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the establishment.[1] In the state of affairs where there is no majority Union system the concurrence of the Conciliation Officer in the agreement will serve as a guarantee of protection of the interest of the rest of the employees.

The question arises: How to gather the concurrence of the Conciliation Officer? How far a party to a dispute or the workers to whom that agreement is binding, can challenge the agreement on the ground that the Conciliation Officer did not exercise his mind?

Conciliation Officers are normally heavily overloaded with work. In the circumstances it will be unrealistic to expect them to exercise their minds on the justness and fairness of the terms of every agreement. The signature of the Conciliation Officer on the mutually arrived agreement will be treated as his concurrence and inference will be drawn that he had exercised his mind.

An important factor that cannot be overlooked is that if the concurrence of the Conciliation Officer is made an essential to an agreement arrived at in the course of conciliation proceedings it may undermine the spirit of collective bargaining. In India, in most of the cases, the chapter of collective bargaining is opened by bringing the conciliation machinery in operation.

A.P.A.

Article 32 of the Constitution and Res judicata—Article 226 and the Constitution (Eleventh) Amendment Bill, 1961.

The Supreme Court has time and again asserted that the liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life;[2] that the Court as the *Sentinel* on the *quivive*[3] has the duty imposed by the Constitution to protect these fundamental rights, and that a breach by the State of these rights cannot be waived.[4] The right to move the Supreme Court by appropriate proceeding for the enforcement of the fundamental rights is guaranteed by Article 32[5] which is itself one of the guaranteed rights. A problem for the elucidation of which the Constituent

1. Industrial Disputes Act, 1947, section 18(3)(d).
2. *Romesh Thappar* v. *State of Madras*, [1950] S.C.R. 594.
3. *State of Madras* v. *V. G. Row*, A.I.R. 1952 S.C. 196.
4. *Basheshar Nath* v. *Commissioner of Income-tax*, A.I.R. 1959 S.C. 149.
5. Article 32(1). The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

   (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus, mandamus*, prohibition,

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Assembly debates do not shed any light and the Court until recently did not finally pronounce upon [6] is whether an application under Article 32 is maintainable after a similar application under Article 226 [7] is dismissed by the High Court on merits. Recently in *Daryao & Ors.* v. *State af Uttar Pradesh,*[8] the Court decided that on general considerations of public policy the rule of res judicata would be a bar to the maintainability of the petition under Article 32 once the same has been decided on merits by the High Court under Article 226.

In *Daryao* the petitioners challenged before the High Court under Article 226, the validity of the Uttar Pradesh Zamindari Abolition and Land Reforms Act XVI of 1953 and for quashing the order of the Board of Revenue dispossessing them of their land. The High Court, following an earlier full Bench decision sustaining the constitutionality of the Act—the judgment of the Supreme Court indicates that in the High Court the counsel did not press the petition in view of this decision—dismissed the petition. The petitioners moved the Supreme Court under Article 32. This was apparently the only recourse as the period of limitation prescribed for an appeal under Article 136 had already expired.

The Court held that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and was dismissed the decision would continue to bind the parties unless it was

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quo warranto and *certiorari,* whichever may be appropriate, for the enforcement of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

6. Cf. *Janardan Reddy & Ors.* v. *The State of Hyderabad,* [1951] S.C.R. 344; *Syed Kasim Razvi* v. *The State of Hyderabad & Ors.,* [1953] S.C.R. 589, where the problem was posed but was not finally or definitely answered.

7. Article 226(1): Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.

8. Writ Petition No. 66 of 1956. Judgment dated March 27, 1961.

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otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. The rule of res judicata, the Court pointed out, was not a mere technical rule but was based on sound public policy. The binding character of judgments pronounced by Courts of competent jurisdiction was itself an essential part of the rule of law and the rule of law was the basis of the administration of justice on which the Constitution lay so much emphasis.

The Constitution (Eleventh) Amendment Bill, 1961[9].

The Supreme Court has read into Article 226[10] the express requirement that the person or authority or the government to whom the writ is to be *issued* should be resident in or located within the territories over which the High Court exercises jurisdiction. The earliest case of *Election Commission* v. *Saka Venkata Rao*,[11] held that before a writ under Article 226 could issue to an authority the authority must be located within the territories under the jurisdiction of the High Court.[12] The Court had no occasion to consider in this case whether the government could be said to have any location within those territories where the government functioned. Recently in *Khajoor Singh* v. *Union of India*[13] the Court interpreted Article 226 to mean that the High Court could issue writs, orders or directions to the Union Government only if such a government was within the territorial jurisdiction of the High Court either by location or by residence. Chief Justice Sinha delivering the opinion of the majority suggested that any inconvenience that might be caused by this interpretation could be remedied only by an appropriate constitutional amendment.

The *necessity* for an amendment of Article 226 was felt immediately after the Court's decision in the *Saka Venkata Rao's* case.[14] The anomalous position created by this case and the recent *Khajoor Singh's* case is that of the twelve High Courts in India only the Punjab High Court has jurisdiction when a writ, order or direction is sought against the Union Government or statutory authorities located in Delhi.

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9. Bill No. 9 of 1961 introduced in the Lok Sabha on May 5, 1961. This is the first non-official Bill for the amendment of the Constitution.
10. See Note 6, *supra*.
11. [1953] S.C.R. 1144.
12. See also *Rashid Ahamad* v. *The Income-tax Investigation Commission*, [1954] S.C.R. 732.
13. A.I.R. 1961 S.C. 532.
14. The Law Commission had recommended that steps should be taken to remove the hardship on the citizen created by the decision in *Election Commission* v. *Saka Venkatarao*: vide *The Jourteenth Report of the Law Commission*, Vol. II, pp. 669, 670.

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The Constitution Amendment Bill, 1961, moved by Mr. C.R. Pattabhi Raman [15] seeks to remedy this inconvenience to some extent.

The Bill as introduced reads :

" In Article 226 of the Constitution the following proviso shall be added at the end :—

Provided that nothing in this Article shall be deemed to preclude a High Court within whose jurisdiction any cause of action arises from issuing such direction, order or writ merely on the ground that the seat of the Government is not within the territories in relation to which the High Court exercises jurisdiction."

The proviso makes cause of action [16] the basis of jurisdiction. Is it necessary that a substantial part of the cause of action should arise within the Court's jurisdiction or is it sufficient that some element of the cause of action is present ? If an order is passed by the Central Government located in Delhi dismissing from service a person employed in Madras and the order is received in Calcutta when the employee is there on temporary duty some element of cause of action is present in all the three jurisdictions. Which court would normally exercise jurisdiction ? It is either the Court within whose jurisdiction the government is located or resident or the court within whose jurisdiction the order has operative effect. In the above illustration the Calcutta High Court would decline jurisdiction because there was not *enough* cause of action within its jurisdiction to attract this discretionary remedy. In the fact situation presented by the *Khajoor Singh* case the Jammu & Kashmir High Court would exercise jurisdiction not because Col. Khajoor Singh received the order compulsorily retiring

15. It may be recalled that Mr. Pattabhi Raman's contentions as counsel, accepted by the Court, in *Romesh Thappar* v. *State of Madras*, [1950] S.C.R, 594, that the state could not impose restrictions on the freedom of speech in the interest of public order lead to the Constitution First Amendment Act, 1951. The Amendment added 'public order', 'incitement' to 'offence' and 'friendly relations with foreign states' to the already existing grounds in Article 19(2).

16. The concept of cause of action does not admit of any precise definition. Most illuminating in this context is the construction by the court of common pleas in England of the words in section 18 of the Common Law Procedure Act, 1852 : " Upon being satisfied by affidavit that there is cause of action which arose within the jurisdiction or in respect of the breach of a contract made within the jurisdiction." Brett J. gave a very concise definition of the term: "A cause of action is the act on the part of the defendant which gives the plaintiff his cause of complaint." *Jackson* v. *Spittal*, L.R. 5 C.P. 542, 552. See, also, *Vaugaham* v. *Weldon*, L.R. 10 C.P. 47; *Baes* v. R., [1948] N.Z.L.R. 777.

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him within that Court's jurisdiction but because the order had operative effect in the state where he was stationed. In the absence of any *location* or residence within its jurisdiction of the government concerned the tendency of the courts would be to refer the parties to the jurisdiction where a substantial part of the cause of action arose. If the government has no location within the state no court is better suited to give relief than the Court within whose jurisdiction the order takes effect and where hence the government, may be said to be operating or functioning. Viewed in this light cause of action is perhaps no guidance at all for the aggrieved party to choose his forum.

To limit the proviso to the Central Government alone is to remove from the writ jurisdiction of the High Court many of the statutory authorities. The necessity for an extension of the reach of the jurisdiction of the High Court to such authorities also needs to be emphasised and it is comforting to note that the mover of the resolution has no quarrel with the measures which seek to widen it.[17] If the argument for the amendment of the Article is the inconvenience caused to the litigant public it is equally necessary that the Amendment should cover authorities and persons as well.

It is suggested that instead of adding a non obstante clause the main article itself may be amended in the following terms:

> "Notwithstanding anything in Article 32, every High Court shall have power, to issue to any person or authority, including in appropriate cases any government, operating or located within those territories, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* or any of them, for the enforcement of any of the rights conferred by Part III or for any other purpose." [18]

K. B. N.

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17. See Debates in the Lok Sabha on "Constitution Amendment Bill" on August 18, 1961.

18. This is also the recommendation of the Second All India Law Conference convened by the Institute in April, 1960, at Patna. See Resolutions on 'Judical Review by Writ Petitions,' 2 J.I.L.I. 621.

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