the summons of the Conciliator (although no penalties are provided in the event of non-compliance) and where the conciliator is given power to demand documents, have access to work-places and so forth.

Compulsory Conciliation:—The compulsory meeting of two parties as e.g. at summons of the Government Conciliator or on the request of either parties to a dispute, does not necessarily impugn the voluntary nature of compulsory meeting.

Conciliation Boards

These boards may be divided into two classes:

- (a) Boards which deal with particular trades; and
- (b) District and General Boards.

In the former class, disputes are automatically brought before the boards for settlement, whereas in the latter, the board can only act when both parties are willing to accept its services.

Arbitration

It is a term derived from the nomenclature of Roman Law, and applied to an arrangement for taking and abiding by the judgment of a selected person in some disputed matter instead of carrying it to the established court of justice.⁴ The essential nature of arbitration is the determination of the question at issue by some outside authority, irrespective of whether the parties to the dispute concur in such determination or not. Usually some measure of compulsion, direct or indirect, is available to enforce the finding of the arbitration authority. Thus arbitration is totally different in principle from conciliation, the essence of which is voluntary agreement. In practice, however, the two methods are frequently combined, the arbitrator endeavouring, as far as possible, to pursue the rôle of a conciliator, and falling back on arbitration only as a last resort.

Kinds of Arbitration

- (a) Optional; (b) Compulsory.
- (a) Optional arbitration is the term applied to the procedure, when both parties agree to refer the dispute to arbitration and when the award is not compulsorily enforceable by definite penalties.
- (b) In compulsory arbitration, the obligatory submission of disputes is unusually implied; and since there is little prospect of arbitral sentences being carried out voluntarily, if the dispute is submitted under duress, the compulsory enforcement of awards by penalties, or alternative, some form of stoppage of work, normally follows as a necessary corollary. Compulsory arbitration is disliked both by the employers and employees, because the former think that their liberty is restricted, while the latter maintain that it curtails "the right to strike", and partly because they believe that the unconscious class bias of the arbitrator—who is usually a man of education and sometimes

⁴ Encyclopaedia Britannica, Vol. II. page 219.

of birth and position—will stand in the way of working class advancement.⁵

III. Enquiry

Machinery for enquiry into industrial disputes in general exists in a number of countries, notably Canada and Great Britain, but it has not yet been sufficiently used to justify the drawing of any very definite conclusions as to the most successful method of application.

IV. Mediation

It means the exercise of good offices by some outside agency with a view to avert an impending rupture between the parties, or if the rupture has taken place, to bring them together again as soon as possible, without the agency itself acting as arbitrator, or making an award, though it might sometimes make and even publish recommendations as to the course which should be allowed. In the latter case, its action facilitates what may be called arbitration by public opinion.

V. Wage Determination

The compulsory arbitration of industrial disputes sooner or later necessitates an answer being given to the question, what are fair wages and what are fair profits? In those countries, such as New Zealand and the Australian States in which compulsory arbitration is a practice of long standing, Governmental determination of wage rates has been instituted as a supplementary measure.

There are two methods of deciding wage rates—one is by conflict of economic power, the other by the application of some agreed principles. In the great majority of cases, under a considerable parade of principles, it is the former of these methods that is actually employed. As a consequence with every change in the business cycle, the temporary bargaining advantage gained by one side or the other is used to enforce a new determination, with continual breaches of industrial peace as the necessary outcome.⁶

⁵ An Arbitration Court has two possible methods of arriving at a decision. It may "split the difference", roughly in the proportion of the economic power of the disputing parties, or it may make an award in accordance with some self-imposed principles

Prof. Pigon suggests: Make arbitration proceedings costly to the disputants. The practicability of such a course, particularly in foreign countries, where compulsory arbitration is already unpopular is to be doubted.—*Economics of Welfare*, pp. 377-378.

⁶ *International Labour Review*, November 1926, page 659.

What is a Dispute :—(i) According to the Government of Bombay (Present Bill), it means any dispute or difference between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person.

(ii) *According to the Central Government* :—It means according to the Trade Disputes Act of 1934, "Trade Disputes include disputes between employers and workmen or between workmen and workmen. But the main provisions relating to conciliation are limited to the former class of disputes and nothing in the Act applies to disputes between employers and employers. Serious stoppages of work occur at times as a result of difference between workmen and workmen and it may be useful to enable the machinery of the Act to be used in the case of disputes between employers and employers which threaten to interfere with trade and employment."

According to 1936 Amended Act, it was designed to make it clear that such men as were discharged, continued to be workmen for the purpose of the Act; also it was

Having discussed the various methods utilised by various countries to prevent and settle disputes in factory organisation, we turn our attention now to consider some specific industries where these methods are found to be employed and taken recourse to.

Public Utilities

Disputes in public utilities have been considered in various countries as being of a special type, in as much as the public is particularly affected and consequently has a right to intervene so as to minimise the possibility of a stoppage of work. It is pointed out that since the workers in these industries are in a particularly strong position by reason of the essential services which they perform, there is no justice in curtailing to some extent their right to strike.⁷

In Roumania and South Africa, disputes in industries of this type are made subject to compulsory arbitration. In the United States, the Court of Industrial Relations of the State of Kansas, likewise adjudicated upon all disputes in industries, affected with a public interest. In a number of other countries, some restriction is made without necessarily subjecting all such disputes to compulsory arbitration—as for example, Canada, where disputes in mines and public utilities may be compulsorily referred to enquiry, stoppage of work being prohibited until such enquiry has been terminated.

When the Trade Disputes Act (1936) was under discussion at the Central Legislative Assembly, a protracted debate took place on the connotation and denotation of the word 'public utility.' We shall deal with this aspect in our study when we come to consider the application of methods of Arbitration and Conciliation as have been employed in certain parts of the world including India.⁸

Stages of Intervention

Measures of Conciliation and Arbitration may be brought into operation at any or all of the stages mentioned here:—(i) Before dispute arises (ii) When a dispute has arisen, but before any cessation of work has taken place, or (iii) After an actual strike or lock-out has occurred.

Constitution of the Machinery

Agencies for the conciliation and arbitration of industrial disputes are of three main types: (i) Those made up of some impartial person or persons who may or may not have other special qualification (ii) Those made up of equal members of representatives of employers and employed (iii) Some combination of impartial persons and representatives. In some instances those members representing the two sides are actual parties to the dispute; sometimes they are

designed to enlarge the scope of the law by including disputes between employers and employers.

- (iii) *International Labour Review Definition*:—A trade dispute or a difference has been defined as "any dispute or difference between employers and workmen or between workmen and workmen connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person. (Industrial Courts Act, Great Britain).

7 *International Labour Review*, December 1926, page 836.

8 *Methods of Conciliation and Arbitration may be Governmental, non-Governmental or quasi-Governmental in their origin.*—*International Labour Review*, P. 838.

representatives of employers and workers in trade or industry concerned; sometimes representatives of employers and workers.

(a) For the prevention of disputes—Standing Joint Committee

(b) For the settlement of disputes—Good offices of a single mediator present the greatest chances of success.

(The success of conciliation by a single conciliator depends upon the position of a person. In France generally J.P.s have proved definitely unsuitable for dealing with disputes of any size.⁹)

After considering the various items connected with our study, we discuss now whether the machinery should be permanent or "*Ad hoc*."

There is no doubt that permanent machinery—some definite and recognised method of dealing with the dispute decided upon before the need for it arises—is generally preferable to leaving machinery to be improvised when a dispute occurs. *Ad hoc* machinery, although theoretically adjustable to the exact needs of the case, in practice, too often means a further series of differences over the choice of methods, the principle on which negotiators are to be appointed, and similar matters of detail. In point of fact the real question at issue is not so much whether machinery should be permanent or *ad hoc* but whether the personnel should be permanent (or quasi-permanent) or appointed anew for each dispute.

It may be definitely said that for a standing Joint Committee, members should be permanent, or quasi-permanent, and not appointed anew for every question that arises, as otherwise the chief object of such machinery or the cultivation of the habit of co-operation will be rendered nugatory. It may be definitely said also that a tribunal to which disputes are compulsorily referred for arbitration should have a permanent or quasi-permanent personnel, or there is likely to be but little continuity of principle and of practice.¹⁰ On the other hand, where conciliation or arbitration is on an optional basis, it would not seem advisable to appoint permanent conciliators or arbitrators, unless provision is also made allowing parties to have recourse to *ad hoc* personnel if they so wish. The reason for this is sufficiently apparent. Permanent boards for the optional conciliation or arbitration of disputes have certain undoubted advantages so long as they retain the esteem of both sides. If, however, such agencies lose this esteem, as they are always liable to do, their influence for peace is to a great extent nullified. In conclusion, it may be said that the joint industrial Council and courts for the compulsory arbitration of disputes would seem to work best with permanent personnel; agencies for the conciliation or arbitration of disputes to which recourse is optional are well-advised to offer a choice of persons, and inquiry, whether compulsory or optional, is likely to prove more successful where the personnel is appointed *ad hoc*¹¹.

⁹ Occasionally provision is made for the public also to be represented—particularly where some public service is concerned, still more occasionally other elements are allowed a place, e. g. farmers in Oklahoma. In many countries, technical assessors are employed especially in arbitration Courts.

¹⁰ There is moreover, the grave responsibility of interference unless the arbitrator's security of tenure, is made reasonably immune from outside attack.

¹¹ International Labour Review, p. 849.

Prof Pigon opines :—

The fact that "general questions," are important, and bear directly upon the permanent interests of all concerned makes the discussion of them, both on the Board itself and

Practical Application of the Methods

Conciliation and Arbitration form an important part of State intervention in every country. In Great Britain, conciliation and arbitration action can be taken only with the consent of the parties. In Germany, Denmark, Sweden, Finland, Norway, Austria, Holland, Australia, New Zealand, and South Africa (Public Utilities) conciliation procedure can be enforced on the parties. In Australia, the presidents of Arbitration boards or Conciliation Committees, have power to intervene on their own initiative before the compulsory arbitration procedure, which follows failure to settle, is put into operation. In Italy, there are "co-ordinating bodies", which have a statutory right to intervene, and stoppages of work are prohibited. In Germany, the proposals of conciliation tribunals, if not accepted, can be made binding on the parties, although the use of this power is strictly confined to disputes seriously affecting the public interest. In Norway, stoppage of work can be prohibited by the conciliator pending conciliation proceedings and a settlement by arbitration may be ordered in disputes endangering the public interest. In Holland, the facts as elicited by conciliation proceedings may be published or in serious disputes a committee of investigation may be ordered. In Canada, besides conciliation under similar conditions, to those in Great Britain, there is in respect of five provinces, power to compel submission of a dispute in mining, transport and public utility industries, to a board of conciliation and arbitration, *stoppage of work in the mean time being prohibited*.

The machinery of Conciliation and Arbitration is constantly being modified in various countries. National circumstances and psychology, the size and distribution of population, the nature of industries, and the economic conditions prevailing must all be taken into account in establishing the suitability of the machinery in any country. A little detailed information that we are giving below has to be viewed in the light of this salient fact.

Great Britain

Although there had been much legislation regarding the settlement of disputes, and the regulation of wages, the only effective action until 1896, was the operation of agreed conciliation arrangements within various industries, based on the inherent desire of those engaged in industry to settle their own affairs, against which compulsory systems have never been more than practically successful in this or any other country.¹² The Conciliation Act of 1896 removed all elements of compulsion and gave the Board of Trade power to

among those who will be bound by its decisions, peculiarly delicate. Consequently even when the relations between the parties are good, it is important that everything which might engender irritation should be excluded from the machinery of industrial peace.

From this principle, the most obvious inference is that technicians and lawyers should not be admitted before the board. Such a policy apart altogether from saving in cost, and time—tends to reduce to a minimum the appearance and hence indirectly the reality of the opposition between the parties.

A. G. Pigon—The Economics of Welfare p. 374, 1920.

¹² Prior to 1896, there were a series of laws regulating industrial disputes on the English Statute Book. Most of these were repealed by the Conciliation Act, but the laws thus repealed were practically dead letters. The Arbitration Act of 1824 had amended and consolidated a number of previous Acts relating to the settlement of industrial disputes. These Acts included several statutes of the Elizabethan period, which gave certain powers to magistrates for fixing of wages. Two Acts of 1745 and 1757 enabled Justices of Peace ummarily to determine disputes between masters and servants under certain circumstances.

promote the settlement of disputes by conciliation or arbitration by consent of both parties and to establish standing Conciliation Boards. In 1908, standing panels of independent chairmen, and employers' and workmens' representatives were appointed with a view to assisting parties in making their nominations for arbitration proceedings. Increasing unrest caused the appointment in 1911 of an Industrial Council of 13 representatives of employers and workers respectively with Lord Askwith as chairman. The council proved itself too large to be effective for either conciliation or arbitration and ceased to function.

During the War, it was of vital importance to prevent stoppage of production and under the Munitions of War Acts, compulsory arbitration with the prohibition of strikes and lock-outs came into operation. A committee of employers' and workers' representatives with the Rt. Hon'ble J. H. Whitley, M. P., as chairman was appointed in 1916 to consider the means of securing a permanent improvement in industrial relations and to recommend means for securing that those relations should be sympathetically reviewed by those concerned.

Present Conditions

Although arbitration awards are not compulsorily binding, agreement to refer a dispute to arbitration is regarded as a settlement of a dispute—work being resumed in the case of a stoppage on the conditions operating when the stoppage occurred. Arbitration proceedings under voluntary conditions are informal and are free from restrictions such as apply to proceedings in Courts of Justice. The parties are encouraged to state their case freely and without hostility. There is no general prohibition of strikes and lock-outs, but strikes in breach of contract are illegal under penalty in gas, water, electricity supply and local authorities services (Conspiracy and Protection of Property Act 1875, Electricity Act 1919, Trade Union Act, 1927).¹³

Norway

In Norway, following serious disputes in 1927, compulsory arbitration was re-introduced by the Labour Disputes Act. If conciliation, (which may be compulsory), fails to settle a dispute and is likely to injure public interest, the Government on the report of the National Conciliator may order settlement by arbitration and prohibit a stoppage of work. Ballots on proposals made by conciliators may also be required and a report made giving the numbers voting

The Act of 1824, was meant to regulate piece-work in the textile trades, but its provisions applied to disputes arising out of general wages contracts as well.

Instances where official intervention was sought and with success

Lord Rosebery successfully intervened in the Coal Dispute of 1894. In 1895, a dispute on the North Eastern Railway was referred for settlement to Lord James of Hereford. Influenced by these various circumstances, the Government ventured to pass the Conciliation Act, 1896.

¹³ The English Section of 1927 Act says:—

“It is hereby declared:—

(a) that any strike is illegal if it

- (i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged; and
- (ii) is a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community.

(Legislative Assembly—Central. 18th March 1938,
from Mr. B. J. Desai's speech.)

for and against the proposal. In every case stoppage of work must not commence within four days of notice being given to a conciliator.

France

In France there are, as in Belgium, *Conseils de prud'hommes* which conciliate in disputes affecting individuals. These consist of a justice and representatives of employers and workers. There is also conciliation by Government officials by consent of the parties.¹⁴

India

Proposals for a measure providing for investigation into and settlement of trade disputes had been under consideration of the Government of India since 1924. In September 1928, a Trade Disputes Bill was introduced in the Legislative Assembly and was passed into law in April 1929. Its life was restricted by the Legislature to a period of 5 years.

The machinery provided by the Trade Disputes Act, 1929, took the form either of a court of inquiry or a board of conciliation. The former was intended to investigate and report on such questions connected with the dispute as may be referred to them by Government and the latter to secure if possible, a settlement of the dispute; but the object of both was to mobilise public opinion in order to prevent or to shorten industrial disputes. The Act sought to penalize lightning strikes in public utility services and declared to be illegal strikes and lock-outs which had other objects than the mere furtherance of a trade dispute within the industry to which the strikers or employers belonged and which were designed to coerce Government either directly or by inflicting hardships on the community.

In 1932, Section 13 of the Trade Disputes Act¹⁵ was amended with a view to affording adequate protection to those who serve on, or would be connected with, Courts of inquiry and Boards of Conciliation from prosecution for disclosures of confidential information obtained by them concerning any trade union or business in the course of inquiry or investigation. The Act (Act XIX of 1932) was passed by both Houses of the Central Legislature in September 1932.

Thereafter the question of a permanent measure was taken up and public and official opinion was invited by a circular letter in June 1933—a bill was introduced in February 1934, to make the Act permanent. The Bill was passed through both Houses in April 1934, and became law as Act XIII of 1934.¹⁶

¹⁴ *Encyclopaedia Britannica* Vol. XII P. 297.

¹⁵ Section 13 was designed to prevent the disclosure of confidential information by members of Courts or Boards appointed under the Act.

¹⁶ In 1934, the Government of Bombay secured the passage of a local Act called the Bombay Trade Disputes Conciliation Act, and it was made applicable only to Bombay City and the Bombay Suburban District and only to the textile industry, but was made capable of extension to other parts of the Presidency and to other industries.

The most original feature of the Act consists of the provision made for the appointment and duties of a Labour Officer. His duty it is to watch the interests of workmen with a view to promote harmonious relations between employers and workmen. The Act thus secures conciliation by official agency.

As for the recent Bill contemplated by the Govt. of Bombay to prevent strikes and lock-outs, please see its summary provisions in the Appendix A.

Again in September 1936, a Bill revising the main Act was introduced and was circulated, after a debate, for eliciting public opinion on it. The most important amendments proposed were the inclusion of a clause providing for the appointment of conciliation officers and the radical alteration of the provisions relating to illegal strikes. The proposed Clause gives the Local Governments the power to appoint such officers, but does not make their appointments obligatory. It states that officers can be appointed temporarily or permanently, and for particular areas or industries, if necessary and be provided with necessary powers of entry and inspection.

Among the other amendments is one designed to enlarge the scope of the law by including disputes between workmen and workmen and between employers and employers. It is also provided to amend the definition of public utility service, so as to include tramways and inland steamer services notified by the Local Government and to ensure that information of notices by stoppage of work in such services should reach Local Governments promptly, so as to enable them to consider whether the machinery provided by the Act be put into motion or not.¹⁷

The Bill was passed through both Houses in April 1938.

Some Criticism

After having studied the theory and practice of the various methods utilised to prevent and settle disputes, in large scale organizations, let us try to make an analytical criticism on those methods.

The attempt here made to distinguish those methods of conciliation and arbitration which appear on the whole to give satisfactory results is altogether tentative. There is no scientific criterion by which these results may be appraised and consequently no means of arriving at any positive decision as to the merits of this or that particular method. Indeed, it would not be wrong to say that of the various measures indicated in the foregoing pages, there is hardly one, that cannot be attacked from one point of view or another. It is, therefore, not so paradoxical as would at first appear that countries employing measures of conciliation and arbitration regarded as "successful," should nevertheless still suffer severely from strikes and lock-outs. These measures may suffice for the end in view, if economic and psychological conditions are favourable, but when these conditions are definitely adverse to industrial peace, the only one system which can be regarded as sound is a *complete system*.

In attempting to elaborate this expression, we must first bear in mind that for a system to be complete, it must deal not only with the psychological difficulty of getting the parties together, under suitable conditions, but also with

¹⁷ A prolonged debate took place in the Central Assembly when the Bill was under discussion. Prof. Ranga and Mr. Joshi objected to include tramways and inland services to be included under "Public Utilities." Mr. Joshi maintained that in England Railways, buses and tramways are not public utility services and wanted to follow English practice, because the whole Bill was according to him drafted on the lines of the English Act of 1927. It was a fact, however, that neither in the Select Committee, nor in the Act itself, were the terms "Public Utility," defined. A good deal of discussion was recorded on the use of the words "general", "prolonged" and "severe". Mr. B. J. Doshi, leader of the opposition clarified the position of his party when discussion on these terms was going on and he maintained on behalf of the Congress and his party that he supported the word "prolonged," purely in its dictionary meaning.—(Legislative Assembly, Central, March 18, 1938)

the economic problem involved. A country having a machinery of negotiation for the prevention of disputes in their incipient stages, and a machinery for negotiation for the settlement of disputes, may be said to have the essentials of a complete system. The two fundamental principles on which their tentative synthesis is based—full discussion at all stages and substantial agreement BEFOREHAND—as to what constitutes a square deal would appear quite sound. For in the final analysis, the most essential constituent and at the same time the ultimate aim of all measures of conciliation and arbitration is good-will; and good-will to be enduring can have no foundation other than the “square deal,” we mentioned above.

Conclusion

In conclusion, then, we may say that a society to be based on the sure foundation of peace and prosperity ought and need to know the essential fact of human nature. If it knows it, it understands as well the symptom of a disease that occasionally erupts in the industrial world. Dr. Myres, an eminent psychologist, propounds that the cause of the disease is not (exclusively) so much the pugnacious instinct in the parties concerned¹⁸ as it is the absence of human touch between the master and the man. However large an organization there may be, it is not impossible (if difficult) that the two pairs of the scissors (as Dr. Marshall calls the parties) cannot get opportunities to understand one another. Sir Samuel Hoare rightly observed some days back that many of the troubles in world—political or otherwise—can be eliminated from this world of contradictions, if only there is patience, common sense and tolerance between man and man!

¹⁸ There are political causes as well why labourers go on strikes. In India *e.g.* when Mr. Tilak was arrested in 1908 a large number of labourers came out with their tools down. So also at the time when the C. D. movement was at its height. These causes are, however, external and need not be taken into the discussion at issue.—(Press and Society in India by P. M. Shah. Page 104.)

TABLE I

Percentage of Stoppages of Work in various Countries attributable in part or whole to Wage Disputes¹

Country	Period	Percentages of stoppages due to wage disputes
Canada	1914-1924	68
Finland	1913-1914 1917-1923	78
Great Britain	1910-1924	66
Italy	1914-1923	76
Japan	1914-1924	71
Spain	1914-1923	62
Sweden	1914-1924	77
United States	1916-1922	62

TABLE II

Comparative Statement showing the average number of days lost per annum in certain states during the five years 1919-1923 and the number of days lost per annum per thousand of population.²

Country.	Average number of days lost per annum 1919-1923	Average number of days lost per annum per 1000 of population.
Great Britain	35,586,000	819
Sweden	4,696,747	795
Germany	35,350,906	591
Australian Commonwealth	2,228,314	411
New South Wales	1,387,701	661
Victoria	357,959	234
Queensland	168,476	223
South Australia	133,625	270
West "	153,495	461
New Zealand	102,601	84
Canada	1,705,835	194
France	10,173,415	259

¹ International Labour Review—P. 94, January 1927.

² Ibid. P. 646 November 1926.

TABLE III
Some Industrial Disputes in which Settlement was reached by Conciliation, Arbitration etc. 1928-36.
INDIA

Serial No.	Date.	Name of the Factory or other Works.	Cause.	Approximate Numbers involved.	How Settled.
I	December 1928 & January 1929	Gujarat Ginning and Manufacturing Mill, Ahmedabad	Demand for the dismissal of a Head Jobber for alleged ill-treatment of his men.	763	The dispute was referred to the permanent board of Arbitration which consisted of Mr. Gandhi and Seth Mangaldas. The arbitrators gave a preliminary award and the strike ended in a provisional compromise.
II	March-April 1929.	Madras United Spinning and Weaving Mills, Ltd. Madras.	Refusal of the employers to grant an increase in wages.	2,000	A provisional compromise was reached by the management agreeing to grant leave concessions and a small increase in wages, pending a full inquiry by the Labour Commissioner, Madras, into the claim for increase in wages.
III	April 1929	(a) The Mall Mills, Coimbatore (b) The Coimbatore Spinning and Weaving Mills	Demand for increase in wages consequent on the introduction of two looms system instead of one.	600	As a result of the intervention of the Labour Commissioner, Madras, new rates of pay were introduced on the basis of rates in other local mills.
IV	July 1929	Madras United Spinning and Weaving Mills, Choolai, Madras.	Demand for an increase in wages and the proper maintenance of accounts for each worker.	400	As a result of the intervention of the Labour Commissioner, Madras, the parties agreed to the appointment of a Committee consisting of three officials to enquire into the grievances of the workers.
V	July-August 1929.	Meghua Jute Mill, Alliance Jute Mill and other Jute Mills in Bengal.	Increase in the number of working days from 5 to 6 and consequential changes in rates of wages.	2,00,000	After negotiations between the Government of Bengal, the Committee of the Indian Jute Mills Association and labour leaders, agreement was reached and work was resumed.
VI	April 1932.	The Hand loom weaving factories of Ludhiana (Punjab).	Demand for rates fixed in 1932.	200	As a result of the intervention of the Director of Industries, Punjab, a Conciliation Board consisting of representatives of the factory owners, dealers, the Textile Association and the strikers was appointed and brought about a settlement of dispute.

Table III—Contd.

Serial No.	Date.	Name of the factory or other Works.	Cause.	Approximate Numbers involved.	How Settled.
VII	August 1934	Shawl Cloth Weaving Sheds, Amritsar (Punjab)	Protest against a reduction in the rate of payment for woven cloth from 12 annas to 10 annas per seer.	580	The dispute was referred to 3 arbitrators appointed by the strikers and the employers. The award of the arbitrators was accepted by both parties.
VIII	January and February 1935	The Western India Match Factory, Ambarnath (Bombay)	Demand for continuance of the old system of payment of wages.	1,077	As a result of the intervention of the assistant Labour Commissioner, Bombay, an agreement was reached. In pursuance of this agreement the management announced a new list of piece work prices to which the workers took exception. The matter was referred to the Commissioner of Labour, Bombay, for arbitration who gave the award in April, 1935.
IX	January and February 1936	The Coimbatore Spinning and Weaving Mills, Coimbatore, Madras.	Protest against the dismissal of certain workers.	2,500	As a result of the intervention of the District Magistrate, Coimbatore, the management agreed to reinstate the dismissed workers.
X	April 1936	The Thana Match Works, Bombay.	Protest against reduction in the rates of wages.	500	As a result of the intervention of the Labour Office, Bombay, an agreement was reached providing that, pending a complete review of the wage position in the factory with the assistance of the Labour Office, the old rates of wages should be continued. Thereupon all the strikers resumed work.
XI	September 1936	Jute Presses at Hajiganj, Tippera District, Bengal.	Demand for an increase in wages.	800	On the assurance of the Sub-divisional Officer, Chandapore, that he would take up the matter with the employers, the strike was called off.*

*Industrial Disputes in India No. 62. Govt. of India, pp. 14-16.

APPENDIX A

Summary provisions of a Bill to

"Aid in the Prevention of Strikes and Lock-outs and to promote amicable settlement of Trade Disputes in Factories and other industrial establishments." (1938).

- (1) The test of determining whether a Union is of a representative character or not will depend on whether it has a membership of at least 20% of the total number of workmen employed in the occupation or industry.
- (2) The Commissioner of Labour shall be *ex-officio* chief conciliator.
- (3) The Minister may appoint a Chief Conciliator for any area or trade.
- (4) The Minister will also appoint conciliators whose jurisdiction will be defined according to area or trade or both.
- (5) The Labour Officer under this Act would be given the right to inspect or call for such documents in the possession of an employer or a worker as he deems it necessary for the purpose.
- (6) Such particulars as are contained in the document would be treated as confidential.
- (7) Employers and workers shall give a notice of thirty days of any intended change in wages and hours of work, and 15 days' notice in respect of change in other conditions of employment as specified in Schedule I. (See footnote at the end).
- (8) Such changes as are desired by either parties will have to be communicated in a prescribed manner to the Registrar, the Secretary of a recognised union and a labour officer.
- (9) In case workmen who are not members of a recognised union are to be affected by such a change, the Labour Officer shall endeavour to ascertain the views of the members and continue negotiations with employers, and try to secure an agreement.
- (10) If an objection has been raised by the workmen to a proposed change or it has been ascertained that a majority of workmen affected are opposed to such a change, it shall be unlawful for the employer to make effective a proposed change until the conciliation or arbitration procedure hereinafter has come to an end.
- (11) A conciliator shall hold conciliation proceedings and may adjourn such proceedings if, in his opinion, it appears that sufficient time be allowed for the parties to agree upon terms of the settlement.
- (12) If no settlement of a dispute is arrived at in a conciliation proceedings held by a special conciliator or a conciliator, he shall send the full report of the proceedings to the Chief Conciliator, who in turn shall send the same to the Minister with his comment upon the case and his recommendations as to the action that may be taken.
- (13) The Minister may in such a case refer the dispute to a Board of Conciliation consisting of three members constituted as follows:—
 - (1) Chairman to be appointed by the Government ;

- (2) and (3) one nominee of each of the employers and the workmen to be appointed by Government in the prescribed manner.
- (14) The Board may adjourn if it thinks that the parties should be given time to agree upon terms of settlement.
- (15) The Minister may appoint a Board of Arbitration at the instance of the parties concerned ; all agreed awards thus decided by the Board of Arbitration would be binding to both the parties.
- (16) In case where a Board of Arbitration fails to reach an agreed award, the Board shall recommend to the Minister that the matter under dispute shall be referred to an Umpire; the decision of the Umpire shall be the last word and binding to the parties.
- (17) It shall be unlawful for any union or for any person to incite any workman to go on strike or to hold processions and meetings if an illegal strike has occurred.
- (18) Any employer who declares or causes a lock-out in contravention of Section XXII shall be deemed to have committed an offence and shall be liable to a fine not lower than Re. 1 and not exceeding Rs. 5 per day for each of his workmen who have been locked-out; so also the workmen would be fined equal to one day's wages for each day or a portion of a day during which such workman continues on strike.
- (19) The Bombay Trade Disputes Act of 1934 shall be considered to have been repealed with effect from the date this Act comes into force; nothing in the Act shall affect any provision of the Trade Disputes Act 1929 (now amended in 1938).

Schedule I says:—

The following matters shall be considered as included in other conditions of employment for the purpose of this Act.

- (a) Reduction or increase in the number of persons employed or to be employed in any department or departments.
- (b) Dismissal of any worker except in accordance with legal or customary requirements or as provided for in the rules or standing orders framed under section VIII-A of this Act as to notice.
- (c) Introduction of rationalisation or other efficiency systems of work.
- (d) Starting, alteration or discontinuance of shift working.
- (e) Withdrawal or granting of recognition to Unions of workers.
- (f) Withdrawal of any customary concession or privilege or change in usage.
- (g) Introduction of new rules of discipline or alteration of existing rules and their interpretation.

APPENDIX B

Views of the Indian Merchants' Chamber on the Bill to prevent strikes and promote settlement of trade disputes.

The Secretary of the Chamber in the course of his letter dated 17th March 1938, to the Commissioner of Labour, observed :—

“My Committee regret that this Bill follows one or two others in not having a statement of Object and Reasons. My Committee have already, with regard to another Bill, drawn the attention of Government to this omission and hope that this omission will be rectified with regard to future Bills. In regard to this Bill also my Committee regret that they are obliged to complain regarding the period of time allowed to them, as well as other commercial bodies, to formulate their views. The Bill is a very comprehensive one aiming, as it does, at aiding in the prevention of strikes and lock-outs and it is not possible to consider it in all its bearings within the short period allowed.

My Committee are glad that Government have brought forward a measure with the object of preventing strikes and lock-outs, which have always been an adverse factor with regard to industrial development of the country. It has been the unfortunate experience of industrialists in this land to have lightning strikes. In fact, excepting in the case of Ahmedabad, the general rule appears to be for Labour to go on strike and then to formulate grievances and carry on negotiations for settlement of such strikes with the employers. It is, therefore, vitally essential that a measure should be devised for the prevention of such strikes, as well as such lightning lock-outs in the interests of all the industries concerned. The best measure for such a purpose should be the recognition of *bona fide* trade unions and recognition of employers' Associations with an arbitral procedure. Government, however, have to see that such procedure is followed, and in cases where it is not followed to institute their own measure to provide for special settlement before the trouble goes further. The Bill does not provide any conditions for the recognition of trade unions. In this connection, I am to draw the attention of Government to the letter of my Committee, dated 13th October 1937, in reply to Government communication, dated 20th September 1937, addressed to different commercial bodies, wherein my Committee had recommended that trade unions, which have more than 51 per cent of the total workers as members, should be recognised by industries concerned. Some such conditions should be precedent to the recognition of trade unions.

With regard to Clause 1 (2), my Committee are of opinion that the Bill, as it stands at present, is suitable only for large and organised industries. They, therefore, beg to recommend strongly that it should apply, for the present, to large and organised industries and not to trades nor to small industries. The consequential change will have to be made in sub-clause (2) taking away from its purview all the small industries, as also in sub-clause (3) deleting all reference to 'any other trade or trades'. Similarly consequential change will have to be made in the definition of 'Workman' in Clause 1 (f), deleting from it all reference to trades and clerical work.

It is not clear from Clause 3 of the Bill, as to whether a union should be recognized for a particular industry or for a particular factory and whether in cases of such recognition, it will have the power to negotiate with any employers concerned or with only the employer or employers of a particular factory or

factories for which it may be recognised. Thus, say, if a union is started for a factory XYZ, it shall have the power to negotiate only with employers of the particular factory. If a union is started for the whole cotton textile industry or for any other industry, it shall have the power to negotiate with the Association of employers of the cotton textile industry or any other industry concerned. In the opinion of my Committee, there should be this difference between different trade unions, viz. unions for particular factories and unions for industries as a whole, instead of the distinction which is proposed to be drawn out in sub-clause (2) of Clause 4, viz. horizontal and vertical unions.

Clause 6 provides that the Commissioner of Labour shall be ex-officio Chief Conciliator, and sub-clause (3) provides that the Minister shall appoint Conciliators whose jurisdiction will be also defined as to cover the whole of the Province of Bombay, either by areas or by industries or by both, provided however that no Conciliators shall be appointed for such industries in such centres as have a recognised union of a representative character with an approved arbitration procedure so long as that procedure is in operation. My Committee are opposed to the appointment of the Commissioner of Labour as ex-officio Chief Conciliator. The Commissioner of Labour may be the executive officer under this Bill to set the machinery in motion, but the Conciliator or Conciliators should be chosen from a panel for the purpose. This panel shall have names of persons of an eminently judicial mind, like retired Judges of the High Court, or retired Sessions Judges or retired lawyers and Government may appoint from this panel Conciliators for purposes of any disputes which may have arisen. Such Conciliators shall be assisted by one or two representatives from each of the parties concerned in the capacity of Advisers.

Clause 8: It is desirable that the period of notice should be reduced to 15 days in the case of proposed changes in the wages and wage rates and hours of work.

With regard to the Schedule under Clause 8, my Committee are strongly of opinion that it is neither practicable nor advisable to announce to workmen by some notice any change in "other conditions of employment", which are mentioned therein, and to take their consent for the same.

(a) Reduction or increase in the number of persons employed or to be employed in any department or departments:

Certain increases or reductions are bound to be made in the number of persons employed or to be employed in any department or departments, and it would be next to impossible to give even 15 days' notice with regard to the same. An employer has got to engage several new persons on a sudden eventuality in any department causing thereby an increase in the number of employees and he will not be able to give a notice of this, unless there is a big delay in the employment of such persons and there is a hitch in the administrative working of the factory causing thereby a big loss.

(b) Starting, Alteration or Discontinuance of Shift Working:

It would not be fair to make it impossible for an employer to start or discontinue night shift working without entering into negotiations with his employees. The Bombay Millowners' Association are right in pointing out that an employer is already compelled to give 14 days' notice to night shift workers if he wishes to discontinue their services and that it would create an impossible

situation if, at the end of the notice period, the employer had to continue working the whole of his night shift because a protest against closure had been made by a few workers and conciliation was proceeding.

(c) Withdrawal or Granting of Recognition to Unions of Workers :

Under clause 3 of the Bill an employer apparently has got the right of recognising or not recognising any union. Under this Schedule, however, he will have to give a fortnight's notice if he wants to withdraw the recognition once granted to a particular union. This is, therefore, inconsistent with Clause 3. My Committee see no reason why an employer should not have the latitude to withdraw recognition from any union or to grant recognition without giving such a notice.

(d) Withdrawal of any Customary Concessions or Privileges or Change in Usage :

The effect of this will be that the employer will be virtually deprived of any discretion in regard to such privileges or concessions which are ordinarily given for producing greater efficiency in the workmen with the result that in future he will fight shy of introducing any such concessions.

(e) Introduction of New Rules of Discipline or Alteration of Existing Rules and their Interpretation :

My Committee suggest that the last three words: "and their interpretation" be deleted. It appears that a certain set of Standing Orders are now in operation to ensure the satisfactory working of the Payment of Wages Act. One of the clauses of the Standing Orders provide that "the decision of the Manager upon any question arising out of, in connection with, or incidental to these Orders, shall be final subject, however, to appeal to the Managing Agents and without prejudice to any right of an operative aggrieved by his or their decision to resort to legal proceedings in a Court of Law." It is because of this that my Committee are of opinion that the interpretation of the Standing Orders should not be brought under the proposed Schedule.

In view of all this, my Committee are of opinion that the Schedule should be altogether deleted and the machinery of this Act should be made use of only for the main purposes mentioned in Clause 8 (1), viz., any intended or desired change in the wages and wage rates or hours of work. Such a restriction of the scope of the Bill is all the more necessary, having regard to the fact that although the period of notice prescribed under Clause 8 (1) in respect of change "in other conditions of employment" is only 15 days, in effect it would mean that the employer would be stopped from bringing about the change for a period extending almost to six months, as under Clause 8 (9), if an objection is taken to any change proposed, the process of either conciliation or arbitration will have to be invoked, with the result that the employer would be able to implement his decision in regard to the said change in the conditions only after a long time.

Clauses 9, 10, 11, 12 and following are concerned with proceedings before Conciliators. My Committee beg to request that their suggestions with regard to the appointment of Conciliators should be adopted and the consequential changes made in all these Clauses."

Bibliography

- (i) International Labour Review.
 November, 1926, December, 1926, January, 1927.
- (ii) Encyclopaedia Britannica—
 Volumes II and XII pp. 293-300.
- (iii) Gilchrist—Conciliation and Arbitration.
- (iv) Central Assembly Proceedings, with special reference to Trade Disputes Bill 1938.
- (v) Government of India Bulletin on Trade Disputes in India.
- (vi) Government of India Bulletin on Factory Legislation in India.
- (vii) Royal Commission Report on Labour.
- (viii) Economics of Welfare by Prof. Pignon.
- (ix) The Press and Society in India (unpublished) by P. M. Shah.

Printed by V. V. Bambardekar
at the India Printing Works,
9, Bakehouse Lane, Fort, Bombay.
