Lesson: 37

Title: Problems have solutions: Dispute Resolution

Topics to be covered:

- Industrial Relations machinery
- Preventive machinery
- Settlement machinery
- Article 1: “Overview of Dispute Resolution”
- Article 2: “Practical Tips for Mediation”
- Article 3: “Diversity Counts”

Today we are going to study the means and ways to resolve industrial disputes. We should understand that whenever there is some problem in our professional or personal life, we should not get disturbed by the problem. We should look for solutions. Please remember that God helps those who help themselves! At this encouraging note let us get into the technicalities of resolving conflicts in organisations.

INDUSTRIAL RELATIONS MACHINERY

Cordial industrial relations and lasting industrial peace require that the causes of industrial disputes should be eliminated. In other words, preventive steps should be taken so that industrial disputes do not occur. But if preventive machinery fails then the Government should activate the industrial Settlement machinery because non-settlement of disputes proves to be harmful not only for the workers, but also the management and the society as a whole.

The machinery for handling the industrial disputes has been shown in the following figure:
I am sure that all of us would have heard the saying that prevention is better than cure. Keeping that in mind let us discuss the prevention machinery before the settlement machinery.

I hope all of you have understood the difference between the two. If you have not, let me explain it to you. The preventive machinery ensures that there are no disputes. It aims at creating an environment in which the employees are allowed to participate and there are very less chances of conflicts. It is thus proactive in nature.

Now don’t tell me that you don’t understand the meaning of pro activity…Anyhow, pro activity means that actions are taken before there is a problem. The settlement machinery on the other hand is reactive in nature. After there is a problem or a dispute, the settlement machinery comes into the picture.

**Prevention of industrial disputes:**

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

a) Schemes of workers’ participation in management such as works committees, joint management councils and shop councils and joint councils.

b) Collective bargaining.

c) Tripartite bodies

d) Code of discipline.

e) Standing orders.

The schemes of workers’ participation and collective bargaining will be discussed in greater detail as a separate topic. As of now, please read something on these schemes and we will discuss it in the due course.
Rest of the preventive measures are discussed below:

- **Tripartite Bodies**

Industrial relations in India have been shaped largely by principles and policies evolved through tripartite consultative machinery at industry and national levels. The aim of the consultative machinery is “to bring the parties together for mutual settlement of differences in a spirit of cooperation and goodwill”

Thus these bodies play the role of consultants!!

Indian Labour Conference (ILC) and Standing Labour Committee (SLC) have been constituted to suggest ways and means to prevent disputes. The representatives of the workers and employers are nominated to these bodies by the Central Government in consultation with the All-India organisations of workers and employers.

The Labour Ministry settles the agenda for ILC/SLC meetings after taking into consideration the suggestions sent to it by member organisations. These two bodies work with minimum procedural rules to facilitate free and fuller discussions among the members. Please note that the ILC meets once a year, whereas the SLC meets as and when necessary. I am sure you would have read in the newspapers that the ILC meet is being organized.

I hope you know what ILC and SLC stand for. ILC means the Indian Labour Conference and SLC stands for the Standing Labour Committee.

Let us understand the functions of ILC!

**The functions of ILC are:**

(a) To promote uniformity in labour legislation
(b) To lay down a procedure for the settlement of industrial disputes
(c) To discuss matters of All-India importance as between employers and employees.

The ILC advises the Government on any matter referred to it for advice, taking into account suggestions made by the States and representatives of the organisations of workers and employers.

**The Standing Labour Committee**’s main function is to consider and determine such questions as may be referred to it by the Plenary Conference or the Central Government and to render advice, taking into account the suggestions made by various governments, workers and employers.

Please research a little more on this and write down at least one page each on both these topics.

- **Code of Discipline**

The Code of Discipline is a set of self-imposed mutually agreed voluntary principles of discipline and relations between the management and workers in the industry.
In view of growing industrial conflict, the Fifteenth Indian Labour Conference agreed that there should be a set of general principles of discipline, which should be adopted by labour and management voluntarily. To evolve such a set of principles, a tripartite sub-committee was set up. The resulting draft was discussed at Standing Labour Committee meeting in October 1957. At the Sixteenth Indian Labour Conference held in 1958, the final form of the Code of Discipline was approved. The details of the code are discussed later.

As of now please understand that there are three sets of principles in the Code Of Discipline. The first set of principles is for the management and the union. The second set is for the Management and the third one is for the union

- **Standing Orders**

Now what do you think are Standing Orders? ….

The orders to stand……

Jokes apart, The Standing Orders regulate the conditions of employment from the stage of entry to the organisation to the stage of exit from the organisation. Thus, they form the regulatory pattern for industrial relations. Since the Standing Orders provide Do’s and Don’ts, they act as a code of conduct for the employees during their working life within the organisation.

The purpose of having Standing Orders at the plant level is to regulate industrial relations. They define with sufficient precision the conditions of employment under the employers and hold them liable to make the said conditions known to workmen employed by them. These orders regulate the following:

- Conditions of employment
- Discharge
- Grievances
- Misconduct
- Disciplinary action etc.

These apply to all the workmen employed in industrial undertakings.

Based on the above discussion, tell me what do you think is the difference between Code of Discipline and Standing Order?

On a closer examination you will be able to conclude that the Standing Orders are much **wider in scope** as compared to the Code of Discipline. The Code of Discipline just applies to the management and union and that also a specific work related area. The Standing Orders on the other hand apply to all the aspects of an employees working life. It encompasses all the rules and regulations from his entry to exit.
Coming on two the Settlement machinery.

Before moving on let me make a few things clear.

Firstly, an effective management should stress on the preventive machinery rather than the settlement machinery.

Secondly, it should be noted that the settlement machinery should only be resorted to when the preventive machinery has failed to achieve its targets.

Thirdly, please remember that preventive machinery is entirely voluntary in nature. Law does not back it. It depends on the organisations. However, this is not the case with settlement machinery.

SETTLEMENT OF INDUSTRIAL DISPUTES
(JUDICIAL MACHINERY)

Preventive measures seek to create an environment where industrial disputes do not arise. Should they, however, arise, every effort is required to be made to settle them as early as possible so that they do not lead to work stoppage. The machinery for the settlement of industrial disputes has been provided under the Industrial Disputes Act, 1947.

This machinery comprises:

(a) Conciliation,
(b) Arbitration, and
(c) Adjudication.

These are discussed below.

Conciliation

Conciliation or mediation signifies third party intervention in promoting the voluntary settlement of disputes.

The International Labour Organisation has defined conciliation as:

“ The practice by which the services of a neutral third party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution. It is a process of rational and orderly discussion of differences between the parties to a dispute under the guidance of a conciliator.”

The conciliator assists the parties to dispute in their negotiations by removing bottlenecks in communication between them. Conciliation machinery as provided under the Industrial Disputes Act, 1947 is as under:
I. Conciliation Officers. The Act provides for the appointment of conciliation officers, permanently or for a limited period, for specific area or for a specific industry, to whom the industrial disputes shall be referred for conciliation. The conciliation officer enjoys the powers of a civil court; he can call and witness parties on oath. The conciliation officer examines all facts relevant to the disputed matter and then gives his judgment.

II. Board of Conciliation. The Act also empowers the Government to appoint a Board of Conciliation for promoting the settlement of disputes where the Conciliation Officer fails to do so within 14 days. The Conciliation Board is a tripartite adhoc body consisting of a chairman and two to four other members nominated by the parties to the dispute. The mode and procedure of the functioning of the Board are similar to those of the Conciliation Officer.

III. Court of Inquiry. In case the conciliation proceedings fail to settle an industrial dispute, the Government has yet another option of referring the disputed to the Court of Inquiry. The Court is expected to give its report within six months. The performance of conciliation machinery cannot be said to be satisfactory. Only 25% of cases are annually handled. Besides a very large number of disputes are filed and then withdrawn later on by workers or unions. It means petty issues are taken up for conciliation. Finally, a substantial number of cases remain pending.

The ineffectiveness of conciliation machinery can be attributed largely to inefficient Conciliation officer! “Either they do not have the necessary educational background, training and experience, and knowledge of industrial relations, since most of them are promoted from the ranks of clerks and labour inspectors, or they lack interest and initiative because conciliation is devoid of conciliation machinery because of the parties attitude of casualness towards it.

I am sure you would have heard people discussing the ineffective judicial machinery in India. As budding managers I encourage you take it as a challenge to correct this scene!!

Please note that often, conciliation is looked upon as merely a hurdle to cross to reach the next stage (i.e., adjudication). Besides, the political pressures on the conciliators also cause the weakening of conciliation machinery.

- Arbitration

Voluntary arbitration became popular as a method of settling difference between workers and management with the advocacy Mahatma Gandhi, who had applied it very successfully in the Textile industry of Ahmedabad. However, voluntary arbitration was lent legal identity only in 1956 when Industrial Disputes Act, 1947 was amended to include a provision relating to it.

On failure of conciliation proceedings, the conciliation officer may persuade the parties to refer the dispute to a voluntary arbitrator. Voluntary arbitration refers to getting the disputes settle through an independent person chosen by the parties involved mutually and voluntarily.
The provision for voluntary arbitration was made because of the lengthy legal proceedings and formalities and resulting delays involved in adjudication.

It may, however, be noted that arbitrator is not vested with any judicial powers. He derives his powers to decide the dispute from the agreement that parties have made between themselves regarding the referring of dispute to the arbitrator. The arbitrator submits his award to the government. The government then publishes it within 30 days of its submission.

Regarding the performance of voluntary arbitration as a method of resolving disputes, it can be said at the very outset that it has failed to make much progress. There exists general indifference among parties to use voluntary arbitration as a method of settling disputes. Hardly 2 to 3 percent of the disputes not settled by conciliation are referred to voluntary arbitration.

Let me ask you, how many of you would be willing to solve a conflict that you had with your friend through a third party chosen voluntarily by you and your friend? I am sure not many of you would be willing to do that and please remember that in the organisations the scene is much more complex! The Voluntary Arbitration has not been able to achieve a lot of success in this regard.

National Commission on Labour (1969) identified following causes for the failure of voluntary arbitration:

1. Lack of arbitrators who command the confidence of the parties to the disputes.
2. Law provides no appeal against the award given by arbitrator
3. Easy availability of adjudication on the failure of negotiation or conciliation.
4. The absence of simplified procedure to followed in voluntary arbitration.

- **Adjudication**

The ultimate remedy for the settlement of an unresolved dispute is its reference by the Government to adjudication.

Adjudication may be described as process which involves intervention in the dispute by a third party appointed by the government, with or without the consent of the parties to the dispute, for the purpose of settling the dispute.

The reference of dispute to adjudication is **voluntary** when both parties agree to reference of dispute to adjudication at their own accord, and it is **compulsory** when reference is made to adjudication by the Government without the consent of either or both the parties to the dispute. The Industrial Disputes Act, 1947 provides a three-tier adjudication machinery comprising

(i) Labour Courts,
(ii) Industrial Tribunals, and
(iii) National Tribunals
(i) **Labour Courts.** The Labour Courts can deal with disputes relating to:

a) The propriety or legality of an order passed by an employer under the standing Orders.
b) The application and interpretation of Standing Orders.
c) Discharge and dismissal of workmen and grant of relief to them.
d) Withdrawal of any statutory concession or privilege.
e) Illegality or otherwise of any strike or lock-out
f) All matters not specified in the third schedule of Industrial Disputes Act, 1947, (it deals with the jurisdiction of Industrial Tribunals).

(ii) **Industrial Tribunals.** The Industrial Tribunals can deal with the following matters

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

(iii) **National Tribunals.** These tribunals are meant for those disputes which, as the name suggest, involve the questions of national importance or issues which are likely to affect the industrial establishments of more than one state. The employers and unions use adjudication as a primary measure of resolving disputes. About 90 to 95 per cent of disputes are referred to adjudication machinery on an average annually. However, the functioning of adjudication machinery has not been very satisfactory, particularly because of the delays involved and the inefficient implementation of the awards.

The proceedings at adjudication take unduly long period. About 50 to 60 per cent of the cases are decided in more than a year. And 25% of the cases take between 6 to 12 months. The state of the implementation of awards (requiring implementation) is also not very commendable. 30 to 40 per cent awards are not implemented by the date of enforcement. Incomplete and abrupt implementation of awards creates suspicions in the minds of workers and shakes their faith in the machinery.

Adjudication has been the most popular measure of resolving disputes accounting for more than 90 per cent of the disputes every year.

However, adjudication is not a democratic method and may create bitterness among the parties. It tends to encourage litigation and irresponsible behaviour
among employers and labour. The functioning of the adjudication machinery has in practice been unsatisfactory. I am sure you will agree that an unduly long time is involved in adjudication proceedings. You will be surprised to know that more than one-half of the disputes are decided in more than a year. Moreover, the implementation of the awards has been inefficient. Delays in implementation erode the faith of workers in the adjudication machinery. Adjudication is preferred more by employers who can afford to spend more on the legal proceedings.

Point to Ponder:
Which machinery do you think is more effective-Preventive or Settlement?

Article 1
(Source: http://www.batnet.com/oikomene/arbover.html)

Overview of Dispute Resolution

Why do disputes arise?

Disputes arise because of perceived differences in interests. That is, if there is an interaction between two or more people or companies, and one person believes that his or her interests are not identical to those of the others, there will be a dispute. People or companies who have a contractual relation or who are engaged in a dispute are traditionally referred to as "parties".

The best way to prevent disputes from arising is to make sure that each party knows what the other party wants and to capture in clear, unambiguous writing any agreements between the parties. Increasing each party's knowledge about the other decreases the chance of a dispute arising because of a misunderstanding. Similarly, relying on business practices that are universally used in a certain industry or region will reduce the number of disputes.

Disputes can easily arise when the parties don't know each other well, when they are engaging in new forms of business, or when they come from different cultures.

Disputes that do arise can be resolved in any of the following ways:

1. One or more parties agree to accept a situation in which their interests are not fully satisfied.
2. The parties submit the situation to an impartial person or panel, who decides which interests should be satisfied and which should not. Usually, the impartial person or panel will refer to pre-existing rules or guidelines that had been agreed by all parties or were at least known to all parties. Often these rules are what we call laws.
3. The perceptions of one or more parties change, so that there is no longer a perceived difference in interests.
4. The interests of one or more parties change, so that there is no longer a difference in interests.
The Three Factors

At this point, it is useful to recognize that there are three independent fundamental factors that affect the resolution of disputes:

Interests:  
Are defined by a party in an interaction and are the things that that party is interested in (money, recognition, physical goods, or whatever).

Power:  
Is given by a combination of external circumstances and self-confidence.

Rights:  
Are given by an external framework, for example national laws or contracts between parties.

When a party has a common interest with another party, and power, and rights, it is in a very favorable situation. For example, Hewlett-Packard (HP) shares with its customers the interest in producing and selling high-quality, low-cost printers; HP has the financial power to develop printers and the marketing power to distribute them; HP has the rights to patents and trade secrets that allow it to produce the best products.

More commonly, one of the elements is missing. For example, in the laserjet printer market, Canon has the same interests as HP and its customers, many of the same rights as HP to the patents on the technology, but it lacks the marketing power.

Rights may confer power: for example, a patent confers the power to prevent competitors from creating a given product. But power may be required to exercise a right: for example, financial power is required to litigate a patent-infringement suit against a large company.

Either rights or power may be ceded in order to satisfy an interest; conversely, to satisfy an interest may require ceding rights or power: for example, authors whose interests are financial rewards typically cede their copyright rights to a publisher.
Thus there are connections between interests, power, and rights, and in real life there are usually trade-offs between the three factors.

Methods of Dispute Resolution

Negotiation:

Is a method of dispute resolution largely based on power; it often results in solutions of type A above.

Arbitration and Litigation:

Are methods largely based on rights; they result in solutions of type B above. The advantage of arbitration is that parties can select the judges and, to some extent, the rules to be used. For more information, see Constituting Arbitral Tribunals, International Commercial Arbitration Primer, and Dispute Resolution in Telecommunications.

Non-binding arbitration:

is a way of obtaining impartial information regarding a situation; it often results in solutions of type C above.

Mediation:

Is a way of finding out if parties' interests can be broadened so that a true common ground can be found; it often results in solutions of type D above.
Seemingly simple disputes can become very acrimonious and hard to resolve when parties focus on power or rights; an important component in the process of mediation consists in reminding parties that interests should always play a significant role in dispute resolution, and in helping the parties to find common interests. For more information see [Non-Adversarial Mediation](#) and [Mediation and Lean Arbitration](#).

Richard Hill
Practical Tips For Mediation

1. **HELP THE MEDIATOR** be prepared to help you. Send a summary of the case, commensurate with the complexity of the case. Depending on the case you can include:
   - Key documents, photos, diagrams
   - Expert reports
   - Deposition excerpts
   - Key pleadings
   - Prior settlement negotiations

2. **PREPARE**--yourself and our client--for the Mediation
   - Identify and list your strengths and weaknesses, and those of the other side(s)
   - Outline cost to date, and probable costs to continue litigation trial.
   - Outline information you have and don't have about your case
   - Outline information you have and don't have about the other side(s)
   - Discuss and analyze settlement options with your client before the mediation
   - Be prepared to "negotiate"

3. Put on a "GOOD SHOW" during the opening presentation, and prepare your client to do the same, if appropriate. This is a golden opportunity to have an impact on the other side(s). See especially "The Use of Evidence in Mediation".

4. "USE" the Mediator. Present your strengths and the weaknesses of the other side clearly that you want emphasized to the other side. Let the mediator know, directly or indirectly, that you want reinforcement made to your client about some weaknesses and risks in your case.

5. Be **FLEXIBLE**. If you feel it would be helpful for the two parties to speak alone, or you want to talk alone with the other attorney, or the mediator, suggest it.
6. Be **CREATIVE**. There are often creative solutions to resolve a dispute that involve consideration other than money, e.g. a free cruise, a future discount, continued employment, etc. Also, consider Adjournment and a subsequent Mediation.

Allen D Nicholson

**Article 3**


**Diversity Counts**

Gender differences in Disputes and Dispute Resolution

One of the reasons for grievance processes is that problems and disputes in the workplace are normal and probably unavoidable. Disputes commonly arise over issues such as work assignments, work schedules, and discipline; once such disputes arise, it is usual for them to be addressed. They may be addressed formally (such as through union-negotiated grievance procedures) or informally, such as in face-to-face conversations.

Given the likelihood that you will find yourself engaged in some type of workplace dispute, the results of one recent study regarding gender differences in disputes and dispute resolution provide some useful food for thought. The study focused on male and female clerical workers’ disputes over tasks and interpersonal treatment and involved 34 in-depth interviews with 23 women and 11 men clerical workers in both unionized and non-unionized firms. The researchers draw three conclusions from their study.

First, there are gender differences in the origins of workplace problems and disputes. At least with these workers in these companies ‘…women workers displayed more sensitivity to problems associated with interpersonal relations in the workplace than men, more often voicing workplace disputes concerning personality conflicts.’ On the other hand, the men clerical workers were relatively less likely to express concerns over personality conflicts in the workplace.

Second, more women generally described how difficult it was to resolve personality conflicts through formalized channels (including grievance procedures). The reason, apparently, is that the sorts of personality conflicts sensed by the female clerical workers rarely ‘….escalate to a point that they can be labeled or proven as harassment.’ Instead they were more subtle occurrences that ‘eat away at women workers’ to use the researches’ phrase. As a result, women were much less likely to use formal dispute resolution procedures for eliminating interpersonal conflicts, but instead were much more likely to request lateral transfers to solve problems in the workplace. In turn such lateral transfers may reduce a woman’s likelihood of receiving a raise or getting more training, since her average tenure on a job will tend to be lower than a man (who either discounts the interpersonal conflict or tries to solve it through some formal or informal procedure.)
A third conclusion is that, given the above, workplace dispute resolution procedures may actually constrain women’s abilities to succeed at work. For example suppose it is true that formal dispute resolution procedures such as grievance processes are unlikely to be useful forums for addressing simple interpersonal conflicts. Then women may be at a disadvantage when it comes to solving an interpersonal conflict that they may be relatively attuned to. One implication is that more formal and informal procedures should be built into an employer’s dispute resolution processes in order to give both women and men a better opportunity to air interpersonal disputes and get on with their work.
Dispute Resolution Machinery

Preventive Machinery

- Workers’ Participation in Management
- Collective Bargaining
- Tripartite Bodies
- Code of Discipline
- Standing Orders
Settlement Machinery

- Conciliation
- Court of Enquiry
- Voluntary Arbitration
- Adjudication
  - Labour Courts
  - Industrial Tribunals
  - National Tribunals