CHAPTER V

VOLUNTARY NEGOTIATIONS VIS-À-VIS
LABOUR ADJUDICATION
Employer - employees' disputes are the most difficult and complex issues to resolve in the human society. Conflicting economic interests of labour and management as well as sensitive problems of human relations are essentially involved in them. Not un-often, vital societial interest is also affected by the industrial disputes and conflagrations. A mechanical or syllogistic approach towards
the solution of industrial problems is not expedient.\footnote{1} Nor are rough and ready methods applied for solving industrial conflicts capable of making adequate diagnosis of the real causes that underlie labour and capital issues. Therefore, any search into evolving or finding out a satisfactory method for the effective solution of labour disputes must, of necessity, make rational evaluation of various factors and considerations involved in them.

Voluntary negotiations\footnote{2} and compulsory adjudication\footnote{3} are two commonly utilized methods for resolving labour management disputes. Doubtless, both these modes of dispute settlement possess relative merits and demerits. However, the question that needs to be considered is whether these two methods are mutually exclusive and inimical to each other, so that adoption of one obviates the need for the other or necessarily hampers the growth and operation of the other. Or, are they complementary to each other and constitute more effective and satisfactory dispute settlement mechanism if both are made to operate in harmony for the resolution of labour management disputes. This question assumes special significance in countries like India where essential conditions (for example, healthy trade unionism) for the successful operation of the institution of collective bargaining and process of mutual negotiations are conspicuously lacking. Further, should the state which is custodian of public interest
remain a helpless spectator if in a dispute due to superciliousness of the employer or recalcitrant attitude of a trade union, especially with political affiliation, all attempts at reaching negotiated settlement are thwarted. In the light of these questions it is desirable to ascertain the possibility of reconciliation between mutual negotiations and compulsory adjudication as labour dispute settlement procedures, so that both act as mutually dependent and supporters instead of being competitors of each other for the solution of labour disputes.

Comparative advantages and disadvantages of Voluntary Negotiations and Compulsory Adjudication

Chief advantages of mutual negotiations are that they enable the parties to the dispute to settle differences themselves without being aided or interfered with by an outside agency. The dispute is solved quickly, amicably, inexpensively, informally and without undergoing botheration and hardship which are invariably involved if the dispute is taken to an adjudicating forum. Above all, since voluntary negotiations are conducted with the spirit of reaching mutual settlement, both the parties tend to appreciate and accommodate each other's viewpoint for settling dispute within the factory. Further, settlement of disputes by mutual negotiations being voluntary and reached through goodwill of the parties, there is no victor or vanquished party and consequently no
bitterness or cause of friction remain behind. This creates peaceful atmosphere within the establishment and helps in bringing about closer kinship between the employer and the employee. It will in its turn ensure unstinted turn out of production and consequently betterment of the industry and national economy. Voluntary negotiations also forge unity in the working class as their effectiveness and outcome depend, for the most part, upon the collective strength of the workers in the face of formidable bargaining power of the employer due to his control over the means and resources.

On the other hand, main flaw in the direct negotiations is that if negotiations do not culminate in agreement, the conflict between management and labour will unfailingly result in a strike or lock out, and stoppage of work.

Again, for the successful working of institution of collective bargaining as well as for carrying on direct negotiations the workers must be organised because in individual capacity worker is in a weak bargaining position. Therefore, employees from unorganised sector can derive little benefit from voluntary negotiations in regard to settling their disputes with the employer. Besides, for the better operation of bargaining process there ought to be healthy trade unionism, that is, there is no multiplicity of unions or union
2 fir,
is that it is extremely dilatory, expensive and legalistic remedy. It is also considered to be antithetical to collective bargaining, destructive of trade unionism, and restrictive of the right to strike which has been attained by the labour after long and bloody struggles and deprivations. It is also felt that adjudicatory awards being superimposed by the third party, will necessarily make the losing party discontented and, as a result, leave behind a trail of bitterness which is inimical to industrial peace and harmony. Besides, easy availability of adjudicatory remedy, it is feared, tempts a party to take trifling matters and untenable claims before adjudicatory forums, and thereby, indicates litigious spirit in them.

It would appear much criticism of compulsory adjudication in the labour field is devoid of substance and mostly reflects the predilections of the critics of adjudicative process. Thus, the complaint that adjudication stifles the process of collective bargaining, trade unionism, and suppresses the right of the workers to strike seems to have little nexus with actuality. In the present study out of 331 cases selected from the decisions of labour adjudicating bodies, in around one third (113) cases there were consent awards. If the adjudicatory process is antithetic to voluntary negotiations, this high proportion of disposal of labour cases through consent awards would have been
impossible. On the contrary, it brings to fore an over-generous attitude of the adjudicatory bodies in favour of voluntary settlements.

The truthfulness of this fact can be further judged by looking at the extra ordinary number of adjournments granted by the adjudicating authorities in cases ending in consent awards. Obviously, most of these adjournments were given to make efforts for reaching mutual agreements. From 4,077 total adjournments allowed in 331 cases, one third (highest number of adjournments 31.59 %) have been granted in the cases terminating in consent awards. It unmistakably derives home the point that the persons adjudicating on labour disputes and grievances are second to none in preferring voluntary settlements to other modes of settling labour matters. It would also seem that a labour adjudicatory forum would give its decision only when all the efforts for compromise settlements have proved futile. The following observations of the Labour Court of Jammu and Kashmir State serve to show the attitude of labour adjudicatory forums towards mutual settlements: "... The parties consented when again an attempt was made (by the parties) to come to a settlement. This tribunal also indicated that any mutual settlement between the parties will be viewed with favour because it ensures lasting peace as held by the Supreme Court ...". The Labour Court in similar vein observed again: "... the parties having settled the disputes among themselves amicably, no dispute
for adjudication is left. This amicable settlement has to be preferred over all other modes of settlement because it is a pointer towards there being goodwill and lasting peace between the employers and employees...". 18

The higher judicial courts have also frequently appreciated and emphasised the role of collective bargaining and mutual negotiations in industrial field. They have taken the view that the workmen have the right of collective bargaining with regard to various matters in which they are interested: their pay, their wages, their bonus, etc., which impose restrictions on the rights of the employer. 19 The Supreme Court has repeatedly underscored the need for the adoption of process of collective bargaining and voluntary negotiations for resolution of labour disputes. It has observed thus: "An element of collective bargaining which is the essential feature of modern trade union movement is necessarily involved in industrial adjudication." 20

In a recent case the Supreme Court again indicated its pre-disposition for voluntary negotiations for the resolution of labour disputes. The Court observed: "...The golden rule for the judicial resolution of an industrial dispute is first to persuade fighting parties by judicious suggestions, into the peace-making zone, disentangle the differences, narrow the mistrust gap and convert them, through consensual steps, into negotiated justice. Law is not the last word in justice, especially social justice... So it is that negotiations first and adjudication next, is a welcome formula for the Bench and the Bar, Management and Unions..."

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19
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Hence, from what has been stated above, it becomes unequivocal that compulsory adjudication has not hindered the evolution and growth of process of collective bargaining or mutual negotiations. But, instead, it is consciously promoting the voluntary negotiations as a means of settling labour disputes. Therefore, involuntary adjudication and collective bargaining appear to be intertwined instead of being mutually exclusive. Both are intended to realise the same objects, viz., preservation of industrial peace and securing improvement of the lot of the worker. The experience of other countries which have adopted compulsory arbitration and collective bargaining for the resolution of employer - employee disputes shows that these two methods go hand in hand for resolving the industrial conflicts.22 Thus, in countries such as Australia and New Zealand compulsory arbitration and collective bargaining operate in unison and harmony, and have acquitted themselves commendably in solving labour - management conflicts as well as in effecting substantial improvement in living conditions of the working class.23

Similarly, compulsory adjudication does not seem to retard trade union development or militate against workers' right to strike in any conceivable manner.24 Trade Union officials freely represent aggrieved workers before adjudicatory forums. As seen above, there is no restriction on the parties
to carry on voluntary negotiations during pendency of adjudicating proceedings. Adjudicatory forums, and especially Supreme Court, have scrupulously refrained from laying down any rigid or general principles in accordance with which disputed labour management questions are to be adjudicated on. They have confined adjudicatory process to the particular factual situations. It leaves considerable scope for mutual bargaining by the parties.

It is true that Industrial Disputes Act, which is more important for collective bargaining and trade unionism, does not permit a strike or lock out during the pendency of a case for adjudication and for two months after the conclusion of adjudicating proceedings. A strike or lock out is also prohibited during the period an award remain in operation in connection with any matter concerned with the award. These restrictions on strike and lock out are only designed to ensure smooth operation of adjudicatory process and maintenance of industrial peace. By any stretch of imagination, this cannot be regarded as substantial curtailment of the right to strike. It is only a reasonable restriction on the legitimate activities of a trade union in the wider interest of the community.

Incidentally, the Constitution of India does not recognize any right to strike. Nor does it guarantee a right of collective bargaining as part of freedom to form associations and unions. It simply confers the right on the labour to
to strike in a democratic polity governed by the rule of law. Over and above, right to strike is not an end in itself. It is to be utilized for the fulfilment of a purpose. The purpose is to improve upon the living and working conditions of workers by legitimate struggle. If in a given case recourse to strike is for ulterior or disruptive purpose, where does it lead to? Surely to violence, stoppage of work and production, and occasionally it may bring untold hardship to society as well. In such a situation if there is no provision for compulsory adjudication, the result will inevitably be chaos. Therefore, in a way, compulsory adjudication may act as safety valve for the lawful and responsible trade union activity.

However, against what has been stated, the Supreme Court of India has evinced a fairly liberal attitude towards workers' right to strike as weapon to strengthen their bargaining power. While delineating the basis and scope of the right to strike, the Court stated:

"... The right to unionise, the right to strike as part of collective bargaining and, subject to the legality and humanity of the situation, the right of the weaker group, viz., labour to pressure the stronger party, viz., capital, to negotiate and render justice, are processes recognised by industrial jurisprudence and supported by Social Justice. While society itself, in its basic needs of existence,
may not be held to ransom in the name of
the right to bargain and strikers must obey
civilized norms in the battle and not be
vulgar or violent hoodlums. Industry, represented
by intransigent Managements, may well be made
to reel into reason by the strike weapon and
cannot then squeal or wail complain of loss of
profits or other ill-effects but must
negotiate or get a reference. The broad basis
is that workers are weaker although they are
producers and their struggle to better their
lot has the sanction of the rule of law. Unions
and strikes are not more conspiracies than
professions and political parties are, and,
being for weaker, need succour ... of course,
adventurists, extremist, extraneously inspired
and puerile strikes, absurdly insane persistence
and violent or scorched earth policies boomerang
and are anathema for the law. Within these
parameters the right to strike is integral to
collective bargaining..."29

In another case the Supreme Court observed:

"... that collective bargaining for securing
improvement on matters like basic pay, dearness
allowance, bonus, provident fund and gratuity
leave and holidays was the primary object of a
trade union and when demands like these were put
forward and thereafter, a strike was resorted to
in an attempt to induce the company to agree to
the demands or at least to open negotiations the
strike must prima facie be considered justified..."30

These observations of the Court clearly indicate
that workers have right to take recourse to strike within
reasonable limit; that is, when strike is not violent or
demands of the strikers are not absured or it is not motivated
by extraneous considerations, etc.,

Hence, it is clear that adjudicating forums do not adversely affect the growth of trade unions or their most potent weapon of resorting to direct action if the lawful demands of the workers are superciliously brushed aside by the intransigent employer.

Next, the apprehension that easy availability of compulsory arbitration generates litigious tendency also seems to be unfounded. Worker who is weaker party to the dispute cannot afford to revel in the long and costly course of litigation. Indeed, the fact is other way round. That is to say, if the worker fails to get decision in his favour from one adjudicating forum, he is dissuaded by the financial constraints to take the matter in appeal or writ before the higher forum. Many, indeed, do not start litigation at all on account of their poverty even if they have lost their job. Although, unlike workers, employer generally is not hindered to make use of adjudicatory mechanism on the ground of cost of litigation, in actual practice, he is exasperated with lengthy adjudicatory process. As a result, he does not rejoice in recklessly indulging in labour litigation. It would seem that extremely lengthy character of litigatory process checks both employer and employee to take recourse to adjudicatory proceedings unthoughtfully.
On the other hand, a vindictive employer may, however, derive full advantage of the appellate and writ jurisdictions of the High Court and the Supreme Court in labour matters. To curb this tendency of employers, suitable changes need to be made in the existing procedures of reviewing the decisions of labour adjudicating bodies. Establishment of Labour Appellate Tribunal can help to bring speedy conclusion of proceedings in labour matters. After the constitution of Labour Appellate Tribunal, Supreme Court should not lightly interfere in labour cases under Article of 136 of the Constitution of India.

As to the assertion that labour adjudicatory mechanism has not been able to establish industrial peace and harmonious relations between two sides of the industry, opinion evidence seems to lend support to it, though wider statistical information concerning work stoppages on account of adjudicatory awards is more relevant to establish the hypothesis that the awards of labour adjudicatory bodies generate industrial unrest. Table 5.1 shows the view of workers, employers and lawyers and adjudicating officers in this respect. It is clear from the table that relatively employers are more discontented with the decisions of labour adjudicatory bodies, though difference is only marginal between the employers' discontentment with labour adjudication and that of workers'. More than one half of employers outrightly condemn adjudicatory mechanism as being generative
of industrial discontent. If the employers who consider that adjudicative settlements only partly cause discontent between the parties are also taken with the employers who totally discard adjudicatory mechanism on the ground of causing industrial unrest, they constitute substantial majority (78.95%).

On the other hand, one half of workers also think that adjudication adds to industrial unrest. These workers with those who think that adjudication only partly cause discontent between the parties to the industrial disputes make up significant majority (63.23%). Significantly, only minority (29.53%) of lawyers and adjudicating officers finds that adjudication perpetrates industrial disharmony. But if these lawyers and adjudicating officers and those in whose opinion labour adjudicative mechanism only partly contributes to industrial unrest are taken together, they form substantial majority (72.00%). On the contrary, only minorities of workers, employers, lawyers and adjudicating officers absolve the labour adjudication from the charge that it leads to industrial unrest. From these data it can be clearly inferred that, by and large, users of labour adjudication machinery as well as lawyers and adjudicating officers do not find favour with adjudicative decisions because they cannot satisfy the parties to the industrial disputes.
Table 5.1. Showing the responses of workers, employers and lawyers/adjudicating officers about whether labour adjudicatory mechanism is successful in establishing industrial peace in the state.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Kind of response</th>
<th>Workers/union leaders (n=256)</th>
<th>Employers (n=57)</th>
<th>Lawyers and adjudicating officers (n=75)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>30.47</td>
<td>19.30</td>
<td>25.33</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>48.44</td>
<td>56.14</td>
<td>29.33</td>
</tr>
<tr>
<td>3.</td>
<td>Partly successful</td>
<td>14.84</td>
<td>22.81</td>
<td>42.67</td>
</tr>
<tr>
<td>4.</td>
<td>Can't say</td>
<td>6.25</td>
<td>1.75</td>
<td>2.67</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Finally, that the labour adjudicatory process is slow-moving and productive of long delays in the adjudication of cases appears to be principal and inexcusable defect in compulsory adjudication. It has been seen elsewhere that settlement of disputes through adjudication involves delay in varying degrees at different stages of adjudication. The delay before labour adjudication bodies such as labour court, tribunal, adjudicating authorities under the Payment of Wages Act and Workmen's Compensation Act is relatively less compared to the delay at the High Court and the Supreme Court level. Lengthy delay in the High Court and the Supreme Court is unavoidable in view of rapidly mounting arrears of cases before them. Mainly, procedural and structural defects account for the tardiness of adjudicatory process. Therefore, given
suitable changes in the procedure and structure of labour adjudicatory forums, delay can be substantially curtailed. if cannot be altogether obviated.

With all the defects in compulsory adjudication it cannot be denied that this mode of deciding labour cases needs a word of commendation for its valuable role in bringing about some degree of security to the workers. Today a worker cannot be turned out of his job with the same ease and flippancy as he could have been before the induction of compulsory adjudication. The Supreme Court has closed the doors to managements which would retrench employees as a cover for outright dismissal. Compulsory adjudication has also succeeded a great deal in securing economic benefits for labour in terms of claims of social justice.

Summing up, no body ought to doubt the wisdom of adopting and promoting collective bargaining and process of direct negotiations for the solution of industrial problems. But a dogmatic or emotional approach towards it needs to be shunned. While every possible effort must be made to solve industrial disputes through voluntary negotiations, compulsory adjudication must be retained as the ultimate remedy for the determination of cases which have not been composed as a result of voluntary negotiations. At the same time, earnest efforts need to be made at all levels for the rapid growth and popularity of collective bargaining, so that this method of
settling employer-employee disputes will become a reality. There is also urgency of effecting a structural change (change-over from present mechanism of adjudication to separate labour judiciary) for making the compulsory adjudication a speedy and more accessible remedy.

**Inadequacy of Statutory Basis for Voluntary Negotiations**

Despite the emphasis of declared labour policy on voluntary negotiations for settling labour management disputes as well as frequent talk in the concerned quarters for taking the voluntary negotiations, nothing practical has been done till this day for the attainment of this object. Incredible as it is, it has not been made even mandatory by a legislative measure to exhaust bipartite negotiations for the settlement of a dispute by the parties before resorting to other remedies available under the law.

Of the three enactments - Industrial Disputes Act, the Workmen's Compensation Act and the Payment of Wages Act - which are the subject of the present investigation, the Industrial Disputes Act has more relevance for collective bargaining and mutual negotiations. The statement of objects and reasons of the Act underscored the need for mutual settlement of industrial disputes, for, it was felt the peace founded on voluntary settlements will be more enduring. The Works Committees were intended to be one of the chief instruments for the prevention and removal of causes of
friction between the parties. However, contrary to expectations, the Works Committees could not perform the role contemplated for them under the Act. The failure of Works Committees to discharge their intended role was primarily owing to the recommendatory character of their deliberations and their non-acceptability to Trade Unions as the unions regarded the carrying on of bargaining process as their sole preserve. The inability of voluntary negotiations to emerge as primary dispute settlement procedure shifted the emphasis on compulsory adjudication and conciliation for resolving industrial disputes.

The Industrial Disputes Act, as originally enacted did not accord any statutory recognition to the mutual settlement agreements. It was only in 1956 that the agreements entered into by the parties as a result of mutual negotiations were made binding on them. Even this was a feeble and half hearted attempt at propping up and promotion of voluntary negotiations as a means of settling industrial disputes. This is so because the sanctity of mutual agreements was confined only to the parties to the agreement. But, in contrast, agreement made in course of conciliation proceedings or award of the Labour Court or Industrial Tribunal is binding not only on the parties but also on the employees of the establishment and the employees to be subsequently appointed in the establishment.
Finally, Rule 3(e) of the Jammu & Kashmir Industrial Disputes Rules, 1972 (it is replica of Rule 3(e) of Central Industrial Disputes Rules) is more positive in regard to resorting to mutual negotiations for settling a dispute, though its application is limited. This Rule lays down that if the parties to a dispute apply for referral of the dispute to the Government for adjudication, they must furnish a statement setting forth, inter alia, efforts made by them to adjust the dispute themselves. The application of this provision is limited in the sense that joint application for getting a reference for adjudication is only one of the ways to move the Government for making reference. It is only rarely when both the parties agree for reference. In most of the cases the Government has to decide about the expediency of referring a case for adjudication on its own on the submission of failure report by the Conciliation Officer. Undoubtedly, it is implied in the failure report of the Conciliation Officer that efforts for mutual settlement have failed. But not infrequently employer takes the plea that workman has approached the Conciliation Officer directly without even informing him about the grievance. Similarly, when a dispute relates to a public utility service and notice under section 22 of the Act has been served, Government has to decide on the expediency of making reference itself. It is not sure whether in these cases Government must satisfy itself about mutual efforts of the parties to reach agreement.
Unlike the Industrial Disputes Act, the Workmen's Compensation Act is more emphatic and demanding about mutual settlement of disputed questions relating to compensation by the parties. Section 19 of the Act provides that if there is any question concerning the liability of a person to pay compensation or whether injured person is a workman or about the amount of compensation, etc., the question shall in default of agreement be settled by the Commissioner. Thus, section 19 clearly imposes a duty on the parties to make efforts for settling the disputes themselves first. It is only when their efforts to reach agreement have failed that Commissioner shall entertain the question for adjudication. Section 22 of the Act further brings home the necessity of making direct negotiations by the parties to settle disputed compensation questions. It requires that an application seeking Commissioner's intervention for determination of a compensation claim shall be made to the Commissioner only if it contains a question on which the parties have been unable to reach agreement. Such application, among other things, must contain a brief statement of matters on which the parties have agreed and of those on which they have disagreed. However, exemption has been made if the application for compensation is made by a dependant or dependents.43

Surprisingly, the Payment of Wages Act or the Rules framed under it do not make any provision which require the
parties to settle disputes concerning delayed wages or illegal deduction from the wages by voluntary negotiations. Therefore, irrespective of whether an aggrieved worker has made efforts for mutual settlement of disputed wage claim with the employer, he may approach the Authority under the Act for the determination of the same. Although the Act does not grant statutory recognition to settlements reached through voluntary negotiations, it does not prescribe any prohibition either if the parties settle disputes through voluntary negotiations. In actual practice, numerous cases are settled by parties by informal negotiations under the Industrial Disputes Act, the Workmen’s Compensation Act as well as the Payment of Wages Act.

**FINDINGS**

In the above analysis it has been seen that voluntary negotiations and compulsory adjudication as dispute settling methods are not inimical to each other. Both can function harmoniously for the settlement of employer - employee disputes. Legal framework of mutual negotiations as provided under the Industrial Disputes Act, the Workmen’s Compensation Act and the Payment of Wages Act has also been delineated. It is useful now to examine the views of the respondents about the adoption of a suitable method for the solution of labour management problems and about the causes of slow progress of mutual negotiations in the State of Jammu and Kashmir.
Table 5.2. Showing responses of workers and union leaders about the method to be adopted for settling employer-employee disputes preference-wise. (Figures in percentage).

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Method of settling disputes</th>
<th>Order of preference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>I (n=256)</td>
</tr>
<tr>
<td>1.</td>
<td>Labour adjudication</td>
<td>0.78</td>
</tr>
<tr>
<td>2.</td>
<td>Voluntary negotiations</td>
<td>99.22</td>
</tr>
<tr>
<td>3.</td>
<td>Voluntary arbitration</td>
<td>0.00</td>
</tr>
<tr>
<td>4.</td>
<td>Conciliation</td>
<td>0.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Note: Total of responses shall not correspond with the sample as the respondents had option to give more than one answer.

Table 5.2 presents the responses of workers and union leaders concerning the desirability of a method to be applied for the resolution of labour disputes. The responses have been presented in order of importance which indicates relative relevance and efficacy of a method for settling labour management issues. It is manifest from the table that of 286 responses of first preference, all (99.22 %) with one voice pointed out voluntary negotiations as the most suitable method for the settlement of claims and issues of working class.
In second preference, there were only 227 responses. Of these, a large majority (81.06%) preferred conciliation as a method for settling labour disputes. A slight proportion (17.62%), however, favoured labour adjudication in this category. In third preference, there is substantial reduction in the responses. There are only 174 responses in this preference. It has significance in that most of the respondent workers and union leaders only like voluntary negotiations and conciliation for determining labour disputes. An important feature of the response pattern of third preference is that almost all the respondents of this preference (97.70%) have favoured labour adjudication for the settlement of labour disputes. Thus, according to the preference-wise analysis of data in the table under reference voluntary negotiations occupy place of primary importance. Interestingly, there is not even a single response in any of the three preferred categories of responses in favour of adoption of voluntary arbitration for solving the labour conflicts.

In striking contrast, if the data presented in Table 5.2 is tabulated frequency-wise, order of importance of different methods is disturbed. Table 5.3 brings out the frequency-wise position of each method. It is clear from the table that in terms of frequency score voluntary negotiations get top position, as was their position according to preference-wise analysis of this data.
Table 5.3. Showing responses of workers and union leaders about the methods to be adopted for settling employer - employee disputes frequency-wise.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Method of settling disputes</th>
<th>Response frequency-wise</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Voluntary negotiations</td>
<td>257</td>
</tr>
<tr>
<td>2.</td>
<td>Labour adjudication</td>
<td>212</td>
</tr>
<tr>
<td>3.</td>
<td>Conciliation</td>
<td>188</td>
</tr>
<tr>
<td>4.</td>
<td>Voluntary arbitration</td>
<td>0</td>
</tr>
</tbody>
</table>

Note: Total number of responses shall not correspond with the total number of respondents as they have option to give more than one answer. Total of frequency score has been worked out by adding together the responses of all the given preferences.

Table 5.4 shows the results of the responses of employers in order of importance indicating their choice.

Table 5.4. Showing responses of employer about the methods to be adopted for settling labour disputes preference-wise. (Figures in percentage).

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Method of settling disputes</th>
<th>Order of preference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>I (n=57)</td>
</tr>
<tr>
<td>1.</td>
<td>Labour adjudication (%)</td>
<td>00.00</td>
</tr>
<tr>
<td>2.</td>
<td>Voluntary negotiations (%)</td>
<td>100.00</td>
</tr>
<tr>
<td>3.</td>
<td>Voluntary arbitration (%)</td>
<td>00.00</td>
</tr>
<tr>
<td>4.</td>
<td>Conciliation (%)</td>
<td>00.00</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100.00</td>
</tr>
</tbody>
</table>

Note: Total shall not correspond to the sample as the respondents have option to give more than one reply.
methods to be adopted for the determination of employer-employee disputes. It is evident from the table that among the responses of first preference all the respondents (100.00%) uniformly pointed out voluntary negotiations as the most desirable method to solve the labour disputes. In second preference, there were only 45 respondents who indicated their choice for the adoption of other methods for settling labour disputes. Interestingly, all the respondents (100%) responding in second preference indicated conciliation as the suitable method for solving labour disputes. In third preference, the number of responses remains the same as in second preference. All the respondents of third preference point out labour adjudication as other mode for deciding labour issues. Significantly, as is the case with workers and union leaders, there is not a single votary of voluntary arbitration from the employers side also.

Interpreting these data (responses in Table 5.4) frequency-wise results are much the same. Table 5.5 tabulates the data frequency-wise. It can be seen from the table that highest frequency score goes in favour of voluntary negotiations; conciliation and labour adjudication trail behind with even number.

Our respondent employers further gave valuable information regarding voluntary negotiations as dispute-settlement method when they were asked to state the procedure they follow after the arising of a dispute or claim with workmen
Table 5.5. Showing responses of employers about the methods to be adopted for settling labour disputes frequency-wise.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Method of settling disputes</th>
<th>Response frequency-wise</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Voluntary negotiations</td>
<td>57</td>
</tr>
<tr>
<td>2.</td>
<td>Conciliation</td>
<td>45</td>
</tr>
<tr>
<td>3.</td>
<td>Labour adjudication</td>
<td>45</td>
</tr>
<tr>
<td>4.</td>
<td>Voluntary arbitration</td>
<td>00</td>
</tr>
</tbody>
</table>

Note: Total of frequency-score shown in the table has been worked out by adding together the responses of all the preferences.

in their establishments. Table 5.6 shows the results of relevant data in this regard. As is evident from the table, the employers uniformly have no hesitation in stating that

Table 5.6. Showing the responses of employers about the frequency with which they adopt mutual negotiations for resolving disputes.

<table>
<thead>
<tr>
<th>S.No. response</th>
<th>Kind of response</th>
<th>Percentage of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Often (n=52)</td>
</tr>
<tr>
<td>1.</td>
<td>Mutual negotiations (%)</td>
<td>91.23</td>
</tr>
<tr>
<td>2.</td>
<td>No negotiations (%)</td>
<td>00.00</td>
</tr>
<tr>
<td>3.</td>
<td>Any other (%)</td>
<td>00.00</td>
</tr>
</tbody>
</table>

they immediately resort to mutual negotiations with disputant workmen or workmen whenever a dispute arises in their establishments. Interestingly, not even a single employer stated that they did not adopt mutual negotiations forth-with
or that they instruct the disputing workers to take recourse to other remedies than mutual negotiations. It gives an inkling into the measure of employers' confidence in mutual negotiations as dispute settling procedure. Besides, as can be seen from the table under reference, an overwhelming majority of employers (92.23%) pointed out that they take frequent recourse to mutual negotiations whenever disputes arise. On the other hand, those who did not adopt mutual negotiations frequently and adopt them only occasionally or rarely their responses are too insignificant to deserve any mention. Hence, these data provide an unimpeachable evidence of the fact that mutual negotiations are the most preferred method of settling labour disputes with the employers - whatever may be the causal factors underlying this approach of employers towards voluntary negotiations.

Against the response patterns of employers and workers about the adoption of different methods for deciding labour disputes, the response of lawyers and adjudicators in this connection presents quite a contrasty spectacle.

Table 5.7 gives an account of the responses of respondent lawyers and adjudicators concerning applicability of various methods for the resolution of disputes of working class. The responses have been recorded in order of preference. It is manifest from the table that in first preference a majority (53.33%) of the responses go in favour of adopting voluntary negotiations. Of the remaining responses, 25.33%
Table 5.7. Showing responses of lawyers and adjudicators about the methods to be adopted for settling employer - employee disputes preference-wise. (Figures in percentage).

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Method of settling disputes</th>
<th>Order of preference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>I (n=75)</td>
</tr>
<tr>
<td>1.</td>
<td>Labour adjudication (%)</td>
<td>12.00</td>
</tr>
<tr>
<td>2.</td>
<td>Voluntary negotiations (%)</td>
<td>53.33</td>
</tr>
<tr>
<td>3.</td>
<td>Voluntary arbitration (%)</td>
<td>9.33</td>
</tr>
<tr>
<td>4.</td>
<td>Conciliation (%)</td>
<td>25.33</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>99.99</td>
</tr>
</tbody>
</table>

Note: Total shall not accord with the sample as the respondents had option to give more than one answer.

support conciliation; 12.00 % labour adjudication and 9.33 % voluntary arbitration. In second preference the number of respondents has come down to 50, as against 75 in first preference. In this category out of the total responses, a good majority (62.00 %) supported conciliation. Responses for conciliation have been followed by those supporting voluntary arbitration (18.00 %). Labour adjudication trails behind voluntary arbitration with 14.00 % of responses. There is almost negligible support for voluntary negotiations in this preference (6.00 %). In third preference, the number of responses have further gone down. There are only 37 responses. In this preference, labour adjudication gets the
better of other methods with the support of 64.86% of responses. It is followed by voluntary arbitration (21.62%) and conciliation (13.51%). In fourth preference, there are only 11 responses. Of these (72.73%) want in favour of labour adjudication. With this it acquired first place in fourth preference, as was its position in third preference.

Overall picture of the data set out in Table 5.7 is that all the four methods - labour adjudication, voluntary negotiations, voluntary arbitration and conciliation - have been favoured by the respondents for settling labour disputes in varying degrees. Although voluntary negotiations have been preferred in the first preference by a narrow majority (about 50%), conciliation has taken over lead from them by its better performance in second preference and by its not insignificant score in the first preference. Overall performance of labour adjudication is also better than voluntary negotiations. This is totally contrary to the position of voluntary negotiations in other two categories of respondents (above considered) where they have got preponderant support of the respondents. The most remarkable feature of Table 5.7 is that voluntary arbitration has also been able to receive some support by which it can justify its existence as a relevant method for solving industrial disputes. This is despite the fact that it has received only marginal backing of the respondents in all the preference. This is so because among the responses of other two groups of respondents voluntary arbitration has not received even single response.
Data presented in Table 5.7 if viewed frequency-wise, more or less, the above findings are corroborated.

Table 5.8 gives frequency-wise results of the above data.

It can be observed from the table that in respect of frequency score, conciliation as a method of settling labour disputes secures precedence over all other methods. Labour adjudication follows conciliation by the difference of a narrow margin; voluntary negotiations come to occupy third place, though the difference between their frequency score and that of labour adjudication is very small. And the place

Table 5.8. Showing responses of lawyers and adjudicators about the methods to be adopted for settling employer-employee disputes frequency-wise.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Method of settling disputes</th>
<th>Response frequency-wise</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Conciliation</td>
<td>55</td>
</tr>
<tr>
<td>2.</td>
<td>Labour adjudication</td>
<td>48</td>
</tr>
<tr>
<td>3.</td>
<td>Voluntary negotiations</td>
<td>44</td>
</tr>
<tr>
<td>4.</td>
<td>Voluntary arbitration</td>
<td>26</td>
</tr>
</tbody>
</table>

Note: Total of frequency-score has been worked out by adding the responses of all the preferences.

of least importance, as it were, falls to the lot of voluntary arbitration. But, on the contrary, if only first response of the respondents is tabulated, results are again quite different. According to this method of tabulation of data, voluntary negotiations have been favoured by a narrow majority (53.33 %) of lawyers and adjudicators in comparison to other methods.
After having known the choice of the respondents regarding appropriate methods to be utilized for resolving labour disputes, it was natural and perhaps necessary to ascertain the reasons adduced by them for their selection of different methods. There could possibly be different relevant factors which might have induced different respondents for liking a method to redress the grievances of aggrieved workers. With some persons speedy removal of grievances is more important; with some simplicity and informality of a method may be relevant considerations and yet with others expense involved in availing of a remedy or the inconvenience which is necessarily entailed in taking recourse to a mode for the redressal of grievances may determine their choice.

Table 5.9 gives the results of the responses indicating reasons of three groups of our respondents for their selection of different methods for determining labour disputes. It can be seen from the table that respondent workers and union leaders favour voluntary negotiations in comparison to other methods for settling their disputes with the employers; because, in their opinion mutual negotiations are speedy means for the redressal of their grievances. Responses suggesting that voluntary negotiations are a speedy method attain prime position in terms of frequency response. A vast majority of workers and union leaders also like voluntary negotiations since they regard them as convenient
Table 5.9. Showing reasons of workers/union leaders, employers and lawyers/adjudicators for preferring a method to decide labour cases.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Class of reason</th>
<th>Workers/union leaders (n=258)</th>
<th>Employers (n=57)</th>
<th>Lawyers/adjudicators (n=75)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Class of reason</td>
<td>Number</td>
<td>Class of reason</td>
</tr>
<tr>
<td>1.</td>
<td>Speedy</td>
<td>255</td>
<td>Convenient to both parties</td>
<td>52</td>
</tr>
<tr>
<td>2.</td>
<td>Convenient to both parties</td>
<td>250</td>
<td>Speedy</td>
<td>50</td>
</tr>
<tr>
<td>3.</td>
<td>Simple</td>
<td>229</td>
<td>Simple</td>
<td>50</td>
</tr>
<tr>
<td>4.</td>
<td>Less expensive</td>
<td>228</td>
<td>Less expensive</td>
<td>48</td>
</tr>
<tr>
<td>5.</td>
<td>Informal</td>
<td>183</td>
<td>Informal</td>
<td>46</td>
</tr>
<tr>
<td>6.</td>
<td>Others</td>
<td>3</td>
<td>Others</td>
<td>2</td>
</tr>
</tbody>
</table>

Note: Total of responses shall not correspond to the total of respondents as the respondents have option to give more than one answer. Total frequency has been worked out by adding together, the responses of all the given preferences.

to both the parties involved in a dispute. At the same time, a large majority of workers and trade union leaders prefer voluntary negotiations on account of their being simple and inexpensive mode of settling disputes. Frequency response of the workers and union leaders who consider voluntary negotiations to be simple and less expensive is the same (229 & 228 respectively). Finally, a good segment of workers and union leaders opt for voluntary negotiations on the
ground of their informal character of remedying the workers' grievances. However, in respect of frequency response they lie at the lowest hierarchical position.

As has been seen above that employers, like workers and union leaders, have preferred voluntary negotiations to other remedies available for deciding labour disputes. Their reasons for preferring voluntary negotiations are also the same as those of the workers and union leaders. But the preferential order of reasons offered is slightly different. While with the workers and union leaders speedy disposal of labour disputes through voluntary negotiations is the prime cause for their liking for voluntary negotiations, convenience resulting from settling disputes by negotiations is principal factor that has induced employers to prefer informal negotiations. Prompt disposal of labour cases through voluntary negotiations is the second important reason which has led the employers to prefer negotiations. Other reasons given by the employers for adopting mutual negotiations have the same order of importance as has been shown by the reasons given by the workers and union leaders. One notable feature, however, of the causes shown by the employers for the adoption of negotiations is that informality which is characteristic of mutual negotiations has about the same measure of support as other reasons. But as is plain from the table under reference, informality as reason for adopting mutual
negotiations has been relatively given by only a small proportion of workers and union leaders.

Although, lawyers and adjudicating officers have shown conciliation as being the best method—workers and employers preferred voluntary negotiations, their reasons for adopting this method are precisely the same as were shown by workers and employers for preferring voluntary negotiations. Most strangely, as is manifest from the table under reference, the order of importance of lawyers and adjudicators' reasons for preferring conciliation is exactly identical to the one evinced by the reasons given by the employers to adopt voluntary negotiations. It appears to be curiously coincidence. It would also seem to be somewhat perplexing why this well knowledgeable group of our respondents (lawyers and adjudicators) have reposed their overriding confidence in conciliation as against voluntary negotiations for settling labour disputes. Undoubtedly, conciliation is a stretched form of mutual negotiations. That is to say, conciliation is a mode of motivating both the parties to the dispute to agree to a mutually acceptable settlement and it is done through some external agency. But the very fact that dispute is, of necessity, brought to a third party for bringing about compromise indicates that spontaneous urge and initiative which are so essential for reaching mutual agreement have been fully exhausted. One possible cause for adjudicators' and lawyers' preference for conciliation over
voluntary negotiations would appear to be that they are not as intimately acquainted with the conditions and requirements of the parties to the labour disputes as the employers and workers themselves are. And this is more so in case of the preponderant majority of lawyers forming part of our sample who are generally practicing law as distinct from having specialized practice in labour matters only.

Needless to state that settlement of labour management disputes through mutual negotiations has become common and most remarkable feature of industrially advanced countries such as America, Sweden, England, etc. In fact, the very scope and conditions of workers' industrial employment, in these countries are determined by the terms of collective bargaining agreements made by the two sides of industry. In the light of successful operation of the institution of collective bargaining in other countries, our respondents were specifically required to divulge as to whether they would like to adopt process of voluntary negotiations, keeping in view their success and effectiveness in other countries. Table 5.10 shows the results of the responses of three groups of our respondents about whether they liked mutual negotiations for settling disputes because of their success in other countries. It is plain from the table that an overwhelming majority of workers (83.98 %) would prefer the adoption of voluntary negotiations because of their success in other countries. On the other hand, a small number of workers (16.02 %)
Table 5.10. Showing the responses of workers/union leaders, employers and lawyers/adjudicators about the adoption of voluntary negotiations due to their success in other industrially advanced countries.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Kind of response</th>
<th>Workers/trade union (n=256)</th>
<th>Employers (n=57)</th>
<th>Lawyers/adjudicators (n=75)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>84.98</td>
<td>84.12</td>
<td>54.67</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>00.00</td>
<td>14.30</td>
<td>25.33</td>
</tr>
<tr>
<td>3.</td>
<td>Can't say/ don't know</td>
<td>16.02</td>
<td>1.75</td>
<td>20.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100.00</td>
<td>99.99</td>
<td>100.00</td>
</tr>
</tbody>
</table>

displayed their inability to say anything regarding this matter. Notably, not a single worker or union leader stated that voluntary negotiations are not to be adopted on account of their success in other countries. Workers and union leaders, illiterate as they are, have practically little knowledge of the remedies available for the removal of their grievances, as also of numerous other matters of their vital concern, in the industrial relations system of their own country, let alone their knowledge of industrial relations systems of other countries. It seems that workers, by and large, have predisposition for mutual negotiations due to convenience and speed involved in the settlement of labour cases through mutual negotiations, given, of course, goodwill and spirit of give and take on the part of both the parties. Besides, it is innate conviction of workers as well as of employers and all other concerned with the welfare
of industry that voluntary settlement really pacifies both the parties, and, thereby, eradicate the root cause of their conflict.

Table under reference further makes it evident that like workers and union leaders an overriding majority of employers (84.21%) also wish to opt for voluntary negotiations on the ground of their success in other industrially advanced countries. Only a handful of respondents (14.3%) do not want adoption of voluntary negotiations because of other countries successful experiment with them in respect of settling labour management conflicts. Employers' propensity for voluntary negotiations is but natural. They have every advantage in taking recourse to negotiated settlements for their disputes with workers. First, they invariably possess superior bargaining power to that of the aggrieved workers. It is especially so if the aggrieved worker is being represented by himself alone on the bargaining table or where the union assisting or representing the worker is an effete or puppet one. As has been considered above intra-union rivalries are proverbial in this country. Union rivalries eat into the vitals of workers' organizations as their potent bargaining representatives. Not infrequently, union rivalries are fostered by employers and managements themselves if it furthers their interest. Secondly, it is generally against the interest of employers and managements if a dispute is not settled within the precincts of the
the factory and has perforce to be entrusted to an outer agency for composition or decision. At any rate, it evidently hurts the feelings of an egocentric employer when a dispute is put into the hands of a third party for settlement, much against his wish.

In contrast with the response of employers and workers, small majority of lawyers and adjudicators (54.67 %) responded positively that voluntary negotiations are solving disputes in other countries effectively and as such they are to be applied in the state of Jammu and Kashmir for settling industrial disputes. On the contrary, a good number of lawyers and adjudicating officers (25.38 %) disagreed to adopting mutual negotiations on this score only. Further, nearly an equal number of lawyers and adjudicating officers (20.00 %) showed lack of knowledge of this matter. Therefore, if the respondent lawyers and adjudicators saying that voluntary negotiations cannot be followed on the sole ground of other countries' successful experience with them and those refusing to express any opinion are taken together, they constitute a fairly significant minority (45.33 %) of this group of our respondents. This variation in the response patterns of different groups of respondents is easily explicable. Workers' disposition for voluntary negotiations may well be attributed to expense, time, and botheration involved in other methods such as conciliation and adjudication for resolving the disputes.
To employers there is no other more convenient and handy method available than bipartite solutions for their disputes with the workers. Lawyers and adjudicators comparatively educationally and intellectually being better equipped, might not like to make blind imitation of other countries' institutions and methods without assessing the feasibility and desirability of adopting them to local conditions. Thus, of the 19 lawyers and adjudicating officers who stated that mutual negotiations cannot be adopted because other industrial countries have adopted them, 36.84% gave this reply on account of differing conditions and environments in India and the state; 26.32% pointed out low moral character of people in India and 10.53% indicated widespread illiteracy as the cause. It is, however, not safe to draw any inference with necessary degree of reliability from these figures as the data represented by them is extremely insignificant.

Finally, our respondents transmitted valuable information from their experience concerning the reasons for the unpopularity of mutual negotiations in the state of Jammu & Kashmir. The state of Jammu & Kashmir is one of the most backward states of the country. In industrial sphere, as in others, it has not made any notable progress. As noted earlier, only recently the state has embarked upon the process of industrialisation in modern sense. Naturally, under such circumstances there were fewer labour issues and problems to be tackled. Correspondingly, the
less was the need for adoption of various methods for 
deciding labour disputes. The result was that there was 
no occasion for getting adequately acquainted with the 
relative merits of the available methods for settling 
labour disputes.

Collective bargaining in a real sense - in the 
sense of regulating and determining the terms and conditions 
of employment by collective agreements - is, by and large, 
unknown in the state. Even where the voluntary negotiations 
are applied for resolving individual or collective disputes, 
they operate in haphazard and unconscious manner without their 
true spirit and import being imbibed by the majority of 
working class. For the effectiveness of voluntary negotiations 
or for that matter of the institution of collective bargaining, 
unity and collective strength of workers is indispensable. 
There is perceptible lack of adequate empirical evidence to 
demonstrate this fact. Data produced in Table 5.11 provide 
empirical support for some of the above observations. Putting 
the data - data indicating reasons for the relative 
unpopularity of voluntary negotiations in the Jammu and 
Kashmir state - frequency-wise, as is shown in Table 5.11, it 
is clear that with workers and union leaders most important 
cause for unpopularity of voluntary negotiations is the lack 
of developed trade unionism or absence of healthy 
growth in the state. In terms of frequency score this 
cause for unpopularity of voluntary negotiations in the
<table>
<thead>
<tr>
<th>Reason</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Unpopularity of volume-</td>
<td>trade union</td>
</tr>
<tr>
<td>2. Unpopularity of volume-</td>
<td>trade union</td>
</tr>
<tr>
<td>3. Due to government's</td>
<td>due to government's</td>
</tr>
<tr>
<td>4. Due to government's</td>
<td>due to government's</td>
</tr>
<tr>
<td>5. Due to government's</td>
<td>due to government's</td>
</tr>
<tr>
<td>6. Don't know/other</td>
<td>for adscription</td>
</tr>
<tr>
<td>7. Adscription is greater</td>
<td>for adscription</td>
</tr>
<tr>
<td>8. Official pre-disposition</td>
<td>for adscription</td>
</tr>
<tr>
<td>9. Official pre-disposition</td>
<td>for adscription</td>
</tr>
<tr>
<td>10. Official pre-disposition</td>
<td>for adscription</td>
</tr>
</tbody>
</table>

**Note:** Total shall not correspond with the sample as the respondents have option to give more than one answer. The frequency response has been worked out by adding the responses of all who answered 'none.'
state occupies top position. Next important factor accounting for unpopularity of negotiations according to the frequency response is the governments' callous attitude towards negotiations, that is, absence of any positive efforts on the part of government to popularise the utility and desirability of adopting voluntary negotiations as a means of settling labour disputes. Again, easy availability of adjudicating remedy and illiteracy respectively are other two reasons (in descending order) which in workers' and union leaders' view are responsible for the slow growth of voluntary negotiations in the state.

With employers, like workers, absence of development of trade unions or healthy growth of trade unions and government's callousness towards voluntary negotiations respectively are the two leading causes for the lack of popularity of voluntary negotiations in the state. Illiteracy and easy availability of adjudicatory remedy respectively are the other grounds shown by the employers which inhibit the growth of voluntary negotiations.

Like workers and employers with lawyers and adjudicating officers too, absence of development of unionism or its healthy growth is the chief cause of unpopularity of voluntary negotiations in the state. It has been followed in downward order by the indifference of government towards voluntary negotiations, illiteracy and official predisposition
for adjudication. Among the responses of this group of respondents, availability of adjudicating remedy has been pushed down to an inferior place with lowest frequency score. An important feature of the responses of lawyers and adjudicators is that official pre-disposition to adjudication, which no response from other two groups of respondents, acquires some measure of recognition for being a possible cause for the unpopularity of mutual negotiations in the state from the lawyers and adjudicatory officers. Other variation emanating from the responses of different groups of respondents is in regard to the contribution of illiteracy in slowing down the process of voluntary negotiations. While with employers as well as lawyers and adjudicating officers, illiteracy has got third place in terms of the frequency score, among the responses of workers and union leaders it has been pushed down to forth place.

However, if only the responses of the respondents in first preference are tabulated, a different response pattern appears to emerge. Table 5.12 below tabulates the responses given by the respondents in first preference only. The resultant response pattern as shown by the table is uniform among all the categories of responses. In other words, causes that have become known for unpopularity of voluntary negotiations in the state by the responses of three groups of respondents are the same and have the same order of importance. At top, lies the absence of trade union
<table>
<thead>
<tr>
<th>S. No</th>
<th>Reason for Discharge</th>
<th>Number of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unfeasibility of Voluntary Negotiation</td>
<td>129</td>
</tr>
<tr>
<td></td>
<td>Employees and Unions (n=286)</td>
<td>57</td>
</tr>
</tbody>
</table>

Table 5.22. Showing responses of first preference only of workers/union leaders.
development or healthy growth of unionism. It is followed
by illiteracy and governments' indifference to negotiations.
The most revealing characteristic of the data presented in
Table 5.12 is that illiteracy has come up as second ground
(first being the absence of trade union development)
accounting for comparative unpopularity of voluntary
negotiations in the state as a result of tabulation of the
first response of the respondents only. As has been seen
above, although illiteracy has been found to be one of the
causes of the slow growth of voluntary negotiations as a
result of frequency-wise tabulation of the data in question,
it was lying at lower hierarchical position in comparison
to other causes. Moreover, other reasons, namely, easy
availability of adjudication and official disposition to
adjudication, especially the former, which have frequency-
wise significant position, have received practically
negligible response in the first preference response of the
respondents.

Table 5.13 indicates the time spent in reaching
mutual settlements by the parties after the commencement of
adjudicatory proceedings before the adjudicating authorities.
It is shocking to find that some disputes have taken as many
as twenty-seven and more months for compromise settlements
after the initiation of adjudicatory proceedings; whereas,
as is clear from the table, a number of compromise
settlements have been effected during the period
between eleven and twenty-three months. Further,
Table 5.13. Showing the time spent in making compromise awards after the institution of cases before labour adjudicating authorities.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Time spent for making consent awards (in months)</th>
<th>Number of cases (n=113)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>0 - 1</td>
<td>7</td>
</tr>
<tr>
<td>2.</td>
<td>1 - 3</td>
<td>23</td>
</tr>
<tr>
<td>3.</td>
<td>3 - 5</td>
<td>17</td>
</tr>
<tr>
<td>4.</td>
<td>5 - 7</td>
<td>12</td>
</tr>
<tr>
<td>5.</td>
<td>7 - 9</td>
<td>18</td>
</tr>
<tr>
<td>6.</td>
<td>9 - 11</td>
<td>4</td>
</tr>
<tr>
<td>7.</td>
<td>11 - 13</td>
<td>9</td>
</tr>
<tr>
<td>8.</td>
<td>13 - 15</td>
<td>4</td>
</tr>
<tr>
<td>9.</td>
<td>15 - 17</td>
<td>3</td>
</tr>
<tr>
<td>10.</td>
<td>17 - 19</td>
<td>3</td>
</tr>
<tr>
<td>11.</td>
<td>19 - 21</td>
<td>7</td>
</tr>
<tr>
<td>12.</td>
<td>21 - 23</td>
<td>3</td>
</tr>
<tr>
<td>13.</td>
<td>23 - 25</td>
<td>0</td>
</tr>
<tr>
<td>14.</td>
<td>25 - 27</td>
<td>1</td>
</tr>
<tr>
<td>15.</td>
<td>27 and above</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>113</td>
</tr>
</tbody>
</table>

A majority of cases culminating in mutual settlements have been decided within nine months from the start of adjudicating proceedings. Compromise solutions are, doubtless, the best remedy available in industrial relations field to solve employer-employee disputes. The utility of this remedy for the maladies of industrial conflicts, as seen earlier, has been repeatedly emphasised by the highest judicial court of the country as well as various adjudicatory functionaries.
in the labour management field. Yet, if the compromise agreements are reached after waste and expending of considerable time, energies and money, it reflects highly unimaginative and feeble-minded approach of those connected with the industrial relations system towards voluntary negotiations as an ideal method of settling disputes.

**CONCLUSIONS**

The main conclusions of the discussion of this chapter are that: our respondent workers, employers, lawyers and adjudicating officers like three methods, namely, voluntary negotiations, conciliation and adjudication for solving labour disputes. These methods have, of course, been favoured in varying degrees by the respondents. Thus, voluntary negotiations have been accorded primary among the responses of workers and employers. Conciliation and labour adjudication respectively follow voluntary negotiations. On the other hand, according to response of first preference, lawyers and adjudicators also accord primary position to mutual negotiations. But in terms of frequency response (response of all preferences) conciliation acquires top position. Labour adjudication gets second preference, whereas voluntary negotiations attain third place.
Strangely enough, advocates of voluntary arbitration are woefully lacking among workers as well as employers, though among lawyers and adjudicators this method has been able to secure some semblance of empirical basis for its justification as a remedy for resolving labour disputes. It would appear that respondents, by and large, are prepared to accept labour adjudication only as an unavoidable course available to them when voluntary negotiations and conciliation have failed to solve a dispute. Consequently, given congenial environment for the conduct of voluntary negotiations, spontaneous zeal and good will on the part of the parties to resolve their disputes themselves and the presence of imaginative and dynamic neutral agency to break deadlock of the disputing parties by bringing home to them the utility of mutual settlements and futility of litigation, the need for utilizing adjudicatory remedy would be rare and minimal, if not to be fully obviated.

Reasons shown for the preference of voluntary negotiations to other methods by the majority of all groups of respondents are speed, convenience, simplicity, inexpensiveness and informality which have been associated with voluntary negotiations as dispute settlement procedure, though relatively informality as ground for adoption of mutual negotiations has received lesser degree of support compared to other grounds. According to available evidence there is no discrepancy among the three groups of our respondents in
regard to placing more emphasis on one reason against the other excepting a minor one. It is regarding the speed and convenience as characteristics of voluntary negotiations. Thus, while workers and union leaders have accorded primary importance to speed in comparison to convenience for preferring negotiations, employers, lawyers and adjudicators have placed before emphasis on convenience than on speed. Apart from the above reasons offered for choosing voluntary negotiations for settling labour disputes, there seems to be instinctive fondness for voluntary negotiations of the respondents. It is an innate conviction of every body concerned with industrial affairs that mutual agreements, whether reached themselves by the parties or brought about by the mediation of a third party, are the most effective and amicable way of bringing a dispute to an early end and eliminating root cause of animosity between them. It is generally felt that mutual agreements help generate harmonious atmosphere which is essential for the establishment of more lasting industrial peace and for turning out uninterrupted production.

Next, a preponderant majority of workers and employers and majority of lawyers and adjudicators too expressed their willingness to select mutual negotiations in preference to other methods for deciding labour disputes on account of their success in other industrially developed countries. While workers and employers, at any rate, tend to prefer voluntary
negotiations for their own divergent reasons, regardless of whether they have requisite knowledge of labour dispute settlement procedures of other countries, a sizable minority of lawyers and adjudicators did probably rightly point out that mutual negotiations ought not to be adopted because of their being successful in other countries since conditions, environments and temperaments are different in different countries.

Finally, the respondents gave varied reasons for the slow pace of the progress of voluntary negotiations in the state. The reasons given by them were mainly the absence of development of trade unionism or absence of its development on healthy lines, illiteracy, government's indifference towards voluntary negotiations and easy availability of adjudicating remedy. The evidence to corroborate the detrimental effect of want of developed trade unionism or its healthy growth and of illiteracy on voluntary negotiations is impregnable. But the same does not appear to/true of two other reasons, namely, government's callousness towards voluntary negotiations and easy availability of adjudicatory remedy as the evidence to prove the negative impact of these reasons on the promotion of negotiations is tenuous, so as it would not be safe to draw a credible inference.
In addition to above, employers' high-handedness, ego-centrism and treating workers as make non-entities (especially in case of private employers), disinterestedness and casual behaviour of managerial staff of public sector undertakings have also hindered the rapid success and growth of voluntary negotiations in the state.
Foot Notes


2. For the purpose of this study term voluntary negotiations denotes the method of settling issues and claims of labour, whether individual or collective, by direct negotiations between the employees and employer without the interference of a third party. As such this term does not encompass the whole purport of the concept of collective bargaining which envisages agreement between the capital and the labour laying down the terms and conditions of employment.

3. Adjudication is a juridical method of settling disputes. In International Encyclopaedia of the Social Sciences (p.508, Vol.8) adjudication has been defined as: "... a mandatory settlement of industrial disputes of courts of justice or administrative tribunals with specialised jurisdiction in the labour management field. Adjudication is used either for ascertaining the legal rights of the parties under regulatory statutes or for interpreting and applying the terms of collective agreements...".

4. Ludwig Teller has defined collective bargaining as: "an agreement between a single employer or an association of employers on the one hand and a labour union on the other, which regulates the terms and conditions of employment". (Ludwig Teller on Labour disputes and Collective Bargaining Vol.1, p.476). Collective bargaining as defined in Industrial Relations Handbook, 1961, p.18 is the term "Collective bargaining is applied to those arrangements under which wages and conditions of employment are settled by a bargain in the form of an agreement made between employers or association of employers and workers organisations" (as quoted in the Worker and Law, 1965, p.101 by K.W. Wedderburn). While delineating on the purposes of collective bargaining Kahn - Freud has stated thus: "... by bargaining collectively with organised labour, management seeks to give effect to its legitimate expectations that the planning of production, distribution, etc., should not be frustrated through interruptions of work. By bargaining collectively with management, organised labour seeks to give effect to its legitimate expectations that wages and other conditions of work should be such as to guarantee a stable and adequate form of existence and as to be compatible with the physical integrity and moral dignity of the individual, and also that jobs should be reasonably secured" (Otto Kahn-Fraud, Labour and the Law, 1972, p.55). In International Encyclopaedia of Social Sciences (Vol.8,p.491) the scope of collective bargaining has been described thus:"...the content and the scope of collective bargaining vary from country to country. The issues in
collective bargaining, broadly speaking, relate to wages, hours of work, various benefit provisions, and other terms and conditions of employment. Also involved are questions concerning the recognition and status of union and collective bargaining procedures ... "; see also, May Sir. Collective Bargaining, edn., 1965, pp. 1-15.


12. The Indian Express, Tuesday, November 25, 1980, p. 5; The Indian Express (Chandigarh) Sunday Standard, April 20, 1980, p. 3; The Indian Express (Chandigarh) Sunday Standard, June 8, 1980, p. 3; The Indian Express (Chandigarh) Saturday, May 3, 1980, p. 3; The Indian Express (Chandigarh) Thursday, April 17, 1980, p. 3; The Indian Express (Chandigarh) Saturday, April 5, 1980, p. 4; The Indian Express Thursday (Chandigarh) April 3, 1980, p. 5; The Indian Express, Chandigarh, Saturday, March 29, 1980. The Indian Express (Chandigarh) Friday, June 5, 1981, p. 7. In Jammu & Kashmir state, in the Kashmir Province state Central Labour Union is the major organisation of workers in public sector undertakings. It is affiliated to the ruling party, National Conference. Its smooth functioning is seriously marred by inter-groupism. In Public sector undertakings in the Jammu Province, apart from its internal groupism, State Central Labour Union is facing stiff competition from other rival trade unions such as INTUC and AITUC. In big private establishments such as Chensab Textile Mills (Kathua) there are rival trade unions dominated by local working people and non-residents of the State working in them. It is not unusual that rivalries between these unions lead to serious industrial violence and bloodshed with management
invariably patronizing unions formed by non-locals. Indeed, in Jammu region in recent years occurrence of violence involving workers' rival groups of workers and police has become regular phenomenon. Such an atmosphere hardly permits the conduct of mutual negotiations for the settlement of disputes, let alone its being congenial for the smooth operation of institution of collective bargaining. In small private business undertakings there is hardly any union looking after the interest of workers in them. Remedy of voluntary negotiations is practically meaningless for the workers of these establishments because a single worker or for that matter two or three workers can rarely dare to talk confidently with the employer, not to speak of negotiating on equal footing. This writer has the bitter experience of seeing miserable lot of the workers working in private establishments except a few big ones wherein the labour is mercilessly exploited by ever rapacious employers. Workers in these establishments are mostly unorganised. Even where they are organized, their position is hardly different. Thus these people neither know anything about bargaining, nor do they know about the statutory remedies such as conciliation, arbitration and adjudication. Many perhaps among them (including union leaders) even do not know about the labour courts, authorities under the Workmen's Compensation Act, the Payment of Wages Act, etc.

17. Mohd. Magbool Parimoo vs. Executive Engineer Electric Rema Grid Station (Srinagar) Kashmir, Case File No. 60/L.C.(1979), Industrial Tribunal/Labour Court J&K.
24. Australian Industrial Relations system, which envisages substantial role for compulsory arbitration for solving industrial conflicts, has not obstructed the growth of trade unions. Rather, it has been proved as a valuable prop for their stupendous growth. Trade union activities are not only going on there normally and smoothly, but that country has emerged as one of the most unionised countries of the world (Arjun P. Aggarwal J.I.L.L., Loc. cit, p. 52).


26. Industrial Disputes Act, 1947, Sections 23 (b)(c); Sec. 24


28. Constitution of India, Article 19 (1) and (4).


31. While conducting field study, many such cases came to light. Attention of this investigator was specifically drawn to three cases involving termination of services of aggrieved workers. Government refused to refer these cases for adjudication. Aggrieved workers were unable to move the High Court for want of money.

32. MARY SIR, Collective Bargaining, 1965 edn., 0.78.


38. MARY SIR, op. cit., p. 72.

39. In America, unlike India, there is statutory obligation to bargain, see, for example, Labour Management Relation Act of 1947, §§ 7,8(a)(3) and 9(a) (5); Similarly in Australia Statutory provision requiring the parties to enter into mutual negotiations for settling their disputes exists. It is only after the failure of the parties to reach agreement that the matter becomes subject of compulsory arbitration. Section 32
of Commonwealth Conciliation and Arbitration Act, 1904 - 70 reads: "Conciliation and Arbitration Commission shall determine the disputes but only if no agreement between the parties is arrived at".

40. Mary Sur, op. cit, p. 74

41. Ibid.

42. Section 18(1) of the Industrial Disputes Act was incorporated in 1956 by an amendment to the Act.

43. Section 22(1) & (2) (d) of the Workmen's Compensation Act.

44. See, supra notes 11 & 12

45. Most of the modern industrial establishments have been set up in the state in late sixties and seventies. Many industrial concerns are presently being commissioned.

46. Workers of small private concerns are constant victims of whims, high-handedness and arbitrariness of employers. Their lot is pitiable as they have little bargaining power and negotiating skill.

47. See supra note 12.