Chapter 18
Mediation and Conciliation in Collective Labor Conflicts in India

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In December 2015, the Tata Motors Sanand facility, suspended 26 workers on charges of 'misconduct' accusing them of damaging about 50 vehicles at the plant. This triggered a flash sit-in strike by 422 workers on February 22, demanding the reinstatement of the workmen suspended (pending enquiry) for serious misconduct. Simultaneously, workers at the Sanand plant also demanded a revision in salary. The initial intervention by the Labor Commissioner did not yield results as the company's management and protesting employees remained adamant on their stand. The workers demanded that suspension of all the employees be immediately revoked while the management argued that the decision on the matter would be taken only after the completion of the inquiry. However, the strike was finally called off on 23 March, 2016. The decision was arrived at after an eight-hour meeting between the workers' representatives, the top management of Tata Motors and the Labor Commissioner's office. The management stated that it would revoke the suspension of 13 out of 26 workers and take a decision about the rest following the completion of the enquiry within a reasonable time of four–six months. The company also agreed to recognize the union and begin negotiations on wages and charter of demands that the workers would give them in the next four–six months. Besides this, the company also agreed not to initiate any action against the strike while the decision on the legality of suspension and wages for the period of the strike would be taken by the court.

18.1 Introduction

The state has come to play a major role in guiding industrial relations in India. The government, in order to protect labor and to ensure uninterrupted production, has enacted a number of labor legislations. These laws have covered rights and

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privileges and also guaranteed certain levels of income and conditions of working environment (Noronha, 1996a). However, since 1991, there has been a clear departure from the state-led political economy following the adoption of neo-liberalist reforms (Noronha & Beale, 2011). Several states in India have relaxed the labor laws and issued directives to prevent routine and periodic inspections, leading to flexible practices (Sharma, 2006). For instance, companies are allowed to self-certify[1] in respect to several laws (Noronha & D'Cruz, 2016). Further, firms have increasingly dispensed with permanent employees in the non-core[2] activities and have hired temporary or contractual employees (Sharma, 2006). The broader liberalization environment has posed tough challenges for trade unions, and created a distinctive and difficult context in which ongoing battles over pay, benefits, conditions, casualization and job security are being debated (Beale & Noronha, 2014; Noronha, 1996b). This has been exacerbated by the disillusionment with third party intervention in the form of conciliation, arbitration or adjudication (Ramaswamy, 1985; Saini, 1991; Noronha, 1996a).

In this article, we focus on conciliation, which in the Indian context, basically means an effort to mediate between employers and employees (Lansing & Kuruvilla, 1987). Based on a review of earlier available research and on interviews with conciliation officers (CO, 4), employer representatives (ER, 6) and trade union leaders (TUL, 3) in Ahmedabad, Gujarat, India, we first outline the process of conciliation as per the Industrial Dispute Act 1947, we then capture the complexities that advantage employers over employees, and finally we discuss the challenges that confront conciliation and suggest a way forward.

18.2 The Conciliation Process

The state domination of industrial relations is deeply rooted in India's colonial past. Its origins can be traced to the promulgation of 81-A of the Defence of India Rules by the British Government in 1942 to control industrial unrest during the Second World War. This rule was converted into a full-fledged Industrial Disputes Act in 1947 (commonly known as ID Act, 1947) (Saini, 2014). In essence, it provided for the intervention of the state as a third party between labor and management at every stage of their relationship. This meant that the state would play a crucial role in settling an industrial dispute by monitoring the processes of conciliation, arbitration or adjudication under the ID Act, 1947 (Noronha, 1996a).

Accordingly, the Central or State Government is authorized to appoint Conciliation officers (Cos) or when the situation demands, a Board of Conciliation. The CO

[1] 'Under the self-certification scheme, employers employing up to 40 persons are required to provide only a self-certificate regarding compliance of labor laws, while those employing 40 or more persons are required to submit a self-certificate duly certified by a chartered accountant' (ILO, 2014).

[2] Work like security, canteen, loading and unloading which are not the central activity of the organization (see Noronha et al., 2018).

is normally the Assistant Commissioner of Labor (ACL) or the Labor Commissioner of the state. In addition, Government Labor Officers (GLOs) are promoted to ACLs, both of whom are recruited through the state public service commission. The GLOs are graduates while ACLs are post-graduates with a Master of Social Work (MSW) or Master of Labor Welfare (MLW) and have a minimum of 5 years of industrial experience. The main work of a GLO is inspections and monitoring of the implementation of labor laws. GLOs only conciliate in organizations having less than 30 employees while ACLs intervene in industries having more than 30 employees. Henceforth, we use the term CO to refer to ACLs. It is argued that the COs do not require any training as most of them have industrial experience and have interacted with the Labor Commissioner's office on a regular basis prior to being recruited. Consequently, all the training is on the job.

An industrial dispute can come into existence when one party has made a demand on the other and the other party has rejected the same. These may relate to a genuine mismatch between the expectations of the employees and unions and their employer. A typical list of individual disputes that are covered by the ID Act, 1947, include discharge or dismissal of employees, minimum wages deprivation, gratuity, bonus, wrongful termination, interpretation of standing orders, wages, bonus, conditions of work, rationalization, lay-offs and retrenchments, while collective disputes are related to terms of employment, service conditions, leave with wages and holidays, withdrawal of customary concession or privilege, new rules of discipline and long term charter of demands. Invariably, after the failure of bilateral negotiations, conciliation is the first attempt to reconcile views of disputants (individual or collective) with the help of a third party and the most frequently used method of dispute settlement both in the public and private enterprises (Lansing & Kuruvilla, 1987; Malhotra & Rao, 2015; Moorthy, 2005; Venugopalan, 2011).

Although it is the duty of the government to refer the dispute to conciliation, conventional practice allows either party to submit a request in writing to the CO to start the process (Lansing & Kuruvilla, 1987). The CO can also take up the matter for conciliation not only when there is an 'existing' dispute but also when such dispute is 'apprehended' (Malhotra & Rao, 2015). When the CO receives the complaint through the union, they verify the authenticity of the documents submitted with the originals. This is followed by the employer submitting the statement of justification in reply to the employee's complaint. In our fieldwork, some private sector employers involved lawyers to draft replies or even appear before the CO. This, according to Saini (1992), has professionalized the disputes. While trade unions avail of outside leadership, the management takes the help of consultants even at the conciliation stage, in the process promoting personal pecuniary interests and hampering conciliation. COs have become party to this by allowing such professionals to appear at the conciliation, even though this is prohibited by the ID Act, 1947. However, in keeping with Saini's (2014) argument that the ID Act, 1947, bans the presence of lawyers in conciliation proceedings to ensure that the settlement of an industrial dispute does not become legalistic, public sector representatives did not employ lawyers in conciliation proceedings, with the company officer representing the organization.

Nonetheless, once the employers filed their reply, the COs without delay brings the employer and the representatives of the employees together and investigates the dispute, with a view to inducing the parties to arrive at a fair settlement (Malhotra & Rao, 2015). In normal circumstances, the CO issues a notice to both the parties to ascertain the facts and tries to understand the merits of the case. On the basis of this investigation, the CO can reject the complaint or proceed with the conciliation. If the COs decide to proceed with the conciliation process, they may enter establishments involved in disputes, call for any relevant documents and resort to processes they think fit for the purpose of inducing the parties to come to a fair and amicable settlement (Van Kennedy, 1958; Kumar, 1966; Lansing & Kuruvilla, 1987; Malhotra & Rao, 2015). Where direct action by employees is expected, the CO tries to arrange meetings in rapid succession with a view to avert any prolonged strike or lockout (Lansing & Kuruvilla, 1987). On such occasions, the conciliation meetings could last a whole day. The strategy is to try to ascertain each party's bargaining and actual positions and to suggest suitable compromises in order to reach a settlement (Sapkal, 2015).

It should be noted that in the course of promoting "a fair and amicable settlement", the CO does not discharge any adjudicatory functions, but can only goad, induce, encourage or cajole the disputants to persist in or continue with negotiations to arrive at a settlement (Rao, 1987). The role of the CO is that of a guide, advisor and mediator who counsels the parties to reach an amicable solution. A conciliator may act as a "go-between" for the parties, preside over and guide their joint discussion or may play an active role in clarifying misunderstandings, exploring grounds for compromise, enabling the parties to see the reasonableness of the other party's point of view and suggesting settlements. Since the conciliator has no powers of coercion over labor and management, they can only persuade the parties to climb down and meet each other (Ramaswamy, 1985). The strategy is to try to ascertain each party's bargaining and actual positions, find out the greatest common measure of agreement and suggest suitable compromises in order to settle a dispute (Lansing & Kuruvilla 1987; Malhotra & Rao, 2015). In other words, their duties are only administrative and incidental to industrial adjudication (Malhotra & Rao, 2015). The main characteristics of conciliation are flexibility, informality and simplicity. The conciliator must be patient and persistent, infuse confidence in the parties and impress upon them that their problems are thoroughly understood (Kumar, 1966; Rao, 1987). For this, the CO does a benchmarking of the employer's working conditions and capacity to pay the wage level and increments within the industry and compares it with the demands of the employees. COs tries to persuade both the sides by highlighting the advantages of a settlement, the legality of the decisions and their vulnerabilities. Further, the perils of adjudication are highlighted as being time-consuming, futile and with a highly uncertain end result. In short, a conciliator adjusts his approach to the circumstances of each case (Kumar, 1966).

Further, the CO allows adjournments so that parties can soften their stance and do a rethink. Adjournments also provide opportunities to respective parties to submit documents and build arguments for their case. However, if the parties raising the dispute are not interested in getting a settlement, it is not the duty of the CO to try to

resolve the dispute. In fact, it is the duty of the persons raising the dispute to assist the CO about the facts of the dispute and how the same can be possibly resolved. Clearly, if the employee who raised the dispute fails to appear, there is no duty cast upon the CO to go ahead with the matter (Malhotra & Rao, 2015).

The conciliator's solutions need not be accepted by the parties (Kumar, 1966; Lansing & Kuruvilla, 1987; Sahoo & Pani, 2007), but if a settlement is reached in the course of conciliation proceedings, it is a binding settlement (Lansing & Kuruvilla, 1987). Such settlements are popularly known as 12 (3) settlements (Saini, 1999), at par with the award of a labor court, industrial or national tribunal. However, if it is achieved "otherwise than in the course of conciliation proceedings", it binds only the parties to the agreement (Rao, 1987). Thus, a settlement arrived at in the course of conciliation proceedings assisted and aided by the CO is on a higher pedestal because it is presumed to be just and fair (Malhotra & Rao, 2015). Clearly, the intention of the government has been to motivate employers and employees to avail of the conciliation facility (Noronha, 1996a).

Once the settlement is reached, the CO has to send a report to the government, together with a memorandum of the settlement signed by the parties to the dispute. If no settlement is arrived at, the CO has to send to the government a full report setting forth the steps taken by them for ascertaining the facts and circumstances, the efforts towards settlement and the reasons for not being able to arrive at a settlement (Lansing & Kuruvilla, 1987). On receipt of this report, the government may refer the dispute for adjudication to a labor court or industrial tribunal, depending upon the nature and type of the dispute. Such a reference, however, is not binding. If the government does not make a reference, it records the fact and communicates to the parties concerned its reasons (Kumar, 1966; Saini, 2014).

18.3 Advantage Employers

In the case of collective disputes, both the employer and employees would like the dispute to be settled at the conciliation stage and avoid litigation that seems to be long drawn and unending, and finally only benefits lawyers (Rao, 1987). However, it is clear from earlier research that employers had an edge in the conciliation process and used it to their advantage as and when convenient to them. For instance, Patil (1982) states that conciliation is used by the employer and union to simply register bipartite agreements, as if these were arrived at during the course of conciliation proceedings. This makes the agreement binding on all the parties and stems endemic conflicts. Patil (1982) terms this as 'convertive' bargaining. Further, employers also tend to use conciliation to ban strikes or their continuation during the pendency of conciliation proceedings. The implications of this are that the continuation of such a strike is then deemed illegal and demand for payment of wages for the strike period can be denied by employers (Lansing & Kuruvilla, 1987). However, with the decline in union militancy indicated in the proportion of strikes falling quite dramatically in

the last three decades (Noronha & Beale, 2011), a labor commissioner argued that cases of collective disputes coming for conciliation had declined:

> In seven months, not even seventeen major cases have come to me. Conciliation will be relevant only if we get 50 cases a day but nobody comes for conciliation in spite of this being the worst region in terms of industrial relations. If I have alternatives, why fight dismissal? I will fight for 5–6 months with the employer, another 5–6 years at the labor court, if the employer has money he will go to the high court, this is an endless process. Industries have increased three-fold but cases coming to conciliation have decreased. (Labor Commissioner)

Clearly, the average number of disputes settled through the mediation of COs has reduced substantially (Bhangoo, 2008; Jyoti & Sidhu, 2003; Moorthy, 2005) in spite of the fact that the number of industries have increased.

In recent times, collective disputes relate to contract employees approaching the CO to regularize their employment. They claim to be directly employed by the principal employer who supervises their work, grants them their leave and pays them their wages, maintaining that outsourcing is used to disguise their relationship with the principal employer. Employers try extricating themselves from these cases by arguing that contract labor is employed for non-core activities and that the employer-employee relationship does not exist, as the work order is given to a contractor with a valid labor license who supervises and controls non-core work. In these cases, the CO appealed to the employers' magnanimity by persuading them to help employees to find alternative jobs when the former refuses to employ those workers who raised a dispute any further. The employer may accede to the request of the CO by pressurizing the contractor to place the 'trouble makers' in another organization while ensuring that these employees do not return to their organization. In this situation, employers may also pressurize the contractor through colleagues, respected elders and opinion leaders from the same community to settle issues such as loss of pay, non-payment of wages, gratuity or bonus. Thus, employers only complied when they thought it was prudent to do so, their financial liability was limited, or the CO's suggestions did not lead to a precedence.

In the case of individual disputes, employers delayed matters through frequent adjournments to meet their interests. Delaying the process often meant that employers were keen that the matter be referred to adjudication especially in cases of dismissal. Consequently, although the prescribed time limit for the conclusion of conciliation proceedings was fourteen days, it often exceeded 6 months. Frequent adjournments (4–6 per case) demanded by employers were intended to harass employees both psychologically and economically. Employees approaching the CO was seen by employers as a personal affront and an attempt to blemish their reputation for which the employee was required to be 'taught a lesson'. Besides this, employees were put through great hardship and huge expenses if they wished to pursue the dispute. They had to take leave, suffer loss of wages and travel several times to appear for the dispute in person, eventually tiring them out so that they relented and agreed to a settlement or withdrawal of the dispute (Bhangoo, 2008; Jyoti & Sidhu, 2003; Moorthy, 2005) while private employers did not have to appear in person. The latter appointed lawyers to handle complex and long drawn disputes or sent representatives who did not have the power to take decisions or make commitments (Lansing &

Kuruvilla, 1987; Murty, Giri, & Rath, 1986). Thus, the delay in the conciliation process enabled employers to exploit the vulnerability of employees. According to unionists, this attitude was reinforced by recent judgements that did not grant back wages[3] to employees, with the presumption that they would have been working for the period pending conciliation proceedings. This made employers more belligerent and they were ready to accept the CO's ex-parte reference to adjudication, instead wasting their time to appear before them. One employer's representative also endorsed this view.

> Employers delay the process when there are monetary implications or it could cause a serious industrial relations issue. The employees would like the dispute to be sorted out as soon as possible and it would be the employers who would like to delay the process. (Employer Representative, Public Sector)

Moreover, previously, the employer had to prove that the worker was not their employee, but now the onus is on the worker to prove that they are employees of the employer against whom they had approached the CO.

Even when settlements were reached, there was an overt coercion by the management. This resulted in a lack of trust between parties and inequitable relations (Saini, 1992). This attitude of employers was reinforced by unscrupulous lawyers and union leaders (who also were often lawyers) who misguided the parties against resolving the dispute through mediation to further their own interests.

18.4 Challenges Facing Conciliation

Obviously, these attitudes impacted the conciliation process. The COs stated that the rigid stance taken by the parties at the negotiation table and the lack of commitment by the employer and employees to conciliation did not leave them with any options but to refer the dispute to adjudication. This is because both employers and employees believed that the adjudicator would rule in their favour.

In contrast, employer representatives argued that the heavy workload of COs delayed proceedings. In addition to the job of conciliation, COs doubled up as inspectors under various labor laws and so had to supervise the working of the multi-purpose Labor Welfare Centres, verify trade union membership, dispose of different types of complaints and discharge other miscellaneous duties. The COs were therefore not in a position to thoroughly study the disputes and offer innovative solutions or left with little time for continuous sittings on each dispute (Kumar, 1966; Lansing & Kuruvilla, 1987; Murty, Giri, & Rath, 1986). Both parties in a dispute wait to get adjournments and their interaction in the presence of the CO is minimal. Conciliation unfolds as a very mechanical process carried out in accordance with the law. This is exacerbated by restrictions placed by the government in filling vacancies of ACLs. Other impediments to be effective include lack of quality training, infrastructure and

[3]Wages due to the employee from the date of suspension/termination till the date of decision to reinstate.

legal and administrative support (Lansing & Kuruvilla, 1987). Though some studies point out that COs did not have adequate knowledge of the industry and latest developments in labor law (Lansing & Kuruvilla, 1987), our participants had no concern about their knowledge of law. According to them, the COs had a good understanding of the industry and were also well-trained in law. However, there were concerns about their art of conciliation and grounding in conciliation procedures (Murty, Giri, & Rath, 1986). They lacked the skills to convince and listen, making their communication ineffective and superficial. This was partially the result of the absence of a well-organized infrastructure.

> The ACLs are supposed to see that the labor laws are complied with in their respective regions. Ninety per cent of the time of ACLs goes into monitoring compliance of labor laws in their respective regions. So conciliation has a low priority. In terms of infrastructure, they do not have a proper room. In small rooms of 7 * 7 or 10 * 10, they have to deal with both the parties and there is a long que outside their offices. Have you been there? It is like a fish market. They also have to deal at least 100 cases a day because of the number of adjournments. This does not give them more than 2 min per case. There are no full-fledged ACLs working for 8 h only on conciliation. A lot of ACL posts lie vacant. Moreover, they are not trained in communication skills. They know the ID Act but don't know how to implement it in the conciliation process. For them, this job is a curse. (Employer Representative, Private Sector)

Further, employers argued there was no formal linkage between performance and promotion. The performance of the CO was not linked to the number of conciliation cases settled or to the reduction in the references made to adjudication and therefore there was no effort to settle the issue or persuade the parties. In fact, being part of a large bureaucracy, with guaranteed job security and promotions based on length of service, provided little incentive for COs to take interest in their job. This was concluded already 30 years ago, however still is confirmed in our interviews (Lansing & Kuruvilla, 1987).

Not surprisingly, conciliation was seen as a "waiting room" or a "hurdle to cross over" before the dispute was referred to adjudication. Not surprisingly, our participants stated that only 10% of the disputes were resolved at the conciliation stage. COs saw themselves as "door mats" or "rubber stamps" or "postmen" who simply forwarded the case to the industrial tribunal or the labor court for adjudication. This image got reinforced, given that the COs did not have the power to implement the settlements of the disputes mediated by them, nor did they have the power to take stringent action in case the parties violated the settlements. Employers (especially in the public sector) argued that COs should apply their minds, examine the merits of the case and prevail on the parties to reach a settlement, act swiftly and judiciously or use their power to reject cases that have no substance. COs' lack of initiative resulted in the employer and employee having to fight it out in court until the judgement was delivered. Some employer representatives argued that the CO's mentality was to send a failure report to the government and recommend adjudication. For instance, some employee representatives argued that the COs entertained disputes pertaining to supervisors, managers or even sons of employees who were not workmen under

the ID Act 1947.[4] Similarly, by referring cases of contract work for adjudication, employees are given a false hope. This mentality of COs got perpetuated as fresh recruits were socialized to maintain the status quo rather than 'act extra smart'.[5]

> The Contract Labor Act says that the employer should have a valid work order, a valid license, the employer should be registered. If these three requirements are met, anybody can employ contract labor. If these records are there, why are they referring the matter to courts? They can see that these documents are necessary and they can examine the same and they have time to do it. It takes several months in the conciliation procedure. Even if all the documents are submitted, it goes to the court—and in court, the same history is repeated. It takes years and years, it is a futile exercise. (Employer Representative, Public Sector)

At the same time, employers also understood that the COs' power was strictly circumscribed and scrutinized by the High Court. The CO could not go into the merits of the case and drawing the line between adjudication and administration sometimes seemed to be difficult. It was therefore easier to refer the case to the labor court or industrial tribunal. Similarly, for non-reference to adjudication, the CO had to give reasons in writing which once again made them susceptible to reprimands from the High Court. The decision not to make reference had to be exercised in a manner that it would not enter into the territory of adjudication since the COs power was merely administrative. For instance, the refusal by the CO to refer a dispute to adjudication, on the grounds that they were the employees of contractors and not of the principal employer, amounted to adjudication of the matter. However, the CO was required to state its reasons for refusing to make a reference so that it could stand public scrutiny. The reasons should be germane to the dispute under consideration and should not be irrelevant or extraneous to the dispute (Malhotra & Rao, 2015). In short, the risk averse Labor Commissioner's office argued that theirs was a toothless organization where conciliators had no powers to direct, adjudicate or force a settlement between employers or employees.

However, the difference between earlier research and our field work was in the area of political influence on the conciliation process. There were several instances in the earlier literature which stated that conciliation was increasingly the result of political intervention and, in this sense, had failed substantially. Political leaders who operated in the garb of conciliators coerce rather than persuade the disputants. The partners to the relationship contribute little to the outcome and both may view the settlement as an imposition about which they can do little (Lansing & Kuruvilla, 1987; Ramaswamy, 1985). Thus, both the partners harbored a sense of having been wronged (Ramaswamy, 1985). However, our field work revealed that the situation may be different today. None of the employers or labor commissioners stated that

[4]Under sec 2 (s) of the Industrial Disputes Act, a workman means any person (including an apprentice) employed in any industry to do any (1) skilled or unskilled (2) manual (3) supervisory (4) technical (5) clerical or operational.

[5]Means going beyond working norms.

they faced political pressure. The reason for this could be that there was a decline of militant trade unions alluded to earlier in the article. Further, there were no complaints about the COs being a partial third party as has often been claimed in the earlier literature.

18.5 The Way Forward

Some Labor Commissioners and employers argued that conciliation is ineffective and should be done away with or made optional. Instead, bipartitism may be encouraged, or since the matter ultimately goes for adjudication, both the parties should be given the liberty to approach the court directly. Accordingly, in 2010, section 2(A) of the Industrial Dispute Act of 1947 was amended to allow individuals to directly approach the labor courts instead of bringing it before conciliation proceedings. This change minimizes the role of conciliator in handling individual labor disputes. While the employers' associations have appreciated this change, unions argue that this would reduce the role of conciliation in resolving labor conflicts making it more costly for workers (Sapkal, 2015). Nonetheless, some persistently argue that the CO is not taken seriously while a judge is taken seriously because parties fear that the judgement would go against them if their approach was casual and therefore parties should be allowed to approach the court directly even in the case of collective disputes.

In spite of these debilitating factors, most employer representatives argued that conciliation was the only medium of getting the two warring parties together to find an amicable solution. Conciliation provided a window to correct disputes because, many times, decisions are taken hastily or due to some miscommunication. Further, conciliation provides a chance to the parties to gauge the strength of their case and offers an opportunity to withdraw unworthy cases. This was the only forum where a one-on-one dialogue was possible with employer and employee, unhindered by the formality of court proceedings. Employer representatives argued that only the CO could explain to labor that there was no substance in the case and no relief was possible and hence proceeding to adjudication would only be a waste of time and money. Conciliation is therefore a very important stage in the dispute resolution machinery and should not be dismantled. The conciliation process was indeed more efficient and effective method of resolving labor conflicts as compared to adjudication (Sapkal, 2015). The CO was just like a friend trying to mediate between the two parties, while the judge could never be a friend.

> There should always be a window to get out of a dispute. Even a judge in the family court always says that I will give you one more month to discuss and decide, only then I will endorse your divorce. Very often rash decisions are taken in haste. Conciliation provides a chance of undoing mistakes or correcting the miscommunication. This enables a compromise. Therefore, it is not a good idea to do away with conciliation. It's like going to a friend rather than going to an elder who dictates the decision. The CO guides us and also gives us a chance to provide the right documents to protect the company's interest. Bogus cases can also be reduced at this stage. (Employer Representative, Private Sector)

Moreover, conciliation was a cheap and quick process of sorting out differences where no cost was incurred by the parties, and if used appropriately, it could become the best option to resolve disputes. For this, the parties to a dispute should not regard the conciliation process to be a hurdle to be crossed in order to have a dispute adjudicated. All the parties should approach the proceedings with desire to settle differences, in the right spirit of co-operation and understanding. Therefore, the parties involved should approach the conciliation process with a determination to resolve their differences amicably (Rao, 1987). Conciliation would also reduce the number of cases being referred to adjudication. This could also be supported by the government resisting the urge to make references to adjudication and banning the representation of the parties by lawyers during the conciliation proceedings (Saini, 2014).

Lawyers should only be allowed if necessary, where the articulation of a legal point might be in question (Saini, 2014). The employer representatives we spoke to confirmed that when managers represented their company at the conciliation proceedings, the chance of reaching a settlement was higher.

Further, earlier research argued that both management and labor generally did not favor adjudication, because it robbed them of the opportunity to obtain their own objectives through the use of force or direct action. Besides this, having a third party would decide the dispute was not acceptable (Lansing & Kuruvilla, 1987). This was so because it was believed that the adjudicator or arbitrator cannot understand and appreciate the differences of the parties as well as they themselves could (Rao, 1987). Moreover, adjudication involved considerable time, and waiting for a decision would only worsen the industrial relations situation in the organization. As a result, both parties tended to rely more on conciliation efforts (Lansing & Kuruvilla, 1987).

In these circumstances, the choice of conciliators should be mutually chosen by the parties who should conduct the process in a professional way. In this regard, Rao (1987) suggests that a tripartite body consisting of representatives of employers, unions and the government can draw up a list of names of persons who can act as conciliators in respect of an industrial dispute so that they could command the co-operation of all parties in promoting a settlement. Besides this, given that the role of the conciliator is delicate and extremely crucial, only an impartial body set up on these lines can instil confidence in the disputants. The government should examine the setting up of an "autonomous conciliation agency" to insulate the service from political pressures while creating a specialized professional service.

The effectiveness of conciliation also depends on the amount of faith the parties have in the CO's skills, integrity and involvement to reduce the gap between the union and management and settle the matter (Murty, Giri, & Rath, 1986; Sahoo & Pani, 2007). To this end, proper selection of personnel, adequate pre-job training and periodic in-service training might help in making the system of conciliation effective (Rao, 1987). The number of COs should be increased so that they could spend more time on task of conciliation. The performance of the CO has to be monitored based on targets and number of settlements. They should be provided with incentives to convince the employer or employees to settle before conciliation rather than adjudication. In addition, too many adjournments should be taken to mean

below par performance since it was an indicator of the CO's inability or drive to get the dispute settled.

Overall, the crux of the matter lies in understanding the thin line between administration and adjudication. This has made the COs risk averse. Therefore, some employer representatives argued that the COs should be given liberty within limits to decide and settle some cases and the boundaries to their authority should be well defined.

18.6 Conclusion

In India, the state dominates industrial relations machinery which is often denoted by conciliation, arbitration and adjudication. In this chapter, we have examined the process of conciliation (which in practice means mediation) and its dynamics. There has been considerable disillusionment with the system of conciliation, with fewer cases being mediated over the years. Indeed, conciliation has not been used for the purpose it was created. Nonetheless, given the importance conciliation is bequeathed with, the parties involved have used the process in the most pragmatic manner to make bilateral agreements binding and to curb the initiation or continuation of strikes.

With the decline in militant trade unionism, employers use delaying tactics to tire and ultimately force employees who raise individual disputes to settle or withdraw. Obviously, employers prefer to see the process as a waiting room before the case moves on to adjudication. At times, the CO's intervention did help, but it was solely based on the employer's expedience which was largely guided by financial interests to consider the same. Overall, employers seem to have an upper hand in the conciliation process. Given these impediments some suggested that the entire process be abandoned in favor of adjudication. Further, the blurring of lines between administration and adjudication reduces COs to postmen/postwomen and the conciliation process as an adjunct to adjudication. In addition, the workload and skills of COs and the absence of a formal link between their performance and promotion also debilitated the process.

However, others argued that conciliation is a cheap and quick process if used appropriately. Therefore, one, the parties should approach conciliation with a commitment to resolve the dispute. Two, the COs' require to curb their urge to refer disputes to conciliation. Three, the government required to increase the number of COs. Four, COs' performance was required to be linked to the number of cases settled. Five, an independent body of conciliators was required to be established for parties to choose from those who were skillful. Finally, and most importantly, the boundary between administration and adjudication should be clarified so that the conciliation process becomes more fruitful.

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