Settlement of Industrial Dispute through Conciliation: a study of Current Practices in Pakistan

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Abstract

Conciliation as a process for the settlement of industrial disputes has been in vogue in Pakistan since the day of independence. The law, however, relating to conciliation has been subject to a number of changes, but despite these legislative changes, the two main parties continue to seek the assistance of state sponsored conciliation service for the resolution of industrial disputes. This paper ventures into the investigation of the law relating to process and practices used by the government in managing industrial disputes. It also argues that the government continues to play a significant interventionist’s role and no pragmatic efforts have been made to bring the service at required level.

Introduction

In industrial arena, the heterogeneity of the interests renders the possibility of the disputes inevitable. Industrial peace, which is the priority of both the proletariat and the entrepreneur, is not a God-given recompense rather it is to be cultivated and worked for constantly. The significant difference between civilized men and savages is the willingness of the former to settle their differences via rules of reason instead of trying the muscle. It was owing to the satiation of the urge for the maintenance of the industrial peace coupled with the peaceful resolution of conflicts and harmony between the two segments of the industrial field that the institutions like mediation, conciliation and the arbitration came into being since the dawn of civilization.

Sometimes, the negotiations are beleaguered due to personal propensities as being the dwellers of this planet, the representative of the workers and the management are not devoid of human attributes of stubbornness, personal biased and inability to comprehend the point of view of the counterpart. Furthermore,
notwithstanding the existence of a solution, lack of proper and complete information coupled with the scarcity of wisdom may be another impediment in working out an amicable settlement. In such a chaotic situation the settlement of disputes through the intervention of third neutral person, without dictating the terms of the settlement, may be instrumental in pacifying the situation. Being the darling of all ages, there is an abundance of literature on the subject; therefore, the jurists have defined the term, almost, in a similar fashion and style except some linguistic variations. Michael Salamon has defined it as a strategy wherein the ‘third party’ supports the direct bipartite negotiating process by assisting the parties to identify the cause and extent of their differences, to establish alternative solutions and their various implications and to develop and agree a mutually acceptable settlement. But, the International Labour Office, Geneva enjoins upon the negotiators to embark upon the process of dialogue with rationality and in an orderly way under the guidance of the conciliator. Being riddled with the responsibility of narrowing down the controversy, the conciliation service has assumed “fire-fighting role” under all jurisdictions. As a result of their survey regarding the union and management attitudes towards conciliation in Britain, Krislov and Galin were of the view that an overwhelming majority of the proletariats and entrepreneurs demonstrated the feeling that such third party intervention was consistent with mature collective relationships. As an efficacious surrogacy for formal justice, the conciliation provides the disputants an opportunity to embark upon a goal oriented dialogue with less economic burden and less time consumption. It also goes to the credit of conciliation that being the process of win-win, the social partners are encouraged to come closer and demonstrate substantial amount of flexibility needed for diagnosing the complex and multifaceted issues and get the conflicting interests adjusted in such a way that the dignity and the worth of the negotiators are acknowledged. If seen from the point of view of output, Michael Salamon calculates that since the last quarter of the nineteenth century, the conciliation and arbitration have played a pivotal role in minimising the industrial unrest. By conciliation, being an integral part of government’s policy, in most of the contemporary jurisdictions, to lessen the use of power option, the governments have succeeded not only in reducing the use of industrial muscle but also encouraging the two sides of industry to benefit from these facilities.

In Pakistan, the institutional and legislative framework for the dispensation of labour justice has been introduced in a patchwork. Nevertheless, the tradition of settlement of industrial disputes through the aegis of conciliators is as old as the history of labour legislation in Pakistan. Under all statutory arrangements, as will be discussed latter, the conciliation was compulsory in essence, but such compulsion is only in term of participation in the process but not accepting the
out come. Therefore, the anatomy of the conciliation as an informal way of settlement of industrial dispute can best be comprehended by dividing it into two phases: from 1947 to 1968 and from 1969 to date. The main reason behind such bifurcation is legislative deviation, which the legislatures have been demonstrating periodically.

Appointment of the Conciliators

In Pakistan, like many other contemporary jurisdictions, the task of conducting conciliation has been entrusted to the Provincial Labour Departments of the Provincial Governments. Under the provisions of the first two enactments, the prerogative of the appointment of conciliators rested with the appropriate Government and the same could appoint as many conciliators as it could deem fit by issuing a gazette notification to that extent. The appointment could be made: for a specific area; for specific industries in a specific area; or for one or more specific industries either on permanent basis or for a limited period expounding thereby the mediation in and promotion of the settlement of industrial disputes as the rudimentary objectives of the appointment. Unlike its successors, the Industrial Disputes Act, 1947 embraced the provisions pertaining to the constitution of an ad hoc Board of Conciliators, for similar purpose, by the relevant Government according to the exigency of the situation. But, under that law, as far as the matter of appointment of the conciliators or the board of conciliators was concerned, that was purely discretionary as the word may was used in the relevant provision.

While interpreting the words “may” and “shall” the courts have reiterated that in case of use of the former the impression becomes directory whereas in case of the latter it renders the impression mandatory. Prior to the incorporation of the provisions relating to the Works Council/Joint Works Council as precursor of conciliation, the conciliator would have assumed the jurisdiction to reinvigorate the disputants for dampening the conflict. But, the inhibitory nature of the statutory arrangements left ample room for the conciliator to exercise his discretion. For example, the commencement of the conciliation proceedings was purely discretionary if the dispute related to other than public utility services. Whereas, in case of an industrial dispute relating to the public utility services, it was mandatory for the conciliator to take up the matter provided that the notice of strike or lock-out had been issued. Nevertheless, under the provisions of the Industrial Dispute Ordinance, 1959, a second law governing the process of settlement and adjudication of industrial disputes in Pakistan, a well nigh perfect reformation was ushered in and it was imperative on the conciliator to embark upon the conciliation process notwithstanding the distinction of the nature of the service under fermentation.
In second phase (from 1968 to date) there emerged three enactments pertaining to the appointment of the conciliators. Out of this legislative trilogy, in the West Pakistan Industrial Disputes Ordinance, 1968 previous method and criterion of appointment of conciliators was kept in vogue but, interestingly, contrary to the preceding arrangements, the idea of an ad hoc board of conciliators was abandoned. Under the provisions of the Industrial Relations Ordinance, 1969 and the Industrial Relations Ordinance, 2002, the legislative thrust had been, partially, shifted from “may” to “shall”. Both of the statutes called upon the Provincial Government mandatorily to appoint conciliators but, as far as the Federal Government’s prerogative to that extent was concerned: the same had been confined to the matters falling within the jurisdiction of the National Industrial Relations Commission\(^18\), and the exercise of that authority had been rendered discretionary\(^19\). Another marked development in the extant law was the resuscitation of the provisions pertaining to the constitution of an ad hoc tripartite Board of Conciliation-- an arrangement that had emerged on the Pakistani industrial horizon about forty four years ago. The only difference manifested in the new law was that the exigencies demanding the constitution of the said board had been earmarked which the old law lacked in. Therefore, the relevant Government could constitute the said board. The board would comprise of men of standing competence. It would be constituted on the request of the party raising the industrial dispute under three circumstances: to conciliate in an industrial dispute involving more than one establishments in a province; in an industrial dispute of national importance and to conciliate in an industrial dispute in an industry at national level provided that the negotiations are, in any of the three situations, not making satisfactory headway\(^20\). The Industrial Relations Ordinance, 2002 could not hold ground any longer and had to be dispensed with in 2008. In the new law, the idea of Tripartite Board of Conciliators was abandoned and the conciliatory arrangements were confined to conciliators to be appointed by either of the governments\(^21\). Industrial Relations Act, 2008 turned out to be a very short lived measure and as a result of Eighteenth Constitutional Amendment, the subject of labour was devolved to the provinces, all the provinces have promulgated separate laws on the subject. It is relevant to mention that no pragmatic deviation has been demonstrated in the new law and old substance has been bought onto the new statute\(^22\).

The amassed impression displayed by the entire legislative plethora is that the conciliation process is assumed by the labour officers of the Labour Department. The disputants, in this respect, cannot choose a conciliator at their own accord. The legislative arrangements are not only contrary to the established cannons of voluntarism but also inconsistent with the manifesto of the International Labour Organisation as has been enshrined in its convention\(^23\). Under the provisions of
the first two laws the situation was so deplorable that the state intervention in the industrial arena had overshadowed the role of the social partners, *inter alia*, via a couple of reasons: due to non-availability of any forum for pre-conciliation negotiations, the disputants had to appear before state-sponsored conciliation, and in case of failure of negotiations the reference of the dispute to the industrial court for regular adjudication rested entirely on the discretion of the appropriate Government.

Another legislative flaw, which has been endemic in Pakistani labour jurisprudence since the dawn of independence, is the absence of the option to change the conciliator in case he loses the confidence of the parties. The disputants are forced to carry on the process of conciliation in an unpalatable atmosphere leaving thereby an ample chance of frustration of the negotiations. Albeit, in case of the incorporation of the provisions relating to change of the conciliator, there is an apprehension of abuse of the provision, but the likelihood may be overcome by rendering the option subject to plausible reasons to prove, for instance, that the conciliator cannot ensure objectivity in the settlement of the dispute. On the other side of the spectrum, restoration of the voluntary character of the conciliation will not only be instrumental in toning up the efficiency of the negotiators but also relieve Pakistan of international criticism which she has been facing due to this legacy of dead wood. Furthermore, as a process of thawing relations between the contestants, the conciliation can play an everlasting role if the role of the labour department is confined to advisory status to the both sides of the industry and if the Government is still adamant to maintain the compulsory character of the conciliation then, at least, the parties should be free to choose/opt the conciliators of their own choice because the allurement of, as has been opined by Henry David, the conciliation lies in the fact that both process and the outcome are seen to be ‘owned’ by the disputants24. In prevalent situation, the major imperfection turns out to be that being an integral part of the Government Department, the conciliation service in Pakistan is tied to the apron strings of the state and it is, therefore, obliged to conform to the policies of the sitting government.

Another concern is seriously flawed legislation pertaining to the constitution of the tripartite Board of Conciliation. Under the statute, neither the terms and conditions of the appointment of the members of the board have been prescribed nor has any pledge been made to prescribe the same via rules. The phrase “men of standing competence” has further confused the situation leaving ample room for official discretion. Moreover, the role to be played by the chairman of the Board and each of the wing men including the analysis of the relevance of the exigencies demanding the constitution of the board are those questions which are yet to be answered. The provisions pertaining to the constitution of the Board of
Conciliator were more clear and speaking under the previous legislative arrangements than the extant legislation in a couple of ways: in terms of appointment of the members and the chairman of the Board, and the autonomy of the disputants regarding the recommendation of the wingmen. The existing legislation is devoid of such characteristics. So, the extant legislative endeavour would be able to fetch required results if such ambiguities are frontally addressed.

Commencement of the Conciliation

Under the legislative arrangements of the first phase, the initiative for conciliation was to be taken by one of the parties by sending a notice, to that extent, to the labour department\textsuperscript{25}. The situation couldn’t prevail any longer but, under the provisions of the West Pakistan Industrial Disputes Ordinance, 1968, the said distinction was not only restored but the conciliation officers were riddled with an additional duty of scrutinizing the legitimacy of the notice of strike or lockout before embarking upon the process of conciliation\textsuperscript{26}. The conciliation process was rendered mandatory under a couple of circumstances: firstly, if the industrial dispute pertained to the public utility services and secondly, in case of non public utility services, if the notice of intended industrial action had been served by the initiating party on its counterpart.

At the same time, however, the discretionary aspect of the conciliator’s jurisdiction was retained in all other cases. So much so, before venturing into the conciliation proceedings the conciliator was enjoined upon to satisfy him as to the validity of the notice of intended industrial action. In case the said notice (in the opinion of the conciliator) turned out to be otherwise, the conciliator had a wide discretion to decline the process of conciliation. But, being equipped with stronger stipulations of predilection, the conciliator could undertake the process of conciliation notwithstanding the question of conformity or non conformity of the said notice with the prescribed scales and also, the validity of the conciliation proceedings, in such situation, could not be called in question on any of such imperfections\textsuperscript{27}. Under the second legislative phase, there ushered upon a crusade of legislative renovations and the institution of the conciliator was purged of, to a great extent, the layer of discretionary powers. The emergence of the Works Councils/Joint Works Councils heralded the conciliation and it was incumbent upon the disputants to exhaust that step before making recourse to the conciliation.

As stated above, consequent upon the failure of the negotiations in the Joint Works Council, the party raising the industrial dispute, under the provisions of the Industrial Relations Ordinance, 1969 and all subsequent enactments\textsuperscript{28} (legislation of the second phase) was called upon to serve a notice of strike or
lock out: on its counterpart, on the conciliator and the labour court. The conciliator was required to persuade the negotiators to conclude a settlement within fourteen days of the service of the notice on the conciliator or within an extended period as was be agreed upon between the parties. But, under the extant legislation, the situation relating to the commencement of the conciliation proceedings has been reversed altogether. In case of frustration of negotiations in the Joint Works Council, the party raising the industrial dispute is required to serve a notice of conciliation instead of notice of industrial action. Indeed, the substance of the provisions reveals that under Pakistani labour jurisprudence, the propinquity of the conciliator in the process of collective bargaining has legislative mandate but, he emerges out at the instance of the party raising the industrial dispute. It should also be born in mind that the conciliator is not supposed to take the suo moto cognizance of any upheaval, a lacuna in the legislative arrangements, which, if given due consideration in the legislation, will prove to be a potent instrument in dampening most of the differences in their bud. The question of conciliator’s power to take the cognizance of the situation came under discussion in two decisions of the apex court. Firstly, in its edified judgment, the Supreme Court held that under section 29 of the Industrial relations Ordinance, 1969, delivery of a copy of strike or lockout notice to the conciliator simultaneously on the issuance of such notice was mandatory. Nevertheless, in a case where disputed point was discussed in Works Council and it was rejected, the Supreme Court held that in the circumstances of the case, rule-requiring endorsement of copy of notice under section 26(3) to the Conciliator (Labour Officer) was directory and not compulsory. Secondly, exactly after the lapse of one year the apex court was pleased to change its view by holding that receipt of notice under section 28 was sine qua non and signal for conciliator for commencement of conciliation proceedings. Supreme Court added that the conciliator had no jurisdiction at all to enter upon conciliation proceedings in the absence of notice or copy thereof delivered to the conciliator.

Moreover, the departure from the preceding practice of the commencement of the conciliation proceedings is another set back for clinching an amicable settlement because the provision of service of notice of strike or lock out at this point may prove more instrumental than notice of conciliation because in case of the latter, there is no fear of any economic deterrence/deprivation. In the face of prevalent situation, the chances of frustration of the endeavour are self evident as, under the extant legislative arrangements, there is only a duty to negotiate but no obligation to conclude an agreement. A similar estranged tactic with paltry linguistic variation, as stated above, had been in vogue where the conciliator was enjoined upon to look over the validity of the notice of intended
industrial action granting, thus, ample discretion to the conciliator to linger on the process of scrutiny resulting in lessening the efficacy of the potential industrial action. Albeit, under the existing law the conciliator has been absolved of the responsibility of scrutinizing the said notice, but the likelihood of the frustration of the conciliatory process has been enhanced by changing the sequential step.

Procedure of Conciliation

The conciliation, as stated above, in Pakistan has been, for some defined issues discretionary. Notwithstanding, however, its discretionary or compulsory character, the procedure to be followed by the conciliators was to be prescribed by the relevant governments by framing rules. Under the legislative arrangements of the first phase, the conciliator was obliged to take cognizance of an existing or simmering upheaval via a couple of ways: on receipt of a communication and secondly in case of public utility service, on receipt of notice of strike or lock out. Under either of the exigencies, the law called upon the conciliator to arrange exploratory meetings with the industrial disputants specifying the time and venue of such parleys. The conciliator, by keeping in view the gravity of the situation and the magnitude of the cordiality of the relations between the combatants, had the discretion to hold joint and separate meetings of the parties. As the law called upon the conciliator to clinch as expeditiously as possible, an agreement, therefore, the manner of extracting the required results was also dependent on the strategy of the conciliator. Before embarking upon the legislative arrangements of the second phase, it is expedient to make mention of an emergent legislative provision, Industrial Disputes (Conciliation and Adjudication) Order, 1965, which had to put in motion due to a turmoil, which had surfaced because of war on eastern border of Pakistan. In the said Order, the prevailing layout of the conciliation was maintained except that the conciliation was rendered mandatory without the distinction of the public utility services or non public utility services, a division that was present in the pre-war statutory arrangements.

Moreover, the conciliator was obliged to dispose of the proceedings within fourteen days and in any case (failure or success of the proceedings) the conciliator was required to send a report to that effect within seven days of the conclusion of the conciliation proceedings. It is worthy to be noted that the period of fourteen days was not extendable even with the consent of the parties. The restriction, perhaps, was due to that chaotic situation which was brought about by the war. Nevertheless, interestingly, some clauses of the Order were incorporated in the subsequent legislation demonstrating, thus, more flexibility therein. Unlike the rigid tone of its predecessor, the Industrial Dispute
Ordinance, 1968, rendered the period of fourteen days extendable with the consent of the parties and the conciliator was empowered to issue a certificate of failure of the proceedings before the expiry of the statutory period stating therein the special circumstances, which rendered it inevitable to issue such certificate. Like its predecessors, the new law enjoined upon the conciliator to conduct the conciliation proceedings according to the procedure prescribed by the rules. But, as the said law happened to be a transitory arrangement\(^39\), therefore, no rules to that effect could be framed under that law, leaving, thus, both sides of the industry without any legislative arrangement for a complete year or so. Albeit, the statutory provisions, as will be discussed latter, pertaining to the conciliation in Pakistan have been of inhibitive nature under all statutes, but the provisions of the Industrial Dispute Ordinance, 1968 leapfrogged its predecessors as well as its successors as far as the procedure of the conciliation was concerned. It called upon the conciliator to venture upon the investigation into the circumstances paving the way to the emergence of the industrial dispute and at the same time reiterated to do all things as the conciliator deemed fit for bringing about a fair and amicable settlement\(^40\).

In late 1960s, the Government had a chance to revamp the law pertaining to the settlement of industrial disputes through the props of informal forums especially by widening the range of activities of the conciliator. Nevertheless, instead of addressing it through a range of initiatives, the legislative arrangements of the second phase turned out to be an elusive endeavour because even the investigative role of the conciliator, which otherwise would have contributed to the settlement of industrial disputes, could not make an inroad in the new set up. The said role, if witnessed in the context of developing economy and repressed and immature trade unionism like Pakistan, is sine qua non because before engaging in the process of conciliation it is imperative to investigate the matter for assuming jurisdiction. For, in most to the cases there is likelihood of the espousal of frivolous matters which don’t fall within the domain of industrial dispute and the conciliator, as per law, is enjoined upon to commence the conciliation proceedings in case of any existing or apprehended industrial dispute. An elaborate legislative arrangement to that effect will prove to be an antidote to dampen weak and insubstantial issues in their bud. Under the provisions of the Industrial Relations Ordinance, 1969 the conciliator was called upon to arrange a meeting of the parties as early as possible for the purpose of securing an amicable settlement\(^41\).

As far as the extant legislation is concerned, no deviation has been made from the previous law except with the exception that the words “the Conciliator or the Board of Conciliators” have been added\(^42\). Under section 27(3) of the Industrial Relations Ordinance, 1969 the inventory of the functions to be
preformed by the conciliator was to be prescribed by the Provincial Governments via rules. But, a cursory review of the said rules reveals that this aspect of the conciliation has been ignored altogether. The practical implication of this legislative flaw is that the fate of conciliation rests totally on the whimsical approach of the official conciliator, which implies nothing but accomplishment of certain formalities. As far as the powers and function of the conciliator or the Board of conciliators are concerned, almost no deviation has been made from the traditional practice. Instead of purging it of conventional stagnation, the institution of conciliation has been demonstrating retarded headway. Under the legislative trilogy of the first phase, the Conciliation Officer or the Board of Conciliation had the powers to enter upon any premises occupied by any establishment, which was the subject of the industrial dispute. The said authority could be exercised subject to two qualifications: first, the purpose of entry was inquiry into any existing or apprehended industrial dispute, and secondly, after serving a reasonable notice on the occupier thereof. The Board of Conciliation was also granted the powers of a civil court under the provisions of the Code of Civil Procedure, 1908. That included the power of enforcing the attendance of any person and examining him on oath; compelling the production of documents and material objects; issuing commissions for the examination of witnesses and allied matters.

In order to save the members of the Board of Conciliation from potential contempt, the inquiry or investigation to be ventured upon by the Board of Conciliation only was rendered to be a judicial proceeding within the meanings of sections 193 and 228 of the Pakistan Penal Code, 1860. The legislative arrangements pertaining to conferment of powers of civil court in certain matters and tender of immunity from certain exigencies to the conciliation staff displayed sheer dichotomy since the dawn of their inception. For instance, the law called upon the Conciliation Officer as well as the Board of Conciliation to conduct inquiry and investigation into the circumstances leading to any existing or simmering industrial dispute. But, the conciliation officer had been deprived of that quantum of authority and immunity which had been accorded to the Board of Conciliation despite the similarity of the task to be undertaken by both forums.

Similarly, like the Board of Conciliation, the Conciliation Officer had the authority to call for and inspect any document, which he, because of the grounds, deemed to be relevant to the industrial dispute. The difference, however, between the powers granted to the Board of Conciliation and the conciliation Officer for similar purpose was that the non-compliance of the former’s orders entailed legal consequences, while the latter was devoid of such authority. Under the provisions of the Industrial Disputes Ordinance, 1959 the idea of the
Board of Conciliation was abandoned. All the powers, previously conferred upon the Board of Conciliation, were transferred to the Conciliation Officer except that the complexion of the powers granted to the Conciliation Officer was not akin to those of the powers of a Civil Court under the Provisions of the Code of Civil Procedure, 1908\cite{1}. Like its predecessors, the West Pakistan Industrial Disputes Ordinance, 1968 also proved to be a shifty endeavour and it miserably failed in bringing about substantial changes on the law of conciliation.

As that was a transitory arrangement and had the royal patronization of the military backed government, which had experienced a similar law on the subject a decade ago\cite{25}, but that couldn’t give due impetus to the conciliation in Pakistan. So much so, the discretion of the Conciliation Officer, in conducting meeting of the disputants immediate upon the appraisal of the any upheaval, was restored with traditional fervours\cite{26}. The legislative arrangements of the second phase were expected to revolutionize the industrial scenario as the ministerial rhetoric heralded hysteria of statutory renovation on modern lines.\cite{27} But, contrary to the pledges of the Government, the legislative arrangements were ushered in a mawkish manner and similar provisions pertaining to the functions to be performed by the conciliator in respect of the industrial dispute were echoed in the new law and the same were to be laid down via rules.\cite{28} However, at the same time, the conciliator was called upon to subtly entice the disputants, according to the demand of the exigency, to demonstrate concession and modification in their non conciliatory attitude.

As far as the rules about the functions of the conciliators were concerned, like previous practice, they couldn’t reinforce the institution of conciliation rather some retreat was visible as, under the new set up, the conciliator had the authority to enter upon any premises occupied by any establishment which was the subject of industrial dispute, without serving any prior notice on the owner/occupier thereof\cite{29}. Unlike the hitherto legislative endeavours, another important and advantageous development marked by the legislative arrangements of that era was the maintenance of the record of conciliation proceedings. Albeit, the necessity of maintaining such record was reiterated by the Industrial Court of West Pakistan\cite{30}, but the said reiteration was devoid of any legislative mandate and without any binding force. It is interesting to note that in all subsequent legislations, the Provincial or federal Governments had been enjoined upon to frame rules as to the procedure of the conciliators but no such rule could ever see the day light. Resultantly, the industrial combatants were let alone to cope with the strained situation.
Representation of the Parties

Since the day of independence, like many other aspects of the conciliation, the question of representation of the industrial disputants before the conciliator remained unheeded for more than two decades. Although, the idea of ‘recognition of trade union by the employer for certain purposes’ had made inroad into the Pakistani labour jurisprudence but, under the statutory arrangements of the first phase, the first two statutes remained completely silent on this important facet of conciliation. No doubt, for the sake of argument, it can be expostulated that the said right was implied in the concept of ‘recognition of trade union’ but the contention seems to be devoid of force as the same has been defied by the subsequent legislative arrangements\textsuperscript{52}. So, under the legislative arrangements of the first phase, the dearth of statutory backing pertaining to mandated representatives of the industrial combatants in conciliation proceedings engendered the ritualistic effects, which instead of rendering the conciliation as a potent mean to obliterate the bitterness of the confrontation and antagonism proved to be conundrum for less fortunate employees. Generally speaking, in interest disputes the parties are usually represented by the negotiating committees, which take part in the previous negotiations\textsuperscript{53}. However, In order to extract desired output, it is plausible that the parties’ representatives attending conciliation meetings should possess full authority from the employers and workers concerned to reach a settlement on their behalf\textsuperscript{54} because otherwise there is likelihood of protraction and in some cases sabotaging the negotiations.

The legislative endeavours of the second phase, however, were ushered in with a new zeal and zest as the existing system for the settlement and adjudication of the industrial disputes was deemed to be replete with lacunae and deficiencies because it was not until 1969 that the difference between the conflicts arising out of matters of rights and the conflicts arising out of matters of interest was maintained, especially, the conciliation service was stated to be inadequate due to a couple of reasons: firstly, non-satisfactory calibre of the conciliation officers and, secondly, the concentration of the administrative, conciliative and judicial powers in the same hands\textsuperscript{55}. Under the provisions of the Industrial Relations Ordinance, 1969, the parties to the industrial dispute could be represented before the conciliator by the persons nominated by them and especially mandated to negotiate and enter into an agreement binding on the parties\textsuperscript{56}. In 1973, the provisions pertaining to the representation /appearance of the parties before the conciliator were broadened and the employer or any officer of the trade union, if required by the Conciliator, was enjoined upon to appear before the Conciliator. The time, date and venue of the appearance of the
parties, however, were to be specified by the Conciliator by issuing notice to that extent.\(^\text{57}\)

In 2002, the present military backed Government announced fifth labour policy of the country identifying and highlighting therein the causes of stagnation in the relationship between the two sides of the industry. Instead of making pledges for revamping the existing legislation pertaining to the settlement and adjudication of the industrial disputes, the Government reiterated, in its labour policy, to encompass the hitherto ignored segments of the labour.\(^\text{58}\) As a precursor of the Industrial Relations Ordinance, 2002, the fifth labour Policy was supposed to be beacon light for future legislation but the same proved a slippery endeavour and only marginal deviation could be demonstrated from traditional practice in the field of settlement of industrial disputes. As a concomitant of the ministerial rhetoric, the Industrial Relations Ordinance, 2002 replaced the Industrial Relations Ordinance, 1969 and besides making aggrandizement of the Board of Conciliators, no praise worthy change had been incorporated in the domain of settlement of industrial disputes. Under the revised statute, the conciliation service was expected to play a pivotal role in effecting agreements but the legislative arrangements were introduced in a recondite and suboptimal complexion. Similarly, this aspect of conciliation service also remained unattended in Industrial Relations Act, 2008, All Provincial Industrial Relation Acts and Industrial Relations Act, 2012.

The compulsion of the nominees, before the Conciliator, having special mandate to negotiate and enter into an agreement binding on the parties demonstrates the quantum of the commitment of the Government to render the resulting agreement, if any, binding on the parties. The rationale behind it has been stated to prohibit the parties from pleading that their representatives were only nominees and could not bind the principal parties in terms of settlement signed by them.\(^\text{59}\) Yet, the Conciliation Service is not fully purged of the traditional defects/shortcomings, which even at the present time are instrumental in inhibiting the output of the conciliation. For instance, under the preceding as well as the extant legislations, the conciliator has the legislative mandate to summon the parties to meetings before him but, in case either of the parties doesn’t turn up at all or fails in appearing on stipulated time, the conciliator is devoid of any authority to pass even strictures and what to talk of any other action. The result, in this situation, would be protraction and sabotaging the negotiations.

Similarly, the conciliator has the authority to issue notice for the production of any document, which is in the possession of either of the parties and which he deems to be relevant for clinching an agreement, but, if that party fails in producing the said document or doesn’t produce the same within prescribed
time, the conciliator has no authority to take action against the defaulting party. Therefore, in order to underscore the existing lacunae in the dispute settlement machinery and underpin the need for prevention of disputes through innovative techniques, it is imperative to reinvigorate the authority of the conciliator by rendering the evasive tactics of the parties as unfair labour practice. Although, under the rules, there existed a provision whereby breach of any rule was punishable up to one hundred rupees but the same seemed to be too ridiculous in the face of emerging situation in the industrial arena that either of the parties could have easily ignored.

Functions of the Conciliator

A review of the literature on the conciliation and practice of the conciliation agencies in various locations around the world indicates that positive output of the conciliation largely depends upon the dynamics and potentialities of the conciliator. Thus, being a multi-faceted individual the role of a conciliator comprises a variety of sub-roles to pull the disputants out of the plight of uncertainties and distrust. The onerous task of endeavouring to bring the things to their logical end is supposed to be discharged by an individual (conciliator) who should be repository of a plethora of idiosyncrasies. An appraisal, however, of the inventory of the sundries reveals that it is hard to find them in an individual in an accumulative form at the same time. Nevertheless, the encouraging results can largely be obtained by providing normative minima prescribing thereunder the principal functions/guidelines for the conciliator.

In Pakistan, the legislative focus on the functions of the conciliator has been changing. For instance, under the first three laws, before embarking upon the process of conciliation, the conciliator was enjoined upon to investigate the matter in issue in order to satisfy himself as to the legitimacy of the cause-conferring jurisdiction on him. Whereas, under the latter two laws, the conciliator is no more riddled with such duty. The conciliatory process, in Pakistan, has macerated so far and wide that it takes off as conciliation and slowly moves towards mediation. Based on statutory arrangements, the conciliator has to perform the following functions: to call the meetings of the parties; to investigate the matter; to persuade the parties for clinching the settlement; to make proposals to the parties; to ask either party for making modifications in its demands; to maintain the record of the proceedings and to submit the report of the proceedings to the Provincial Government.

Conduct of Meetings

As the law, relating to conciliation in Pakistan, outlines a sequence of procedure punctuated by certain deadlines, the conciliator under the statutory
arrangements of the first phase was ordained to conduct conciliation proceedings without any delay. For this purpose, as a first step, he had to conduct as many meetings of the disputants as he deemed expedient. The Conciliator, however, had the discretion of holding the said meetings separately or jointly specifying the time, date and venue for the meetings.

As stated above, the conciliation process is time bound in Pakistan. But, like other aspects of the conciliation, the period within which the conciliator has to do a variety of activities, like issuance of notice of the meetings, conduct of the meetings, examination of the documents, inspection of the premises, has been subject to dichotomy. Unlike its successors, the task of the Conciliator or the Board of the Conciliators under the provisions of the Industrial Disputes Act, 1947 was burdensome, as the Conciliator or the Board had to dispose of the proceedings within fourteen days of the commencement thereof. The statutory restriction of disposing of the conciliation process within fourteen days harboured the suspicions of protraction or failure of the negotiations. Under the latter statutes, however, the legislative flaw was removed via a couple of ways: firstly, by enhancing the period for conciliation process and secondly, by giving the parties an option of extending the period therefor. The said situation could not outlast any longer and within a decade, not only the said bifurcation of public utility services and non-public utility service was denounced but the period for conciliation was also reduced to fourteen days. The reason behind that reversion was stated to be the discouragement of the irresponsible use of strikes/lock-out.

It is owing to, perhaps, varying parliamentary assertions that since the dawn of independence, the law relating to the Conciliator’s discretion to call for the meetings of the parties has not been speaking. The restriction of disposing of a host of tasks within a short span of time is likely to affect the quality of the outcome as well. The flaw can be cured by enhancing the period of conciliation or alternatively, the period of issuance of the notice of the meeting should not be counted towards the period of conciliation. Under the law, the conciliation proceedings are deemed to have commenced before the conciliator on the date when the conciliator receives the notice of conciliation. Out of fifteen days, almost five days are easily consumed in administrative work and literally, the conciliator or the Board of Conciliation has to induce the parties to clinch an agreement within ten days, which prima facie seems to be an impossible task.

Investigation of the Issue

A conciliator, during the course of conciliation, is concerned with problems of human behaviour and group relations as the disputes between both sides of the industry are not only a matter of difference between the parties rather they are at
bottom and fundamentally problems of human behaviour and group relations\textsuperscript{71}. For this purpose, the conciliator has to conduct pre-dispute meetings. Such meetings have threefold purpose: to give information, to obtain information from the parties and to establish his relationship with the parties on a positive note\textsuperscript{72}. In Pakistan, under the provisions of the first three laws, the investigative role of the conciliator had statutory recognition. As discussed earlier, consequent upon the appraisal of the industrial dispute, the Conciliator or the Board of Conciliator was enjoined upon to investigate the dispute and all the matters affecting the merits and settlement thereof\textsuperscript{73}. This is the only point, as explained above, where a conciliator is in position to acquaint him with the roots of the cause of the dispute. Albeit, for this purpose, the law conferred upon the conciliator significant discretionary powers for going into the roots of the matter but he had to confine him to the demands in the first notice of strike. For example, the entertainment of an application for the addition of demands during the course of investigation, by the Conciliator, has been held to be illegal and beyond the jurisdiction of the Conciliation Officer\textsuperscript{74}.

Unlike its predecessor, under the legislative arrangements of the second phase, the investigative role of the Conciliator or the Board of Conciliators has been abandoned. The law does not speak of any such role of the conciliator. It rather suggests the functions of the Conciliator or the Board of Conciliators to be prescribed by the rules\textsuperscript{75}. Nevertheless, none of the Provincial Governments has given any consideration, in rules, to this vital aspect of the conciliation\textsuperscript{76}. Parliamentary deviation from the investigative role of the conciliator coupled with the scarcity of normative minima, to be provided by the Provincial Governments, on the subject has left ample room for likelihood of the failure of the service. The presence of such provision is likely to serve the purpose of saving precious time of the industry in trivial matters. For instance, in case a conciliator is obliged to venture upon the investigation of the matter, he can easily persuade the parties about the hollowness of the issue. The parties can easily be persuaded to drop the issue and concentrate on the harmonization of the industrial relations.

**Persuasion of the Parties**

The earlier discussion on the topic reveals the pressing nature of the conciliation. The conciliator has no advisory or decision-making role throughout the process. He has to facilitate the parties to find an amicable solution of the issue by maintaining the impression of his impartiality\textsuperscript{77}. The exigency demands three characteristics as to his role as persuader: under standing the parties; moral authority of the conciliator and marshalling pressures\textsuperscript{78}. As to the first, it has been argued that it is wise on the part of the conciliator to understand the barriers in
the way of the bringing about rationality to the negotiations. For this purpose, he
has to instil reason and objectivity in the discussion. As far as second
characteristic is concerned, the possibility for successful persuasion by a
conciliator depends, largely, on the way he is viewed by the negotiators.
Generally, the parties’ attitude towards the conciliator is determined by a host of
factors: personal attributes; behaviour and performance; reliability; impartiality;
trustworthiness and expertise.

Under Pakistani labour jurisprudence, the second function to be performed
by a conciliator, for inducing the parties to conclude an agreement, is persuasion.
If viewed in their chronological progression, the legislative provisions of the first
phase were more speaking than those of the second phase as far as this role of the
conciliator was concerned. By granting unimpeded discretion to the conciliator,
the legislation of the first phase enjoined upon the conciliator to induce the
parties to come to an amicable settlement. On the contrary, under the statutes
of the latter phase, no such express impression has been demonstrated in it rather
the inventory of the functions of the conciliator is to be provided by the
Provincial Governments by framing rules, which are also silent on this aspect of
the conciliation.

Although, the rules framed by the Provincial Governments do not speak of
the functions of the Conciliator or the Board of Conciliation however, the
encouraging aspect is that the Conciliator or the Board may make such
suggestions to either of the parties for creating flexibility in its demands, which in
the opinion of the Conciliator or the Board, are likely to be instrumental in
promoting an amicable settlement. In the face of prevalent situation, there
emerge two possible views; first, the Conciliator or the Board has to make such
suggestions after detailed behavioural analysis of the negotiators and second, the
tasks of conciliation and mediation have been put together in the same person.
The latter view seems to be more rational because only mediation and not the
conciliation imply such obligation. The presence of the state sponsored
conciliators, in Pakistan, do not enjoy the confidence of at least one side of the
industry i.e. the workers. The general perception of the workers about the
conciliation service in Pakistan is full of reservations. The worker, as has been
argued, is made aware at a relatively early stage of the proceedings that he has to
contend not only with his employer but also with the power of the state. The
milieu of distrust assumed torrential proportion in industrial arena during first
three decades of post-independence Pakistan. The situation was expected to be
transformed in 1972 with the democratic government in saddle as the same had
been pledging in its ministerial rhetoric to establish an enabling framework for
the amelioration of the workers’ grievances. The subsequent events, however,
shook aside the whole plethora of expectations and like its predecessors; the
The sitting government could not bring about any innovative measure as far as the conciliation was concerned. As stated above, the doubts of government’s alignment with the employer germinated from 1947 to 1970 were reinforced in 1972 and the Government had no option but to keep the inherited policy in vogue.

As of impartiality, trustworthiness and expertise, it is submitted that first two characteristics are susceptible to the perception of the Conciliator or the Board by the parties. If either of the parties, especially the workers, embarks upon the negotiations nurtured with the idea of partiality of the so-called ‘neutral’, the chances of the success will be infinitesimal. Over the past more than five decades, the worrisome problem, in Pakistan, is the need to change the way the workers perceive the emergence of the state sponsored conciliation service. As the prevalent system is over reliant on the manoeuvring capabilities of a single (now in some cases on the Board as well) person, the restoration of the autonomous status of the parties will be an efficacious panacea the countervailing advantage of which will be that not only the conciliation will assume required ferocity but the perception of the parties will also be changed.

In Pakistan, the expertise of the Conciliation service does not display a healthy picture. It was not until 1963 that the country was infertile of any institution imparting any formal /informal training to the conciliatory crew. The industrial combatants had to contend with the semi backed conciliatory services. In 1963, however, the establishment of Industrial Relations Institute was an encouraging step towards the elevation of standard of the conciliation service in Pakistan. Since the day of its establishment, the institution is conducting tripartite training courses for the Officers of the Labour Department, Representatives of the Trade Unions and Management in the field of Labour Economics, Labour Psychology, Labour Laws and ILO’s Conventions. The maximum duration of the course is from two to four weeks.

Albeit, the establishment of such institutions prima facie appears to be an encouraging endeavour on the part of the government but the inhibiting aspect, inter alia, is the duration of the courses to be imparted by the institution. A cursory view of the contents of the courses to be undertaken by the potential trainees reveals that the time factor does not commensurate with the volume of the activities. So, the positive advantages associated with the conciliation can only be achieved if a programme of ‘structured and continuous special training in negotiating skills to up date the knowledge and skill base of the conciliators’ be given due space in the inventory of the subjects to be taught to the trainees.
Preparation of Memorandum of Settlement

If the negotiations in respect of all issues or partially result in success, the negotiators are enjoined upon to draw a memorandum of settlement, to that extent, to be tabled before the conciliator or the Board of Conciliators for onward submission to the Government. Like other aspects of the conciliation, the provisions relating to the conclusion/preparation of the memorandum of the settlement have also been replete with inadequacies. For instance, the Conciliator or the Board have not been under any statutory duty, under any of the statutes hitherto enforced in Pakistan, to assist the parties in drawing memorandum of settlement. So much so, if the parties prepare a memorandum of the settlement, it is unclear whether the Conciliator or the Board has any power to scrutinize it or it is to be submitted as such to the Government.

Equally important is the time factor within which the Conciliator or the Board has to submit the memorandum of the settlement to the Government. About this important aspect of the conciliation, the legislative arrangements under the first two laws of post-independence era were, to some extent, elaborative. The inhibitory aspect of that legislation was that the conciliation authorities were enjoined upon to submit only failure report within stipulated time. As far as the time pertaining to the submission of the memorandum of settlement to the Government was concerned, no such duty had ever been cast upon the conciliation authorities.

As is evident from the above discussion that especially in Pakistani context the conclusion of an agreement is the out come of painstaking endeavours amongst the three characters i.e. Conciliator/Board of Conciliators, employer and the union. The legislative inadequacies, as have been highlighted above, pave the way to the traditional inexpediencies usually attributed to the formal way of adjudication of industrial disputes. In the face of above situation, the conciliator/ the Board of Conciliators has unrestricted discretion as far as the submission of the memorandum of settlement to the Government is concerned. The matter can be delayed inordinately without any formal or informal accountability. Albeit, ADR is not a magic elixir or a cure all\textsuperscript{84} but the effectiveness of this informal mechanism can be enhanced manifold by purging it of dependency syndrome. In that case, it can be argued with great amount of certainty, the vestige of neutrality would be visible and the conciliation service would be able to enjoy the confidence of the both sides of the industry.

Should the efforts at conciliation prove to be fruitless, the Conciliator or the Board, under the provisions of the first post independence statute, was obliged to table a detailed report of the failure of the proceedings\textsuperscript{85}. The practice, however, of submitting such report could not remain in vogue and until 1968, the conciliation Officer, in such situation, was required to issue only failure
certificate (see note 84). The process of refurbishment of the conciliation service in Pakistan continued and under the statues of the second phase, a radical departure has been demonstrated from the traditional practice. The conciliation service, in case of frustration of the conciliation efforts, is no more riddled with the responsibility of tabling failure report before the Government.

Apparently, the *raison d’etre* for such deviation has not been demonstrated in any statute or the labour policy but the analysis of the sequential steps for the settlement of the industrial dispute reveals the logic behind it. Previously, the process of the surveillance of the industrial relations was so strong that even no dispute could be brought before the labour court unless and till the appropriate Government was satisfied that the matter was fit for the intervention of the court. Thus, to enable the appropriate Government to form its opinion as to the expediency of the court’s intervention such detailed failure report was *sine qua non*. As stated above, although under the provisions of the second law of the first phase, the conciliator was absolved of such responsibility, but in case of failure of the negotiations, the party raising the industrial dispute could only invoke the jurisdiction of the labour court after having a failure certificate from the conciliator. Under the latter phase, however, the condition of obtaining the certificate of failure of the negotiations has been abandoned and the party raising the industrial dispute is entitled to invoke the jurisdiction of the labour court without the onerous requirement of seeking the permission of the Government.

**Conclusion**

Albeit, the alternative dispute resolution has experienced steadily increasing acceptance and utilization around the world due to the perception of immense flexibility, reduced costs as compared to formal system of adjudication but if seen in Pakistani perspective, there is dire need for reinvigorating the legislative provisions pertaining to the conciliation in Pakistan. The efficiency of the service cannot be toned up to international standard unless all the issues are frontally addressed.

**Notes and References**

* Iftikhar Ahmad Tarar is Assistant Professor in University Law, University of the Punjab, Lahore.


4 Ibid 364


9 Ibid 295


11 Ibid.

12 The term “appropriate Government”, means either the Federal Government or the Provincial Government.

13 Sections 4 and 4 of the Industrial Disputes Act, 1947 and Industrial Disputes Ordinance, 1959 respectively

14 The idea, however, of the constitution of an ad hoc Board of Conciliators has once again been introduced in the present law.

15 Section 5 of the Industrial Disputes Act, 1947. It should also be kept in mind that under the extant law, as will be discussed latter, the provisions pertaining to the appointment and constitution of an ad hoc Board of conciliators have been reintroduced.

16 Section 12 of the Industrial Disputes Act, 1947

17 Section 5 of the Industrial Disputes Ordinance, 1959

18 For detailed discussion on the Industrial Relations Commission, see Dr. Zafar, A. Shaheed. ‘The Organization of Leadership of Industrial Labour in
Karachi (Pakistan) an unpublished Ph.d thesis, Department of Political Science, University of Leeds, 1977 P.484

Sections 27 and 26 of the Industrial Relations Ordinance, 1969 and the Industrial Relations Ordinance, 2002 respectively

Ibid

Section 43 of the Industrial relations Act, 2008

Section 35 of the Punjab Industrial Relations Act, 2010

Recommendation 1951 No. 92 para 1 and 3.

Joyce D. Henry ‘Fairness of Outcome’ in the Mediation of Industrial Disputes

Under the provisions of the Industrial Disputes Act, 1947 and the Industrial Disputes Ordinance, 1959, a bit little difference was displayed as far as the commencement of the conciliation proceedings was concerned. Under the former, there was a distinction of public utility services and non public utility services. In case the notice of strike or lock out pertained to the services other than public utility services, the commencement of the conciliation proceedings rested entirely on the discretion of the conciliation officer and in case of public utility services, the conciliator could embark upon the conciliatory process subject to the issuance of the notice of the intended industrial action. However, under the provisions of the Industrial Disputes Ordinance, 1959, the said distinction was discarded and the conciliation officer was enjoined upon to hold conciliation proceedings in the prescribed manner.

Section 5(3) of the West Pakistan Industrial Dispute Ordinance, 1968

Ibid.


Section of the Industrial Relations Act, 1969

1976 SCMR 82

PLJ 1977 SC 229

West Pakistan Industrial Disputes Ordinance, 1968.

Under the provisions of the Industrial Disputes Act, 1947, Industrial Disputes Ordinance, 1959 the Central Government and the Provincial Governments had the authority to frame the rules pertaining to the procedure to be followed by the conciliators. However, with the promulgation of the West Pakistan Industrial Disputes Ordinance, 1968 and subsequent legislative arrangements this distinction has been discarded.
but, the Federal Government, as will be discussed later, still has the authority to frame rules pertaining to the procedure to be adopted by the National Industrial Relations Commission.


36 Ibid


38 Clause 3 of the Industrial Disputes (Conciliation and Adjudication) Order 1965

39 The Industrial Dispute Ordinance, 1968 remained in force only for one year and was soon replaced by the Industrial Relations Ordinance, 1969.

40 Section 6 of the Industrial Dispute Ordinance, 1968

41 Section 30 of the Industrial Relations Ordinance, 1969

42 Section 29 of the Industrial Relations Ordinance, 2002


44 Section 11 of the Industrial Disputes Act, 1947

45 Section 6 of the Industrial Disputes Ordinance, 1959

46 The Military led Government of the Field Marshal General Muhammad Ayyub Khan, during its tenure from 1958 to 1969, tried three law in the field of industrial relations.

47 Under section 7(2) of the West Pakistan Industrial Dispute Ordinance, 1968 the conciliator had the discretion to call for the meeting of the
parties for conciliation as the word ‘may’ was used which rendered the impression discretionary.

48 For detailed study of the situation, see Labour Policy of Government of Pakistan announced under the auspices of Air Marshal M. Noor Khan, member, Council of Administration.

49 Section 30 of the Industrial Relations Ordinance, 1969


51 In the case of Workers of the West Punjab Textile Mills Ltd, Lahore v. West Punjab Textile Mills Ltd, Lahore, 1961 PLC 1366(1370) as quoted by Hussain A. Ch. The Law and Practice of Industrial Disputes in Pakistan Vol. 1 Pakistan Law Times Publications 1, Urdu Bazaar, Lahore-2, 1966 P79 the learned presiding Officer of the Industrial Court was of the view that although the law didn’t make it obligatory but in his opinion both in their own interest and in the interests of the parties, the conciliation officers should maintain a true and accurate record of the proceedings before them. The learned judge added that in the absence of such record they might have to depend with regard to certain facts entirely upon their memory which they must entertain is fallible. When, the court continued, the parties mutually agreed to do a certain thing, it was still better if their statements were recorded and they were made to sign them.

52 Notwithstanding the deficiencies and lacunae, which persist in this respect, the issue of representation of the parties before the Conciliator or the Board of Conciliators has expressly been addressed under the provisions of the West Pakistan Industrial Disputes Ordinance, 1968, Industrial Relations Ordinance, 1969 and the Industrial Relations Ordinance, 2002, Industrial Relations Act, 2008, All Provincial Industrial Relations Acts and Industrial Relations Act, 2012.

53 Conciliation in Industrial Disputes, Published by the International Labour Office Geneva, 1973, P.55

54 Ibid

55 Chapter two of the Labour Policy of the Federal Government, 1969

56 Section 30(2) of the Industrial Relations Ordinance, 1969

57 Proviso to the section 30(2) of the Industrial Relations Ordinance, 1969, the said proviso was added via the Industrial Relations (Amendment) Ordinance No. XXIX of 1973
Settlement of Industrial Dispute through Conciliation: a study of Current Practices in Pakistan

58 Labour Policy, 2002, of the Federal Government


60 Rule 83 of the Punjab Industrial Relations Rules, 1973

61 Conciliation in Industrial Disputes’, Published by the International Labour Office Geneva, 1973, p.91

62 Industrial Disputes Act, 1947, the Industrial Disputes Ordinance, 1959 and the West Pakistan Industrial Disputes Ordinance, 1968

63 Industrial Relations Ordinance, 1969 and the Industrial Relations Ordinance, 2002

64 Sections 12, 5 and 6 of the Industrial Disputes Act, 1947, the Industrial Disputes Ordinance, 1959 and the West Pakistan Industrial Disputes Ordinance, 1968 respectively


66 Section 12 of the Industrial Disputes Act, 1947

67 It should be born in mind that under the provisions of the Industrial Disputes Ordinance, 1959 and the West Pakistan Industrial Disputes Ordinance, 1968 different period for conciliation was prescribed for an industrial dispute relating to a public utility service and other service. In case of former, the conciliation process was to be completed (in either form) within fourteen days of the commencement thereof, whereas in case of latter, the said period was fixed as twenty-eight days with the option of extending the said period in both cases.

68 Section 28 of the Industrial Relations Ordinance, 1968

69 Section 8 of the Labour Policy of Government of Pakistan, 1969, under the said policy, the Government pledged to fix the period of conciliation as twenty one days for all ‘services’ subject to the condition that the notice of strike was to be approved by the majority of the workers through a secret ballot. However, due to unknown reasons, both the said principles could not make an inroad in new law

70 Section 34 of the Industrial Relations Ordinance, 2002


72 Ibid
Sections 12, 5 and 6 of the Industrial Disputes Act, 1947, Industrial Disputes Ordinance, 1959 and the West Pakistan Industrial Disputes Ordinance, 1968 respectively

1961 PLC 1366


The rules framed by the four Provincial Legislatures simply emphasis on the powers of the Conciliator to call for or inspect any document, which he deems to be relevant to the dispute and the authority to enter the premises occupied by any establishment to which the dispute relates


Ibid

Ibid

Dr. Zafar, A. Shaheed. ‘The Organization of Leadership of Industrial Labour in Karachi (Pakistan)’ an unpublished Ph.d thesis, Department of Political Science, University of Leeds, 1977 P.484

Ibid


The provisions relating to the submission of the failure report to the Government have been subject to dichotomy. For instance, under the provisions of section 12 of the Industrial Disputes Act, 1947, the Conciliation Officer was ordained to submit a detailed account of the conciliation proceedings but he could bring on record his recommendations, if he considered it expedient, for the settlement of the issue (sub rule 2 of Rule No8 of Industrial Disputes Central Rules 1960). On the contrary, the Board of Conciliator was enjoined not only to give detail of the proceedings but also its recommendations for the determination of the dispute. Moreover, from the point of view of duration, the conciliation service was also subject to dichotomy. The Conciliator had to submit his report within fourteen days of the commencement of the conciliation proceedings or within such shorter
period to be prescribed by the appropriate Government. Whereas, in case of report by the Board, the tie period was two months and the same was extendable with the written consent of the parties.

It is interesting to note that the practice of submitting failure report to the appropriate Government could not make permanent inroad into Pakistani labour jurisprudence. For instance, from the promulgation of the Industrial Disputes Ordinance, 1959 down to the repeal of the West Pakistan Industrial Disputes Ordinance, 1968, the Conciliation Officer was called upon to issue ‘failure certificate’ only enabling thereby the party, to whom such certificate had been issued, to make an application to the labour court for the adjudication of the industrial dispute.

86 As stated above, this phase includes the Industrial Relations Ordinance, 1968 and the Industrial Relations Ordinance, 2002 Industrial Relations Act, 2008, All Provincial Industrial Relations Acts and Industrial Relations Act, 2012. Under these laws, the Conciliation Officer or the Board has been absolved of the duty of submitting the failure report to the appropriate Government or the issuance of the certificate of failure of the conciliation proceedings.


88 Section 5 and 6 of the Industrial Disputes Ordinance, 1959 and the West Pakistan Industrial Disputes Ordinance, 1968 respectively