UNIT – II

SETTLEMENT WITH STATE INTERVENTION AND WITHOUT INTERVENTION

After completion of this chapter the student will be able to

- Understand settlement with State Intervention and without Intervention.

STRUCTURE

2.2.1 INTRODUCTION

Labour management relations involve dynamic socio-economic process. Both parties, namely, labour and management constantly strive to maximize their preferred values by applying resources to institutions. In their efforts they are influenced by and are influencing others.

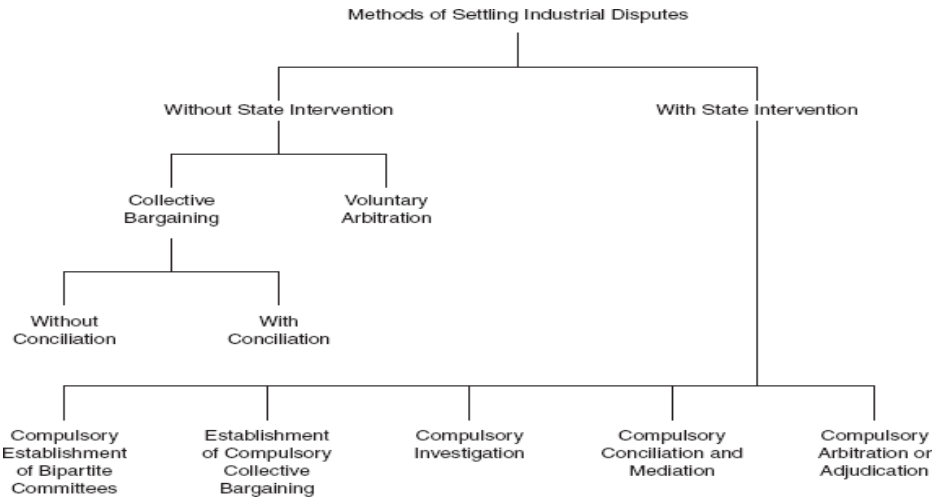
Industrial disputes are organized protests against existing terms of employment or conditions of work. According to the Industrial Dispute Act, 1947, an Industrial dispute means

“Any dispute or difference between employer and employer or between employer and workmen or between workmen and workmen, which is connected with the employment or non-employment or terms of employment or with the conditions of labour of any person”. In practice, Industrial dispute mainly refers to the strife between employers and their employees. An Industrial dispute is not a personal dispute of any one person. It generally affects a large number of workers’ community having common interests.

2.2.2 METHODS OF SETTLING INDUSTRIAL DISPUTES

When certain demands are made by the workers and the employees resist them, industrial disputes arise. Different methods have evolved over the course of time for settling them and different countries have used them in varying degree. Therefore, everywhere studies comprise the effective methods of settling industrial disputes in keeping with the basic economic and political framework and institution of the country. The methods of settling industrial disputes are not very much different from the methods of settling any other disputes. Basically, the parties to a dispute can settle it by mutual discussions and negotiations (bargaining). If at any time in the discussions a hitch occurs, the parties can decide to enlist the support of a third person to help them in their negotiations (bargaining and conciliation). If mutual negotiations still fail, the parties can either resort to coercive methods. If the law so permits. Or can decide to refer the matter for arbitration to a third party, in whom both have confidence. As the settlement of industrial disputes has serious implications for public welfare, the state intervene and does not leave the parties always free to settle their disputes in any manner they like, the state has adopted a number of agencies for settling industrial disputes. Strikes and lock-outs represent coercive methods in the industrial field, as wars do in the international arena. Resort to arbitration is a common occurrence in everyday life. As the settlement of industrial disputes has serious implications for public welfare, the state intervenes and does not leave the parties always free to settle their disputes in any manner they like. The state has adopted a number of agencies for settling industrial disputes.

Methods of Settling Industrial Disputes



2.2.3 SETTLEMENT UNDER THE INFLUENCE OF THE STATE

State intervention in industrial relations is essentially a modern development. With the emergence of the concept of welfare state, new ideas of social philosophy, national economy and social justice sprang up with result that industrial relation no longer remains the concern of labour and management alone. Many countries realized that for general progress to be assured, economic progress was a must. In no country is a complete laissez faire attitude now adopted in the matter of labour management relations.

The peaceful and smooth functioning of industrial relations is of vital importance to the community. Interruptions in production because of strikes and lock-outs cause untold inconvenience and loss of economic welfare to people in general, especially if the supply of essential goods and services is stopped. The changing nature of strikes and lock-outs involving entire industries has further strengthened the need for intervention by the state in the settlement of industrial disputes. The under developed countries, which have launched upon vast programmes of economic developments and have adopted the system of planning, find that they cannot afford frequent interruptions in production. Therefore, there is a growing tendency on the part of the state to intervene and to seek to promote peaceful ways of settling industrial disputes, in both the industrially developed and underdeveloped countries.

In all the countries, over a period of time, the state has assumed power to regulate industrial relations. It is the state which is now the most significant element in determining the legal environment within which industrial relations operate. **Bean** regarded state as an actor within industrial relations performing a number of distinct roles. The distinct roles that state performs are broadly, categorized by him as five:

Firstly, it acts as a third party regulator promoting a legal framework which establishes general ground rules for union-management inter-action, particularly in the procedure for collective bargaining.

Secondly, and additionally, as a means of supporting and underpinning collective bargaining or as a supplement to it the law can be used establish minimum standards while collective bargaining exploits particular advantages to secure higher standards whenever it can.

The third well established function in many countries is the provision of state service for conciliation, mediation and arbitration with a view to facilitating the settlement of industrial disputes.

A fourth aspect of the role of the state that has become increasingly important is that of a direct and primary participation as a major employer in the public sector. In this respect, it influences the pattern of industrial relations by its own behaviour and example.

A fifth role that the state has come to play in many countries is that of a regulator of incomes. As a result, direct and active state involvement in the industrial relations has become much more pronounced in recent years.

The most common ways in which the state intervention takes place are the following:

I. Compulsory establishment of bipartite committees
II. Establishment of compulsory collective bargaining
III. Conciliation and mediation (voluntary and compulsory)
IV. Compulsory investigation
V. Compulsory arbitration or adjudication

2.2.3.1 Compulsory Establishment of Bipartite Committees

i. **Tripartite and Bipartite committees:** the need for consultation on labour matters set by the ILO was recommended by Whitley Commission in 1931. It envisaged a statutory organization which should be sufficiently large to ensure adequate representations of the various interests involved; but it should not be too large to prevent the members from making individual contributions to the discussions. The representative of employers, of labour and of government should meet regularly in conference. The commission also recommended that labour members should elected by registered trade unions and employers' representatives should be elected by their associations. But the recommendation was not implemented and nothing could happen until the outbreak of Second World War, which necessitated the need of industrial peace.
In the Fourth Labour Conference held in August 1942, set up permanent tripartite collaboration machinery and constituted a preliminary labour conference (later named as the Indian Labour Conference-ILC) and the standing Labour Advisory Committee (later the word 'Advisory' was dropped). The pattern of representation was government by the obtaining in the ILC. It ensured:

1. Equality of representation between the government and the non-government.
2. Parity between employer and workers.
3. Nomination of representatives of organized employers and labourers was left to the concerned organizations; and
4. Representation of certain interests, where necessary, on adhoc basis through nomination by the government. The delegates are free to bring one official and one non-official advisor with them.

INDIAN LABOUR CONFERENCE, STANDING LABOUR COMMITTEE AND COMMITTEE ON CONVENTIONS

Both ILC and SLC are two important constituents of tripartite bodies. They play a vital role in shaping the Industrial Relation system of the country. Brief accounts of these are discussed below:

a) **INDIAN LABOUR CONFERENCE (ILC**): the function of the ILC is to "advice the Government of India on any matter referred to it for advice, taking into account suggestion made by the provincial government, the states and representatives of the organization of workers and employers." The representatives of the workers and employers were nominated to these bodies by the Central Government in consultation with the all India organizations of workers and employers.

The objectives of ILC are:

i) to promote uniformity in labour legislation
ii) to lay down a procedure for the settlement of industrial disputes; and
iii) to discuss all matters of all India importance as between employers and employees.

The rules and procedures, which characterize the Indian tripartite consultative machinery, are largely in tune with the recommendations of ILO Committee on consultation and cooperation. In this connection, the following guidelines have been suggested:

1. use of flexible procedures;
2. calling a meeting only when necessary with adequate notice of the meeting and the agenda;
3. reference of certain items to working parties, if necessary;
4. dispensing with voting procedure in arriving at conclusions to facilitate consultation;
5. maintaining records of discussions in detail and circulating the conclusion related to all participants;
6. documentation of reference; and
7. provision of an effective secretariat and a small representative steering grant in case of more formal consultative machinery.

b) STANDING LABOUR COMMITTEE: SLC's main function is to "consider and examine such questions as may be referred to it by the Plenary Conference or the Central Government, and to render advice taking into account the suggestions made by various governments, workers and employers".

The agenda for ILC/SLC meetings was settled by the Labour Ministry after taking into consideration the suggestions sent by it to the member organizations. These two bodies worked with minimum procedural rules to facilitate free and fuller discussions among the members. The ILC meets once a year whereas the SLC meets as and when necessary.

c) COMMITTEE ON CONVENTIONS

This is a three-man tripartite committee set up in 1954. The objects were:

1. to examine the ILO conventions and recommendations which have not so far been ratified by India; and
2. to make suggestions with regard to a phased and speedy implementation of ILO standards.

d) INDUSTRIAL COMMITTEES

The eight session of the ILC (1947) decided to set up Industrial Committees "To discuss various specific problems special to the industries covered by them and submit their report to the conference, which would co-ordinate their activities." These committees are tripartite bodies in

which number of worker's representatives is equal to the number of employers' representatives. They do not meet regularly; meetings are considered afresh each time a session is called.

These committees provide a forum for the discussion of proposals for legislations and other matter connected with labour policy and administration before they are finally brought up before the legislature, so that the passage of the legislation may be facilitated.

The first Industrial Committee was constituted in 1947. These mostly constituted of committee related to plantations, cotton textiles, jute, coal mining, mines other than coal, cement, tanneries and leather goods manufacture, iron and steel, building and construction industry, chemical industries, road transport, engineering industries, metal trades, electricity, gas and power and banking.

OTHER TRIPARTITE COMMITTEES

Besides various committees, certain order tripartite bodies playing vital role are as follows:

1. Steering Committees on Wages
2. Central Implementation and Evaluation Machinery
3. Central Boards of Workers' Education
4. National Productivity Council

BIPARTITE BODIES:

It is well-known to students of industrial psychology and labour economics that, apart from such issues of conflict as wages and hours of work, bonus, pensions, gratuity and others, there are many other industrial grievances which, if allowed to accumulate and fester, grow into big industrial disputes, ultimately threatening interruptions in production. Therefore, the state has passed enactments requiring the establishment of bipartite committees consisting of the representatives of workers and their employer at the plant or industrial level. These bipartite committees are given the power to settle differences between the workers and the employers as soon as they appear, and thereby they prevent them from growing into big conflagrations. On the basis of the recommendations of the Whitley Committee, Joint Industrial Councils, District Councils and Works Committees were set up in Great Britain for considering matters affecting both labour and capital. Similarly, in India the Industrial Disputes Act, 1947, provides for the compulsory formation of Works Committees in industrial establishments employing 100 or more persons, if so required by the appropriate government. A works committee consists of representatives of the workers and employers and is entrusted with the responsibility 'to promote measures for securing and preserving amity and good relations between the employer and the workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters' [Sec. 3(2)]. The relevant rules framed by the central government under this Act lay down the details concerning the size of works committees, the selection of workers' representatives, terms of office, facilities for meeting, and so on. The state governments have framed similar rules requiring the formation of works committees in different industrial establishments. Some of these works committees are functioning successfully and discharging their functions in a responsible manner, but most of them have proved to be a failure. The main factors accounting for their failure have been:

b. The reluctance and hostility of the employer or the trade union concerned,
c. Illiteracy and ignorance of the workers, and
d. Absence of leadership from the rank-and-file.

Thus, the primary ideas behind the establishment of such bipartite committees are:

(i) Giving encouragement to the parties concerned to settle and compose their differences by themselves in order to avoid the direct intervention of a third agency and
(ii) Facilitating the composition of the differences at their embryonic stages without causing work-stoppages.

While emphasizing the importance of works committees in the settlement of industrial disputes, the statements of the objects and reasons of the Industrial Disputes Bill, 1947, said, 'Industrial peace will be most enduring where it is founded on voluntary settlement, and it is hoped that the Works Committees will render recourse to the remaining machinery provided for in the Bill for the settlement of industrial disputes infrequent'. In the eyes of the framers of the Act, the works committees were to provide the king-pin in the machinery for the settlement of industrial disputes. The Act created a forum for the voluntary settlement of industrial disputes and imposed it on the employers. In a way, the provision for the constitution of works committees under the Industrial Disputes Act, 1947, meant the compulsory imposition of voluntarism in the settlement of industrial disputes.

The bipartite consultative machinery comprises two important constituents, viz., the **works committees** and the **joint management councils.** These are purely consultative and not negotiating bodies. This consultative joint machinery with equal representation of the employers and the workers has been set up exclusively for dealing with disputes affecting plant and machinery.

Evolution of such Bodies

The important of bipartite consultative machinery was first recognized as early as in 1920, when a few joint committees were set up in the process controlled by the government of India. Later, in 1922, the workers people's welfare committee was established in the Buckingham and Carnatic Mills, Madras to achieve close contacts with the workers. A few were also started in some private and state-owned enterprises and in some railways. But, generally speaking, the results achieved were rather disappointing. The importance of bipartite consultation was further highlighted by the First-Five-Year plan. The two important constituents of tripartite consultative machinery are:

A) WORKS COMMITTEES

These committees have bed regarded as the most effective social institution of industrial democracy and as a statutory body, established within the industrial units with representatives of the management and workmen, for preventing and settling industrial disputes at the unit level. The works committee can be formed by any enterprise, employing 100 or more workers. Its objectives are:

1. To remove the causes of friction in the day-to-day work situation by providing an effective grievance –resolving machinery;

2. To promote measures securing amity and good relationship;
3. To serve as a useful adjunct in establishing continuing bargaining relationship;
4. To strengthen the spirit of voluntary settlement, rendering recourse to conciliation, arbitration and adjudication rather infrequent;

For these are achieved by commenting upon matters of concern or endeavour to compose any material difference of opinion in respect of such matters.

COMPOSITION OF WORKS COMMITTEE

A works committee consists of representatives of employer and workmen engaged in the establishment. The number of representatives of workmen shall not be less than the number of representatives of the employer. The composition committee is so fixed as to give representation to the various categories, groups and classes of workmen and to the sections, shops or departments of the establishments. The total number of people shall not exceed 20. The representatives of employer all be nominated from the technical, managerial or supervisory category, who should be in direct touch with the working of the establishment. The representatives of workers shall be elected from among themselves.

MEETING OF THE COMMITTEE

The committee may meet as often as necessary, but not less than once in three months. At its first meeting, the committee shall regulate its own procedure. It shall meet ordinarily during the working hours of the establishment.

FUNCTIONS OF THE WORKS COMMITTEE

According to Section 3(1) (2) of the Industrial Disputes Act, the works committees "promote measures for securing and preserving amity and good relations between the employer and workmen; and to that end, comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters."

In order to remove the vagueness in the exact scope and functions of the works committee, the 17th session of the Indian Labour Conference at Madras drew up, in July 1959, an alternative list of items which the works committee could deal with and a list of items which they should not deal with.

The latter, which were beyond the scope of the works committees and were reserved for the collective bargaining process, included wages and allowances; bonus and profit-sharing, bonus, rationalization; fixation of work-load; pay-scales, retrenchment and lay off, victimization for trade union activities, leave and holidays, incentive schemes; housing and transport; provident fund, gratuity and other retirement benefits.

So actually what was let to discuss conditions of work-lighting, ventilation, temperature, sanitation, etc., amenities-supply of drinking water, rest rooms, medical and health services, safe working condition, administration of welfare fund, educational and recreational activities, encouragement thrift, saving, etc.

These committees deal with day-to-day questions of interest to both the management and the employees. These questions cover a wide range, bear upon the daily life of the workers, and with satisfactorily at the initial stages, they lead to disputes.

B) JOINT MANAGEMENT COUNCILS

These communities give labour a greater sense of participation and infuse a spirit of co-operation between the two parties without encroaching upon other people's sphere of influence, rights prerogatives. These communities also aim at making the will of the employees effective in the management, insure the operation of the private-owned concern in conformity with national interests and provide for a popularly agency for supervising the management of nationalized under takings.

Functions of the Councils

The Indian Labour Conference at its 15th session in July 1957. After considering the report of a study team on workers' participation abroad, accepted in principle the idea of setting up JMCs in India.

1. Equal representation to workers and management.
2. The Council to be entitled.
3. To be consulted on certain specific matters such as administration of standing order and their amendments, when needed; retrenchment, rationalization, and closer; reduction in or cessation of operation.
4. To receive information, to discuss and give suggestion on such other matter as the general economic situation of the concern, the state of market, production and sales programmes, methods of manufacture and work.
5. To be entrusted with administrative responsibilities for the administration and supervision of welfare measures, safety measures, vocation training and apprenticeship schemes, provision of schedules for working hours, breaks and holidays, etc.

2.2.3.2 Establishment of Compulsory Collective Bargaining

As the state encourages and requires the establishment of bipartite committees for the purpose of composing grievances and differences between workers and their employer, it may also think it advisable to encourage and, if necessary, to force workers and employers to enter into formal collective bargaining through their representatives. The idea behind such a policy is to force the parties to seek to settle their differences through mutual negotiations and discussions before they decide to resort to strikes or lock-outs. Where the parties themselves have set up a machinery for collective bargaining and negotiation, the imposition of collective bargaining by the state becomes unnecessary. But, if either or both the parties resist the establishment of collective bargaining and the state feels that collective bargaining helps the peaceful and democratic conduct of industrial relations, it may impose collective bargaining compulsorily.

It was in this frame of mind that the Federal Government of the United States under President Roosevelt enacted the National Labour Relations Act, 1935, popularly known as the Wagner Act. This Act made the refusal by the employer to bargain with the representatives of

his employees, an unfair labour practice and imposed penalties for the same. The Labour Management Relations Act of 1947, commonly known as the Taft-Hartley Act, made the refusal to bargain either by the employer or by the trade union, an unfair labour practice. Thus, in the United States, the employers and the workers both are required by law to bargain collectively, if one of the parties so desires. However, the outcome of collective bargaining is not dictated by the government. Here again, the spirit is to require the parties to solve their dispute by their own efforts before they resort to a trial of strength. In India, refusal to bargain collectively in good faith by the employer and the recognized union, has been included in the list of unfair labour practices by an amendment of the Industrial Disputes Act in 1982. However, in absence of making recognition of representative union by the employer statutorily compulsory, this provision of the Industrial Disputes Act, 1947, does not have much significance.

2.2.3.3 Conciliation and Mediation

The third method used by the state for promoting a peaceful settlement of industrial disputes is the provision of conciliation and mediation services. There is no essential difference between conciliation and mediation and the two terms are used interchangeably. However, some people tend to differentiate between the two on the basis of the degree of the active role played by the third person. To some, the conciliator is more active and more intervening than the mediator who is said to perform a 'go messenger' service. Through conciliation and mediation a third party provides assistance with a view to help the parties to reach an agreement. The conciliator brings the rival parties together discuss with them their differences and assist them in finding out solution to their problems. Mediator on the other hand is more actively involved while assisting the parties to find an amicable settlement. Sometimes he submits his own proposals for settlement of their disputes.

Conciliation may be voluntary or compulsory. It is voluntary if the parties are free to make use of the same, while it is compulsory when the parties have to participate irrespective of whether they desire to do so or not. Section 4 of the Act provides for appointment for conciliation officers and Section 5 for constitution of Boards of Conciliation. The Board of conciliation is to consist of an independent Chairman and two or four member representing the parties in equal number. While the former is charged with the duty of mediating in and promoting the settlement of industrial disputes, the latter is required to promote the settlement of industrial disputes. The act generally allows registered trade unions or a substantial number of workers/ employees and also in certain cases individual workman to raise disputes. The performance of conciliation machinery, though it does not appear to be unsatisfactory, causes delays due to casual attitude of the parties towards conciliation, defective processes in the selection of personnel and unsatisfactory pre-job training and period-in-service-training. Delays in conciliation are attributed partly to the excessive work-load on officers and partly to the procedural defects. Since conciliation officer has no powers of coercion over labour and management, he can only persuade them to climb down and meet each other. The settlements that are claimed to result from conciliation are increasingly the result of political intervention. Success of conciliation depends upon the appearances and their sincere participation in conciliation proceedings of the parties before the conciliation officers. Non-appearance and non-participation of the parties in conciliation proceedings poses a serious hindrance in this direction. On the attitude of the parties National Commission on Labour observed conciliation is looked upon very often by the parties as merely hurdle to be crossed for reaching the next stage. The representatives sent by the parties to appear before him are generally officer who do not have the power to take decisions or make commitments: they merely carry the suggestion to the concerned authorities on either side. This dampens the spirit of a conciliator. Section 11 of

the Act has clothed the conciliation officers with the power to enter premises occupied by any establishment and also has been invested with the powers of civil court under the Civil Procedure Code, 1908 when trying a suit for enforcing the attendance of any person and examining him on oath, compelling the production of documents and material objects and issuing commission for examination of witness for the purpose of inquiry in to any existing or apprehended industrial dispute. These provisions are seldom enforced. Moreover, conciliators most often do not have requisite information on the employers and trade unions, up to date wage/productivity, information and relevant up to date case laws which affect his capability to conciliate effectively. The National commission on labour in this context laid emphasis for pre job and on the job training of conciliation officers.

Voluntary Conciliation and Mediation

Under the method of voluntary conciliation and mediation, the state sets up a conciliation and mediation machinery, consisting of personnel trained in the art of conciliating disputes. The services of this machinery are always available to the disputants. Whenever they feel that the conciliator may help them in resolving their dispute or in breaking a deadlock, they may call upon the services of the conciliation machinery. The state provides the service without imposing any obligation on the disputants to use it. Sometimes, the conciliator is empowered to be a little more active. He may inform the parties that his services are available and also request them to keep him informed of the developments in their negotiations.

The aim of the conciliator is to break the deadlock, if any, explain the stand and the viewpoints of one party to the other, convey messages and generally keep the negotiations going. Suggestions may come from the conciliator or the mediator, but the parties are free to accept or reject them. It is the parties who ultimately decide the issues. They may or may not come to an agreement. This sort of conciliation or mediation is not different from voluntary collective bargaining and may be said to be mere continuation of the process of collective bargaining.

Compulsory Conciliation and Mediation

In many countries, the state does not rest content with the mere creation of a conciliation service. The state goes a step further; it imposes an obligation on the parties to submit their dispute to the conciliation service and makes it a duty of the latter to seek to conciliate the dispute. Meanwhile, the state requires the parties to refrain from causing any work-stoppage for the purpose of resolving the dispute, so long as the conciliation proceeding is going on.

Generally, there is a time limit for the conciliators and mediators to conclude their efforts at conciliation. There are three main considerations for prohibiting the parties from causing work-stoppage and imposing this time limit.

Firstly, it is felt that conciliation will provide a cooling off period during which emotional tensions may subside and a settlement can be arrived at.

Secondly, it is felt that the freedom of the parties to settle their disputes even by causing work-stoppage should not be taken away from them for a long period.

Thirdly, it is argued that, if conciliation does not achieve an early break-through, it is not very likely to succeed later.

If, at the end of the conciliation proceeding, the parties fail to settle their dispute, they are free to go on a strike or declare a lock-out, but the state may further persuade the parties and use other methods for bringing about a peaceful settlement of the dispute. On the other hand, if a settlement is arrived at, an agreement may be signed in the presence of the conciliator and it is declared legally binding on the parties.

In India, both voluntary and compulsory types of conciliation are in existence.

Conciliation and Mediation in Different Countries

Under the Industrial Disputes Act, 1947, giving of a notice of strike or lock-out in public utility services, is obligatory on the parties before they go on a strike or declare a lock-out. Under the rules, a copy of the notice has to be sent to the conciliator appointed by the government for a particular geographical region or the industry where the parties are located. When the Conciliation Officer receives such a notice, it is his legal responsibility to seek to conciliate the dispute. The conciliation officer makes efforts to induce the parties to come to a settlement. In the event of a failure, he submits a report to the government, stating the facts of the case and the reasons responsible for the failure. The government is free thereafter, to take such steps as it deems fit for settling the dispute. The Act prohibits a strike or a lock-out in a public utility service during the pendency of the dispute before a conciliation officer and 7 days after the conclusion thereof.

Similarly, the appropriate government may appoint a Board of Conciliation and refer to it, a particular dispute that threatens industrial peace. The board of conciliation has been vested with the power to enforce the attendance of the parties concerned for the purpose of conciliating the dispute. Strikes and lock-outs are prohibited during the pendency of the conciliation proceedings before the board of conciliation and seven days after the conclusion thereof. The board of conciliation has the duty ‘to endeavour to bring about the settlement of a dispute referred to it and for this purpose to investigate the dispute and all matters affecting the merits and the right settlement thereof and to do all such things as it thinks fit for purpose of inducing the parties to come to a fair and amicable settlement of the dispute’ [Sec. 13].

What has been said above shows that, under certain conditions, the parties can be forced to go through a conciliation process and to refrain from causing work-stoppages so long as the conciliation proceedings are going on. Not only this, any agreement arrived at during the course of the conciliation proceeding is legally binding on the parties concerned, the violation of which is a penal offence.

At the same time, the parties are also free to make use of the services of the conciliation officers according to their choice, without being subjected to any specific legal obligation. However, if an agreement is signed by the parties and the conciliation officer, the agreement becomes a settlement which is binding on the parties.

In Australia, under the Commonwealth Conciliation and Arbitration Act, commissioners are empowered to intervene if no agreement is reached between the parties themselves. The Act empowers the commissioners to convene a compulsory conciliation conference, consisting of the representatives of employers and employees and presided over by a commissioner, or on the commissioner’s authorization, by a conciliator. A memorandum of agreement arrived at in the conciliation proceedings are, on the certification of the commissioner, binding on the parties. If conciliation fails, the commissioner settles the disputes by arbitration. In New South Wales,

Queensland, South Australia, Conciliation Committees or Conferences work in direct conjunction with the Courts of Arbitration.

In New Zealand, the Industrial Conciliation and Arbitration Act provides for the establishment of Councils of Conciliation, consisting of equal number of representatives of employers and workers concerned, to be presided over by a Conciliation Commissioner who is a permanent official of the Department of Labour. In case no agreement is voluntarily reached between a registered trade union and the employer concerned, either side may refer the dispute to the Council of Conciliation. If the parties so desire, a settlement arrived at in the process of conciliation may be made binding by an award of the Arbitration Court. If no agreement or only an incomplete agreement is reached, the dispute is referred to the Court of Arbitration for final disposal. Like India, Australia and New Zealand provide for both compulsory and voluntary conciliation.

The United States and Great Britain provide examples par excellence, of voluntary conciliation. In the United States, the federal government and also the state governments maintain conciliation and mediation services, whose good offices are made available all the time, and the parties to a dispute are free to call upon them to help arrive at a settlement. In Great Britain also, similar services are maintained.

2.2.3.4 Compulsory Investigation

Another method of intervention by the state in the settlement of industrial disputes is compulsory investigation of the implications of a particular dispute. Many governments have assumed power under laws relating to industrial relations, to set up a machinery to investigate into any dispute. The purpose behind the appointment of a Court of Enquiry is essentially to find out the relevant facts and issues involved and to give them wide publicity so that the pressure of public opinion may force the recalcitrant party to give up its obstinate attitude. If the issues are brought to the knowledge of the public, the parties concerned may develop a reasonable and accommodative frame of mind. The primary sanction behind the effectiveness of the reports of such inquiries comes from the pressure of enlightened public opinion.

The second purpose behind the appointment of a Court or Board of Inquiry where strikes are prohibited during the preliminary investigation, as in the United States, is to provide a cooling off period to the parties concerned so that they could reconsider their respective stands, realize the implications of their steps and, if possible, settle their disputes peacefully.

In India, under Section 6 of the Industrial Disputes Act, 1947, both the central and state governments have the power to constitute a Court of Inquiry for ‘enquiring into any matter appearing to be connected with or relevant to an industrial dispute’. Under the Conciliation Act, 1896, and the Industrial Courts Act, 1919, of Great Britain, the Minister is empowered to constitute a Court of Inquiry to enquire into and report on the cause and circumstances of a dispute. Similarly, the Taft-Hartley Act, 1947, of the United States empowers the president to appoint a Board of Enquiry whenever he believes that an actual or threatened strike imperils national health and safety. The board of enquiry investigates the dispute and reports to the president what the issues are, but is forbidden to make any recommendation for settlement. After the receipt of the board’s report the president may instruct the attorney general to seek an injunction from the appropriate Federal Court to prohibit or end the strike, if any. Such an injunction, if issued, runs for a maximum period of 80 days. In the interim period the president

may reconvene the Board of Enquiry for a further report, but the board is again forbidden to include any recommendation in the report.

In India, the Court of Inquiry has the same powers as are vested in a civil court under the Code of Civil Procedure in respect of:

(i) enforcing the attendance of any person and examining him on oath;
(ii) compelling the production of documents and material objects;
(iii) issuing commissions for the examination of witnesses and
(iv) in respect of matters prescribed under relevant rules.

2.2.3.5 Compulsory Arbitration or Adjudication

Although the state has devised methods for the peaceful settlement of industrial disputes, it is clear that these do not guarantee a smooth end to disputes. In spite of the pressures and inducements by the state, the parties still may prefer to resort to strikes and lock-outs to settle their disputes. In the opinion of the government such strikes and lock-outs may appear to be injurious to national and public interest and may cause irreparable damages. Under such conditions, the government may decide to refer the dispute to adjudication and force the parties to abide by the award of the adjudicator and at the same time, prohibit the parties from causing work-stoppages. This means imposing compulsory arbitration or adjudication.

Compulsory arbitration is the submission of disputes to arbitration without consent or agreement of the parties involved in the dispute and the award given by the arbitrator being binding on the parties to the dispute. On the other hand in case of voluntary arbitration, the dispute can be referred for arbitration only if the parties agree to the same. Section 10 A of the Act, however, provides only for voluntary reference of dispute to arbitration. This system, however, has not been widely practiced so far. One of the main reasons for not gaining popularly of this procedure is lack of arbitrators who are able to command respect and confidence of the parties to the dispute. Inter Union rivalry also sometimes makes it difficult in arriving at an agreement on settlement of an arbitrator who is acceptable to all the trade unions in the industry. The main idea behind the imposition of compulsory arbitration is to maintain industrial peace by requiring the parties to refrain from causing work-stoppages and providing a way for settling the dispute.

Adjudication: If despite efforts of the conciliation officer , no settlement is arrived at between employer and the workman, The Industrial Dispute a provides for a three tier system of adjudication viz. Labour Courts , Industrial Tribunals and National Tribunals under section, 7 , 7A and under section 7B respectively. Labour Courts have been empowered to decide disputes relating to matters specified in the Second Schedule. These matters are concerned with the rights of workers, such as propriety of legality of an order passed by an employer under the standing orders, application and interpretation of standing orders, discharge or dismissal of workman including reinstatement of grant of relief to workman wrongfully discharged or dismissed, withdrawal of any customary concession or privilege and illegality or otherwise of a strike or lockout. The industrial tribunals are empowered to adjudicate on matters specified in both the Second and Third schedule i.e. both rights and interest disputes. The jurisdiction of the Industrial Tribunal is wider that the labour courts.

In case of disputes which in the opinion of the Central Govt. involve question of national importance or is of such nature that workers in more than one State are likely to be affected. The Act provides for constitution of National Tribunals. Industrial adjudication has undoubtedly played a conclusive role in the settlement of industrial disputes and in ameliorating the working and living conditions of labour class. In this context the National Commission of Labour observed the adjudicating machinery has exercised considerable influence on several aspects of conditions of work and labour management relations. Adjudication has been one of the instruments for the 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 interest of the weaker sections of the working class, who were not well organized or were unable to bargain on an equal footing with the employer.

The following are the two principal forms of compulsory arbitration based upon the nature of reference and nature of the award:

1. Compulsory reference but voluntary acceptance of the award
2. Compulsory reference and compulsory acceptance of the award.

Under the **first** type, a dispute is referred to a tribunal or Court of Arbitration for adjudication either by the government or the parties may be required, by law, to submit their dispute for adjudication, though they are left free to accept or reject the award when it comes. However, it is expected that once the issues have been examined by an impartial and independent authority and an award has been given, the parties will think twice before rejecting such an award for fear of incurring public displeasure. It is expected that the pressure of public opinion would lead them to accept the award.

Under the **second** form of compulsory arbitration, it is not only that the government has the power to refer the dispute for adjudication, but also, that the parties are put under a legal obligation to abide by its award. Law forces the parties to appear before the adjudicator and penalties are imposed on them for non-acceptance and non-implementation of the terms of the award. The adjudicators are vested with adequate powers to summon the parties and call for witnesses and to take such steps that are necessary for arriving at a fair and reasonable conclusion. The parties are required to refrain from going on a strike or declaring a lock-out during the pendency of the adjudication proceedings and during the period when the award is in operation.

Australia and New Zealand were pioneers in introducing compulsory arbitration, but later the system came to be adopted in many other countries of the world. The system is widely in force in Australian states, particularly, New South Wales, Queensland, South Australia and Victoria. The theory of compulsory arbitration in Australia, as in most other countries, is based on the proposition that ‘when agreement in an industrial dispute is not reached through negotiation between the employer and employees or their representatives or subsequently through conciliation by an independent public authority then that public authority should arbitrate’

An Arbitration Court may consist of one person only or a few persons with one member acting as the Chairman. Usually, the adjudicators are drawn from the judiciary. The qualifications and tenure of office, powers and functions of the adjudicators are, in general,

prescribed under the law itself. Sometimes, representatives of employers and employees are also associated with the deliberations of the Court.

The powers of the Courts depend mostly on the objective for which they are set up. In cases where such Courts have been set up exclusively for deciding wage disputes, their powers are narrow. Wherever the object is to decide industrial disputes in general, the powers are usually wide. In general, however, the provisions of the laws with respect to the powers of the Court vary widely.

In most cases, the agreement reached by the disputing parties is made legally binding by an award of the Court. In some countries, if the parties to an agreement represent majority of the employees and employers, its provisions are compulsorily extended, also, to other employers and trade unions not parties to the agreement. Compulsory conciliation and constitution of tripartite wage boards, generally form preceding steps before compulsory arbitration is resorted to.

	Methods of settlement						
	Governmental intervention		Mutual settlement		Voluntary resumption		
Year	Number	Percentage	Number	Percentage	Number	Percentage	Total
1961	487	41.8	334	28.6	345	29.6	1,166
1966	1,005	42.8	680	29.0	662	28.2	2,347
1971	1,070	42.7	659	26.3	779	31.0	2,508
1979	775	30.7	755	29.9	996	39.4	2,526
1983	464	27.6	473	28.1	747	44.3	1,684
1984	552	37.1	352	23.7	584	39.2	1,488
1985	541	42.1	343	26.7	400	31.2	1,284
1986	642	46.8	402	29.3	329	23.9	1,373
1987	638	48.2	295	22.3	391	29.5	1,324
1988	485	39.4	207	16.8	539	43.8	1,231
1989	458	34.4	316	23.7	559	41.9	1,333
1990	396	28.7	334	24.2	649	47.1	1,379
1991	387	28.2	281	20.5	704	51.3	1,372
1992	439	33.6	241	38.4	628	48.0	1,308
1993	396	37.6	280	26.6	376	35.7	1,052
1994	322	35.2	237	25.9	357	39.0	916
1995	264	33.2	174	21.0	358	45.0	796
1996	228	26.9	235	27.7	386	45.5	849
1997	298	30.1	237	23.9	456	46.0	991
1998	226	30.4	202	27.2	316	42.5	744

***Source*: Compiled on the basis of data published in Government of India, Ministry of Labour. Various issues of Pocket Book of Labour Statistics.**

2.2.4 SETTLEMENT WITHOUT STATE INTERVENTION

There are two ways in which the basic parties to an industrial dispute—the employer and the employees—can settle their disputes. These are: (1) collective bargaining and (2) voluntary arbitration.

2.2.4.1 Collective Bargaining

Collective Bargaining is a technique by which dispute as to conditions of employment, are resolved amicably, by agreement, rather than by coercion. The dispute is settled peacefully and voluntarily, although reluctantly, between labour and management. In the context of present day egalitarian society, with its fast changing social norms, a concept like 'collective bargaining' is not a capable of a precise definition. The content and Scope of collective bargaining also varies from country to country. Broadly Speaking Collective bargaining is a process of bargaining between employers and workers, by which they settle their disputes relating to employment or non-employment, terms of employment or conditions of the labour of the workman, among themselves, on the strength of the sanctions available to each side. Occasionally, such bargaining results in an amicable settlement arrived at voluntarily and peacefully, between the parties. But quite often, the workers and employers have to apply sanctions by resorting to weapons of strike and lockouts, to pressurize one another, which makes both the sides aware of the strength of one another and that finally forces each of them to arrive at a settlement in mutual interest. It is thus the respective strength of the parties which determine the issue, rather than the wordy duals which are largely put on for show, as an element of strength in one party is by the same token, an element of weakness in another.

The emergence and stabilization of the trade union movement has led to the adoption of collective bargaining as a method of settling differences and disputes between the employer and his employees. Collective bargaining implies the following main steps:

1. Presentation in a collective manner, to the employer, their demands and grievances by the employees.
2. Discussions and negotiations on the basis of mutual give and take for settling the grievances and fulfilling the demands.
3. Signing of a formal agreement or an informal understanding when negotiations result in mutual satisfaction.
4. In the event of the failure of negotiations, a likely resort to strike or lock-out to force the recalcitrant party to come to terms.

The four steps mentioned here, indicate the step-by-step conclusion of the process of collective bargaining conducted by the parties without any outside assistance. Sometimes, when collective negotiations reach a deadlock, the parties themselves may call in third persons to help them settle their disputes. Here, the role of the outsider, who is a mutually agreed person, is to break the deadlock, to assuage feelings, to interpret the view point of one to the other, and thereby to help the parties arrive at an agreement. But the solution, if any, comes out of the parties themselves; the presence of the outsider neither supersedes the process of collective bargaining nor the freedom of the parties to agree or to disagree. Bargaining with the help of the third party is generally called conciliation or mediation. If the negotiations result in a mutually satisfactory solution, an agreement may be formally signed or just an informal understanding may be arrived at.

The last step in the process of collective bargaining is a likely resort to coercive measures, that is, strikes or lock-outs. Strikes and lock-outs are an integral part of the process of collective bargaining and may be viewed as a method of settling industrial disputes, as war is a method for settling disputes between two or more nations. In the present context of national sovereignty, war is still recognized as a legitimate instrument of settling international disputes, however disastrous its consequences may be for humanity as a whole. So are strikes and lock-outs recognized in many countries as legitimate weapons in the armoury of labour and management, however detrimental their consequences may be for the welfare of the community. Apart from the nature of the demands and grievances in determining the outcome of collective bargaining, the threat of strikes and lock-outs exercises a potent degree of pressure on the parties concerned to settle their disputes and come to an agreement. If the threat of a strike were not there, mutual negotiations would rarely succeed and, therefore, if collective bargaining is to be developed as a method of settling industrial disputes, the right to strike has to exist unimpaired. The solutions arrived at in the process of collective bargaining are ultimately evolved by the parties themselves and are of lasting value. Where collective bargaining has been firmly established, as in the United States, Great Britain, Sweden and others, the trade unions and the employers do come to agreements in most cases without taking recourse to strike. But in some cases, it is the resort to this trial that ultimately resolves a dispute.

2.2.4.2 Voluntary Arbitration

The second way, in which the parties can settle disputes without any state intervention, is voluntary arbitration. The parties, feeling that mutual negotiations will not succeed and realizing the futility and wastefulness of strikes and lock-outs, may decide to submit the dispute to a neutral person or a group of persons for arbitration. The neutral person hears the parties and gives his award which may or may not, be binding on them. At the time of submitting a dispute to arbitration, the parties may agree in advance, to abide by the award of the arbitrator and thus, industrial peace is maintained and the dispute is resolved. Sometimes, however, the parties may agree to submit the dispute to an arbitrator but at the same time, reserve their right to accept or reject the award when it comes. Under such a condition, voluntary arbitration loses its binding force. However, even this limited form of voluntary arbitration is not without its utility.

The Gandhian technique of resolving industrial disputes accords a high place to voluntary arbitration. The constitution of the Textile Labour Association, Ahmedabad, provides for voluntary arbitration. Many industrial disputes are settled today through voluntary arbitration. At Dalminar, the Rohtas workers union and the management for the Rohtas Industries Limited had on a number of occasions, submitted their disputes to voluntary arbitration. Many industrial disputes are settled today through voluntary arbitration.

The Industrial Disputes Act, 1938, and the Industrial Relations Act, 1946, of Maharashtra recognized voluntary arbitration as a method along with others, for the settlement of industrial disputes. The Industrial Disputes Act, 1947, provides for joint reference of disputes, to arbitration. The Code of Discipline (1958) also reiterated the faith of the parties in voluntary arbitration in the event of the failure of mutual negotiations. The need for according a wider acceptance to voluntary arbitration was further recognized in the 1962 session of the Indian Labour Conference which held, ‘Whenever conciliation fails, arbitration will be the next normal step, except in cases where the employer feels that for some reasons he would prefer adjudication,’ such reasons being creation of new rights having wide repercussions or those involving large financial stakes’. The Conference, however, said ‘… the reasons for refusal to

agree to arbitration must be fully explained by the party concerned in each case and the matter brought up for consideration by the Implementation Machinery concerned'.

Again, the Industrial Truce Resolution, 1962, emphasized voluntary arbitration and specified certain items which could be conveniently brought under its purview. These included complaints pertaining to dismissal, discharge, victimization and retrenchment of individual workmen. Later, a tripartite National Arbitration Promotion Board was set up with a view to reviewing the position, examining the factors inhibiting its wider acceptance and suggesting measures to make it more popular. Almost all the state governments and union territory administrations have also either set up Arbitration Promotion Boards or made some other institutional arrangements, to popularize voluntary arbitration.

Inspite of the support and blessings of **Mahatma Gandhi** and efforts made by the government, voluntary arbitration has not made much headway in the country. Some of the factors which have hampered the adoption of voluntary arbitration, as a method of settling industrial disputes in India, were highlighted in the evidence before the first National Commission on Labour. These included:

(i) easy availability of adjudication in case of failure of negotiations;
(ii) dearth of suitable arbitrators who command the confidence of both parties;
(iii) absence of recognized union which could bind the workers to common agreements;
(iv) legal obstacles;
(v) the fact that in law no appeal was competent against an arbitrator's award;
(vi) absence of a simplified procedure to be followed in voluntary arbitration; and
(vii) cost to the parties, particularly workers'.

In the United States, most collective agreements provide for resort to arbitration as a final step in the settlement of grievances. Grievance procedures jointly worked out by the parties usually provide for voluntary arbitration as the last step.

In Great Britain also, many national agreements provide for arbitration of unresolved differences, relating to application of the agreements during the period of their operation. Very often, the parties, at the time of entering into an agreement, also undertake to accept the decision of the arbitrator as binding. In case where a particular company enters into an agreement with the union in modification of a national agreement at the industry level, voluntary arbitration is often provided at the company level also.

2.2.5 SELF ASSESSMENT QUESTIONS

1. Describe various methods of settling industrial disputes.
2. Bring out clearly the merits and demerits of collective bargaining and adjudication as methods of settling industrial disputes.
3. Describe the statutory machineries for the settlement of industrial disputes in India. Which of these will you prefer for the country and why?
4. Give a brief description of non-statutory bodies or instruments concerned with resolution of industrial disputes in India.

5. Explain the recommendations of the National Commissions on Labour relating to the methods and machineries for the settlement of industrial disputes. What is the status of their implementation?

2.2.6 REFERENCES

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