Chapter II

Industrial Conflict Resolution: A Theoretical Frame Work
Every industrial dispute occurs in the context of some environment. The contextual factors of environment may be categorised as extra-organisational social-cultural-economic-technological-legal-political and intra-organisational (such as size, structure, leadership style, trade unions, etc. of the organisation). The impact of these factors may be conducive or non-conducive. The effects of non-conducive may lead to industrial conflict. A responsive organisation attempts at preventing the occurrence of industrial disputes through effective machineries like grievance redressal procedure, participative management, etc. The occurrence of an industrial dispute per se may not be undesirable, its non-settlement is certainly disfunctional. So resolution of industrial conflict assumes utmost importance.

Resolution or settlement of any industrial conflict may be achieved by way of self settlement or assisted settlement or through imposed settlement, depending upon the parties involved. Self settlement can be achieved through mutual bargaining when workers/unions collectively try to settle the dispute, through negotiations with the management, the method is called “Collective Bargaining”. The collective bargaining agreements may result in the signing of a mutual agreement but drawn as per provisions of the concerned law of the land. When the dispute is not resolved through collective bargaining, the assistance of the third party may be required. The statutory agencies available as per Industrial

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2 Ibid., P. 24.
Disputes Act, 1947, to the organisation for the resolution of industrial conflicts are; Conciliation, Voluntary Arbitration and Adjudication.

In case of an impasse in or failure of mutual negotiations, the consequential peaceful procedure is seeking conciliation. Conciliation may terminate in signing of an agreement between the parties, or may result in withdrawal of the dispute or in failure. On the failure of conciliation the parties to the dispute may opt for voluntary arbitration by a disinterested but mutually appointed third party known as Arbitrator. If the parties to the dispute do not opt for voluntary arbitration to settle their disputes, the ultimate legal remedy for the unresolved dispute is to refer to a third party appointed by the government. The decision given by the Arbitrator or an Adjudicator is known as Award and is imposed settlement. The Award of the Arbitrator or Adjudicator is binding and final and no appeal, except under certain Provisions of the Constitution, lies against it.

2.2 Collective Bargaining

Collective bargaining is the technique that has been adopted by unions and management for compromising their conflicting interests. Collective bargaining is the system by which the wages and other conditions of employment of workers are regulated by agreements between the representatives of employees and employers. The phrase collective bargaining is made up of two words - collective, which implies group action through its representatives; and bargaining, which suggests negotiating by applying pressure on the other in order to achieve
certain objectives. Collective bargaining is the most acceptable method of conflict resolution in industry.

The term collective bargaining has different meanings to different persons. Depending upon one’s point of view, the meaning of the term varies. For a lay man, collective bargaining is the procedure by which the wages and conditions of employment of workers are regulated by agreements between the representatives of management and workers. Collective bargaining is more than a procedure to regulate wages and employment conditions.\(^1\) The term collective bargaining is applied to the process by which trade unions and management voluntarily meet, discuss, argue, rebut, negotiate and finally settle some or all of the terms on which employees agree to work for an employer for the duration of the agreement.\(^2\)

Thus, to describe and define collective bargaining there are wide ranging definitions based on various approaches. It is essential to understand the philosophy of collective bargaining.

**2.2.1 Definition**

N.W. Chamberlain has described collective bargaining as “the process whereby management and union agree on the terms under which workers shall

\(^1\) Tandon, B.K., *op. cit*, P. 4.

perform their duties."\(^1\) Mary Sur has defined collective bargaining as "In the world of industry and commerce a process has been evolving during the past century for the negotiation between management and employees of terms and conditions of service and the establishment of peaceful, orderly relations at the place of work through mutual settlement of differences and the co-operation of all those engaged in the enterprises."\(^2\)

According to the Encyclopedia of Social Sciences, Collective bargaining is a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert. The resulting bargaining is an understanding as to the terms and conditions under which a continuing service is to be performed... More specifically, collective bargaining is the procedure by which an employer or employers and a group of employees agree upon the conditions of work.\(^3\)

Thomas A. Kochan has defined collective bargaining as "a means for establishing, enforcing and modifying the terms and conditions of employment that must be evaluated against the alternatives of the free market or governmental regulations and intervention."\(^4\) Chamberlain and Harry Shulman

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describe that "the negotiation of contract is to labour relations what the wedding ceremony is to domestic relations."

R.F. Hoxies says that "collective bargaining is a mode of fixing the terms of employment by means of bargaining between an organised body of employees and an employer or an association of employees usually acting through organised agents. The essence of collective bargaining is a bargain between interested parties and not a decree from outside parties."

H.W. Davey is of the opinion that collective bargaining is to cover the negotiation, administration, interpretation, application and enforcement of written agreements between employees and unions representing their employees setting forth joint understandings as to policies and procedures governing wages, rates of pay, hours of work and other conditions of employment.

The I.L.O. has defined collective bargaining as "Negotiations about working conditions and terms of employment between an employer and a group of employees or one or more employees organisation with a view to reaching an agreement wherein the terms serve as a code of defining the rights and obligations of each party in their employment relations with one another; fix a large number

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of detailed conditions of employment, and, during its validity, none of the matters it deals with can in normal circumstances be given as a ground for a dispute concerning an individual worker." In other words, collective bargaining involves organised group relationships on both sides of the bargaining counter rather than individual dealings. It is an institutionalised representative process.

2.2.2 Theories of Collective Bargaining

2.2.2.1 The Classical Views of the Webbs

The term "Collective bargaining is reported to have been coined in 1891 by Sidney and Beatrice Webb, outstanding historians of the British labour movement. They described it in their monumental work 'Industrial Democracy'. The Webbs dealt with collective bargaining as one of the several methods adopted by trade unions to further their basic purpose of maintaining and improving the conditions of their working lives. "According to Webbs, collective bargaining is equivalent and alternative to individual bargaining. The workers secured higher price for their labour when they bargained collectively, unlike with their earlier individual bargaining. Likewise, they believed that higher the scale of their bargaining unit, greater was the advantage."
2.2.2.2 Chamberlain's View

Taking into considerations the deficiencies of the traditional concept of collective bargaining, Chamberlain made an outstanding attempt to develop a modern treatment of collective bargaining in a comprehensive way. He has given a 'generic definition', in his book *Collective Bargaining* in 1951. Later Kuhn joined with him in this humble attempt. Chamberlain has described the nature of collective bargaining with the help of three theories. They are (a) The Marketing theory, (b) The Government concept, and (c) The concept of industrial relations.¹

**The Marketing Concept** - Chamberlain's marketing concept does not differ in its features from that of Webbs, although he was more concerned with the contractual aspect. It is a market an exchange relationship and is justified on the ground that it gives assurance of voice on the part of the organised workers in the matter of sale of labour. Marketing concept considers collective bargaining as a means of contracting for the sale of labour. Under this theory the union-management relationship is regarded as a commercial one.

**The Government Concept** - The governmental theory admits the contractual character of bargaining relationship but sees the contract mainly as providing a constitution for industrial self governance. Under the governmental concept collective bargaining agreement is viewed as a constitutional system in industry. It establishes political relationship. Like other governments, the industrial

government has its legislative, executive and judiciary functions. In the words of Slichter, collective bargaining creates a system of “industrial jurisprudence”. It is a method of introducing civil rights into industry, that is of requiring that management be conducted by rule rather than by arbitrary decision.¹

The Concept of Industrial Relations - The Industrial Relation theory holds that collective bargaining is a system of industrial management. The union and the management together reach decisions on matters concerning them. The relationship is seen as functional relationship between union and company. They combine in reaching decisions on matters in which both parties have vital interest. Employees through their representatives participate in the formulation of policies which guide and rule their work lives. This approach views the agreement as a set of directive orders, a guide for administrative action within the firm.

"The ethical principle underlying the concept of collective bargaining as a process of industrial governance is that those who are integral to the conduct of an enterprise should have a voice in decisions of concern to them. We may call this the 'principle of mutuality.' It is a correlative of political democracy, as Brande pointed out, collective bargaining is today the means of establishing industrial democracy - the means of providing for workers in industry the sense of work, of freedom, and of participation that democratic government promises them as citizens."²

Collective bargaining is industrial government through consent of the governed i.e. the labourers. The principle of arbitrary unilateralism is giving way to self-government in industry. Collective bargaining is not a mere signing of an agreement granting seniority, vacations and wage increase. Collective bargaining is a democratic, joint formulation of company policies on all matters affecting the workers in the plant.

All the three theories of collective bargaining can be simultaneously maintained in any enterprise, although each concept provides a different emphasis, stresses a different guiding principle, and can influence the nature of actions taken by the parties.¹

2.2.2.3 Allan Flanders Views

Allan Flanders critically studied the classical model and tried to give a theory of unified nature of collective bargaining, incorporating the role of the state which was ignored by the earlier theories. The following are the important characteristic features of his views:

(a) Collective bargaining is essentially a rule-making process. It could more appropriately be called joint regulation; since its distinctive feature is that trade unions and employers or their associations act as joint authors of rules made to regulate employment contracts and incidentally, their own relations.

(b) The second characteristic feature of collective bargaining as evolved by Flanders is that it is "a power relationship between organisation." Flanders came out successfully in evolving the concept of collective bargaining encompassing the changes that has taken place since the traditional approach, which is universally accepted.

2.2.2.4 Prof. Dunlop’s Approach

Dunlop is of opinion that a homogeneous union negotiates with a homogeneous management or association is erroneous. A great deal of the complexity of collective bargaining involves the process of compromise and assessment of priorities within each side. In an important sense collective bargaining typically involves three coincidental bargains - the rejection of same claims and the assignment of priorities to other within the union, an analogous process of assessing priorities and trade offs within a single management or association, and the bargaining across the table. The same process is involved in the administration and application of agreement. Dunlop while writing on the social purpose of collective bargaining has made the following observations:

1. Collective bargaining is a system to establish, revise and administer many of the rules of the work place.

2. It is a procedure to determine the compensation of employees and to influence the distribution of the economic pie; and

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3. It is a method of settling disputes during the life of agreements and on their expiration or reopening before or after resort to the strike or lockout. These are the basic purposes when collective bargaining in every industrial society and economy must somehow fulfill.¹

2.2.3 Collective Bargaining in Foreign Countries

2.2.3.1 Sweden

Collective bargaining in Sweden is essentially centralised. Three kinds of agreements are negotiated for manual workers (i) the economywide agreements, (ii) agreements for a single industry or a group of industries, and (iii) agreements for the enterprise and establishments. The Swedish confederation of Trade Unions and the Swedish Employer's Confederation negotiate two types of economy-wide agreements (a) agreements which are reached at regular intervals, usually two years covering wages and working conditions and (b) agreements intended to provide authoritative guidance for negotiations in individual industries or group of industries.

2.2.3.2. Federal Republic of Germany

Collective bargaining takes place both at the regional level and economy level. However, the recent developments indicate that in near future the plant level bargaining may become popular. In case of less well organised industries such as food processing, textiles, clothing, leather and wood industries

regional level bargaining takes place. Whereas in printing, paper, shoe manufacturing, building construction, banking and insurance industries agreements are negotiated at economy level.

2.2.3.3. Great Britain

In Great Britain both formal and informal systems of collective bargaining were in vogue. While under the formal system national industry-wide bargaining was conducted, informal system consisted of local bargaining. The formal type of bargaining established the basic terms and conditions of employment throughout the industry, whereas the latter provided for local variations. The agreements under formal systems were known as procedural agreements.

But in a short period of time substantial changes have taken place in British collective bargaining institution. The greater change of bargaining significance has been the expansion of bargaining at the level of company and the plant. This change was mainly due to productivity bargaining that came into practice on a wide scale during the 1960s starting with the Fowley agreement of 1960 in the Esso Company of Fowley.¹ The second reason for the change from industry-wide bargaining to enterprise on plant level bargaining was the recommendation of the Royal Commission on Trade Unions and Employer’s Associations (the Donoval Commission).

2.2.3.4 France

Generally the collective bargaining is conducted at the national or regional level. In France the public authorities encourage economy-wide bargaining. The 1971 amendment to the 1950 Act has accorded official recognition to such collective agreements. Where territorial agreements exist, the enterprise agreement will be deemed to be a supplementary agreement. The recent developments in France indicates gradual decentralisation of bargaining.

2.2.3.5 U.S.A.

Collective bargaining in U.S.A. is the central institution of the industrial relations system. It is marked by a high degree of decentralisation accompanied by noticeable tendencies toward a moderate amount of consolidation and concentration.¹ The period since the independence has been a dynamic one for collective bargaining, marked by a number of significant innovations in the subject matter, procedure and structure of bargaining. Further, the structure of bargaining has been affected by inputs as the AFL-CIO merges, technological change and the Taft-Harfley Act of 1947.² The enterprise level agreements are common in U.S.A. such agreements are often supplemented by the additional plant level agreements. Of late a new type of bargaining has come into practice -

the coalition bargaining. Such type of bargaining is an effort by unions to solve the problems of bargaining with multi-plant corporations in which the workers of each plant are represented by different local unions which in turn may belong to different national unions. In case of large bargaining units (employing more than 5000 workers) single employer bargaining has been widely prevalent in the manufacturing industries whereas the multi-employer bargaining has been rather predominant in the non-manufacturing industries. Another unique feature of collective bargaining of U.S.A. is that the parties have been using computers to analyse demands, offers and the alternatives to a settlement.

2.2.3.6 Australia

In Australia compulsory arbitration occupies the significant position in industrial relations system. Collective bargaining has not been encouraged. Therefore, collective agreements are reached within the framework of compulsory arbitration either before or during the arbitration proceedings. Collective agreements are signed in the form of consent awards. At present the plant level negotiations are frequent in almost all the industries for negotiating agreements over and above the terms of awards and the supplementary agreements. The growth of such bargaining in recent years has been rapid, and it seems to be modifying the character of industrial relations and the arbitration system in the continent.
2.2.3.7 Japan

Uniformly the collective bargaining takes place in the Japanese industries at the individual enterprise or plant level. However, in industries like maritime, textile, private railway, etc. industry-wide and multi-employer bargaining is conducted.

2.2.3.8 India

The Indian industrial relations system is characterised by the tripartite approach. In fact, the management both in private and public sectors and the trade unions prefer collective bargaining to any other method of industrial conflict resolution. In spite of various problems like the absence of the statutory provisions to recognise trade unions as the bargaining agents, the registration of collective bargaining agreements, the multiplicity of trade unions, the collective bargaining has made a definite impact on industrial relations.

The collective agreements are either registered with the conciliation officers by forwarding a copy of the agreement or by way of covering the agreements into settlements arrived at in the course of conciliation proceedings. Sometimes the consent awards are secured from the Labour Courts or Tribunals. The general pattern of collective bargaining in India has been the plant-level bargaining. There have, however, also been quite a few cases of company/corporate level association level, the industry-cum-regional level, and industry-wide bargaining. In case of industries like plantations, textiles and jute,
the pattern has been the industry-cum-regional level bargaining. In Iron and Steel and coal industries and similar public sector industries the collective bargaining is conducted at the industry level.

2.3 History of Industrial Disputes Legislation in India

It is possible for labour as well as management to evolve, even to enforce, satisfactory labour standards. The unfettered unionism and industrial relations in U.S.A. are the glaring examples of such a possibility. In the developing economy like India, the government has to assume a more active role to give direction to social change and to create conditions for unhampered economic development. This has been further strengthened by the fact that the ideals of the welfare state are embedded in the Directive Principles of State Policy as enunciated in the constitution of the Republic of India.

Early legislation in the field of labour-management relations were mainly restrictive and corresponded to the British Legislation in vogue at the time. An earlier act passed was that of an Employers’ and Workmen’s (Disputes) Act, 1860. This Act made a provision for a summary trial by magistrate of all the disputes in certain industries, particularly public utilities viz. canals, railways and public works. Any breach of contract on the part of a worker was a criminal offence under this Act. The Act was finally repealed in 1932 on the recommendation of Royal Commission on Labour.

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The World War I changed the scene entirely. The employers were given a free hand to deal with the labour force. High and huge profits for the employers led to demands for high wages for the labour force. The other factors like dynamic influence of Gandhiji on the political and labour movements of the country, the extension of politics into the labour organisations with a view to strengthening the base of the national movement for freedom, the formation of the I.L.O. in 1919, the emergence of All India Trade Union Congress in 1920 gave a new twist to the labour problems. The Labour Party in Great Britain was also gaining ground and naturally infused confidence in the labour organisations in India.\(^1\) These factors affected the industrial peace during 1914-1920 in almost all industries of the country. A large number of disputes occurred during the period 1914-1920 in Bombay and Bengal and this lead to the setting up of Industrial Unrest Disputes Enquiry Committee in Bombay and a Committee on Industrial Unrest in Bengal. The Bombay Committee opined that when the differences between labour and management seemed to be serious or irreconcilable a court of inquiry should be appointed followed by an Industrial Conciliation Board, if necessary. The Bombay government was keen to have an enactment to give effect to the recommendations of its own committee. But the Central Government promised an all-India legislation which put this demand of the Bombay government in cold storage. The Central government proposed a bill in 1924 on the lines of the Bombay Industrial Disputes Committee making provisions for the establishment of a Board of Investigation for the settlement of

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industrial disputes. Since the provincial government did not react to the bill favourably, it was dropped.¹

During 1928-29 there was widespread labour trouble which forced the government to take up the Bill and enact it. The year 1929 is thus an important landmark in the history of labour legislation in the country. It was not till 1928, that a bill was actually introduced which was finally passed as Trade Disputes Act, 1929. The main purpose of the Act was to bring the weight of public opinion to bear on industrial disputes in the belief that neither employers nor unions could afford to ignore its impact. This was the first attempt to recur some machinery for the prevention and settlement of industrial disputes in India.

The Act provided for (1) The Court of Enquiry, (2) The Board of Conciliation, (3) No strike or lockout in a Public Utility service, (4) Appointment of Labour Officers to watch the interests of workers. The government was empowered to refer any dispute to a court of enquiry, or, if both parties agreed, to a Board of a conciliation. In the case of Public utility services, 14 days notice of strike and lockouts was made mandatory in order to give the government time to bring a conciliation machinery into action. The Act thus provided a machinery for settlement of disputes for the first time. So far the government had been treating industrial disputes mostly as a law and order problem. It did not intervene to solve the dispute itself with the result that labour suffered all the

¹ Shroff, A.D., Conciliation and Arbitration of Industrial Disputes in India (Popular Book Department, Bombay, 1949), P.147.
time, and often in the name of law and order, government was forced to side with the employers.¹

The Act had many weak points, viz. (a) it did not provide any standing machinery for the prevention of industrial disputes, (b) it was not mandatory upon the government to refer labour disputes to a Board of Conciliation or a Court of Enquiry, (c) no power was vested in the government by the Act to enforce the findings and recommendations of such bodies, and (d) it envisaged the operation of the machinery and set up only when the trouble had exploded into the crisis; it did not show any preference for prevention being better than cure.²

The Act was not widely used and it was used only for five times during the period 1929 to 1936. The Royal Commission on Labour in India did not favour the Act and opined that “Conciliation necessary for avoidance of disputes were not thought out prior to the introduction of such ineffectual means.” In 1931 the Royal Commission on Labour in India made a number of recommendations - permanent courts instead of adhoc tribunals, the appointment of labour officers, the creation of works committees, etc. The Act was amended in 1932, preventing the members of the court of enquiry disclosing any confidential information. In 1934 the Bombay Government passed the Bombay Trade Disputes Conciliation Act on the lines suggested by the Royal Commission.³ It made conciliation compulsory at the discretion of the government.

² Ibid., P. 252.
In 1936, the Government of India also took the clue from the above Act and made provisions for the appointment of conciliation officers to mediate in and promote the settlement of disputes by amending the Act of 1929. The scope of the term trade disputes was also enlarged. The term trade disputes was to include difference between employers and employees, water, transport and tramways in the public utility services and made the provision concerning illegal strikes and lock-outs less repressive. It was rather unfortunate for the communist members of the AITUC to regard the provisions of the Bombay Conciliation Act 1934 as well as the Central Act, duly amended in 1936, as an encroachment upon the rights of the trade unions to settle their disputes directly with the employers. If the trade unions had acted more rationally than emotionally at that time, it could have been possible to make a good use of the offices of conciliation machinery.¹

2.3.1 Bombay Industrial Disputes Act, 1938

The years 1938 and 1939 have a great significance in the history of industrial disputes legislation. The Bombay Government passed the Bombay Industrial Disputes Act of 1938 which cut new grounds in several respects and influenced the future course of legislation in the subject. It was a pioneering legislation radically different from previous legislation on the matter. Some of the main provisions of the Bombay Act are:

The Act differentiated between unions and made a distinction between recognised, registered, qualified and representative unions. (b) Promotion of peaceful and amicable settlement of industrial disputes by conciliation and arbitration. (c) The Labour Commissioner was to function as the Chief Conciliation Officer with jurisdiction over the whole of the state and conciliation officers were assigned specific geographic areas. (d) For the first time the Act defined a legal strike and a legal lock-out. It prohibited all strikes and lock-outs without proper notices and initial conciliatory processes. (e) The provincial government could also constitute an Industrial Court or a court of Industrial Arbitration, consisting of two or more members, one of them being the president, who was to be a person not connected with any industry, and generally judges of High Court were to be appointed on this post. (f) The Act required the undertakings to have their standing orders, the absence of which or their vagueness resulted into day-to-day pin-pricks between the contending parties.

Bombay Industrial Disputes Act succeeded in considerably reducing industrial strikes and provided for an elaborate machinery for settlement of industrial disputes by conciliation and arbitration. However, the Act was criticised on several grounds, e.g., the introduction of compulsory conciliation, the classification of the trade unions, the official character of the conciliation machinery, the heavy penalties prescribed for those involved in illegal strikes and other similar provisions did not find favour with most of the leaders at that time. However, the subsequent experience of the working of the Act showed that most
of the objections were mostly political and the only just criticism was in respect of classification of unions.  

2.3.2 Industrial Disputes Legislation During the War

The Bombay Industrial Disputes Act of 1958 was amended in 1941 and 1942 as emergency measures designed to meet the war time need for unrestricted production. The first of these empowered the government to refer industrial disputes to the court of Industrial Arbitration if it considered that the disputes would lead to serious outbreaks of disorder, affect the industry concerned adversely and would cause prolonged hardship to the community. The 1942 Amendment Act exempted the employers from notifying the changes regarding hours of work and rest periods. This was done by the government as a war measure. The Bombay Act was amended for the third time in 1945, which gave the Labour Officer, appointed by the government, powers to convene a meeting of the workers in the premises where they were employed and the employers, if ordered could not refuse to announce such a meeting.

The government promulgated two ordinances—Rule 81A of the Defense of India Rules in January 1942. This empowered, the central government to make general or, to suit local requirements, special orders, to prohibit strikes or lock-outs, to refer any dispute for conciliation or adjudication, to require

employers to observe such terms and conditions of employment as might be specified and to enforce the decisions of adjudicators. Another order issued on 6th March, 1942 was very stringent. It prevented any person in any undertaking from going on strike without giving 15 day's notice, and in case a dispute was referred to a court of enquiry or a board of conciliation, within two months from the date of conclusion of conciliation.

Another ordinance promulgated was the essential services (Maintenance) Ordinance of 1941 with the object of preventing workers in certain essential services from leaving their employment which was apprehended owing to the panic caused by Japan's entry in the war. Powers were also taken to regulate wages and terms and conditions of employment in certain essential services. Extensive and effective use was made of these powers and during the entire period of war, there was comparative peace.

In April 1943, the Defense of India Rules were further amended and concerted stoppage of work on refusal to work by a body of persons in a place of work, except in furtherance of a trade dispute with which they were also empowered to take necessary action in this respect. From 1942 onwards tripartite Labour Conference between government employers and the trade unions became a regular feature of Labour Policy. One of the most important events of the war period which has considerably affected the pace of labour legislation in India is the emergence of a tripartite consultation machinery.

1 Ibid, P. 163.
After the war, Section 81-A of the Defense of India Rules was extended upto October, 1946 and was kept in force by the Emergency powers (Continuance) Ordinance, 1946, for a further period of six months. In October, 1946, a Bill was introduced in the Central Legislature, embodying the essential principles of Rule 81-A of the Defense of India Rules, which had proved generally acceptable to both employers and workmen. It was passed as the Industrial Disputes Act of 1947 combining the investigation and conciliation principles of the 1929 Act with the compulsory arbitation principle of Rule 81-A of the Defense of India Rules.

2.3.3 The Industrial Disputes Act, of 1947

The emergency war legislation ceased to be operative from 30th September, 1946 but the wartime experience convinced the government that such rules were extremely useful, and if they were incorporated in the permanent Labour Laws of the country, it would do much to check the industrial unrest, which was gaining momentum owing to stress of the post-war industrial readjustments. The result was that the Industrial Disputes Act was passed by the central government in 1947 which replaced the Trade Disputes Act of 1929.

This Act came into force on 1st April 1947. It is a comprehensive measure for improvement of industrial relation. It covers all workmen including technical and supervisory staff, but excludes managerial and administrative staff, drawing a salary up to Rs. 500 per month. The Act creates seven different authorities for prevention and settlement of disputes. They are (a) works
committees (b) conciliation officers, (c) Board of Conciliation, (d) Court of
Enquiry, (e) Labour Courts, (f) Tribunals and (g) National Tribunals. The works
committee, conciliation officers and board of conciliation constitute conciliation
machinery. The Court of Enquiry is a fact finding agency and the labour courts
and tribunals are adjudication authorities. While retaining most of the provisions
of the earlier law, the new Act introduced two new institutions for the prevention
and settlement of industrial disputes i.e. works committee consisting of
representatives of employers and workers, and Industrial Tribunals consisting of
one or more members possessing qualifications ordinarily required for
appointment as Judge of a High Court. Some of the main provisions of the Act
are:

2.3.3.1 Works Committee

At the factory level, the Act provides for the first time for the setting
up of works committees in factories employing 100 or more workers in order to
remove causes of friction between employers and workers in the day to day
working of the establishment and to promote measures for securing amity and
good relations between them. The composition of the works committees is to be
bipartite, the workers' representatives shall not be fewer than those of employers
and shall be elected from the various groups, categories, and classes of workmen
in consultation with their registered union, if any. The strength of the works
committee will not be more than twenty. The workers' representatives shall be
elected departmentally by workers. The employer shall enquire from registered
trade unions the number of their total membership and its distribution in departments. If the unions fail to respond within a month, the employer can allot seats to various departments unilaterally and proceeds with the election.

Although these works committees were supposed to secure good relations between labour and management they were not visualised as part of any collective bargaining machinery but purely as bodies which could help to promote industrial harmony by removing the causes of friction.¹

Another defect in the working of these committees has been that their relationship with the trade unions in the undertakings has not been well defined. They were regarded as rivals by many unions. On the contrary British trade union congress insists that in an industrial undertaking works council should be established to deal with matters other than those covered by the established negotiating machinery. The workers side of these councils should be organised by the trade unions.² The Act also does not make any specific provision for holding election by secret ballot.

2.3.3.2 Conciliation

The Act authorises the appropriate government to appoint conciliation officers for mediating in and promoting the settlement of industrial disputes in a particular industry in a particular area or in different industries. The Act also

authorises the establishment of Board of Conciliation consisting of an independent Chairman and two or more members representing equally the parties to a dispute. These are the second and third agencies created for conciliation proceedings.

Conciliation is the recognised method of state intervention to secure a peaceful settlement of industrial disputes. Conciliation is a process by which the representatives of the workers and the employers are brought together before a third person or a group of persons, with a view to persuading them to come to an agreement among themselves, by mutual discussion between the two parties.\(^1\) It is based upon the recognition of the fact that strike activity may prove detrimental to both the employers and employees. This is especially true when both the parties have more or less equal bargaining powers and, therefore, the result of an open conflict is indeterminate. Although conciliation does not rule out the occurrence of strikes completely, it does help in resolving differences due to faulty negotiations and helps the parties to understand and appreciate the situation.\(^2\)

When an industrial dispute occurs, or is likely to occur, first of all the Conciliation Officer, to whom the dispute is referred, tries to help the parties to reach an amicable settlement. He is required to submit his report to the government within fourteen days. If settlement is arrived at, it is signed by both


the parties and submitted to the government. If the efforts fail, the Conciliation Officer sends full report of his efforts to the government. The government may hereafter refer the matter to a Board of Conciliation or the Industrial Tribunal. The Board is to finish its efforts for settlement within two months and if it succeeds, the agreement is to remain in force for six months or even a longer period if agreed by the parties. In case of failure, the Board also submits full report to the government. The government then may refer the case to a Court of Enquiry to collect the necessary facts about the disputes and to report within a specified time, generally six months.

One of the important feature of the Act is that it makes completely compulsory for the government to refer for conciliation all disputes in public utility services and in other cases the government can exercise its discretion. This is a very useful link in the conciliation machinery. But unfortunately most of the state government have delegated the powers of the conciliation officers to the officers of the Labour Directorate.

The Board is a tripartite body, the representatives nominated to the body are the choice of the parties concerned - only the chairman is an independent person. So it has the advantage of prestige and persuasive weight in achieving a solution to the dispute. The fact that its report is made public is another advantageous factor. But one of its very serious defects is that it is a temporary body on an ad-hoc basis. Perhaps greater success could be achieved if such a tripartite board were to be established on a permanent basis. There has been
another noticeable defect in the functioning of these Boards. In the majority of cases, the report of the conciliation officer is regarded as sufficient by the government for reference of cases to the tribunals. In view of the easily available machinery of the tribunals under the Act, little or no effort is made for further conciliation on voluntary agreement. The existence of the adjudication machinery makes the worker's and employers' organisation defiant and they care very little for mutual discussion and agreement through the medium of these boards which are at the sweet will of the appropriate government to be set up as occasions arise. The government also takes resort to the tribunals rather than refer these disputes to such boards.

2.3.3.3 Court of Enquiry

The idea of setting up a court of enquiry has been borrowed from the British Industrial Court Act, 1919, under which the Minister in-charge can set up such an enquiry court to probe into the dispute and make its own assessment of the situation as well as render its recommendations. This procedure has a distinct advantage as the report of such a body is given wide publicity to arouse public interest in the matter in order to prevent any irrational step on the part of the parties for fear of public condemnation. The setting up of such a court is entirely at the discretion of the government. It is given a period of six months to enquire into an industrial dispute and its report must be published by the government within thirty days of its receipt. This court is merely a fact-finding body. Its utility is great where the public opinion is very strong and wide awake. In
countries like Great Britain it works very well because of the strong public opinion but in India it does not work very well. This court has no sanction to bring the parties together. Sometimes there is danger of backfire because the party which is exposed in the report may stick to its position rather than come to an agreement. So there may be less chances of settlement by the mutual efforts of the parties. So this type of institution seems to be superfluous in the context of things in India.

2.3.3.4 Adjudication Machinery

The ultimate real remedy for the settlement of unresolved disputes is its reference to adjudication by the appropriate government. The Industrial Disputes Act is compulsory adjudication oriented with abundant scope for governmental interference. This has wide repercussions over the healthy growth of collective bargaining and the formation of effective strong unions. In effect, workers and employers are driven to a legal combat with consequential spite, friction, tension and industrial unrest. The Act provides for a three-tier system of adjudication-Labour Court, Industrial Tribunals and the National Tribunals. The first two can be appointed by both the central and the state governments, but a National Tribunal is the prerogative of the central government only.

Labour Court - The setting up of a Labour Court is at the discretion of the government. It was introduced by amending the Act in 1956. It is a one-man court presided over by a person who has held either a judicial position in India for
not less than seven years or who has been presiding officer of a Labour Court constituted under any State Act for not less than five years. The court is to deal with the day-to-day matters as specified in the second schedule appended to the Act.\(^1\) A Labour Court has a jurisdiction over matters which in U.S.A. normally arise in day-to-day working and handled by the grievance machinery provided under collective bargaining.\(^2\)

**Industrial Tribunals** - Tribunals have jurisdiction both over the matters over which Labour courts have jurisdiction and those mentioned in the Third Schedule.\(^3\) The tribunal comprises one person only. It may be setup by the appropriate government on a temporary or permanent basis for a specified dispute or for industry as a whole.

**National Tribunals** - The National Tribunals are to adjudicate upon disputes on reference to them by the government involving any question of national importance or of such nature as industrial establishments situated in more than one state are likely to be interested in or affected by it. Once a dispute has been referred to a National Tribunal, no labour court or tribunal will have jurisdiction to adjudicate upon it. If any such matter is pending before a Labour Court or an Industrial Tribunal, it is required to vacate the proceedings.

Adjudication seeks to settle disputes more justly than strikes could settle them. The settlement is based on rational thinking and it is not the result of

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1. See the Annexure - 1.
3. See the Annexure-2.
the might of the parties. Rather it is based on the right of the parties. Further no loss of production, consequent to stoppage of work, is involved in the settlement process by compulsory adjudication, i.e. unlike in the case of collective bargaining which very often may invite strike or lock-out.

2.3.3.5 Arbitration

The Industrial Disputes Act, 1947 has been amended several times. The 1956 amendment to the Act introduced for the first time the principle of voluntary arbitration of a dispute by mutual agreement between the parties provided such a dispute has not been taken over by a Labour Court or Tribunal for adjudication. Section 10A of the Act says that at any time before a reference of dispute under Section 10, the disputants may by a written agreement refer the dispute to arbitration. They may specify their own arbitrator, or may select a board of arbitrators with provision for appointment of an impartial Chairman if needed. Any agreement between the parties to arbitrate the dispute must be made in writing, and copies of the agreement must be submitted to the appropriate governmental agency and the area conciliation officer. The award is submitted to the government, which must publish it within 30 days of its receipt. Unless the government opposes the award, it becomes operative within 30 days from the date of publication and no appeal lies against such an award.

As the power given to the government to enforce the award of the adjudicator in case of adjudication on compulsory arbitration, this method put the

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fate of labour in the hands of the deciding authority. The achievement of social
inghtice becomes wholly dependent upon the competence, sincerity and
enlightenment of the authority which will naturally derive its complexion from the
state. The workers cannot hope to achieve any radical change in their position
and, therefore, will have to be satisfied with such minor changes, as are
acceptable to state officials. Compulsory arbitration or adjudication, unless used
spareingly and with considerable caution, may amount to an unjustified state
imposition and may pave the way for a complete negation of the principle of
democracy. Hence the introduction of this principle of composition has been the
subject of much critical controversy.

The Royal Commission on Labour was against compulsory arbitration
and said that the effect on industry would be disastrous if there was a general
tendency to look to some external authority to preserve industrial peace and to
discourage settlement by the industry itself. It is said that compulsory arbitration
will defeat its own purpose, instead of building peace, and is bound to create
greater dissatisfaction among the workers. In other countries also such a measure
has always been opposed. Sydeney Webb has said, "Compulsory arbitration is no
arbitration for anything if it means suppression of collective bargaining altogether. The
arbitration is a form of making laws. A court of law should only interpret law and
should not legislate it."¹

2.4 Relevance of Foreign Practices of Methods of Industrial Conflict Resolution in the Indian Situation.

In this part of this chapter the researcher attempts to describe the relevance of foreign practices of methods of industrial conflict resolution in the Indian situation.

Collective bargaining in U.S.A. and other industrially advanced countries of the West, is a well known method for the resolution of industrial conflict and promotion of harmonious industrial relations. If the parties are strong and develop positive attitude toward collective bargaining, the state regulation and state intervention in industrial disputes will remain nominal. Unfortunately, this has not been so in India, where collective bargaining has not been given its due. In India collective bargaining is a voluntary method of industrial conflict resolution.

In U.S.A. the government policy states clearly to what extent the parties have the freedom to determine both the procedural and substantive matters in collective bargaining - determination of bargaining agents, the delimitation of appropriate bargaining units, the handling of union recognition issues and closely related questions of duty to bargain in good faith, the obligation of the employers to furnish information essential to effective negotiations, the subject matter of bargaining, the nature of agreement, its enforcement, the procedure of its termination etc.

In the developing countries like India the practice has been that the employers extend their recognition only when the union is strong enough to refuse to negotiate with it or when the industrial relations machinery forces to accept the unions. Quite often the disadvantage of refusing recognition, viz. a strike and violence, weigh heavily in favour of granting recognition to the unions.

The legal protection had strengthened the trade unionism and their bargaining power in U.S.A. The Wagner Act gave a tremendous fillip to labour organisation. In U.S.A. once an agreement has been reached, it is a valid legal contract. It can be enforceable at law. Both employers and labour organisations can sue or be sued for breach of its clauses. It is for this reason that collective agreements in the U.S.A. are often called labour contracts. The National Labour Relations Act of 1935 (more commonly known as the Wagner Act) had a three fold of purposes: (i) to protect the workers’ right to join a union of his own choice and to organize without interference from his employer; (ii) to provide for election machinery to determine the most representative union in any unit, (iii) to compel the employer to recognize and bargain with the most representative union.

India badly needs legislation on the lines of U.S.A. to strengthen the labour organisations and their bargaining power. The objectives of the Wagner Act should be incorporated in the new legislation so that the government’s

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2 Ibid, p.27
interference with the bargaining process will be minimum. The legislation could curtail the employers’ freedom of action in respect of meeting the workers’ representatives at reasonably frequent intervals of time and at an agreed place and not to avoid his obligation by taking various pleas. The law may seek to restrict the employers’ freedom of action and compel them to negotiate on the demands put forth by the unions in respect of the subject matters which the union may legitimately introduce into the negotiation. For example, the Labour Relations Act, 1947, in the U.S.A. has laid down that the basic issues like hours of work and wages are indisputably bargainable subjects. Hence, the employers’ refusal to negotiate on these subjects would constitute a violation of the duty to bargain.

The trade unions in India should use computers widely as in practice in the U.S.A. to make bargaining decision easier. The use of computers also helps to determine the ability of a firm to pay.

There should be, in India as in practice in the U.S.A., a statutory provision compelling the employers to supply the relevant information to the unions for negotiation. The unions always demand accurate and up-to-date information, while the employers refuse to part with certain types of data considered to be ‘confidential’. In such situation, unless there is a statutory provision compelling the employers to supply the information and to bargain in good faith, as in the U.S.A. the unions may not be able to get the needed information from the employers.¹

The pattern bargaining of U.S.A. is also most suitable to our country. The pattern of negotiation is usually unit-wise or company-wise. Among some large industrial unions it is the practice to choose an outstanding firm in the industry and begin negotiation there. Having succeeded in drawing up an agreement with this company, the union uses it as a model with which to approach other employers in the same industry in the hope that they will fall in line. This is called ‘pattern bargaining’ and prevails in a number of major industries such as steel, automobiles, engineering, etc.\(^1\) This type of bargaining will help to avoid wage discrepancy in Indian industries.

Another approach to bargaining in U.S.A. is creative or continuous bargaining. This system calls for the parties to explore particularly difficult bargaining problems through mutual integration over a long period of time, throughout the life of a contract. One innovation in the bargaining tactics is the adaptation of formal strike insurance or mutual aid plans by employers in a few American industries.\(^2\)

Joint study Committees are charged with the responsibility of collecting facts on critical problems and to explore alternatives solution over a period of several months. The Joint Committees conduct the meetings in a free atmosphere and the discussions are quite detailed, opinions are expressed and

\(^2\) Ibid., P. 310.
positions could be changed. Continuous bargaining has proved to be a spectacular success in different industries in U.S.A. In India continuous bargaining will help to resolve the deadlocks in bargaining. The difficult bargaining issues will be taken up by the Joint Committees. This will help to develop constructive co-operation between the parties.

The greatest change of bargaining significance in Great Britain has been the expansion of bargaining at the level of the company and the plant. This change was chiefly due to the productivity bargaining that came into vogue on a wide scale during the 1960s starting with the Fawley agreement of 1960 in the Esso Company at Fawley. During that decade the productivity agreements had the official backing. The productivity agreements have been a means to secure more efficient use of labour by directly relating terms and conditions of employment to working practices. It is argued that productivity bargaining is an attempt in buying off the restrictive work practices.2

Productivity bargaining in its pure form is not found in India to an appreciable extent.3 Productivity bargaining as developed in England is almost absent on the Indian sub-continent. Though the movement has gained currency and attempts have been made to operationalise the concept since the early 1960s in other countries, most of the productivity agreements in Indian industries

tantamount to incentive schemes. The only case that approximates productivity bargaining is reported from Kerala. In 1962 in one of the basic metal industries a productivity agreement was signed almost on the lines of the Fowley agreement. In India productivity bargaining will help to eliminate restrictive and unproductive practices. Further, in case of productivity bargaining both the parties are benefited. Reduction of cost and improvement of industrial productivity enhance the company's competitive strength. The workers are also paid higher wages for increased responsibility. In India, the attention of the industry was really focused on productivity when ILO team visited this country in 1952 and 1964. Improvements in productivity in the field of steel, aluminium, coal, power, paper and fertilisers would bring about an increased prosperity for the economy as a whole.

The dispute settlement machinery in India function largely under government aegis. Except the conciliation officer, who can initiate conciliatory efforts on his own or on the request of the parties, all other machineries must function under instructions from the government. They are bound to submit their findings to the government which alone has the power to review and modify them. Generally the government does not change the awards, but sometimes it does censor each one of them, which sometimes affect the judgment of tribunals. In principle such an approach is wrong.

It is through conciliation and arbitration services that the government can move in the most direct way at the highest practical level to promote good
labour-management relations and industrial peace. The government can exert its 
most effective, beneficent influence over the parties through the people to whom 
it has given the responsibility for dealing with them.

The conciliation machinery is a temporary and adhoc arrangement. 
But it should be permanent and continuous. It should not be inhibited by any limitations. In U.S.A. they do not suffer from statutory time limitation on their efforts.¹ When there are many alternatives open to the parties for resolution of industrial conflict, the normal psychological effect of these alternatives is that the disputing parties do not take the initial conciliation proceedings seriously; they wait in the hope of bettering their individual chances at the next step. As Prof. Meyers says, “compulsory adjudication in India tends to discourage direct settlement through mediation and conciliation. Conciliation and mediation are not substitutes for collective bargaining; they are supplement to it.”² Conciliation and mediation in India do not have any preventive mediation as in the U.S.A. under the Federal Mediation and Conciliation services. In India the conciliation and mediation activities are limited to the specific disputes which are referred to them. In India no long range activity is entrusted to the conciliation machinery for the improvement of industrial relations. This difference must be eliminated. Conciliation machinery should be independent, permanent and its activities should not be regulated by the Labour Department of the government. We have to emulate the example of Federal Mediation and conciliation services in the U.S.A.


Serious thought may be given to create independent Federal and State conciliation services as in the U.S.A. It may be equally worthwhile to take a page from the history of the American Arbitration Association at New York. Both these two agencies (the Central, State and Municipal Bodies Mediation agencies as well as the A.A.A., New York) have developed all the background for arbitration in the U.S.A. A critical assessment of arbitration procedure is also made by independent observation.¹

Likewise, inspite of the powerful advocacy of many national leaders, the voluntary arbitration method has not attracted much in the Indian industry unlike in U.S.A. or Australia. The 1958 Code of Discipline highlighted the need of invoking voluntary arbitration as an important method to resolve industrial conflict. The Industrial Truce Resolution in 1962 also emphasised this device. The National Commission on Labour have pointed out the factors which have contributed to the slow progress on voluntary arbitration. They are:—

(a) Easy availability of adjudication in case of failure of negotiation; (b) dearth of suitable arbitrators who command the confidence of both parties; (c) absence of recognised unions which could bind the workers to common agreements; (d) the fact that in law no appeal is maintainable against arbitrators' award; (e) absence of a simplified procedure to be followed in voluntary arbitration and (f) cost to the parties, particularly workers.²

Inspite of emphasis of various five year plans on this mode of settlement of dispute, it cannot be expected that voluntary arbitration will become a common method for settling industrial disputes in near future. There are number of difficulties as pointed out by National Commission on Labour. Moreover, arbitration proceedings are not properly understood or appreciated by the parties. Again the inexperienced arbitrator often permanently impair the labour-management relations. For the success of voluntary arbitration, there must be a sufficient degree of mutual confidence in decision by the arbitrator. There must be agreement on the subject matter which may be submitted for arbitration.

In India we should start with Arbitration Association as an autonomous body where impartial arbitrator may be trained and registered. The persons coming out of this association should act as voluntary arbitrator for settling industrial disputes.

Ever since 1933, the policy of the socialist government in Denmark to give a different treatment to the decision of the conciliation agency. The conciliation proposals, when rejected by one party but accepted by the other, one accepted by the government and promulgated as law. That are not even referred for adjudication. Such a procedure is worth a trial in India.

Compulsory adjudication has done more harm than good. It has cut the very root of collective bargaining. V.V. Giri the ex Labour Minister of India observed “Compulsory adjudication has cut at the very root of trade union organisation. If workers find that their interest are best promoted only by co-
operation, no greater urge is needed to forge a bond of strength and unity among them. But compulsory arbitration sees to it that such a bond is not forged. It stands there as a policeman looking out for signs of discontent and at the slightest provocation takes the parties to the court for a dose of costly and not wholly satisfactory justice. The moment the back of the policeman is turned, the parties grow red in the face with redoubled determination and the whole cycle of litigation starts over again. Let the trade unions become strong and self-reliant and learn to get on without the assistance of the policeman. They will then know how to organise themselves and get what they want, through their own strength and resources.”¹ This view served as the basis of what was known as “Giri Approach” for achieving industrial peace. Giri did not rule out the possible unnecessary trial of strength that would occur if adjudication were removed from the statute book. There will be bargaining and it will lead to good industrial relations except in few cases which will lead to strikes and lockouts.

As far as strikes and lockouts are concerned they take place even in Australia and Newzealand despite compulsory arbitration as well as ban on them. We lose both the worlds - industrial peace as well as collective bargaining - under this system. In the U.S.A. even resort to mediation by the parties is resented, there they are supposed to be on their own. It is free collective bargaining.²

In Philippines there is support for switch over from compulsory arbitration to collective bargaining. In the Philippines before the Act of 1953, The Industrial Peace Act (a) work stoppages were considered detrimental to the national interest, and (b) they could be settled by compulsion on law-compulsory adjudication. The law was found unsatisfactory in dealing with the post-war labour problems and hence the Industrial Peace Act of 1953 was passed to promote industrial peace through collective bargaining, conciliation and mediation.

The main provisions of the Acts are: (1) Court of Industrial Relations with the function of hearing complaints on unfair labour practices; to intervene through conciliation services of the Department of Labour. (2) The workers can freely organise a union without interference from management or government. (3) the employer must bargain with the union. (4) The collective bargaining covers wages, conditions of employment, provision for grievance procedure.

The Act of 1953 has made the switch-over from compulsory arbitration to collective bargaining. It has very much curtailed the power of the government to intervene in industrial disputes. The parties bring about an agreement by their own efforts. The court of Industrial Relations intervenes when unfair practices are reported on strikes occur during negotiation of an agreement. This intervention of the court is only through the conciliation service of the department of labour. The court does not directly interfere, it is through another agency. The intervention was only through conciliation.
The Act has led to the development of a healthier labour management relation and a retreat from compulsion of law. The most significant change has been the awareness among the employer and the employee: both that the ultimate responsibility of industrial peace lies with them. In India there is shift in emphasis from adjudication to collective bargaining. The power of the government should be curtailed to intervene in industrial disputes. The parties should bring about agreement of their own efforts.

Our economy appears overmedicated by too many labour laws. The government, unions and management should rise to the occasion. The management has a greater responsibility. The unions must organise themselves into strong and undivided associations. The government must provide all helps to achieve this.