

## **ROLE OF COLLECTIVE BARGAINING IN INDUSTRIAL DEMOCRACY IN INDIA: ISSUES AND CHALLENGES**

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### **INTRODUCTION**

The prime objective of the Industrial relations is to regulate the powers of management and organised labour and to provide a mechanism to reconcile there too. It presupposes equal status before law of labour and management and acts as a countervailing force to reduce the inherent inequality in the collective power of the two parties.

Collective bargaining has developed to some extent in India since independence. This inspiration for peaceful settlement of differences between management and labour came from Gandhiji. In the past, collective bargaining was not necessary because the production methods before Industrial revolution differed so much from those of Modern Industry. But, now men are working towards new techniques by which agreement, rather than coercion, can become the core of the needed regulation.

Today, a distinct feature of the modern industrial era is collective bargaining. It is the technique for voluntary regulation of industrial relations.

Settlement of industrial disputes is very necessary to improve the industrial relations in the organization. Rise and growth of the trade unions evolved a device of collective bargaining to resolve their disputes by negotiations between the two parties without the help of any arbitrator. It has now become the central point of industrial relations.

Theoretically, collective bargaining is based on the principle of balance of power. Managements and unions representing the workers are considered as two separate powers that jointly negotiate with each other various terms of employment. In actual practice both the parties bargain to get maximum advantage out of the other by using, if necessary, threats and counter threats like strikes, lockouts and other direct actions. Information about the company, industry and other relevant statistical data are pressed into service in the process of bargaining. Collective bargaining therefore has been used as an important method of

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influencing managerial decisions over past years. The element of power does play a part in arriving at an agreement. The method of horse trading also is not uncommon.

## **CONCEPTUAL ANALYSIS OF COLLECTIVE BARGAINING**

The expression “collective bargaining” has acquired a technical meaning in industrial law. The term Collective Bargaining originated in the end of the nineteenth century. The word “Collective Bargaining” is made up of two words “Collective” which implies group action through its representatives, and “bargaining” which suggests negotiating.

It provides a system of industrial jurisprudence establishing and administering the conditions under which wage earners render their services. It is an industrial peace treaty.

The meaning of the expression “Collective Bargaining” has been the subject-matter of controversy. It has been defined in the encyclopaedia of social sciences as “a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert.

According to Dale Yoder, “it is essentially a process in which employees act as a group in seeking to shape conditions and relationships in their employment.” Thus, collectively bargaining is a method by which problems of wages and conditions of employment are resolved amicably (although after reluctantly) peacefully and voluntarily between labour and management. In brief, it can be described as continuous, dynamic process for solving problems arising directly out of employer-employee relationship.

Collective bargaining represents a situation in which the essential conditions of employment are determined by bargaining process undertaken by representatives of a group of workers on the one hand of Employers on the other. The prerequisites for its success are first unions which are neither controlled nor seriously influenced by the Employers and second some rough equivalence of bargaining power on the two sides of the table. As such, unorganised workers are usually helpless and they have little or no power to bargain against their employer.

The conclusion of the collective bargaining is the collective agreement or ‘labour contract’. It is the written statement of the terms and provisions arrived at by collective bargaining. It is either a mimeographed document or a small printed booklet.

## **OBJECTS OF COLLECTIVE BARGAINING**

It enumerated the following objects:

- (1) To establish and built up union recognition as an authority in the work place,
- (2) To raise workers' standard of living and win a better share in company's profits
- (3) To express in practical terms the workers' desire to be treated with due respect and to achieve democratic participation in decision affecting their working conditions
- (4) To establish orderly practices for sharing in these decisions and to settle disputes which may arise in day to day life of the company and lastly
- (5) To achieve broad general objectives such as defending and promoting the workers' interests.

## **COLLECTIVE BARGAINING IS DEMOCRATIC**

Collective bargaining is an institution that allows individual freedom of association and discussion both for management and organised workers. It is a process of decision making and rule making for the governance of industrial life. It is self-government in operation and promotes the democratic virtues of independence and responsibility. Collective bargaining has come to stay as the main plank of industrial democracy.

## **FORMS OF COLLECTIVE BARGAINING**

Collective bargaining may be broadly classified under two heads, such as 'single-employer bargaining' and 'Association or Multi-employer bargaining'. Again, for bargaining purposes the union representatives are generally at two levels-local and national.

## **IMPORTANCE OF COLLECTIVE BARGAINING**

The necessity of collective bargaining is keen felt for solving the problems arising at the plant or industry level. It restricts management's freedom or action, for even where management security is intact. Again, it opens up a channel of communication between the top and bottom of an undertaking which is difficult otherwise.

## **DURATION OF COLLECTIVE BARGAINING**

The duration of collective bargaining agreements vary from agreement to agreement. There is a general tendency on the part of union to have the contract or short duration, but management on the other hand prefers agreement of long duration.

### **MAJOR CLAUSES IN COLLECTIVE BARGAINING**

The most frequently included subjects of collective bargaining are given below:

- (i) Wage clauses
- (ii) Recognition or union security clauses
- (iii) Hours of work clause
- (iv) Seniority clause and lastly
- (v) Other miscellaneous clauses like leave of absence, welfare funds, disciplinary action or grievance procedure.

### **ESSENTIAL CONDITIONS FOR THE SUCCESS OF COLLECTIVE BARGAINING**

In order to achieve collective bargaining, it is essential to ensure that the workers and employers must have freedom to form unions or association. The denial of such freedom negates collective bargaining. Apart from that a strong and stable trade unions, recognition of trade unions and willingness to give and take are some of the important prerequisites for success of collective bargaining.

### **STAGES OF COLLECTIVE BARGAINING**

Broadly speaking, collective bargaining is a composite process consulting of certain stages. They are:

1. Negotiation- It is the first step in the process. Here, only the parties to the dispute are involved without any intervention from the third party.
2. Conciliation- It involves a third party whose responsibility is limited to keeping the disputing parties together around the conference table. In industrial jurisprudence, conciliation and mediation are used inter-changeably meaning thereby the presence of a third party whose function is that of peace-maker persuading and helping the parties to continue their bargaining efforts to reach an amicable settlement.

Conciliation is a process by which discussion between employers and employees is kept going on through the activities of a third party (conciliator). The Industrial Disputes Act, 1947 and other state enactment authorise the Government to appoint conciliators charged with the duty of mediating in and promoting the settlement of industries in a specified area or one or more industries either permanently or for a limited period. The appropriate Govt. may also constitute a Board of conciliation for promoting the settlement of industrial disputes. Such board consists of an independent chairman and two or four other members, representing the parties to this dispute. The conciliation machinery can take note of the existing as well as apprehended disputes either on its own or on being approached by any party to the dispute. While conciliation is compulsory in all public utility services, it is optional in non-public utility services. In conciliation, the ultimate decision rests with the parties themselves but the conciliator may after a solution to the dispute acceptable to both the parties and serve as a channel of communication. The parties may accept his recommendation for settlement of any dispute or reject it altogether.

3. Arbitration- It goes further than conciliation or mediation. While conciliation is to aid and promote the settlement by persuasion and suggestions, the arbitration has the responsibility for deciding the nature of the final settlement, acceptance of which may or may not be compulsorily required by the disputants. Apart from that there is also the method of enquiry or investigation by third parties, which again may and may not result in a compulsory settlement.

The term “collective bargaining” has been defined as under:

Michael J. Jucius defines “Collective bargaining refers to a process by which employers on the one hand and representatives of employees on the other, attempt to arrive at agreements covering the conditions under which employees will contribute and be compensated for their services.”

According to Encyclopaedia of Social Sciences, collective bargaining is a process of discussion and negotiation between two parties one or both of whom is a group of persons acting in concert. The resulting bargain is an undertaking as to terms and conditions under a continuing service are to be performed.”

Edwin B. Flippo defines, "Collective bargaining is a process in which the representatives of labour organization and the representatives of business organization meet and attempt to negotiate a contract or agreement which specifies the nature of the employee-employer union relationship."

It is the method where trade unions and the representations of management sit together and resolve their disputes or negotiate an agreement with the management for better working conditions, terms of employment, bonus, participation in management and other benefits. This method has generally been used by the trade unions all over the world.

In other words, collective bargaining is a process, a technique, or device to protect the interests of the employees and employees, to determine the employment conditions, to fix the wage and salary and achieve the objectives of the organization.

### **IMPORTANCE OR ROLE OF COLLECTIVE BARGAINING IN PERSONNEL MANAGEMENT**

The role of collective bargaining may be evaluated from the following points of view:

- (1) From management point of view: The main object of the organization is to get the work done by the employees at work at minimum cost and thus earn a high rate of profits. Maximum utilization of workers is a must for the effective management. For this purpose co-operation is required from the side of the employees and collective bargaining is a device to get and promote co-operation. The labour disputes are mostly attributable to certain direct or indirect causes and based on rumours and misconceptions. Collective bargaining is the best remedial measure for maintaining the cordial relations. Strikes, go-slow tactics are avoided which result in increasing the production. It promotes industrial democracy.<sup>1</sup>
- (2) From labour point of view: Labour has poor bargaining power. Individually a worker has no existence because labour is perishable and therefore, the employers succeed in exploiting the labourers. The working class in united form becomes a power to protect its interests against the exploitation of the employers through the process of collective bargaining. The collective bargaining imposes certain restrictions upon the employer. Unilateral action is prevented. All employers are treated on equal footings. The

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<sup>1</sup> Dr. Varma & Agarwal, *Personnel Management and Industrial Relations*, Revised Edition, 1991, Forward Book Depot, Nai Sarak, Delhi, p. 338.

conditions of employment and rates of wages can be changed only through the negotiations with labour. Employer is not free to make and enforce decisions at his will.

- (3) From trade union point of view: Collective bargaining can be made only through the trade unions. Trade unions are the bargaining agents for the workers. The main function of the trade unions is to protect the interests of workers through constructive programmes and collective bargaining is one of the devices to attain that objective through negotiations with the employers. Trade unions may negotiate with the employer for better employment opportunities and job security through collective bargaining. It also satisfies the ego of the workers.
- (4) From Government point of view: Government is also concerned with the process of collective bargaining. Government passes and implements several labour legislations and desires it to be implemented in its true sense. If any person violates the rules and laws, it enforces it by force. Collective bargaining prevents the Government from using the force because an amicable agreement can be reached between employer and employees for implementing the legislative provisions. Labour problems shall be minimised through collective bargaining and industrial peace shall be promoted in the country without any force.

### **ESSENTIAL PREREQUISITES FOR COLLECTIVE BARGAINING**

Effective collective bargaining requires the following pre-requisites:

- (1) Existence of a strong representative trade union in the industry that believes in constitution means for settling the disputes.
- (2) Existence of strong and enlightened management which can integrate the different parties, i.e employees, owners, consumers and society or Government.
- (3) Agreement on basic objectives of the organization between the employer and the employees and on mutual rights and liabilities.
- (4) Existence of a fact-finding approach and willingness to use new methods and tools for the solution of industrial problems. The negotiation should be based on facts and figures and both the parties should adopt constructive approach.
- (5) Proper records for the problems should be maintained.

(6) Collective bargaining should be best conducted at plant level. It means if there are more than one plant of the firm, the local management should be delegated proper authority to negotiate with the local trade union.

(7) In order that collective bargaining functions properly, unfair labour practices must be avoided by both the parties.

It may be emphasised here that the institution of collective bargaining represents a fair and democratic attempt at resolving mutual disputes. Wherever it becomes the normal mode of setting outstanding issues, industrial unrest with all its unpleasant consequences is minimised. The contract must include arbitration clause in case there is a dispute.

### **CONTENTS OF COLLECTIVE BARGAINING AGREEMENT**

Collective bargaining is a form of collective contract. Every matter defining the relationship between the management and the workers may form a part of the contract. Usually, two types of provisions are included in a collective bargaining agreement:

- (i) Economic provisions and
- (ii) Political provisions.

Economic provisions involve provisions which affect the economic and working conditions of workers. The political provisions include the provisions relating to the general administration such as divisions of authority and responsibility between the management and the employees or workers participation in decision making bodies or powers to challenge the decisions taken by management etc.

Generally, the following items may be included in a comprehensive contract:

- (i) Wage rates, including shift and overtime wage rates, the method and the period of payment of wages and incentive wages.
- (ii) Allowances, holiday pay, leave with pay etc.
- (iii) Hours of work, holidays, vacations, leave rules etc.
- (iv) Lay-off of workers, rationalisation, demotion, discharge, promotion or transfers, covering particularly the nature and effect of security.
- (v) Grievance procedures including steps, time limitations and provisions for arbitrations.



- (vi) Safety and health facilities.
- (vii) Setting up of standards for production, methods and procedures.
- (viii) Workers representation in management, profit sharing and co-partnership.
- (ix) Recognition of trade union and its authority.
- (x) Maintaining discipline, penal provisions for indiscipline.
- (xi) Provision for retirement benefits such as pension, gratuity, provident fund etc.
- (xii) Performance appraisal, job analysis and job evaluation.
- (xiii) Bonus.
- (xiv) Labour welfare and social security measures. Etc.
- (xv) Arbitration clause.

The above items are not all. Many others may be included in an agreement but certain items have specifically been excluded from the purview of collective bargaining such as managerial policies and decisions which cannot be negotiated in any way.<sup>2</sup>

## **ROLE OF COLLECTIVE BARGAINING IN SETTLEMENT OF INDUSTRIAL DISPUTES**

The methods of settling industrial disputes are not very much difficult from the methods of settling any other disputes. The concern of the state in labour matters emanates as much from its obligations to safeguard the interest of workers and employees as to ensure to the community the availability of their joint product/service at a reasonable price. The extent of its involvement in the process is determined by the level of social and economic development, while the mode of intervention gets patterned in conformity with the political system obtaining in the country and the social and cultural traditions of its people. The degree of state intervention is also determined by the state of economic development. In a developed economy, work stoppages to settle claims may not have as serious consequences as in a developing economy.

An important feature in the field of industrial relations in India is the role played by the State. State intervention in India has assumed a more direct form. The state has enacted procedural and substantive laws to regulate industrial relations.

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<sup>2</sup> *Ibid* at p. 340

The industrial disputes legislation in India provides for two types of machinery. One is for prevention of disputes and includes works committees and welfare officers; the other is for settlement of industrial disputes and consists of conciliation officers and boards, courts of inquiry and tribunal.

In the case of settlement of industrial disputes without state intervention there are two ways in which the basic parties to an industrial dispute i.e the employer and the employees can settle their disputes. These are as follows:

- (a) Collective bargaining and
- (b) Voluntary arbitration.

But, where there is state intervention takes place are the followings:

- (a) Compulsory establishment of bipartite committees;
- (b) Establishment of compulsory collective bargaining;
- (c) Compulsory investigation;
- (d) Conciliation and mediation (voluntary and compulsory) and
- (e) Compulsory arbitration or adjudication.

The internal settlement by mutual agreement is the best method of solving differences between the employers and the workers. However, state interferences in industrial disputes in India under the present circumstances seem to be desirable and essential.

Collective bargaining is very dynamic, vital, growing, expanding and changing in its area, scope, style, coverage and levels. Previously it was distributive bargaining; now it is productive bargaining. Now it has become more scientific, factual and systematic. From plant level it has moved to industry and national level. It has almost encompassed the whole gamut of industrial life.

### **FACTORS FOR MAKING COLLECTIVE BARGAINING SUCCESSFUL**

On the basis of discussion and information's obtained from 800 respondents (125 managers, 125 union leaders, 550 workers), the following points have emerged for making collective bargaining more successful and effective :

- i. Criteria for recognition of union.

- ii. Commitment and determination to reach an agreement.
- iii. Unfair practices must be declared illegal.
- iv. Full implementation of agreement.
- v. Based on factual data.
- vi. Well laid down grievance procedure
- vii. Mutual recognition of rights and responsibilities.
- viii. Existence of an efficient bargaining machinery.
- ix. Presence of a supportive legislative frame work.

## CHALLENGES

### 1. *Weak Bargaining Process*

Collective bargaining process is an essential to protect and safeguard the workers interest. On the other hand, collective bargaining is happening separately based on the union objectives which may differ from union to union. As a result, collective bargaining process gets weakening from industries to industries due to non-cooperation among the trade unions. As it is happening in this region, identified weak collective bargaining process as a dependent variable and politicization of trade union kept as an independent variable. The following hypothesis is framed to find the association between politicization and weak collective bargaining process.

### 2. *Chameleonic Attitude of Trade Union Leaders*

Attitude of trade union leader is an important factor for better relationship among the parties of industrial relations. Consistent attitude is better which should be adopted by various parties in the industrial relations. On the other hand, chameleonic attitude from trade union leaders will definitely damage the trust between management and trade union leaders which has got direct effect on cordial industrial relations.<sup>3</sup>

## CONCLUSION & SUGGESTIONS

Indian constitution considers formation of association as a fundamental right. Indian Trade Union Act allows any seven workers to join together and form a Trade union. Both give rise

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<sup>3</sup> S. Rajesh, Dr. Manoj P., *Politicization of Trade Unions and Challenges to Industrial Relations in India: A Study With A Focus On Northern Kerala*, International Journal of Business and Administration Research Review. Vol.I, Issue No.2, Nov-Jan 2014

these file to formation of multiple trade unions which goes against the very concept of unionism-the unity workers. No central legislation now exists which makes it compulsory for management to recognize more than one union or not to recognize anyone? This has further weakened the trade union and their bargaining power. The Indian Trade Union Act further allows 50 per cent of officer-bearers from outside the organization and 10 per cent of leadership from outside. This provision resulted politicization, and remote control of union activities from outside the organisations. Even the “code of discipline” only recommend recognition of trade union as a voluntary action. Recognition of trade union causes rivalry from others who are not recognized. This problem can be tackled by bringing out comprehensive central legislation covering all aspects such as Recognition, Multiplicity, outside leadership, etc.<sup>4</sup>

Individual worker is too weak in bargaining. Trade union, through collective bargaining, protects the interest of the workers. Thus, collective bargaining is the main object of the trade unions.

The analysis of the development of trade union movement in India shows that lack of proper leadership, and political influences presented several obstacles in the way of its development. Unions are still being dominated by the professional men and political leaders which have no identical interest with that of the workers and make use of the working force for their own interest and in their own way by organising the strikes, gherao etc. for no reasons. Because the most of the workers are uneducated and are not in a position to understand the complexity of laws. Trade unions are weak because they have lack of funds to manage the affairs of the unions, workers do not take active part in the activities because of their migratory character and low-saving capacity. Therefore, it is necessary that the strong trade unions must be created so that they may have good bargaining power to safeguard the interests of their members and help achieving the production targets. As V.V.Giri states,

*“If the trade union movement is not united and strong enough to achieve these objectives the industrial structure to be built in India on the basis of full-fledged specialist democracy would not have firm foundation.”*

A few following suggestions have been offered to the ills of the trade union movement:-

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<sup>4</sup> Abhishek Gupta, Neetu Gupta, *The 21st Century Trade Union Challenges in India*, Journal of Accounting & Marketing, 2013

(1) One union, one industry

The multiplicity of unions in the same industry establishment leads to inter-union rivalries which ultimately weakens the powers of collective bargaining and reduces the effectiveness of workers in securing their legitimate rights. To end the multiplicity of unions, 'one union in one industry' should be fully implemented and adheres to in practice. It will promote the mutual understanding between employers and workers and ultimately reduces the conflicts and promote labour relations better. For this purpose, political influences should be kept out of the field.

(2) Removal of inter-union rivalries

Inter-union rivalries harm the interests of the worker. It comes in the way of settlement of dispute, disunity among the ranks of workers etc. which are mainly responsible for lack of strength and poor bargaining power. All must join hands to form a single central organization on the basis of common goal and programmes covering methods and procedure. Unity of strength have two basic factors promoting interests of workers and maintaining real industrial peace.

(3) Working class leadership

Outside leadership is the main weakness of the Indian trade union movement. They are generally professional agitators and were often interested in using the workers as a 'pawn in their political game'. It is, therefore, essential to have their own leader from within the members themselves who know the real hardships of the working class. He should be given proper education in the art of how to tackle the problems of workers.

(4) Responsibility of workers

At present, trade unions confine their attention to the workers' demands only. It is high time they inculcate in the workers a sense of discipline and responsibility to do a full day's work for a full fair day's wages. They should first make every worker understand their duties and responsibilities and then their rights and privileges.

(5) Framing own policy

The trade union movement must keep itself away from the conflicting ideologies of different parties and follow an independent policy, which is best suited to the interests of the workers. Disruptive political activities should be avoided but it does not mean that the trade union movement should completely be divorced from politics and labourers should not take part in politics but it should be in their individual capacity. The political parties must not be allowed to utilise trade unions for their selfish political objectives.

(6) Varied trade union activities

Trade unions should enlarge their operations in the sphere of education, health, recreation, housing and other welfare activities. They should have contacts with their members in normal times as they contact them in the time of disputes. They must make their members educate in the sense of discipline and responsibilities by organising frequent meetings, discussions etc. they should not function only as strike committees.

(7) Strengthening of trade unions

Indian trade unions are weak in their strength and finance. The following steps may be recommended to strengthen their position:

- (i) Small trade unions must be amalgamated into one big trade union who can organise the labour welfare activities well. They should pour their resources in the interest of stability and strength.
- (ii) Improvement in the finances of trade unions should be made from their internal resources. Membership fee may be enhanced and defaulters should not be allowed to continue their membership.
- (iii) Attitude of employees needs change. They should realise that strong trade union is essential for the better development of industry.

(8) Responsible trade union leadership

Trade union leadership should be fully responsible for the acts of the union. Leaders should acquire full understanding of the constitutional and legal rights available to unions. They should make use of such rights to secure and promote workers interests.

(9) Need for comprehensive legislation

The Trade Union Act was passed as early as in 1926 which is in force since then without any major change. There should be a comprehensive legislation on the subject which should provide not only for registration and recognition of trade unions but also for protection and development of worker's interest.

The development of sound trade union organisation is a sine-qua-non for the success of industrial democracy. The success of our planning, progress and development of the world depends greatly upon the workers-their zeal, enthusiasm and solidarity. A healthy growth of genuine trade unionism is therefore imperative throughout the world. They have to modify the traditional role and adopt a new one for the economic development of an underdeveloped economy of the world.