CHAPTER-III

INDUSTRIAL DISPUTES: METHODS AND MACHINERY FOR THEIR SETTLEMENT
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3.1 Introduction

This Chapter deals with the concept of ‘Industrial dispute’. The definition of the concept as given in the *I.D. Act* is discussed in detail. This discussion provides an understanding as to the inherent nature of industrial disputes in employment relationship and the need to settle them in a manner agreeable to the parties to the dispute and the society in general. The discussion of the concept of industrial dispute is so designed as to get an appreciation regarding the applicability of a particular method of settlement to a particular type of dispute. For example, the method of compulsory adjudication is generally considered as more appropriate and effective in resolving “rights disputes” rather than “interests dispute”.

The various methods of settlement of industrial disputes, as are available and used in varying degree, are discussed to the extent felt necessary. With a view to utilizing these techniques of settlement, the *I.D. Act* provides different types of settlement machinery aimed at preventing, wherever possible, investigating and settling of the disputes. Therefore, further discussion in this Chapter concentrates on these provisions. The discussion also deals with the effectiveness of the machinery in helping peaceful resolution of disputes in the light of their working in the country during the last five and half decades. Since the main theme of the thesis is critical study of adjudication of industrial disputes, the functional nexus among the various
methods of settlement and the correlation of adjudication with other methods is emphasized.

3.2 Concept of industrial disputes

Disputes are characteristic of society and more so in an industrial society. The conflict between the capital and labour is inherent in an industrial organization. The disputes that arise from this basic conflict of interests, it is commonly agreed, can only be adjusted temporarily but cannot altogether be eliminated. The inherent inequality of employment relationship which places more power in the hands of employers, the question of distribution of the social product, which is the outcome of the common effort of employers and workmen, the issue of job security which is vital to an employee, the constant urge of the workmen who are generally on the lower ladders of society to improve their standards of living, the employers natural inclination to retain a larger portion of the surplus and the growth of the trade union movement which articulate the demands of the workmen are some of the important factors that give rise to disputes in any industrial organization.

The industrial disputes are, therefore, the disputes that arise between an employer or an employers organization on one side and the workmen or trade unions of workmen on the other, on matters relating to employer-employee relationship, i.e., on the formulation and enforcement of standards of wages and other conditions of employment.
The divergence of interests between labour and capital is at the root of the
industrial or labour disputes. Kahn Freund emphasized the reality of this divergency
when he observed:

"Any approach to the relation between the management and labour is fruitless
unless the divergency of their interests is plainly recognized and articulated. This is
true of any type of society one can think of and certainly of a communist as much as
of a capitalist society. There must always be some one who seek to increase the rate
of investment."1

Mr. Justice Higgins, the principal founding father of the Australian system of
arbitration and conciliation, said that "the war between the profit maker and the wage
earner is always with us; i.e., the war between those who argue for more investment
and those who argue for a maintained or improved standard of living now."2

The capital and labour are the two sides of industry, both having their own
interests. The one interest they have in common is that the inevitable, and sometimes
necessary, conflicts should be regulated from time to time by available procedures
recognized by both the parties. "It is however a sheer utopia to postulate a common
interest in the substance of labour relations."3

The fundamental character of industrial disputes as a distinct phenomenon of
modern industrial society is that such disputes are not simply a claim to share the

2 Ibid., p. 27.
3 Ibid., p. 28.
material wealth jointly produced and capable of registration in statistics. At heart, they are a struggle, constantly becoming more intense on the part of the employed group, engaged in co-operation in rendering services to the community, for a higher general human welfare, to share in that welfare in a greater degree.\(^4\)

Analysing how the conflicts between employers and workmen led to organization on both sides, Kahn Freund observed:

"Thus on the employers as well as on workers' side the formation of organized groups may be the outcome of the conflict itself. In labour management relations conflict is very much father of all things."\(^5\)

### 3.2.1 Types of Disputes

Before proceeding to discuss how the concept of "industrial dispute" is defined under the *I.D.Act*, it is particularly relevant, from the point of view of examining the suitability of settlement procedures, to distinguish between different types of industrial disputes. Highlighting the distinctions in different countries, the ILO Publication reported:

"In a number of countries national law or practice distinguishes between different types of labour dispute for the purpose of applying different procedures of settlement. Two main distinctions have been developed: the first is based on the number of persons involved in the dispute, which determines individual or collective

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character; the second on differences in the nature of issues involved; essentially the
difference between issues regarding the application or interpretation of existing rights
and those regarding the establishment of new rights (in which case the distinction
between rights and interests disputes.) In some countries disputes regarding trade
union rights constitute a separate category, dealt with by distinct procedures.”

3.2.2 Individual and collective Disputes

In general, a dispute is individual, if involve a single worker, or a number of
workers in their individual capacities or in relation to their individual contracts of
employment. For example, disputes relating to discharge, dismissal, retrenchment or
termination of an individual workman and also disputes relating to other service
conditions of individual workman such as promotion, seniority, entitlement to wages
and other allowance, increments, transfer, suspension, retirement benefits, etc., are
considered as individual disputes. It may be noted that all such individual disputes
under this distinction are “rights” or “legal” disputes. They involve legal questions
like the application and enforcement of existing rights under the contract of
employment or law, as stated in the legislative enactments or binding court decisions.

On the other hand, a collective dispute is a dispute involving a number of
workmen, whether or not the said workmen are organized in trade unions. Collective
disputes are disputes that affect the workmen as a class, involving their rights or
interests. The community of interest of the class of workers as a whole distinguishes

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6 ILO Office, “Conciliation and Arbitration Procedures in Labour Disputes, A Comparative Study”,
the collective dispute from an individual dispute. The word “collective” in the phrase “collective bargaining” originally reflected the plurality of workmen involved. By far the most important industrial disputes, which if not resolved peacefully might result in work stoppages, are the collective disputes. The disputes relating to wages, bonus, other allowances, working hours, disciplinary procedure and other general conditions of employment are by nature collective disputes. Collective disputes may be “rights disputes”, as for example when they involve the interpretation or enforcement of the terms of collective agreement or of award or law, or “interests disputes”, which arise from the demands of workmen for modification of existing rights.

It may be noted that the steps leading to the distinction between individual and collective disputes were taken in France, when the Act of 1806, at a time when trade unionism was still at an early stage of development, established “probiviral” courts to settle differences in relation to a contract of employment, i.e., individual disputes, although new dispute settlement procedures were later on designed for disputes which were generally initiated by trade unions and necessarily collective in nature. The French Labour Code (Overseas Territories) 1952 introduced in many former French territories the distinction between individual and collective disputes and provided for the establishment of Labour courts to hear individual disputes.\(^7\)

Although the I.D.Act in India has not made distinction, the Courts, while interpreting the definition of “industrial dispute”, did bring out such a distinction; of course for a different purpose. They held that individual disputes would not per se be

\(^7\) Ibid., p. 137.
industrial disputes, unless, a trade union or a considerable number of co-workmen espouse the cause of the individual workman. Thus, the courts recognized only collective disputes as industrial disputes for the purpose of the I.D.Act. This interpretation led to an amendment of the Act, which recognized individual disputes relating to discharge, dismissal, retrenchment or termination of an individual workman as industrial disputes, without such espousal.

3.2.3 Rights and Interest Disputes

Depending upon the nature of issues involved, the industrial disputes are categorized as "rights disputes" or "interests disputes". The right disputes which are also known as "legal disputes", involve issues relating to existing rights of workmen under the existing contract of employment or any other norms having the force of law, such as settlements, awards, court decisions or legislation. "These disputes originate in complaints about an alleged violation of agreed standards by member of the opposite group, in the differences regarding the meaning or interpretation of these standards, in the application of those standards to concrete cases. e.g., in American it is called a 'grievance dispute' in connection with seniority of employment or with dismissals or other disciplinary measures." In America the rights disputes are also called as "contractual disputes", meaning thereby that they relate to the existing contract.

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9 Kahn Freund, supra note-5, p.55.
On the other hand, disputes concerned with the variation of existing standards so as to lay down new and better standards are called “interests disputes”. These disputes arise when the workmen of trade unions put forward their demands for a wage increase or increase in other allowances, extra bonus, a pension fund, etc. and the employer has denied to concede these demands. These disputes are so called because the workers have no right to such demands under the existing contract of employment or other legal norms, but they only have an interest in them. In the U.S.A. these disputes are also known as “economic disputes” or “terminal disputes” (arising upon the termination of the contract of employment).

It may be recalled that all individual disputes are by nature “rights disputes” and collective disputes may be either rights disputes or interests disputes. And all interests disputes are essentially collective disputes.

It was observed earlier that in a number of countries, national law or practice distinguishes between these types of dispute for the purpose of applying different methods of settlement. In many countries where this distinction is maintained, the rights disputes are invariably decided by institutions like Labour Courts or by private arbitration, after failure of mutual negotiations.

It is of interest to note that in Britain and some countries following the British tradition, no distinction has been made between different types of labour dispute, such as rights and interests disputes. The reasons are peculiar to the collective bargaining tradition and the nature of collective bargaining agreements in Britain. Collective bargaining agreements have never been considered in Britain as laying down legally
enforceable standards. The traditional approach of British workers and unions towards law and courts, in whom they had the least thrust, was responsible for this peculiar situation. Even the change introduced by the Industrial Relations Act, 1971, which was repealed in 1974, treating collective bargaining agreements as legally enforceable was resisted by union by inserting a clause in the collective bargaining agreements that they do not intend to create legal relations by the agreements. Commenting on the absence of such distinction in Britain, Kahn Freund observed:

"In Great Britain the distinction between conflict of right and conflict of interests is to some extent academic. The difference between the enforcement of existing standards and the creation of new ones is often ignored in practice... yet, the neglect of this distinction, so sharply drawn on the continent of Europe, is not only due to imprecise thinking. Conflicts of rights and conflicts of interests do not have to be kept in watertight compartments where the "rights" are enforced mainly by social and not legal sanction."\(^{10}\)

3.3 Nature of dispute and settlement methods

The distinctions as drawn above are discussed in detail because the adjudication system prevalent in India is well suited to resolve the rights disputes. As far as the interests disputes are concerned, collective bargaining is considered as the best method to resolve them and failing that conciliation and voluntary arbitration would be the most suitable methods to supplement the collective bargaining. Compulsory adjudication with its present structures in India, i.e., one-person tribunal

\(^{10}\) Ibid., pp. 56-57.
of a judicial officer as presiding officer, is not a suitable alternative for resolving interests disputes. Even those concede that compulsory adjudication should be the last resort even in interest’s disputes, particularly in cases of disputes relating to public utility services and other vital disputes, desire structural changes in the composition of these bodies.

It is useful here to note that NCL and the Ramanujam committee have recommended such changes, while retaining the Labour Courts as they are for adjudication of rights disputes. Both of them favoured multi member Industrial Relations Commissions, independent from the government, for adjudicating interests disputes. It is true that they have not made the necessary distinction between these different types of disputes; but they had these distinctions in mind when they recommended different quasi-judicial bodies for adjudication of different types of disputes.

It is pertinent to refer here that although the I.D.Act does not make a clear cut distinction between rights disputes and interests disputes, the matters specified in Second Schedule, which are within the jurisdiction of Labour Courts, are essentially rights disputes. On the other hand, the matters, which are specified in Third Schedule, are within the jurisdiction of Industrial Tribunals and are all interests disputes. But there are no structural differences between Labour Courts and Industrial Tribunals under the Act.
3.3.1 The Definition of “Industrial Dispute” under the I.D. Act.

The I.D.Act in Section 2 (k) defined “industrial dispute” in the following words:

“Industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with employment or non-employment or the terms of employment or with the conditions of labour of any person”

This definition is a slight modification (the disputes between employers and employers are also included in the present definition) of the definition of ‘trade dispute’ in the repealed Trade Disputes Act. 1929, which in its turn was a reproduction of the definition of the same term in the Industrial Courts Act, 1919 of the United Kingdom. This Act introduced for the first time adjudication of disputes as a wartime measure.

The definition postulates that, first, the dispute should relate to an “industry” as defined in Section 2 (j); secondly, there should be a dispute or difference as a matter of fact; thirdly, the dispute should be between the parties specified and lastly, the dispute should be connected with matters, which bear upon the relationship of employers and workmen.

(i) Industry

According to Sec.2 (j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.”
Until a seven judge Bench of the Supreme Court in 1978 authoritatively laid down certain definite principles in *Bangalore Water Supply and Sewerage Boards v. A. Rajappa*\(^{11}\) there was lot of uncertainty on the scope of the definition. The Supreme Court by a majority verdict in this case held, ‘where (i) a systematic activity (ii) is organized by co-operation between employer and employees (iii) for the production and /or distribution of goods and services calculated to satisfy human wants or wishes, prima facie, there is ‘industry’ in that enterprise.

“Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint or private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on employer-employee relations.’’

The consequences are: (i) professions (ii) clubs (iii) educational institutions (iv) Co-operatives (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfill the above mentioned triple tests, they cannot be exempted from the scope of S.2 (j).’’\(^{12}\)

The only exemption recognized by the Court is the sovereign functions and not any welfare or other economic activities undertaken by government or statutory bodies.

The Parliament has amended the definition in 1982 by adopting the above triple tests by excluding hospitals, educational and research institutions etc., from the


\(^{12}\)Ibid.,
ambit of the definition, but this amended definition has not yet been brought into force.\textsuperscript{13}

However, in Coir Board Ernakulam v Indira Devi P.S.\textsuperscript{14} the Supreme Court was called upon to examine whether the appellant Coir Board is an industry under the I.D.Act, 1947. The Kerala High Court held that Coir Board is an “industry” under the I.D. Act. On appeal two judges bench of the Supreme Court observed:” Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of Bangalore Water supply and Sewrage Board, be re-examined. The experience of the last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of industry) the application of the I.D. Act to organization which were quite possible not intended to be so covered by the machinery setup under the I.D. Act, might have done more damage than good, not merely to the organizations but also to employees by the curtailment of employment opportunities”. Further it is opined by the bench that larger bench should be constituted to re-examine the wider connotation of the definition of the term “industry” by the seven Judge bench of Supreme Court in Rajappa’s case. Accordingly three judge bench was constituted and the bench has upheld the decision of the seven Judge Bench in Rajappa’s case and held that the request for constituting a larger Bench was refused both on the ground that the Industrial Disputes Act had

\textsuperscript{13} Act 46 of 1982
\textsuperscript{14} 1998 (78) FLR 847 S.C.
undergone an amendment and that the matter did not deserve to be referred to a larger Bench as the decision of seven Judges in Bangalore Water Supply case was binding on Benches less than seven Judges.\textsuperscript{15}

However, the five Judge Bench of Supreme Court in \textit{State of U.P v. Jai Bir Singh}\textsuperscript{16} held that the interpretation of the term “Industry” was over expansive and one sided i.e., only workers oriented interpretation, by the majority judges in \textit{Bangalore Water Supply and Sewerage Board v A. Rajappa} and hence requires reconsideration by a larger Bench. Further, it is held that, the main aim of Industrial Disputes Act, 1947 is to regulate and harmonise relationship between employers and employees for maintaining Industrial peace and social harmony and hence, while interpreting the same interests of employers, employees and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities have to be kept in view.

\textbf{ii) Factum of Dispute}

A dispute arises when one party on the other makes demand and the other party has rejected to concede the same. Until such time, the dispute cannot be said to have come into existence. Raising the dispute for the first time before the conciliation officer or before the appropriate Government is not sufficient to constitute an industrial dispute.\textsuperscript{17} However, this view of the Supreme Court was not in conformity with the earlier decision of the Supreme Court in Bombay \textit{Union of Journalists v. The

\textsuperscript{15} (2000) 1 SCC, 224.
\textsuperscript{16} (2005) 5 SCC, 1.
\textsuperscript{17} See \textit{Sindhu Resettlement Corporation on India v. Industrial Tribunal}, (1968) I. L. L. J. 484 (S.C.).
Hindu\textsuperscript{18} wherein it was ruled that the industrial dispute must be in existence or apprehended on the date of reference. The net effect of the principle is that even if the demand is not made earlier before management and rejected by them and is raised at the time of reference or during conciliation proceedings, the dispute may be an "industrial dispute". The Supreme Court in Shambunath Goel v Bank of Baroda has followed this view.\textsuperscript{19} The court observed that, "to read in to the definition, the requirement of written demand for bringing into existence an industrial dispute would tantamount to re writing the section." And held that, it is for the Government to be satisfied about the existence of the dispute.

iii) Parties to the Dispute
(a) Employers and Employers

The disputes, which are connected with matters specified in the definition between employers and employers, have also been included in the definition as a matter of abundant caution and with a view to widening the scope of the concept of industrial dispute. There is so for no such dispute taken up by the machinery provided under the Act nor is there any decided case on the construction of these words.

(b) Employers and workmen

By far, the most important disputes which the Act intends to cover are the inter group conflicts, i.e., conflicts between employers organization and trade unions, or conflicts between a single employer and the workmen, as a group, represented by a

\textsuperscript{18} AIR 1963 SC 318.
\textsuperscript{19} (1978) 2 S. C.C. 353.
number of workmen collectively or by trade union or unions. Until 1957, when the Supreme Court decided in *Central Provinces Transport Services Ltd., v. R.G. Patwardhan*,\(^\text{20}\) that an individual dispute between an employer and single workman could not per se be an industrial dispute, but could become one if it was taken up by a trade union or a substantial number of co-workmen, there was a considerable conflict of judicial opinion on this question. The Supreme Court in the instant case made the support of a trade union or a considerable number of co-workmen essential for converting an individual dispute into an industrial dispute, within the meaning of S.2 (k) of the Act. In other words, the Court held that on the side of the workmen the dispute must be shown to affect them collectively. The Court referred to the concept of collective bargaining and the scheme of the Act in coming to the conclusion, which gave sufficient muscle to the trade unions, without whose espousal an individual dispute cannot be converted into an industrial dispute, so it can be dealt with by the machinery provided under the *I.D.Act*. The trade unions received this decision favourably as the workmen are in a way constrained to join trade unions, lest the unions might not take up their cause in case of any future eventuality. But this position did not remain for long and in 1965 Parliament amended the *I.D.Act* and inserted a provision to consider the individual dispute connected with “discharge, dismissal, retrenchment or termination” as deemed industrial dispute,

“notwithstanding that no workman nor any union of workmen is a party to the dispute.”

The Government on the ground that the most serious disputes relating to individual workmen would go unresolved, if the unions for any reason do not take them up, justified the amendment. But, this had removed the only legal influence or persuasion for the workmen to join trade unions.

However, as law stands now, the individual disputes which are not connected with termination of service still require espousal by trade unions; otherwise they are not considered as industrial disputes which may be referred for adjudication.

c) Workmen and Workmen

The third alternative regarding the parties to the dispute is that it should be a dispute, which is connected with the matters specified in the definition between the workmen as such, for whom the trade unions may act in a representative capacity. Whether a dispute between trade unions as such, i.e, a pure inter-union disputes, such as a dispute relating to recognition of trade unions, is comprehended by the definition or not is a matter which is still undecided, as no such dispute was ever referred for adjudication under this Act.

iv) Subject matter of Dispute

The definition does not contemplate all types of dispute between employers and workmen, but only those disputes which are connected with “employment or non

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employment or terms of employment or with the conditions of labour of any person” are covered by the definition.

v) Any Person

Interpreting the words ‘of any person’, the Supreme Court in *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate* held that ‘any person’ in the definition clause means a person in whose employment or non employment or terms of employ or conditions of labour, the workmen who are raising the dispute have a direct and substantial interest i.e, with whom they have under the scheme of the Act, community of interest. The words ‘any person’ do not mean any body or every body in this wide world, but they are also not limited to ‘any workmen,’ potential or otherwise.

3.4 Disputes settlement methods and machineries

It is already noted that that disputes between employers and workmen are a common phenomenon in an industrial society and these disputes arise due to inherent conflict of interests and expectations in employer-employee relationship. There can be no rules for their avoidance and so what has to be done is to devise ways and means to prevent them from becoming serious, wherever possible, and to settle them when they

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22 For the meaning of these words, see, *Western Automobile Association v. Industrial Tribunal*, (1949) I. L. L. J. 245 (F. C.).


24 For further discussion on the interpretation of these words, see, the minority opinion of Justice Sarkar in *Dimakuchi Tea Estate Case; Workmen of Dahingeapar Tea Estate v. Dahingeapar Tea Estate*, (1958) II L. L. J. 498 (S.C.); *Standard Vaccum Refining Company of India Ltd. v. Their Workmen*, (1960) II L.L. J. 233 (S.C.); *All India Reserve Bank Employees Association v. R.B.I.*, (1965) II L. L. J. 175 (S.C.).
actually arise through appropriate procedures. Highlighting the need for effective procedures for settlement of labour disputes, the ILO Publication observed:

“Both in industrialized and developing countries have always attaches particular significance to the establishment of effective procedures for dealing labour disputes. This significance has, however, been felt more deeply in recent years as a result of growing concern with the effects of labour disputes on industrial growth, economic development and over all socio political stability.”25

3.4.1 Collective Bargaining

Of the various methods that are used for adjustment of industrial conflicts, collective bargaining stands on the highest footing. Theoretically, no one denies, as it involved no third party intervention. The content and scope of collective bargaining vary from country to country. Collective bargaining method is also known as common sense method of settling disputes. A collective bargaining agreement was defined by Ludwig, Teller as an “agreement between 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. The term “ collective as applied to collective bargaining agreement will be seen to reflect the plurality not of the employers who may be parties thereto, but of the employees therein involved. Again the term collective bargaining is reserved to mean bargaining between an employer or group of employers and a bonafide labour union. The collective bargaining agreement bears in its many provisions the imprints of decades of activity contending for labour equality

through recognition of the notions underlying collective negotiation. Indeed, in the collective bargaining agreement is to be found a culminating purpose of labour activity.\textsuperscript{26} But, the common characteristics is that it is a process of bargaining involving bipartite negotiations, between employers, either represented through an organization or single employer, and the workmen, represented through trade unions, by which they seek to settle their disputes on matters bearing upon employer-employee relationship, on the basis of the strength of sanctions available to each side. The negotiations may result in an agreement, in which case, the dispute is peacefully settled. But, occasionally depending upon the attitude of both parties to accept a compromise for the adjustment of the conflict, negotiations may not yield an agreement. Then both parties may threaten to use or start using the sanctions available to them to put pressure on the other, i.e., the workers may resort to strike, by withdrawing their labour, and the employer may retaliate by declaring a lock out. The threat or the ultimate use of these weapons available to both parties in the process of collective bargaining may ultimately bring about a situation where agreement become possible. For a just settlement through collective bargaining, it is necessary that both parties must have nearly equal bargaining power. In the absence of an equal bargaining capacity, the winner will generally be the stronger party, unless the stronger party relents to reasonable demands keeping in mind the long-term peaceful relations between the parties.

The NCL agreed that collective bargaining is a superior arrangement for resolving disputes. It observed:

"The best justification for collective bargaining is that it is system based on bipartite agreements, and as such, superior to any arrangement involving third party intervention in matters which essentially concern employers and workers."\(^{27}\)

"The problem with collective bargaining is the work stoppages that might result from the failure of negotiations. Collective bargaining is a process of reaching agreement and strikes are an integral and frequently necessary part of that process"\(^{28}\)

The work stoppages, although some times necessary to make the parties understand the necessity of each other, are not only harmful to both employers and workmen, but also to the nation. Public opinion is always against such stoppages they cause direct inconvenience to one section of the public or the other. Such inconvenience will be felt more when work stoppages occur in public utility services, which are essential to the public.

But to develop collective bargaining as the most desirable method of settlement of disputes, certain amount of work stoppages will have to be tolerated in the initial stages, i.e., until the system becomes self regulatory. In countries like U.S.A., Britain and other industrial western countries where collective bargaining is highly developed due to the existence of very strong trade unions, the work stoppages are not

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comparatively higher than those in countries like India and other developing countries, where the system of collective bargaining is not highly developed.

Development of collective bargaining on sound lines would ultimately reduce work stoppages and it would be conducive to industrial harmony in an atmosphere of industrial democracy. Giving importance to collective bargaining does not necessarily mean complete abstention of state in industrial relations. On the contrary, there may be instances, where the state has to intervene to prevent work stoppages and for ensuring an amicable settlement but without undermining the collective bargaining process.

Collective bargaining in India, although spread to many industries now, cannot be said to be at a developed stage. There is a vast unorganised sector where trade unions make their presence only nominally or virtually there are no unions at all. It is common knowledge that in this unorganised sector there is more exploitation of labour, to the extent that the employers do not even care to implement the minimum wages fixed by the state under the minimum wage legislation. Again there is no worthwhile collective bargaining in agriculture sector and wages there depend upon the forces of labour market. Child labour in violation of the child labour prohibition laws is a common thing in the unorganised sector.

Collective bargaining can be said to be in a reasonably advanced stage in public sector undertaking and major industries in private sector. In view of concentration on industries in major cities in India, the trade union movement is also mainly centralized in these areas.
Factors restraining the growth of collective bargaining

There are many factors, which are restraining the growth of collective bargaining in India. But, it is proposed to mention only the most important of them. The responsibility lies on trade unions and the employers as well as the Government for not creating an encouraging atmosphere conducive for healthier bargaining.

(i) Multiplicity of trade unions and their political connections is a major factor, due to which collective bargaining could not develop on sound lines in the country. In most industrial units, there are as many trade unions as there are political parties, often not less than five or six. The employers find it difficult to deal with all these unions, pulling in different directions. Gaining more support from workers with radical slogans and sometimes-unreasonable demands is the obsession of the unions rather than getting tangible benefits to the workmen. Inter union (and sometimes even intra union) rivalries is a common feature of India trade union movement. The proposed amendment to the Trade Unions Act to enhance the minimum number of workers requires for registration of a union from the present seven to one hundred or one tenth of total workers have not yet been made into law. Even this amendment may only cure the disease in a minor way because trade union registration is not compulsory under the Act.

(ii) The reluctance of employers to share power with the workmen is another factor that restricts the development of collective bargaining. Except for a few enlightened ones, the employers, in general, are reluctant to prefer a bargained relationship ones, the employers, in general, are reluctant to prefer a bargained
relationship to take the place of government intervention. Some employers do go further and meddle with the trade union organizational matters, in some cases even to the extent of encouraging “company unions”.

(iii) The government policy throughout has not been helpful to the development of collective bargaining in the country. The government has so far failed in making a law providing for recognition of trade unions. In the absence of such law imposing an obligation on the employers and trade unions to bargaining in good faith, collective bargaining has become purely a voluntary affair between the parties. Unless the trade unions are strong enough, the employer would feel that it is advantageous not to negotiate with the unions. Until such a law is made, the collective bargaining will continue to be at an undeveloped stage. Strong trade unions and mutual obligation on the parties to bargain in good faith are sine qua non for development of collective bargaining on sound lines.

(iv) Further, there is a genuine complaint that the availability of compulsory adjudication even for interests dispute has hampered the growth of collective bargaining. Although the adjudication cannot be avoided in case of rights disputes, greater scope for collective bargaining should be provided for the settlement of interests disputes, by restricting the scope of compulsory adjudication in this area. Government’s intervention in interests disputes, except perhaps in public utility services, should be rare. With regard to rights disputes also, there can be collective bargaining initially, but the degree of success is likely to be very limited here as the parties are likely to take legal stands and talk in terms of justice in such cases.
Therefore, where the parties fail to submit such disputes for arbitration, which normally happens in India due to the absence of sound collective bargaining traditions, the adjudication is the only effective remedy in rights disputes.

The recommendations of NCL on the recognition of trade unions and for an increased scope for collective bargaining have not yet been implemented.

**Collective Agreements**

Collective agreements have not made much success in the country due to the factors discussed above. However, since Independence trade unions have been growing in strength as well as in numbers and agreements with employers have become more common. Most of the agreements are at the plant level, though in important industries industrial and national level agreements have become common on major employment issues. Often the collective agreements reached voluntarily are registered as conciliation agreements to ensure that these agreements shall be binding on all workmen under Section 18(3) of the *I.D. Act*.

The collective agreement has become more common in almost all public sector undertakings and government owned industries. In addition such agreements are to be found in plantations, mines, ports and docks, state transport services, industries like chemical, petroleum, oil refining and distribution. All India agreements are also common in industries like textiles. Jute, sugar, railways, banking, insurance, air transport, etc.
First NCL noted: "on the whole the record of reaching collective agreements has not been unsatisfactory, though its extension to a wider area is certainly desirable."29

Although there is no statistical evidence on the extent of development in the collective agreement, it may be taken for granted that there are more collective agreements now in more industries.

The Industrial Disputes Act and collective Bargaining Agreements

The I.D. Act as originally enacted did not contain any provision relating to collective bargaining. It was in the year 1956, by an amendment to the Act, a collective bargaining agreement was included in the definition of "settlement", which is declared legally binding on the parties to the settlement.

Prior to this amendment only settlement arrived at in the course of conciliation proceeding were legally recognized.30

It is significant to note that both S.2 (P) and S.18 (1) refer to agreements between the employers and workmen and not between the employers and trade unions. Although there is no much difference in its meaning in practical terms, the avoidance of the term 'trade unions' is noteworthy. Secondly, such a collective agreement shall be binding only on the parties to the agreements and not on all workmen of the establishment even when the agreement is between the employer and a majority trade union or between the employer and a recognized trade union. This

29 Supra note 26, pp. 321-22.
30 See Secs. 2 (p) and 18(1) of the I.D. Act.
may be contrasted with a settlement arrived at in the course of conciliation proceeding, which shall be binding on all workmen, irrespectively of whether they are a party to the settlement or not.

However, in *M/s. Oswal Agro Furane Ltd and another v. Oswal Agro Furane Workers Union and others* 31, the supreme court has held that settlement arrived at between employer and workmen in the course of conciliation proceedings within meaning of S.2(p) read with S 18 (3) of *I. D. Act*, would not prevail over statutory requirements under Sec 25 (N) and S 25 (O) of the Act. Further, it is held that in case of closure of industry to whom chapter V-B is applicable, obtaining of prior permission from appropriate government is mandatory. This judgment of the hon’ble Court will help to avoid fraudulent settlement by the employer by recognizing a Union which is favourable to him and which is not a real and genuine Union.30

**Awards in terms of agreements**

There may be situations where the parties arrive at a private settlement after the adjudication proceedings have commenced, on the same matters which are pending in adjudication. This might happen due to a realization on the part of the parties, after government’s interference through a reference to adjudication, that they should avoid litigation with its harmful consequence on their future relations or the possible delay in settlement that is proverbial with the adjudication system. In such a case, both the parties to the dispute may either abstain from the proceedings leading to the dismissal of the dispute or the parties may request the adjudictory authority to

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31 J. T. 2005 (2) S.C. 260.
permit withdrawal of the dispute; or they may file the settlement before the authority and request it to adopt the settlement as its award. If the authority finds that the settlement is fair and reasonable, it has to make its award in terms of the settlement. Such an award is known as “compromise award” or “consent award”.

In *State of Bihar v. D.N.Ganguli*, the Supreme Court made an obiter observation that “it would be very unreasonable to assume that the Industrial Tribunal would insist upon dealing with the dispute on merits even after it is informed that the dispute has been amicably settled between the parties. There can, therefore, be no doubt that if an industrial dispute before the Tribunal is amicably settled, the Tribunal would immediately agree to make an award in terms of the settlement between the parties.”

**Preference of settlement to an award**

The judiciary’s preference of collective agreements over the awards of the adjudicatory authorities under the *I.D.Act* has been amply demonstrated by the Supreme Court in the case of *Sirsilk Ltd v. Government of A.P.* In this case the Court went a step further and directed the appropriate Government not to publish an award which was submitted to it after adjudication on merits by the Tribunal in view of the amicable settlement of the dispute by the parties. Speaking for the Court, Justice Wanchoo observed:

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Therefore, as soon as an agreement is signed in the prescribed manner and a copy of it is sent to the appropriate Government and the conciliation officer, it becomes binding at once on the parties to it and comes into operation on the date it is signed or on the date which might be mentioned in it for coming into operation. The settlement having thus become binding and in many cases having already come into operation, there is no scope for any inquiry by the Government to the bonafides of the settlement.  

The Supreme Court in its anxiety to encourage collective agreements went even further in *Amalgamated Coffee Estate Ltd v. Their Workmen*. In this case, the parties entered into an amicable settlement during the pendency of appeal by special leave in the Supreme Court against the award of the Industrial Tribunal. Consequently, the employer moved the Court for disposing of the appeal in terms of the settlement. When some of the workmen who were not parties to the settlement resisted this motion, the court remitted the case to the Tribunal for a finding on the fairness of the settlement. Upon the finding by the Tribunal that the settlement was a fair one, the court disposed of the appeal in terms of the settlement. Thus, it is clear that the Court preferred a collective agreement to an award, which had in fact been published and therefore became binding on the parties under Section 18 (3) of the I.D. Act.

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34 Ibid., p. 651-52.
In *Herbertson Ltd v. Their Workmen*, the Supreme Court similarly preferred a collective agreement reached between the employer and a recognised union to an award already published and became binding, though in this case the Tribunal returned a finding that part of the settlement was unfair. The Court held that the settlement which is in the course of collective bargaining should be given due weight and consideration and that in view of the fact that several factors might influence the parties to come to a settlement, the settlement fairness could not be judged by the same standards applicable to compulsory adjudication. The Court recognised that there was always delay and uncertainty in litigation and that in collective bargaining the workmen would get immediate benefits. There was also the prospect of further advance in the shape of improved emoluments by voluntary settlement, avoiding friction and unhealthy litigation. This, the court said, is the quintessence of settlement, which the Courts and Tribunals endeavour to encourage. Further in *Hillson and Dinshaw Ltd v. P. G Pednekar and others* it was held that the settlement arrived at not in the course of conciliation proceedings is binding on the person who are parties to same unless it was shown that settlement was *ex facie* unfair, unjust or *malafide*.

In the recent years the Supreme Court has not even been insisting on formal compliance with the Rules made under the *I.D. Act* for the validity of collective bargaining settlements. A settlement made through correspondence between the union

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38 (2003) III L.L.J. 77. (Bom.).
and the management, and a settlement recorded only by way of minutes of discussion between the staff association and management were held to be binding on the parties. It may be noted that in both these cases there was no question of inter-union rivalry and one union represented the workmen.

Though the above judgments stand to the credit of Supreme court for encouraging industrial democracy through collective bargaining, in an area where the Parliament and executive could not do much, a significant plea of the working class to deduce a fundamental right to collective bargaining from Article 19 (1) (c) of the Constitution was turned down by the Court in *All India Bank Employees' Association v. National Industrial Tribunal.*

**Enforcement of Collective agreements**

With a view to ensuring proper observance of settlements, Section 29 of the *I.D. Act* declares that a breach of any term of any settlement, which is binding, is an offence punishable with imprisonment which may extend to six months, or with fine or with both.

Although non-observance of settlements has been declared as a punishable offence, prosecutions on this count are very few. According to Section 34 of the *I.D. Act,* “No court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the

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authority of the appropriate Government.” Experience shows that Governments are not easily persuaded to launch prosecution when an employer commits the breach of settlement.

3.4.2 Works Committees

To facilitate bilateral negotiations or joint consultation on all matters of common concern, Sec.3 of the I.D.Act provides for the constitution of works committees, consisting of representative of employer and workmen in equal numbers. As per this provision, the appropriate Government may by general or special order require an employer of an industrial establishment in which one hundred or more workmen are employed, or have been employed on any day in the preceding twelve months, to constitute a Works Committee. The representatives of the workmen shall be chosen, in consultation with their trade unions, if any, registered under the Trade Unions Act, 1926.

Section 3 (2) lays down: “It shall be the duty of works committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interests or concern and endeavour to compose any material difference of opinion in respect of such matters.”

Of the machinery provided under the I.D.Act, the works Committee is the only machinery which is aimed at ensuring bilateral negotiations between employers’ and ‘workers’ representatives with a view to prevent the disputes through a constant dialogue.
Scope and Powers of works Committee

It is clear from the Section that the function of the Works Committee was stated in vague and general terms. Therefore, the Indian Labour Conference (I.L.C) in its Seventeenth Session in 1959 discussed the difficulties in the functioning of the Works Committee and appointed a tripartite committee, which had drawn up a list of functions.42 The list, which it called only flexible and not exhaustive, included almost every thing that can be comprehended in employer-employee relationship, such as wages and other allowances, bonus, holidays, hours of work, retrenchments and layoffs, victimization for trade union activities, retirement benefits, welfare and safety aspects and other amenities to workers.

Although the range of subjects it can discuss is very wide, the scope of its powers is confined to only two things, i.e., (i) “to comment on matters of common interest” and (ii) “to endeavour to compose any material differences of opinion.43 Neither “comment” nor “endeavour”, the words used in the statute, could mean, “to decide “ any disputes on these matters.

The Supreme Court in Northbrook Jute Co. Ltd. v. Their Workmen,44 pronouncing on the powers of the Works Committee, observed:

The languages used by the legislature makes it clear that the Works Committee was not intended to supplant or supersede the unions for the purpose of

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43 See Section 3 (2) of the I.D.Act, 1947.
44 (1960) I. L. L. J 580 (583) S.C.
collective bargaining; they are not authorized to consider real or substantive changes in the conditions of service; their task is only to smooth away friction that might arise between the workmen and management in day to day work”.

Therefore, the Works committees are only deliberating bodies or at best recommendatory bodies, but not decision-making bodies. The recommendations made by the Works Committee may form the basis for the collective bargaining negotiations between the employer and trade unions. The logic of such Committees at a time when the trade union movement was in its inception was understandable. After the trade union movement has come to stay, the Works committees have not merely become superfluous, but the trade unions have been considering them as their rivals. Despite policy pronouncements in First and Third Five Year Plans to encourage Works Committees, they have remained quite ineffective. The NCL attributed their failure mainly to the lack of appreciation, on the part of both employers and trade unions, of the utility of such a democratic institution. For effective functioning of Works Committees the NCL recommended that “the recognized union should be given the right to nominate all worker members on this body. With union recognition obligatory, this would eliminate the most important cause of conflict and antipathy between unions and works committees. 45

Kennedy, in his criticism on the ideology of constituting works Committees over and above the collective bargaining relationship, considered them as “artificial

45 NCL Report, supra note 26, p. 343.
creation of bodies to perform theoretical function.\textsuperscript{46} He maintained very emphatically.

The government's continued espousal of works committees assumes that there is a significant function of them to perform that is separable from orthodox union-employer relations. I believe this is a misreading of the forces at work in labour relations. The collective bargaining relationship and decision making process places no limits on its own jurisdiction... The vast majority of works committees are inactive or lead a pro-forma existence of little significance.\textsuperscript{47}

Similarly, arguing that joint consultative machinery imposed from outside would hardly serve any purpose, V.V. Giri observed:

"Employers, workers and trade unions have viewed these committees with great suspicion. Each group felt that the committees would usurp its respective functions, rights and prerogatives. It is some years now since such committees were constituted, but there has been no change in the outlook of any of the groups which would make the work of the committees effective. The feeling of mistrust continues to pervade industrial relations.\textsuperscript{48}"

Works committees are now virtually non-functional and in many industries they are non-existent.

\textsuperscript{46} Kennedy Van Dusen, "Unions, Employers and Government", Manakkalas, Bombay, p.132.
\textsuperscript{47} Ibid., pp.132-133.
A veteran trade union leader Sri G. Ramanujam once commented on the Works committees as follows:

Works committees are rarely constituted; where they are constituted they rarely meet; when they meet they rarely take decisions; even when they take decisions, they are rarely implemented”.

3.4.3 Conciliation or Mediation

Conciliation or Mediation are procedures whereby a third party provides assistance to the parties in the course of negotiations, or when negotiations have reached an impasse with a view to helping them to reach an agreement.\(^{49}\)

Conciliation as a method of settlement of industrial disputes is widely prevalent in almost all countries. The utility of conciliation as a dispute settlement technique, not only in labour relations but also in international and other domestic relations is well recognized. The recent thrust on Lok Adalats in India manifests its effectiveness as a conflict adjustment technique.

Elucidating the two different objectives of conciliation in labour relations, the ILO publication on Conciliation and Arbitration observed:

For many years the settlement of disputes without or with a minimum of strikes and lock outs was the first and the only recognized objective of conciliation and arbitration, and this still seems to be largely the position in certain countries; however, especially where voluntary procedures are the only recognized or the

\(^{49}\) ILO Office, *supra* note 6, p. 145.
prevailing methods of settlement, it is also the aim of conciliation and arbitration to foster the growth of collective bargaining.50

Although the etymological origins of conciliation and mediation are different and the third party is supposed to be more active in mediation in assisting the parties to find an acceptable solution, going so far as to submit his own proposals for settlement to the parties, such distinctions, considered as only differences of degree, have tended to disappear in industrial relations practices. It may be noted in this regard that Section 4 of the I.D.Act, which provides for the appointment of conciliation officers, uses the words, “Conciliation Officers... charged with the duty of mediating in and promoting the settlement of industrial disputes.”

Speaking of the need for outside intervention in industrial disputes and the emergence of conciliation in labour relations, Kahn Freund observed:

As industrial disputes become more frequent and the need for outside intervention more urgent, the need arose in many countries for a group of permanent officials who would keep in touch with the development of industry and whose services would be available for the prevention and speedy settlement of disputes. In many countries, e.g. in Britain and in United States Conciliation services were set up, staffed by civil servants, and much of the work hither to done by honoratires was thus taken over by this branch of the civil services.51

50 Ibid., p. 147.
51 Otto Kahn Freund, supra note 5, p.70.
Permanent officials take up the conciliation in many countries because it is felt that they are well suited for the task of mediation. Kahn Freund explains why generally permanent officials are chosen as conciliators in the following words:

The informal intervention of conciliator, either of his own motion or upon the request of either party, the lending of a helping hand in negotiations, the discussion of the situation with the parties in the conference room at the round table, all these are things well suited for the work of permanent officials who over many years have gained considerable knowledge of the conditions, the history, the mentality of those industries which are located in their districts.\(^\text{52}\)

**Conciliation Machinery under the Industrial Disputes Act**

The *I.D. Act* contemplates two types of machinery for performing the function of conciliation. They are, i) Conciliation Officers,\(^\text{53}\) who are normally the officers in the labour department, and ii) Boards of Conciliation,\(^\text{54}\) a multi-member body consisting of an independent person as chairman and two or four other members representing employers and workmen in equal numbers, to be appointed by the appropriate government on the recommendation of the parties.

**Boards of Conciliation**

Where a dispute is of a complicated nature and the issues involved are important and require special handling, boards may be preferable to conciliation

\(^{52}\) *Ibid*

\(^{53}\) Section 4 of the *I.D.Act*.

\(^{54}\) Section 5 of the *I.D.Act*. 
The boards of conciliation are the oldest industrial relations machinery along with courts of inquiry, provided under the repealed Trade Disputes Act, 1929. Both these institutions have now become obsolete and the Government seldom uses them. They have almost remained unused.\textsuperscript{55} Malthotra records that in recent years no Board has been constituted by the Central Government.\textsuperscript{56}

**Conciliation Officers**

Sec. 4 of the *I.D. Act* empowers the appropriate Government i.e. the Central Government and the State Governments to appoint conciliation officers charged with the duty of mediating in and promoting settlement of industrial disputes. They may be appointed for a specified area or specified industries and either permanently or for a limited period. The officers in the labour Department, i.e., Commissioners, Deputy Commissioners and Assistant Commissioners of Labour are generally appointed as conciliation officers. Conciliation authorities are vested with necessary powers under Sec. 11 of the *I.D. Act*. Sec. 12 and 13 lay down the duties of the conciliation officers and boards of conciliation, respectively.

**Conciliation proceedings**

According to Sec. 12 of the Act conciliation is compulsory in a public utility service\textsuperscript{57} where a notice of strike or lock out has been given under Sec. 22 of the

\textsuperscript{55} See Giri V.V., *supra* note 47, p. 89.


\textsuperscript{57} Sec. 2 (n) of the Act defines the Term “Public Utility Service” and the First Schedule enumerates industries, which may be declared as public utility services as and when need arises.
Act. According to Sec. 20 the conciliation proceedings in a public utility service shall be deemed to have commenced on the date on which a notice of strike or lockout is received by the conciliation officer and the proceedings will continue until a memorandum of settlement is signed by the parties or where no settlement is arrived at until the failure report is actually received by the appropriate government. There is prohibition on strikes and lockouts in public utility services during the pendency of conciliation proceedings and seven days after the conclusion of such proceedings.

As per Sec. 12(1) conciliation in non-public utility services is discretionary. Either of his own motion or at the request of the parties the conciliation officer may hold conciliation proceedings.

The conciliation officer shall, when he commences the proceedings, without delay investigate the dispute and all matters affecting the merits and right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement.

Where the conciliation proceedings result in a settlement, he shall send a report to the appropriate Government along with the memorandum of settlement. If no such settlement is arrived at he shall send to the appropriate government a failure report, with all the details relating to the dispute, steps taken by him for bringing about a settlement and reasons on account of which in his opinion, a settlement could not be

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58 See also the Second proviso to Sec. 10 (1) of the I.D. Act.
60 Section 22 (1)(d) and (2)(d) of the I.D. Act.
61 Section 12 (2) of the I.D. Act.
arrived at. Thus failure report forms the basis for the government for taking further action on the matter. Upon consideration of the failure report, if the appropriate Government is satisfied that there is a case for reference to a Board of Conciliation or to any adjudicating authority, it may make such reference and if it does not make such a reference it shall record and communicate to the parties concerned its reasons therefore.

Normally the conciliation officer shall send his report within a period of fourteen days from the commencement of proceedings, but the time for the submission of the report may be extended by such period as may be agreed upon by all the parties to the dispute, subject to the approval of the conciliation officer. A settlement arrived at in the course of conciliation proceedings has been given a higher status than a settlement arrived at in the collective bargaining process. The conciliation settlement is binding on all the workmen in the establishment, present and future, irrespective of whether a particular union signed the settlement or not.

**The performance of conciliation**

Statistical evidence shows that conciliation proceedings are highly effective in both the Central and State spheres. The success rate varies, except in a few States, from 50 and 90 per cent. There are two limitations to be noted in understanding these

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62 Section 12 (4) of the I.D. Act.
63 Section 12 (5) of the I.D. Act.
64 Section 12 (6) of the I.D. Act.
65 Section 18 (3) of the I.D. Act.
66 See NCL Report; *supra* note 26, p. 322.
statistics. First, in view of wider binding operation provided by the Act for conciliation settlements, the parties even when they settle a dispute through collective bargaining, go to a conciliator and get it recorded as a conciliation settlement. Conciliators oblige them, as that would also be an indication of their success on record. Secondly, it is common knowledge that it is generally minor disputes that get settled through conciliation. However, by no means one can say that the conciliation is a failure, although there is a lot of room for improvement.

**Conciliation and adjudication**

It cannot be said that the presence of alternative method of compulsory adjudication has a discouraging effect on conciliation. V.V. Giri, pointing out the availability of adjudication as a major reason for the ineffectiveness of conciliation, observed:

The major reason for the failure of conciliators in bringing about an amicable settlement of matters in dispute is the fact that the law provides for another remedy, namely, adjudication by tribunals. The parties do not, therefore, place all their cards on the table during conciliation proceedings and are not in a frame of mind to arrive at a settlement, hoping as they do, that their respective viewpoints will be appreciated and accepted by the tribunals.\(^67\)

\(^67\) Giri V.V., *supra* note 47, p. 89.
Charles A. Myers and S. Kannappan, who had done outstanding work on industrial relations in India, testified this when they approvingly quoted “one of the most successful former Chief Conciliators for the Central Government.

“adjudication has made a mockery of conciliation; conciliation must recommend or reject reference to adjudication, so all effort is pointed in that direction and not in bringing agreement.”

First NCL also recognized the effect of adjudication on conciliation and on the attitude of parties towards conciliation, NCL put it thus:

“Conciliation is looked upon very often by the parties as merely a hurdle to be crossed for reaching the next stage. There is, therefore, casualness about it in the parties and a habitual display of such casualness conditions make the conciliator also get into that attitude.” Further, in order to make conciliation more effective, the Second NCL has recommended that inspector should not be appointed as Conciliation Officers as that may undermine their efficiency as such officers. Conciliation officers should be separately recruited and trained and should be clothed with sufficient authority to enforce attendance at proceedings of conciliation.

Working of the system

Taking an overall view of the industrial relations machinery the NCL recommended a qualitative change in the set-up. The conciliation machinery, the NCL

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69 NCL Report, supra note 26, p. 323.

L felt, should be part of the industrial Relations Commission (IRC) which was supposed to be an authority independent of the government. The independent character of the IRC would, it is hoped by NCL, inspire greater confidence in the conciliation officers. The commission expected that the parties would be more willing to extend their co-operation to the conciliation machinery working independently of the normal labour administration. Apart from this basic change in the set up of conciliation machinery, the NCL felt that there is need for certain other measures to enable the conciliation officers to function effectively. They are (i) proper selection of personnel (ii) adequate pre-job training and (iii) periodic in service training through refresher courses, seminars and conference.71

3.4.4 Court of inquiry

The Trade Disputes Act, 1929, originally provided the machinery of the court of inquiry and the same is continued in the present I.D.Act.72 It was only in the initial stages that this machinery was used and now it is completely out of use. Whatever be the advantages of the system, the governments have not found favour with it and therefore, the 1988 Trade unions and industrial disputes (amendment) Bill proposed to delete this machinery from the Act.73

71 Report of NCL, supra note,26 ,p.323 .
72 See Sec. 6 of the I.D.Act.
73 The Trade Unions & Industrial Disputes (Amendment) Bill–1988 clause–20: to the effect “Section 6 of the Industrial Disputes Act shall be omitted.”
3.4.5 Voluntary arbitration

Arbitration is a procedure whereby a third party, whether an individual arbitrator or board of arbitrators, not acting as a court of law, is empowered to take a decision, which disposes of the dispute. Arbitration is voluntary when both the parties to the dispute agree without any compulsion from outside, to leave the dispute to the arbitrator and to abide by the decision of the arbitrator. To ‘arbitrate’ means to give judgement or “to make decision”. This method is similar to that of adjudication, but whereas in adjudication the judge is a state appointed the parties to the dispute select public official, in arbitration the arbitrator. Of course, the system does not bar the selection by the parties of any public official as an arbitrator.

The system of voluntary arbitration is generally seen as a method of settling labour disputes, which operates, effectively as a substitute for the strikes or lockouts. Voluntary arbitration has therefore been encouraged and promoted as a matter of public policy in a good number of countries.

The system of voluntary arbitration is widely resorted to resolve present and future disputes in countries where collective bargaining is highly developed as the main form of settlement of disputes. The collective agreements often provide an arbitration clause and thus parties through arbitration settle the disputes, when the collective bargaining mechanism fails in an individual case.

74 ILO Office, supra note.6, p.147.
75 Ibid., p.158
The persons selected as arbitrators are generally lawyers, judges, economists, and former civil servants etc., who have gained personal prestige in the locality. As Kahn Fruend put it, "Judges have played a considerable role in the development of industrial arbitration in Britain, and in United States too, lawyers, both practicing and academic, are among the most successful arbitrators. But the role of economists and the social scientists has been equally prominent.... This is one of the few social activities, which have not become institutionalised, or at any rate not comparatively so."  

**Voluntary Arbitration in India**

The origins of voluntary arbitration as a method of settlement of industrial disputes in India go back to 1918, when the Ahmedabad Textile Labour Association under the leadership of Gandhiji and the Ahmedabad Mill owners' Association successfully resolved the plague bonus dispute through voluntary arbitration. Gandhiji preached this ideology as a guiding force of all labour organizations. Gandhiji said, "If I had my way, I would regulate all labour organizations of India after the Ahmadabad model."  

But, later developments show that this model could not be extended to other parts of the country or to other labour organizations.

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76 Kahn Freund., Selected Writings, supra note 5, p. 70.
77 Lakshman P.P., *Congress and Labour Movement in India* (Allahabad, 1948) p.10; Quoted in Sukomal Sin,, p.70
Thereafter, the Bombay Industrial Disputes Act, 1938 and its successor Bombay Industrial Relations Act, 1946 recognized voluntary arbitration. The first and second Five Year Plan documents emphasized the need to popularise voluntary arbitration as part of government's labour policy.\footnote{Planning Commission, The First Five Year Plan, Summary (1952) 116-122, Second Five Year plan – p.572 (1956).}

In 1956, a significant step was taken in the direction of encouraging voluntary arbitration by amending the \textit{I.D.Act} and introducing a specific provision in the Act relating to voluntary arbitration.\footnote{Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act 36 of 1956)(w. e. f. 10-3-1957) Section 10-A was inserted by this amendment.} The Code of Discipline 1958 emphasized that both the managements and unions would strive to settle their disputes, which could not be settled through negotiations, by adopting the voluntary arbitration method. The industrial Truce Resolution adopted in 1962, in the wake of the Chinese conflict, further stressed the need.\footnote{Giri V.V. \textit{supra} note 47, p-91.}

In 1964, the provision in the \textit{I.D. Act} relating to arbitration, viz., Section 10-A, was amended mainly to provide for an extended operation of arbitration award in cases of majority arbitration.\footnote{See Section. 10-A (3-A) and Section 18 (3) of the \textit{I.D.Act}.}

Further to promote the idea of voluntary arbitration as a substitute for strikes and lock outs, the Government of India appointed in July 1967, The National Arbitration Promotion Board (NAPB), to Constantly monitor and provide necessary guidelines to promote arbitration. Such Boards were there after set up in many states.

\footnote{See Planning Commission, The First Five Year Plan, Summary (1952) 116-122, Second Five Year plan – p.572 (1956).}

\footnote{Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act 36 of 1956)(w. e. f. 10-3-1957) Section 10-A was inserted by this amendment.}

\footnote{Giri V.V. \textit{supra} note 47, p-91.}

\footnote{See Section. 10-A (3-A) and Section 18 (3) of the \textit{I.D.Act}.}
Both employers and unions may always approach and seek assistance of these Boards for the choice of arbitrator and in any other matter connected with arbitration.

With a view to making voluntary arbitration almost compulsory, the 1988 Trade Unions and Industrial Disputes (Amendment) Bill proposed another restriction on strikes and lockouts. For a legal strike or lockout, it was necessary, as per this proposal, that the party must have offered for arbitration and the other party had rejected such an offer.\(^82\)

The Second NCL has recommended that, in case of non settlement of disputes in socially essential service providing organizations like Water Supply, Medical Service, Sanitation, Transport, Electricity etc., by mutual agreement between employer and workmen and 51% of the workmen have voted in favour of a strike, it should be taken that the strike taken place and the dispute must forth with referred to compulsory arbitration by arbitrators from the panel of the Labour Relations Commission (LRC) or arbitrators agreed by both sides.\(^83\) Further a named arbitrator or panel of arbitrators of all disputes arising out of interpretation and implementation of the settlement and any other disputes recommends it for having an arbitration clause in every settlement providing for arbitration.\(^84\)

\(^{82}\) The Trade Unions & Industrial Disputes (Amendment) Bill –1988 – Clause 45 Amendment to Section 23 of the I.D. Act.

\(^{83}\) Second NCL Report, supra note 69, p.40

\(^{84}\) Ibid., p. 45
Poor response to the system

Despite all these efforts by the government, the voluntary arbitration has not become popular with the employers and trade unions. Statistics available show that number of disputes referred to voluntary arbitration has been declining.\textsuperscript{85}

Commenting on the factors responsible for the failure of all government efforts in this direction First NCL commented:

With little progress made in collective bargaining, which presupposes the existence of a recognized union representing all the employees and a responsive employer, who together build up over a period an attitude of mutual trust and an acceptance of bonafides on the two sides, it is perhaps not a matter for surprise that voluntary arbitration has so far had little success in India.\textsuperscript{86}

Thus, the underdeveloped stage of trade union movement in the country and the absence of healthy and orderly collective bargaining traditions are mainly responsible for the extremely poor response to the system from the unions and employers. The experience of the countries where voluntary arbitration is widely resorted to show that it can only grow as a supplement to collective bargaining, because it is for the parties to agree for arbitration.

Other reasons generally cited for the lack of expected progress in this area are:

1) Easy availability of adjudication in case of failure of negotiations, 2) dearth of suitable arbitrators who command confidence of both parties, 3) cost of arbitration

\textsuperscript{86} NCL Report, supra note 26, p.324
to the workers, 4) absence of recognized union which can bind all workmen by its agreements and 5) legal technicalities, which are same as in case of compulsory adjudication.\textsuperscript{87} V.V.Giri opined that, “so long as compulsory adjudication is also kept on the statute book, voluntary methods cannot succeed.\textsuperscript{88}

\textbf{Voluntary Arbitration under the Industrial Disputes Act}

Voluntary arbitration as envisaged in Section 10-A is arbitration in name and in reality it is more adjudication. Once the parties make a reference to an arbitratory, it partakes the character of adjudication.\textsuperscript{89} The procedures, powers, jurisdiction, awards and judicial review of awards are all same for both. Thus, “the efficacy of arbitration is largely buttressed by reliance upon state intervention.\textsuperscript{90} In India the emphasis is mainly on compulsory adjudication and the voluntary arbitration has not taken root inspite of the influential advocacy for it in different policy making forums.\textsuperscript{91}

\textbf{Status of an Arbitrator under the Act}

The arbitrator appointed by the parties under this Act is considered as a “statutory arbitrator” and a “tribunal” within the meaning of Articles 136 and 227 of the constitution of India.\textsuperscript{92}

\begin{thebibliography}{99}
\bibitem{87} Ibid., See also Srivatsava. S.C., \textit{supra} note. 87
\bibitem{88} Giri V.V. \textit{supra} note 47, p.93.
\bibitem{90} Indian Law Institute, \textit{Labour Law and Labour Relations}, (1968 ed.) p.181
\bibitem{91} First NCL Report, p.324
\end{thebibliography}
Further in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha.*93

The Supreme Court by a creative interpretation, which may be considered as judicial legislation, conferred on an arbitrator the same powers that are vested in the labour tribunals in cases of disputes relating to discharge or dismissal of workman as punishment. By this decision, the arbitrator also gets appellate jurisdiction in such cases and he can even interfere with the quantum of punishment imposed by employer. Despite the absence of the word ‘arbitrator’ in section 11-A, the Supreme Court conferred these exceptional powers on arbitrators.

3.4.6. Compulsory Adjudication

Compulsory adjudication, known during the initial stages in this country and even now in some countries as compulsory arbitration, is the submission of a dispute to an adjudicator or arbitrator, appointed by the state, without the need for any agreement or consent of all the parties involved in it, for a legally binding award. Compulsory adjudication provides a quasi-judicial forum for resolution of industrial disputes, to which the parties are compelled to resort, whether they like it or not. When the parties fail to resolve the dispute through voluntary negotiations and normally, conciliation efforts have also failed and the parties do not agree to resort to voluntary arbitration, as an ultimate resort, compulsory adjudication machinery may be pressed into service by the government rather than allowing the parties to resort to strike or lock out. The main idea is to empower the government, whose responsibility it is to ensure industrial peace, to compel the parties to abide by the decision of the

adjudicator with a view to avoid confrontation and trial of strength which are considered harmful not only to the parties but also to the economy of the nation. Once the government refers the dispute for adjudication, in respect of an industrial establishment, it can prohibit strikes and lock outs in that establishment.

Compulsory adjudication is used in many countries, even in U.S.A. and Britain, as an exceptional measure and also mainly for the settlement of disputes of rights nature.

Nature of compulsory adjudication

The ILO publication on “conciliation and Arbitration” pointed out “The two questions of compulsory arbitration in interest disputes and of legislative restrictions on the right to strike in this category are probably the most controversial issues facing those responsible for public policy as regards the extent of state intervention in the settlement of industrial disputes. Compulsory arbitration is a subject of controversy both as a method of settling disputes and as a means of preventing strikes.94 The above statement clearly indicates the controversial nature of compulsory adjudication for settlement of interests’ disputes and not of rights disputes. Adjudication as a method of settlement of rights disputes is widely applied in many countries and there is no controversy on this aspect, as it does not involve the restricting of the right to strike. Although compulsory arbitration exists in some form or the other in many countries, the question that often arises is whether or not the existing system should

94 ILO, supra note 6, pp. 160-61.
be modified, with a view to enlarging or limiting its scope or to simply improving its operation and rendering it more effective.

**Approach to settlement of disputes**

In the earlier approach to the settlement of labour disputes, the issue facing public policy was considered to be that of compulsory arbitration verses strikes. Commenting on the earlier and present approaches, the ILO publication maintained.

“Even today there seem to be proponents of compulsory arbitration who conceive of the issue solely and very largely in these terms, (compulsory arbitration verses strikes) and who would support their view by expressing the issue as one between compulsory arbitration and the “law of the jungle”. In the main, however, the question of compulsory arbitration is now considered mainly in relation to collective bargaining, where the right to strike is held to be an essential element of the right to bargain collectively. The emergence of collective bargaining as a distinct institution in the field of labour relations has substantially changed the contours of the problem of compulsory arbitration.⁹⁵

It is widely recognized now that through compulsory arbitration, the state replaces the contractual freedom of the parties with the power of third party to determine the terms of their relationship. It is also commonly assumed that where compulsory arbitration is applied, particularly in the interests’ disputes, it will tend to discourage collective bargaining. It is undeniable that, as a matter of principle, it is in

the highest public interest that employers and employees should be able to negotiate collective agreements and that collective bargaining should accordingly be promoted.96

In developing countries, which have introduced the general system of compulsory arbitration, one of the reasons often advanced to justify it is the weakness of the trade unions in these countries. But those who plead for more room for collective bargaining argue that the very presence of the system of compulsory arbitration makes the unions more dependent on the government and this system and therefore it further weakens the unions.

Above all, the question of averting work stoppages, which is considered essential in a developing economy, still influences the policy makers to continue the system of compulsory arbitration as an alternative to direct action by the parties.

**Compulsory adjudication and ILO conventions on collective bargaining**

It is significant to note that the system of compulsory arbitration, entailing strike prohibitions, which do not fall within the limits deemed to be acceptable, and which may undermine collective bargaining, might be considered to be incompatible with the guarantees of ILO convention No. 87. (Freedom of Association and Protection of the Right to Organize convention, 1948) and the convention No. 98 (Right to Organize and collective Bargaining Convention, 1949) 97

It may be interesting to note that these two important Conventions of ILO, which seek to protect the right to strike of employees, with reasonable limitations, and to promote collective bargaining have not so far been ratified by the Indian Government.98

Need for Adjudication

However, there is a safety margin beyond which the state cannot be expected to permit strikes and lock outs, which are likely to threaten the vital interests of the community. Therefore, such critical disputes or disputes in public utility services like water, power, transport, etc., or disputes during the times of war or other emergency may have to be settled though the system of compulsory adjudication, as a last resort.

Similarly, in disputes involving the rights of the parties i.e., right disputes, "which involve of the application of legal principles to ascertained or ascertainable facts, where the parties do not arrive at a voluntary settlement, their existing rights and duties will have to be determined by a judicial process culminating in the imposition of legal sanctions such as orders for performance, injunctions and damages."99 This statement of Kah-Freund known for his penchant for collective bargaining is recognition of the proposition that adjudicatory settlement of rights disputes is not only necessary, but also desirable.

Therefore, the adjudication method should continue in some form, and there is no room for any controversy on this matter. Then the question left is how to improve

99 Kahn Freund, supra note 5, p.56.
the operational efficiency of adjudication so as to render justice to the parties expeditiously, at a less cost and with least technicalities. The thesis aims at probing into these areas.

As against the above arguments against compulsory adjudication as a method of settlement of interests’ disputes, its proponents cite the following reasons for the continued operation of this system.

1. India, being a developing country, cannot afford work stoppages, which would interfere with achievement of her production goals.
2. If strikes are freely permitted, there is a “danger” that trade union movement might play into the hands of communists, who are already strong in the trade union movement in the country.
3. Trade unions in India are generally weak and workers lack sufficient resources to survive long strikes, which may be necessary in the process of collective bargaining. So, if compulsory adjudication is not available, workers and their unions would be at the mercy of employers.
4. The government would lose its control on labour relations, if it has no power to refer disputes for adjudication.
5. Strikes and lockouts are harmful to the interests of the community and therefore the government has an obligation to the people to intervene in
industrial disputes wherever it is necessary so as to ensure free flow of goods and services to the community.\textsuperscript{100}

However, there is now a growing awareness that both collective bargaining and voluntary arbitration built into the collective agreements, should be encouraged to replace the system of compulsory adjudication in the country, particularly in matters concerning interest disputes. The present adjudication machinery, however, has to continue for the settlement of rights disputes and emergency cases.

\textbf{Compulsory adjudication under the Industrial disputes Act}

The central theme of the \textit{I.D. Act} is compulsory adjudication. As enacted in 1947, excepting the provisions relating to other machinery, every provision in the act dealt with only compulsory adjudication and prohibition on strikes and lock outs. Since the succeeding Chapters are designed to deal with these aspects in detail, in this chapter only the policy aspects have been discussed.

\textbf{3.4 Conclusion}

Despite several objections based on the fundamental issues as well as functional aspects, it cannot be denied that compulsory adjudication in our country, with the intervention of High Court and Supreme Court, has made very large contribution towards the betterment of service conditions of workers. The NCL recorded this in the following words:

\textsuperscript{100} See Myers Charles & Kannappan S., \textit{supra} note. 67, p.321.
"It cannot be denied that during the last twenty years the adjudication machinery has exercised considerable influence on several aspects of conditions of work and labour management relations. Adjudication has been one of the instruments for improvement of wages and working conditions and for securing allowances for maintaining real wages, bonus and introducing uniformity in benefits and amenities. It has also helped to avert many work stoppages by providing an acceptable alternative to direct action and to protect and promote the interests of weaker sections of the working class who were not well organised or were unable to bargain on an equal footing with the employer.\textsuperscript{101}

\textsuperscript{101} First NCL Report, \textit{supra} note.26, p.325.