CHAPTER 2

CONCEPTUAL BASE

The task of the present chapter is to derive a conceptual base for the present study by surveying the theoretical and empirical literature on industrial disputes. The chapter has been organised in four sections. Section one presents the chart highlighting the process of occurrence of industrial disputes, the settlement process, and the factors which determine the effectiveness and efficiency of the settlement process. Further the section defines "industrial disputes" and their "settlement" as they are used in the present study. The theoretical and empirical literature has been surveyed in order to discern the possible causes of industrial disputes (Box 1 of the chart), and their settlement (Box 2) in sections two and three, respectively. The fourth section (Box 3) explains the factors which determine the effectiveness and efficiency of the settlement process.

2.1 Conceptual Base: A Bird’s eye-view

The term "industrial disputes" in the literature including government publications, writes Johri, is used to denote work-stoppages as well as those differences between labour and management that are settled through the industrial relations machinery. To avoid this confusion, the term "strikes" has been used in this study for denoting the former, and "industrial disputes" for the latter although strike is a

form of industrial dispute. The distinction between the two terms is based on their classification in the I.D. Act. The Punjab Labour Department also distinguishes between the two by categorising them as such. Further, since lockouts are generally preceded by strikes, therefore, the term "strikes" wherever used here may include lockouts also. Term "industrial dispute" here carry the same meaning as laid down in section 2(K) and 2-A of I.D. Act, keeping these definitions as base, disputes raised under section 2(K) of the Act have been identified and named in the present study as "Collective Disputes"; and disputes raised under section 2-A of the Act have been identified and named as "Individual Disputes". Collective disputes, involving a group of workmen and thereby raised by them jointly have also been referred to as Demands or Interest disputes. Individual disputes being differences or controversies about discharge, dismissals, termination, etc. of a single workman, have also been referred to as Termination or Right disputes, in the present study.

Every industrial dispute occurs in the context of some environment. The contextual factors of environment may be categorized 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 interaction of these factors may result in a manner which is considered as conducive or otherwise for the functioning of the organisation. One aspect in which the non-conducive impact may manifest itself will be in it.
occurrence of industrial disputes. A responsive organisation, however, attempts at preventing the occurrence of industrial disputes through evolving a suitable mechanism like better communication, effective grievance procedure, works committees, joint management councils, etc.

The occurrence of an industrial dispute per se may not be undesirable, its non-settlement is certainly dysfunctional. Particularly, the extreme situations of strikes, etc. can be catastrophic in terms of economic and social costs involved. Hence, settlement of industrial disputes assumes utmost importance.

The meaning of settlement in relation to disputes, in dictionary sense, is "to decide, to decide by arrangement between the contesting parties", obviously, what is decided by the settlement is the dispute. Every settlement is an arrangement or agreement though every arrangement or agreement is not a settlement. To call any arrangement or agreement a settlement "the agreement or arrangement must decide some part of the dispute or some matter in the dispute or decide the procedure by which the dispute is to be resolved. Thus, a settlement only settles the matter or matters in dispute which it settles."

Settlement of any industrial dispute may be achieved by way of self-settlement or assisted settlement or through imposed settlements, depending upon the parties involved. Self-settlement can be achieved through collective bargaining, termed as Agreed-settlements, or by a belligerent action.

Assisted-settlements and imposed-settlements both involve third party intervention, where an intervener just assists the parties to reach an agreement, it is called an Assisted-settlement. But, when the intervener decides or determines the disputes on the basis of the merits of the case, the process is called as Imposed-settlements. The intervener in Assisted-settlement is not vested with power to force a settlement though in Imposed-settlement, decision of the intervener is binding for a stated length of time.

Section 2(p) of the Industrial Disputes Act, defines Agreed and Assisted type of settlements. Imposed-settlements are dealt with under S. 2(b). Whereas the settlements provided under S. 2(p) have been termed as "Settlements", the settlements done under S. 2(b) have been called as 'Awards'. Our concept of settlement extends beyond the definition given under S. 2(p) and it embraces what has been termed as Award under section 2(b). The reason for this is that settlement of any dispute is just the determination of the dispute or any matter in the dispute whether achieved mutually or with the intervention of a third party. Moreover, as per Malhotra3,

settlement at conciliation level has been equated with the Award, as per s. 18(3) in respect of its binding effect. Further, as per decision in the Andhra Handloom Weavers vs. Coop. Society, the object of decision called Award is to resolve the differences between the disputants. In Union of Workers vs. State of Bihar, it was observed that the "Settlement of the dispute would include an agreement between the Union of workers and the management that particular item of a dispute between them should be decided by a third party and its decision should be accepted by them as final."

On the basis of above discussion, settlement, in the context of the present study, has been defined as an arrangement or agreement by which a dispute, in its totality or in respect of some matter contained in the dispute or procedure by which dispute is to be sorted out, is resolved either mutually or with the assistance of the third party, either imposed by law or mutually accepted by the disputants.

Efforts to settle industrial disputes may be belligerent or of peaceful nature. Since belligerent settling disputes involves human unhappiness and misery in addition to heavy economic cost, it must be avoided. Moreover, it is the fundamental duty of any government based on law to provide for an orderly procedure for the settlement of industrial disputes. Orderly and peaceful process of settle-

ment ranges from self-settlement to Assisted-settlement. Self-settlement is a process whereby workers individually or collectively settle the disputes with the management. When workers/unions collectively try to settle the dispute, through negotiations with the management, the method is called 'collective Bargaining'. This bipartite method of settlement, may result in agreed-settlements by way of signing the private mutual agreement or may result in the signing of a mutual agreement but drawn as per provisions of the concerned law of the land. Else, it may not result in signing of the mutual agreement. In that case, assistance of an outside agency may be required to avert direct action, by either of the parties. The outside agency may be available privately or may be provided by the Government for assisting in reaching a settlement. The statutory agencies available to the organisation for settlement of industrial disputes 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, called as Memorandum of Settlement or may result in withdrawal of the dispute or in failure. Failure in conciliation may result either in parties agreeing for voluntary arbitration by a disinterested but mutually appointed third party known as Arbitrator, or on not agreeing for voluntary arbitration, may jointly agree for reference to, or Government herself may make a reference of an unresolved dispute to a decision by the
third party - adjudicator - appointed by the Government under law of the
and.

The decision given by an Arbitrator or an Adjudicator,
known as Award, is Imposed-settlement, under the Assisted-
settlement category. Award of the Arbitrator or Adjudicator
is binding and final and no appeal, except under certain
provisions of the Constitution, lies against it.

Settlement process of Industrial Disputes, as shown
in box 5 and explained above is to be judged in the context
of its effectiveness and efficiency, i.e., the extent to and
the cost, which the settlement machinery has been able to achieve
the objectives for the attainment of which it has been
constituted.

The major determinants in effectiveness varies from
methods of settlement (see the last box). In self-settlement,
i.e., collective bargaining, the major determinants are (1)
relative strength of the parties. Settlement is hoped to be
more effective where both union and management are of equal
strength. In assisted-settlement, i.e., conciliation, image
of the conciliator, law and political intervention may determine
its effectiveness. Under imposed-settlements, i.e., voluntary
arbitration and adjudication, the determinants are the image
of arbitration/adjudication system as such, statutory
provisions in respect of arbitration/adjudication, whether
decision is given in terms of merits of the case or in terms
of mutual settlement arrived at between the parties, etc.
Effectiveness will also depend upon the state of implementation
of agreements, settlements and awards. Efficiency in terms of cost at which the objectives of machinery are being achieved will be measured in terms of time taken for reaching at settlement and announcement of award.

2.2 Causes of Industrial Disputes

Industrial disputes, whether raised before industrial relations machinery or involving strikes arise due to variety of causes, which may broadly be termed as economic and non-economic, though it is a matter of controversy whether the prominent factors underlying industrial disputes are economic or non-economic. The studies by Mayo and his associates emphasise the importance of non-monetary factors such as supervisory attitude and behaviour, work satisfaction, morale and group membership. Houser, showed that financial frustrations ranked 10th in the list. Moore held that money was an important work-incentive in industrial societies, reason being that there are so few other types of interests directly consistent with the industrial mode of division of labour, and also that money was such a useful thing to secure the fruits of production. Katz concluded that so long as income remained the all important means for satisfying human wants and needs, wage would continue to be a major consideration in industrial conflict. Contrary to earlier studies,


Daherndorf suggested that to foist economic and non-economic approaches in the explanation of industrial conflict is misleading. Eldridge showed, through various case studies, that political, economic, reformist and revolutionary goals might coexist in the proceedings. Semelser summarised the major explanations of conflict leading to strikes as follows:

1. The 'economic advantage' school which maintains that the labour unions are in business and attempt to maximise the wage gains of their members.

2. The 'job security' school focusses its attention on the decision of workmen to protect their interests and conditions of service in the long run rather on the short-term wage gains.

3. The 'Class warfare' school which attributes the worker unrest to the fact that the working class suffers from systematic exploitation at the hands of the capitalists.

4. The 'political school' which emphasises political conflict between unions and management over the recognition of unions, and collective bargaining, jurisdictional disputes among unions and internal leadership rivalries.

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5. Th 'Human relations' school is associated with the inustrial sociology of Mayo and his followers. Broadly speaking, this school traces basic dissatisfaction among labogers to the break-down of primary groups among workers and the lack of communication and understanding between management and workers.

Devasayam's study concluded by saying that inadequate pay, bad housing and working conditions might be regarded as the major causes of tension.13 Punekar distinguished between the short term aspect that led to industrial hostility (e.g. wages, prices, working conditions, working hours and cost of housing) and the long term aspect (e.g. speed of industrialisation and the transition of values).14 Ball Rajeshwara Rao showed that salary was an important but not the only reason for causing either satisfaction or dissatisfaction.15 De and Srivastva while studying gherao movement, found that factors contributing to ghraos were the aggressive employer response and deep frustration of workers with the patterns of industrial relations.16 Parmod Verma's study found that inflationary conditions have significantly influenced strike activity in India.17 Sarma's study reveals that both union and workers...

gave first reference to lack of promotion as the reasons of labour est.18

Summing up, all these studies have shown that several economic and non-economic factors have caused the emergence of industrial disputes.

2.3 Settlement Process

A number of researchers in the industrial relations field have suggested/offered a number of theories and models to settle the disputes and establish industrial peace and harmony. Perhaps, the most pervasive and acknowledged approach is that of John T. Dunlop.

Dunlop's notion of industrial relations system19 (hereinafter to be referred as IRS) is based on the concept of social system which stands for an orderly arrangement of parts that are functionally interrelated and interdependent. On this argument a social system (which as a whole society, its industry, or an industrial unit) can be regarded as comprising various sub-systems such as economic, political, etc. In an industrial set-up, one of the sub-systems in the total set of labour-management relations, which can be called the industrial relations system, Dunlop identifies the following four components - of the IRS:

1. Actors: These are: (a) a hierarchy of managers and their representatives in supervision; (b) a hierarchy of workers and their representatives; (c) specialised government agencies concerned with worker enterprises and their relationships.

2. Contexts: These are: (a) the technological characteristics of the workplace and work community; (b) market or budgetary constraints, which impinge on the actors and (c) locus and distribution of power in the larger society.

3. A body of rules governing the actors at the workplace and work community. These include procedures for establishing rules and procedures for applying the rules.

4. Ideology: A set of ideas and beliefs commonly held by the actors that help to bind or to integrate the system.

Accordingly, if one wants to understand any aspect of industrial relations, settlement of industrial disputes in our context, in a firm or industry and solve problems such as that of strike threat, one needs to relate the industrial relations to the facts about technology, market rules and regulations, and the beliefs guiding both the parties.

Shepard lists possible responses of groups to conflict as ranging from suppression (destructive and primitive conflict) to cooperation and accommodation.
method) through bargaining (partially destructive and modern method) to problem solving (civilized and not yet attained method).

Blake et al suggest three alternative approaches to the problems of dealing with conflict:

1. Conflict is inevitable, agreement is possible, on this view, one may decide to fight it out. This would result in a win-lose power struggle. In this type of situation, main issues of struggle can hardly be resolved.

2. Conflict may not be inevitable but agreement is not possible (in a given situation). On this assumption, parties may decide to withdraw from interaction or become indifferent to the problem they face. This approach also may provide temporary satisfaction and benefits to some, but may not lead to any meaningful resolution of conflict.

3. Although conflicts may arise in various situations, agreement is possible. This is regarded as the most positive approach in dealing with conflicts. Here, both parties would recognise that there is a need for solving the problem that has arisen. On this premise, parties may begin interacting with each other. The problem may first be identified and then ways and means be devised to solve it. A typical example of this method is collective bargaining.

Erl Rhenman\textsuperscript{22} considers conflict a social disease and hence felt committed to remove the causes of conflict as an essential to curing the malady. According to him, "the introduction of democracy into working life has often been regarded as just such a remedy for this serious social ill." Democracy implies the existence of joint decision-making, where management gradually cedes a part of its freedom and as a recompense wants workers to show a greater confidence about their willingness to co-operate with the company. But joint-decision making is always not successful, so Rhenman recommends for institutionalising the conflict for its resolution, whereby definite rules and procedures for resolving the conflict are laid down:

Mergerison\textsuperscript{23} in his industrial relations model makes an analysis of the emergence of three types of conflict. He stresses that his types are not mutually exclusive. The first type of conflict i.e., distributive conflict, relates to disputes that arise in the making or operation of the economic contract, emerging from the market situation outside the firm. This type of conflict can be resolved by collective bargaining. The second type, i.e., structural conflict relates to the problems that emerge from interactions within the formal structure of the organisation. This type of conflict can be


resolved by management agreeing to restructure the organisation according to social and technical changes in the environment. The third type of conflict i.e., human relations conflict, is at the role - personal role - exemplified by a clash of personalities. This type of conflict can be resolved by what are traditionally called leadership and man-management.

The existing theory of employer-employee relations (EER), Satya Prakash Singh writes, is by and large based on the Smithian assumption. That is both the employers and employees are assumed to take actions which are meant to increase their own self-interest. When put in specific bilateral monopoly context, this leads to the direct conflict situations - that is, again to one party will imply loss to the other, and vice-versa. Attempting a more general model of EER, a classification of actions of employers and employees is presented on the basis of their intended consequences (such as loss-Gain, status and Gain, Gain-Gain, Gain-Status and Gain-Loss, status quo-loss and loss-loss actions). Singh visualises that employers and employees in the long run will come together and decide to take Gain-Status-quo position (An action taken by employer/employee which leads to his (employer-employee) gain without affecting the other, e.g. the wages of workers increase out of their own increased productivity without any change in the employer's profits).

and Gain-Gain actions (An action taken by employer which leads to gain of both, employer and employee, e.g., connecting wages with productivity of an alert class leads to increased wages and profits.)

According to Sharma, the various conflict resolving styles available in literature are: competitive style, the avoidant style, the sharing style, the accommodative style and the collaborative style. After weighing the pros and cons of all these styles, be opted for the collaborative style because it is based on the problem solving approach, an approach which depends upon the authentic communication climate of mutual trust and support (I am O.K., you are O.K.), the genuine respect for the indifferences, and attempts to integrate the interests of the individuals, who are engaged in conflict.

Aggarwal presented a framework of the union-management relations whose foundation is oneness or unity of objectives and operation of all efforts of union and management on which a solid edifice of co-operation between union and management can be constructed, which, though takes a long time. The framework he presented aimed to seek reducing the extent of work stoppages and to encourage local settlement of disputes. He favours union-management co-operation as a

method of settling industrial disputes since in it lies inter-
dependence and joint efforts of both the parties.

Summing-up, the various approaches in the theory
outlined above, describe the number of methods, prevailing
and suggested, for the settlement of industrial disputes.
These range from avoidance, to fighting, to accommo-
dation, and to co-operation. Evidently, there cannot be any
uniform method under all situations and choice rests upon a
number of factors like external environment impinging upon
its (organisation's) internal environment, beliefs of labour
and management, social and cultural background of the workers,
the policy of Government in respect of industrial relations,
etc.

Based on the approaches outlined above, the chart
presents a settlement process which exists in all democratic
societies. The settlement process consists in terms of the
number of parties involved in the dispute and the nature of
dispute. Collective Bargaining is a technique where labour and
management try to resolve their differences, normally demands
dispute, bilaterally across the table. It may either result
in an agreement or it may not result in an agreement. In the
latter case, either a deadlock in the talks occurs or the
negotiations fail. Under such situations, either parties
may resort to direct action or invite a mutually acceptable
third party to assist them to continue their negotiations to
reach an agreement or to give them an award. The first course,
i.e., resort to direct action, being costly to the parties,
ought not generally be adopted. In other words, a failure
to settle the disputes through bipartite technique of collective
bargaining may lead to the utilisation of the tripartite
technique.

The tripartite technique involves an assisted-settle-
ment process. It takes different forms based upon the voluntary
or statutory compulsion to invite the third party to help in
negotiations but with no compulsion to accept the solution
offered by the third party (conciliation) or the voluntary
or statutory compulsion to submit the dispute to a decision
by the third party and to be bound by its decision (arbitration/
adjudication).

As demonstrated in the chart, conciliation, the first
step in the assisted-settlement process, is resorted to when
either the mutual agreement reached in the collective bargain-
ing is to be registered with the State labour authorities for
the purpose of binding themselves or when the collective
bargaining talks fail or a deadlock is created in the talks,
or when individual terminated worker raises the dispute or
when certain cases, for example, in public utility services,
the dispute has occurred or is apprehended. Except in the
last case, that is, dispute occurred or apprehended in public
utility services, the conciliation is voluntarily under the
law (I.D. Act in our context). Conciliation may either settlement arrived
at between the parties or dispute may be withdrawn or may result
in mutual settlement but signed before the conciliation officer
or may result in failure.
In the case of failure of conciliation, parties to the dispute may agree to submit the dispute for a decision by the third party, whose decision will be binding on them. This third party may be an Arbitrator, mutually appointed by the parties to the dispute, or an Adjudicator, an authority appointed under the law.

The chart shows that a dispute under normal situations should first go through the process of conciliation before it could be referred to the arbitration/adjudication authorities. This is in consistent with the procedure as laid down in law (I.D. Act in our case). This shows that the settlement process is exhaustive and is characterised by the ladder-type system, i.e., moving from one authority to the other in a specified sequence. Dahrendorf puts it as, "successive stages of conflict regulation..."

**Collective Bargaining**

The term collective bargaining is used to describe all sorts of labour-management relationships and might be broadly defined, e.g., as collective approach of the employees to an employer or the approach of an employer to his organised employees, for the purpose of jointly considering controversial aspects of the employment relationships with an object of reaching a mutually acceptable agreement.

A basic aim of collective bargaining, to facilitate the peaceful accommodation of conflicting interests. This accommodation normally comes about through a process described...
as 'give and take', but which might more precisely be called a rough balancing off of practical power realities.

Being a democratic method, its effectiveness in containing industrial disputes and ensuring lasting industrial peace has been recognised by one and all. In this context, NCL says, "the best way to solve an industrial dispute is through mutual settlement (because) it leave no rancour behind and help to create an atmosphere of harmony and cooperation."

To be effective, bargaining has to be between two strong equal parties. Hence, it presupposes the existence of a strong and independent trade union for the purpose of bargaining on behalf of workers. Hence, wherever, the statutory provisions to create a bargaining agent of the workmen are absent, the trade unions would be found in its infancy and the collective bargaining a weak institution. But the technique essentially includes the right to strike/lockout and use of this weapon causes dislocation in the economy. Great visionaries Sydney and Beatric Webb, 72 years ago realised it and remarked that the growing impatience with industrial dislocation would lead to some form of compulsion by legal enactment. It will bring in mediator to settle the disputes. The following other methods in the dispute settlement process, viz., conciliation, voluntary Arbitration and Adjudication, are statutory procedures (in our context - established under the I.D. Act).

27. NCL Report, op. cit., para 6.79.
Conciliation

The word 'conciliation' and 'mediation' have come to be used by a majority of persons, as synonymous, and are used interchangeably. Whereas conciliation is the act of a third party bringing together the two parties in dispute for negotiation and for settlement of the disputes, mediation is the process whereby the third party not only brings the two parties together but actively participates in the negotiations generally consulting with each of the parties separately and, by persuasion, effecting a compromise acceptable to both. Thus, it, would appear to be a question of distinguishing the passive from the active or positive role that can be played by an intervenant.

According to Hunter, "Mediation is a close cousin of conciliation, but distinguished from it by the more positive role of the mediator in developing proposals for resolution of the dispute." 28

In conciliation, since conciliator merely acts as a "go between" for the parties, the parties have same right and freedom to arrive at an agreement which they have under collective bargaining. Thus, conciliation is purely recommendatory in nature and procedure and is regarded as an extension of collective bargaining. Conciliation, in this way, can be described as an 'assisted-bargaining process'.

Conciliation is a voluntary process especially where collective bargaining method of dispute settlement is a strong

and generally used technique. But where collective bargaining is a weak institution and adjudication is compulsory, the disputants there are under a statutory compulsion to invite the Government appointed conciliators. This is so because without seeking conciliation, disputants cannot approach the adjudication authorities. The first step, i.e., conciliation has to be exhausted before access to arbitration or adjudication is to be got. Thus, conciliation is both a voluntary and compulsory procedure with reference to the entry of the conciliators to the acceptance of the solutions. Since conciliation is an art and a highly individualised process, so to be effective, conciliator has to be, according to Kurt Braun, experienced, objective and impartial. 29 According to ILO, a conciliator should possess personal qualities like independence and impartiality, commitment to their job, power of persuasion, common sense and practical-mindedness, sense of humour, professional qualifications like knowledge of industry and the industrial relations system, etc. 30

Arbitration

Arbitration is a process where issues of differences between the labour and management are settled by the binding of decision/an impartial outsider, who is not directly interested in the affairs of either party. Arbitration is different from conciliation because under this system the impartial

outsider gives his own verdict which is binding on both the parties either by law or by previous agreement, whereas in conciliation the final decision is taken by the parties themselves.

Arbitration agency may be established either by the Government or the interested parties themselves may persuade an impartial outsider to arbitrate upon the issue concerned. The former is known as compulsory arbitration, the latter as voluntary arbitration. Under compulsory arbitration, the parties concerned have no choice in regard to the way of settling the dispute, they are compelled to submit the issue to the Government nominated arbitration agency instituted under the provisions of the law and are obliged to abide by its decision. Under voluntary arbitration, they may send the dispute for arbitration only if both the parties agree to it, there being no compulsion so far as reference of the dispute is concerned.

Voluntary arbitration may be available to the parties either as an alternative to conciliation or a consequential procedure. Under Indian context, voluntary arbitration is available as a consequential procedure, i.e., only when conciliation fails, the parties may agree to submit the dispute for a decision by a mutually agreed party.

Whether voluntary or compulsory, an arbitrator by his decision or award, has the power to determine a dispute submitted to him. The decision of the voluntary arbitrator
is final and binding on the parties. Arbitrator hears both the parties and after studying the dispute and views of both the parties makes an award.

The effectiveness of voluntary arbitration depends on a number of factors, foremost being the attitude of the disputants and the calibre of the arbitrator.

Adjudication

Compulsory arbitration or the adjudication is a judicial process of determining the disputes and in countries like India it is the ultimate legal remedy for the settlement of an unresolved dispute. This is done by its reference for adjudication by the appropriate Government. Reference of a dispute would also be made when both the parties to a dispute apply for such a reference. The latter reference can be called voluntary adjudication and the former compulsory adjudication. The adjudicator after hearing both the parties, gives his award on judging the merit of the conflicting issues involved therein.

The working of these various peaceful dispute settlement methods in India have been examined by a number of individual researchers and agencies, both government and non-government, such as Labour Bureau (1951 and 1971), A.D. Shroff (1953), Indian Law Institute (1962).


A brief survey of the literature on the working of the various methods of disputes settlement is attempted below:

**Collective Bargaining**

Collective bargaining as a technique for settling disputes between employers and employees has been widely adopted in India. The Employers' Federation of India in their Monograph (1971) stated that 70% of the disputes raised...
were settled through direct negotiations. Patil (1977) found that 69.8% of trade unions in Karnataka usually settled their disputes across the table.

Mehrotra\textsuperscript{54} and others have pointed to the difficulties in the operation of collective bargaining, the chief among them being multiplicity of trade unions, outside political intervention, lack of resources of trade unions, problem of selecting representative trade union and the government's policy of adjudication. Van D. Kennedy found that "tender-mindedness" of government was the main cause for the unpopularity of collective bargaining in India.\textsuperscript{55} Raman Rao refuted this and said that government had not come in the way of practising collective bargaining in India. Rather, it has helped it by strengthening the unions through labour laws.\textsuperscript{56} Further, according to him, Government has intervened only when mutual negotiations have failed. But according to V.V. Giri adjudication by government had cut at the very roots of collective bargaining.\textsuperscript{57}

The National Commission on Labour (NCL) noted that the record of reaching collective agreements has not been as

\textsuperscript{57} Giri, V.V., 'Labour Problems in Indian Industry', Bombay: Asia, 1972, p.171.
unsatisfactory as it is popularly believed. Feeling the desirability of extending it to a wider area, the Commission observed that a beginning has to be made in the move towards collective bargaining by declaring that it would acquire primary in the procedure for settling industrial disputes. The above recommendations of the Commission were incorporated about ten years later by the Government in Industrial Relations Bill, 1978, but Bill could not see the light of the day since it lapsed with the dissolution of the Sixth Lok Sabha.

Conciliation

How far has the conciliation machinery in India been successful? There is no unanimity about the answer. Shroff (1953), while evaluating conciliation machinery in the province of Bombay during 1929-34, commented, "Thus we can say that the machinery of conciliation has failed in its two main objects, which it had set up to attain, namely the lessening of strikes, and providing an adequate machinery for settling disputes." The Indian Law Institute (1962), reported that the conciliation machinery in central sphere was quite effective and on an average 64 percent of the cases instituted in conciliation proceedings were settled. Srivastva (1966) found that

58. NCL, op. cit., p. 327.
59. Ibid.
60. See Punekar, S.D., In a foreword to Conciliation in India by B.R. Patil, op. cit., p. xii.
61. Shroff, A.D., op. cit., p. 78.
62. Indian Law Institute, op. cit., p. 31.
conciliation machinery in U.P., requires immense improvements. Pardeep Kumar (1966), while studying the working of the conciliation machinery in Rajasthan commented that conciliation machinery did not function as effectively as it should. He found that the percentage of settlements were going down, withdrawals were increasing, the percentage of failures were rising, and extent of pendency were increasing. It indicated the inadequacy and ineffectiveness of conciliation machinery. Punekar (1966) observed that the conciliation machinery has failed to make any contribution in the sphere of industrial relations. While studying industrial relations in Kanpur Cotton Mills, V.B. Singh (1968) remarked, "Conciliation has been a time consuming process... We have been convinced more than ever before, that certain urgent improvements are needed in the conciliation field." NCL, however, (1969) concluded, "the performance of the conciliation machinery does not appear to be unsatisfactory." B.R. Patil (1977), while studying functioning of conciliation machinery in Karnataka, concluded that the functioning of the conciliation machinery was unsatisfactory and highly ineffective. In his doctoral study, K.C. Yajnik (1977) found that the performance of the Conciliation machinery in Gujarat, in terms of the nature of

64. Pardeep Kumar, op. cit.
65. Punekar, S.D., op. cit., p. 37
disposal did not seem to be encouraging. The settlement percent was low and failure percent was significantly high.\textsuperscript{69}

All these and other studies on conciliation have pointed out that machinery suffer from defects such as delays involved, casual attitude of one or the other party, lack of adequate background in the conciliation officer himself, government's failure to set up a separate conciliation machinery, etc. etc.

**Voluntary Arbitration**

Since the use of voluntary arbitration in India has been rather limited, therefore, there have not been many studies on voluntary arbitration. A study done by Ministry of Labour, Govt. of India, in 1963, revealed that out of 336 failure cases analysed arbitration was resorted to only in 4 cases and only in one case it did actually take place. The survey further revealed that 99 percent of the employers and 19 percent of the unions refuse to accept arbitration.\textsuperscript{70} Srivastva (1966) found that voluntary arbitration as a means of settlement of industrial disputes was not very popular in U.P. State.\textsuperscript{71} NCL (1966) has come to the conclusion that voluntary arbitration in India has had little success.\textsuperscript{72} NCL attributed the slow progress of arbitration to factors such as (1) easy availability of adjudication in case of

\begin{itemize}
  \item \textsuperscript{69} Yajnik, K.C., \textit{op. cit.}
  \item \textsuperscript{70} Ministry of Labour, Govt. of India, \textit{op. cit.}
  \item \textsuperscript{71} Srivastva, R.K., \textit{op. cit.}, p. 318.
  \item \textsuperscript{72} NCL, \textit{op. cit.}, para 23.26, p. 328.
\end{itemize}
failure of negotiations, (2) Dearth of suitable arbitrators, (3) Absence of recognised unions which could bind the workers to common agreements, (4) finality of award, (5) cost to the parties, particularly workers, etc.

**Adjudication**

The working of the Labour Courts and Tribunals for settling disputes has received good attention in the literature. Thakkar (1962) concluded that the machinery (Labour Court) have been expensive and dilatory, that the majority of the cases ended in settlement or withdrawal and whenever decision had to be given by the Court these have been mostly against the workers. Kamala Mathur's (1962) study revealed that the average time taken in making an award came to 218 days or 7 months approximately. Banerjee (1963) observed that adjudication was prevalent in India not because of its inherent soundness or superiority over other methods but because the workers were poor and uneducated and trade unions were incoherently organised. He further commented that adjudication could not establish industrial peace for all time to come. V.V. Giri opposed any involvement of courts at all for settling labour disputes as they retarded growth of unions. He called adjudication as number one enemy of collective bargaining. Aggarwal's (1967) analysis of the problem of delays in labour

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judiciary, led him to conclude that delays were the result of three factors: procedure, human, and administration. V.K. Chawda (1971), concluded that the process was very time-consuming and 62 to 82 percent of disputes during 1957-67 usually remained undecided every year. NCL also admitted that adjudication suffered from certain procedural deficiencies, like it is dilatory, expensive and even discriminatory as the power of reference vests with appropriate government. However, NCL was satisfied with the adjudication process in that it had helped to avert many work stoppages by providing an acceptable alternative to direct action, and to protect and promote the interests of the weaker section, i.e., the working class, who were not well organised or were unable to bargain on an equal footing with the employer. Finally, NCL favoured a gradual replacement of adjudication by collective bargaining. S.R. Mohan Dass's (1974) study brought out that the compulsory adjudication system for management of industrial relations would very quickly breakdown as tempo of industrialisation increased; parties in the adjudication process found the judicial process extremely difficult to operate, and finally, judiciary in industrial disputes itself was finding it difficult, if not impossible, to adjudicate in the complexities of problems and played more a mediation role than an adjudicatory role.

79. NCL, op. cit., para 23.32, p. 325.
80. Ibid.
2.1 Settlement Process; Effectiveness and Efficiency

The process of settlement as explained in the preceding paragraphs can be meaningful only when it result into settlements. To maintain industrial peace and establish industrial harmony settlements should be effective, and to be effective it should not only settle the surfacical issues but should also result in eliminating the source of dispute.

The concept of effectiveness, particular in reference to the organisational effectiveness, is widely discussed. The various models of effectiveness have either followed the "goal-approach" in the fashion of Georgopoulos and Tannenbaum (1957)82, Price (1968)83 or the "system resources model" as was done by Katz and Kahn (1966)84, Yuchtman and Seashore (1967)85, whereas the former has been criticised on account of its static nature, the latter, i.e., systems resources model, has been called a dynamic. However, both models were criticised for subscribing to the ultimate criterion of organisational effectiveness. Thus, recent researches in organisational behaviour have revealed an increasing recognition of the multivariate models of organisation effectiveness (Lawrence and Lorsch, 1969)86, Mott (1972)87, Duncan (1973)88 etc. etc.

86. Lawrence Paul & Lorsch, Jay; Organisation and Environment Homewood III; Richard Irwin, 1969.
All these authors point out that the criteria of effectiveness were different for macro-level and micro-level analyses. In our context, effectiveness has to be measured keeping in view of the expectations of people having interest in the survival and growth of the institutions of dispute settlement. In this respect, disputants, particularly and government and public generally, have much in stake in the development of dispute settlement machinery. Whereas disputants and government have direct vital interest in the institutions of dispute settlement, general public have indirect but less vital interest in these institutions.

Effectiveness, which is a broader term than efficiency, has to be seen in terms of attainment of values for which the institutions are created. 89

The values for which the institutions for dispute settlement, viz., conciliation, voluntary arbitration, and adjudication, were created were the expedient disposal of disputes and establishment of industrial peace and harmony.

The factors which determine effectiveness of settlement varies from institution to institution (of dispute settlement). The major determinants of effectiveness being stated here are based more on the imagination and insight of the present researcher. These are not supported by empirical findings and is an area for the future researchers to probe.

In relation to self-settlement, in effectiveness of settlement, is relative strength of the union and management. If either of the two are stronger than the other, the settlement reached through signing of the collective agreement may not be lasting. But if both the parties are of equal strength, they are expected to refrain from violating the agreement reached. The effectiveness of settlement in case of assisted settlement (conciliation) will depend upon among others, the image of the conciliator in the eyes of the disputants, the relevant legal provisions and political interference. Image of the conciliator causes acceptability of the system, which weighs considerably in effectiveness of the settlement reached with his help. Settlements reached even with least political intervention may not be durable and thus, effective. In respect of imposed settlements (voluntary arbitration and adjudication), image of the arbitrator and adjudicator, the type of settlement 'given', i.e. whether the award was based on merits of the case or was given in terms of mutual settlement, determine the effectiveness of the settlement.

Implementation of agreements/settlement/award also determines its effectiveness. Non implementation results into ineffectiveness of the settlement reached.

The efficiency of the settlement may be judged from the time taken to reach at settlement. Longer the time taken, lesser the chances of its becoming effective.