The Right to Organise and Collective Bargaining

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Abstract

Collective bargaining is a method by which problems of wages and conditions of employment are resolved amicably peacefully and voluntarily between labour and management. The system is highly developed in many countries and is making headway slowly in India. 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 of the two sides of the table. The system of collective bargaining was strictly voluntary and its effectiveness depended essentially on the good faith of the parties. The obligations arising therefrom were regarded as more moral than strictly legal in nature. Therefore, without this being expressly prescribed by the law or the agreements themselves, the system of collective agreements entailed the obligation on both employers and workers' organizations and their members to observe their respective rights to organize and to negotiate, which constituted the very cornerstones of the system. As such, it was not considered necessary to pass a specific law guaranteeing those rights against possible infringement by the parties to the labour contract. The object of the study is to discuss The Right to Organise and Collective Bargaining between workers' and employers.

Introduction

An individual is free to bargain for himself and safeguard his own interest. If an individual workman seeks employment, he stands in a weaker position before his master, who having command over wealth stands in a better position to dictate his own terms and the individual has to accept the offer without any reserves for he has to earn something to feed his family. However the position becomes different if a bargain is made by a body or association of workmen they can negotiate and settle their terms with the employer in a better way and secure better wages, better terms of employment and greater security. The object of collective bargaining is to harmonise labour relations, promote industrial peace by creating equality of bargaining power between the labour and the capital. Collective bargaining can exist only in an atmosphere of political freedom. Any conditions of service like, wages, hours of work, leave, gratuity, bonus, allowances and other like privileges can all be settled by negotiation between the body of workmen and employer. Thus "collective bargaining" is that arrangement whereby the wages and conditions of employment of workmen are settled through a bargain

between the employer and the workmen collectively whether represented through their Union or by some of them on behalf of all of them.[1]

Definition and Scope of Collective Bargaining

Encyclopaedia of social sciences treats collective bargaining as a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert more specifically, it is the procedure by which an employer or employers and a group of employees agree upon the conditions of work. Ludwig Teller defines collective bargaining as an agreement between a single employer or an association of employers on the one hand and a labour Union on the other, which regulates the terms and conditions of employment.

"The Encyclopedia Britannica", defines collective bargaining as "negotiation between an employer or group of employers and a group of working people to reach agreement on working conditions. If negotiations between an employer and a group of his work people the dependence of the work people on the employer for their job weakens their bargaining power, and therefore collective bargaining is more usually understood to be negotiation between one or more Trade Unions and an employer or group or association of employers. The trade Union organization gives the work people greater strength in providing means for the expert presentation of demands by skilled officials not dependent on the employers for their jobs. Further a Union has funds and means of obtaining information outside any one undertaking and can secure for the work people at any one firm the support of their fellows in other firms."

The rights of an unregistered Trade Union are different from a registered Trade Union. The employer can negotiate with an unregistered Trade Union. The management will be bound to recognize any Trade Union, which has enrolled a majority of its employees as its member. A Union whether registered or unregistered commanding allegiance of a majority of the workmen has a better claim to negotiate with the employer on behalf of its workmen in preference to a registered Trade Union representing a minority of the workmen. To accept a principle other than this would, in the opinion of the Madras High Court, give room for abuse and lead to inconvenient results.[2]

But an unregistered Trade Union is not competent to represent its member's interest in proceedings initiated under the Industrial Disputes Act, 1947, because only an officer of a registered Trade Union is entitled to represent its member's interest in any proceeding under the Act. A worker who is a member of an unregistered Trade Union is entitled to be represented by an officer of a registered Trade Union connected with, or by any other workman employed in the industry in which such worker is employed, provided there is an authorisation to represent in the prescribed manner.[3]

[1] Mishra,S.N., Labour And Industrial Laws, Central Law Publications, 26th Edition. P.321
[2] Worker of B and C, Co. v. Labour Commissioner, AIR 1964 Mad. 538
[3] Ram Kapil Singh v. Ali Hasan, A.I.R. 1964 Pa. 271

The common law emphasis on individual contract of employment is shifted to the collective agreement negotiated by and with the representative groups. The application and interpretation of such agreements are also in the collective manner. The subject-matter of such collective activity ranges from the establishment of basic wage rate for thousands of workers throughout the country to the settlement of one man's grievances in respect of one object in one factory.

Two important purposes are achieved generally by collective bargaining agreements. The parties undertake towards one another certain obligations and create a code for the trade. Whether the collective bargaining agreement expresses this or not, the trade union and employer or employers' association by signing the agreement undertake to keep the peace and not to resort to strikes or lock-outs for changing the agreed terms during the currency of the agreement. There is the implied undertaking also to do their best to see that the terms agreed are applied by the employers and employees concerned. Thus, they act as parties to an agreement imposing the natural obligations upon each other. At the same time they also act as the joint legislators for the trade to which the agreement applies. They seek to determine the content of the contract of employment which individual employees have concluded in the past or will conclude in the future. Collective bargaining has the effect of imposing a limit on the freedom of the employers to run their business as they think fit. These limits even though would be achieved by legislation are different, since they operate as voluntarily negotiated agreements.' Collective bargaining is highlighted as "Self Protection" to the workers from two angles; firstly, that in the presence of a reserve army of unemployed, it eliminated the competition which would otherwise exist among them to offer their services at a lower price than their fellow workers for getting the employment; secondly, it enables the workers in favourable conditions improvements and other emoluments, and finally collective bargaining wage protects labour against victimization and favouritism of employers. Hence, it is something like a 'rule of law' in industrial relations.[4]

Collective bargaining a process of consultation

The process of collective agreements normally takes one or the other of the forms, namely,

1.Negotiation,

2. Mediation and

3. Arbitration, voluntary or compulsory,

Negotiation is the process of settling the differences face to face roundtable talks between the representatives of the employees and employers. In case of failure of the negotiating machinery to resolve the difference by mutual discussions and understanding, a third party intervention to secure settlement of labour disputes by way of mediation is often resorted to. The mediator functions not as a judge, but assists the parties in dispute to reach an agreement by persuading them to resume or continue their bargaining efforts. Arbitration is an act of settling labour disputes through the medium of a neutral third party. The parties to a dispute may either agree

[4] Pllaai's K.M. Labour and Industerial Law, Allahabad Law agency, 16th Edition 2015, Reprint-2019. P. 46

amongst themselves 10 submit for settlement by a third person and abide by his award or a dispute might be submitted to arbitration under the provisions of a statute. In the former case it is voluntary arbitration, in the latter, it would be compulsory arbitration. In case of voluntary arbitration the selection of arbitrator entirely rests with the parties to the dispute. The award is binding on the parties and is also enforceable in the courts.[5]

Royal Calcutta Golf Club Mazdoor Union v. State of West Bengal,[6] The rule of collective bargaining has been incorporated in the Industrial Disputes Act, 1947, wherein the provision is made for the appointment of Conciliation Officers, charged with the duty of mediation and promoting the settlement of industrial disputes. On a reference of a dispute to the Conciliation Officer, a Conciliation Board is constituted consisting of the representatives of employees and employer with the Conciliation Officer as its chairman. The memorandum of settlement duly signed by the parties is sent to the appropriate Government for publication. The main task of the Conciliation Officer is to go from one camp to the other and find out the greatest common measure of agreement to investigate the dispute and do all such things as he thinks fit to arrive at a fair and amicable settlement of the dispute.

The right of a Trade Union to speak legitimately on behalf of their members is recognised in Indian law, but it does not in any way derogate an individual from his right to judge for himself, independently of any Trade Union, as to an offer advantageous to him, concerning his employment. The limits of the doctrine of collective bargaining inherent in the representative capacity of the Trade Unions vis-a-vis freedom of individual workers to protect his economic interest have been stated by Mr. Justice Ananlanarayanan in *Tamil Nadu Electricity Workers Federation v. Madras State Electricity Board*[7] in the following words:

"The whole theory of organised labour and its statutory recognition in Industrial legislation, is based upon the unequal bargaining power that prevails as between the capitalist employer and an individual workman, or disunited workmen Collective bargaining is the foundation of the movement and it is in the interest of labour that statutory recognition has been accorded to Trade Union and their capacity to represent workmen, who are members of such bodies. But, of course, there are limits to this doctrine, for otherwise, it may become a tyranny stifling the freedom of an individual worker. It is not, that every workman must necessarily be a member of the Trade Union, and that, outside its fold, he cannot exercise any volition or choice in matters affecting his welfare. The representative powers of organisation of labour, with regard to enactments, such as the Industrial Disputes Act, will have to be interpreted in the light of the individual freedom guaranteed in the Constitution, and not as though such freedom did not independently exist, as far as organised labour is concerned."

The principle of collective bargaining has been recognised by the International Labour Organisation also. The Industrial Labour Conference held in 1951 adopted a resolution recommending collective agreements which provided that

[5] Mishra S.N., Labour and Industrial laws, Central Law Publications, 26th Edition. P.322
[6] A.I.R. 1956 Cal. 550.
[7] AIR 1956 Mad.111

(i) Machinery appropriate to the conditions existing in each industry should be established by means of agreements or laws or regulations as may be appropriate under national conditions, to negotiate, conclude, revise and review collective agreements, or to be available to assist the parties in the negotiations, conclusions, revision, and renewal of collective agreements.

(ii) The organisation, methods of operation and function of such machinery should be determined by agreements between the parties or by national laws, or regulations as may be appropriate under national conditions.

In *Chairman, State Bank of India and other v. All Orissa State Bank Officers Association and another*[8] the respondent Association was a non-recognised Union. It was held by the Supreme Court that there was no common law right of a Trade Union 10 represent its members, whether for purposes of collective bargaining or individual grievances of its members. For Redressal of grievances the bank was having a grievance procedure which had been functioning smoothly for the last several decades. The Union recognised by the employer which represents more than 90 per cent of officers employed in the concerned circle had also not been given the privilege of representing its members in grievance proceedings. The respondent Association is a minority Association. The alleged discrimination against the respondent Association did not exist as the right claimed by it was not conceded even to the majority Union.

Legal Framework for Right to Organize and Collective Bargaining in India

It is a way in which workers rights to organize and collective bargaining are placed to archive industrial democracy. The right to bargain collectively with an employer promotes the independence of workers to influence the establishment in case of Inadequate fixation of wage or wage structure, Unhealthy working conditions and mismanagement to work with dignity and liberty and. It is an instrument for pursuing external ends as well as constituting valuable as a practice of self-governance. Collective bargaining has developed to some extent in India since Independence. Inspiration for peaceful settlement of differences between management and labour came from Gandhiji, who in his autobiography expressed his philosophy of industrial relations thus:

Man is an engine whose motive power is the soul. The largest quantity of work will not be done by this curious engine for pay or under pressure. It will be done when the motive force, that is to say the will or the spirit of the creature, is brought to its greatest strength by its own proper fuel, namely by the affections. Assuming any given quantity of energy and sense in master and servant, the greatest material result obtainable by them will not be through antagonism to each other, but through affection for each other.[9]

Article 19(1) (c) of the Constitution of India guarantees to all citizens the right to form associations or unions and Article 19(4) gives power to the State to impose reasonable restrictions in the interest of public order or morality or safeguarding the sovereignty and integrity of India may be imposed on this right by law.[10] Article 19(c) of the Indian Constitution guarantees freedom of association as a fundamental right. State directive

[8] (2003) III L.L.). 751 (S.C.).

[9] Srivastava, Prof. S.C., Labour Law and Labour Relations Cases and Materials, The Indian Law Institute New Delhi, Third Edition. P.148.

[10] M P Jain, Indian Constitutional Law, LexisNexis, Edition 2021 P.1055

principles also can be interpreted as to improve the condition of the labour. In the article 43-A, the State shall ensure the participation of workers in the management which can be seen as a direct cause for the right to collective bargaining. It was recognized in the Trade Union Act, 1926, the Industrial Disputes Act,1947, and the Industrial Employment (Standing Orders) Act, 1948. In 1923, India ratified the ILO Right of Association (Agriculture) Convention, 1921[11] during British rule. It has not, however, ratified ILO Conventions (Freedom of Association and Protection of the Right to Organise)[12] and (Right to Organise and Collective Bargaining) [13]due to "technical difficulties" involving trade union rights for civil servants. Such grounds constituted no valid reason for non-ratification: a ratifying country can exempt certain services. In 1961, in *All-India Bank Employees' Association v. National Industrial Tribunal*[14] It was argued that article 19 (1) (C) guarantees as a concomitant to its right to form associations or unions, a right to effective collective bargaining and a right to strike. But the Supreme Court rejected the argument, saying that even a very liberal interpretation of sub-Clouse, (c) of close (1) of Art. 19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective bargaining." But even so the right is one of social importance in India's industrial development.

Not binding on other unions unless a result of conciliation

Under the Industrial Disputes Act of 1947, collective agreements to settle disputes can be reached with or without the involvement of the conciliation machinery of the Government established under the legislation. If a settlement (a written agreement between the employer and the workers) is arrived at in the course of conciliation proceedings,[15] it is binding under the Act, not only on the actual parties to the industrial dispute but also on the heirs, successors or assignees of the employer on the one hand and all the workers in the establishment, present or future, on the other. The conciliation officer is duty-bound to promote a proper settlement and to do everything he or she can induce the parties to act in such a way as to arrive at a fair and amicable settlement of the dispute. A settlement/agreement with one trade union is not binding on members of another union or of other unions unless arrived at during conciliation proceedings; the other union(s) – including a minority union – can, therefore, start an industrial action.[16] The Industrial Disputes Act deals with workers' representatives. Any collective agreement would be binding on the workers who negotiated and individually signed the settlement. It would not bind any worker who did not sign the settlement and who did not authorize any other worker to sign on his or her behalf. A collective agreement presupposes the participation and consent of all the interested parties. When workers are members of different unions, every union, regardless of whether or not it represents a majority, cannot but be considered interested. A few workers may choose not to be members of any union, and one (or more unions), for reasons of its own, may not like to

[11] ILO Right of Association (Agriculture) Convention, 1921, No.11
[12] ILO Conventions (Freedom of Association and Protection of the Right to Organise) No. 87
[13] ILO Conventions (Right to Organise and Collective Bargaining) No.98
[14] (1961) II LLJ 385 at 396 (SC).
[15] Section 2(p) of the Industrial Disputes Act of 1947
[16] Section 18(3) of the Industrial Disputes Act of 1947

conclude negotiations by the proposed settlement.[17] The Industrial Disputes Act of 1947 deal with such practical difficulties by making collective agreements binding even on indifferent or unwilling workers as the conciliation officer's presence is supposed to ensure that the agreement is bona fide.[18]

Collective Bargaining under International Labour Organization's instruments

The ILO has adopted a number or instruments dealing directly or indirectly with collective bargaining and related issues: the Collective Agreements Recommendation, 1952, For the purpose of this Recommendation, the term collective agreements means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.[19] The Freedom of Association and Protection of the Right to Organise Convention, 1948 Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation[20] Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.[21] In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers. [22] This convention provides the protection of the right to organize, the Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.[23]

The General Conference of the International Labour Organisation, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and Having determined that these proposals shall take the form of an international Convention; adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:[24]

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

[17] Section 36 (1) of the Industrial Disputes Act, 1947

[18] Sections 2(p)4 and 18(3) of the Industrial Disputes Act of 1947

[19] R091 - Collective Agreements Recommendation, 1951 (No. 91)

[20] Article-2 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

[21] Article-5 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

[22] Article-10 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

[23] Article-12 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

[24] International Labour Organisation, 1949 Convention No. 98

2. Such protection shall apply more particularly in respect of acts calculated to —

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.[25]

Workers' and employers' organisations shall enjoy adequate protection against any acts of interference with each other or each other's agent or members in their establishment, functioning or administration. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.[26] Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles[27] Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers[28]the Collective Bargaining Convention, 1981 For the purpose of this Convention the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) Regulating relations between employers or their organisations and a workers' organisation or workers' organisations.[29]

The provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery, or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.30 and the Collective Bargaining Recommendation, 1981. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, arbitration awards or in any other manner consistent with national practice.31

[25]Article-1 International Labour Organisation, 1949 Convention No.98
[26] Article-2 International Labour Organisation, 1949 Convention No.98
[27] Article-3 International Labour Organisation, 1949 Convention No.98
[28] Article-4 International Labour Organisation, 1949 Convention No.98
[29] Article-2 Collective Bargaining Convention, 1981 (No. 154)
[30] Article-6 Collective Bargaining Convention, 1981 (No. 154)
[31] Collective Bargaining Recommendation, 1981 (No. 163).

Advantages and disadvantages in labour law

Collective bargaining plays a vital role in settling and preventing industrial disputes. It is an important tool for maintaining industrial peace and so the responsibility of its proper implementation should be of both the employers as well as the employees. Plant level bargaining of the union is responsive to the rank and file. It helps to solve the problems collectively and effectively because the leaders have to live and mingle with the workers. But it will be disadvantageous if the industries are small and unions are weak. Industrywide bargaining has the advantage of getting uniform terms for the entire industry. It benefits the workers in the smaller firms as they often get better wages which a strong union can obtain. But this treats the prosperous and less prosperous firms equally and thereby retards the incentives of the workers in the prosperous firms. Nationwide bargaining may lead to better economic integration and higher living standard. It mitigates the divisive tendencies of caste, language and the religion which exist at regional levels. But it has the disadvantage that it may invite nationwide strikes, it may by their chain reactions, paralyse the industries and sometimes it may jeopardise the security of the nation itself. Further, nationwide bargaining may aggravate the evils of labour monopoly.[32]

Conclusion

Collective bargaining involves legislative, executive and judicial functions. The broad principles, standards, and norms, that are to govern employer-employee relations are involved. These are observed and implemented by the parties concerned. They involve the interpretation of a collective agreement. This process stretches throughout the period of the agreement. Even though of late origin, the concept of collective bargaining is gaining importance in India. But its prospects in the future will be bleak unless sweeping changes are effected to the existing system of settlement under the Industrial Disputes Act, which gives predominance to compulsory adjudication. This saps the foundation of self-reliance of labour. The recommendations of the ILO and the National Commission on Labour in this matter, if implemented, will mitigate the mischief at least to a certain extent. However, the labour also should not be unmindful of the fact that collective bargaining is not to be substituted by coercive bargaining in which case the practice of collective bargaining will become unpopular, ill reputed and oppressive. Thus, the doctrine of collective bargaining which was recognised by the democratic way of life with the object of giving equality to the bargaining power to the employees against their employers is leading to the complications, where the freedom of the employees is itself imperilled in the Western countries. Even after the trade unions are created, managements are not ready to recognize them and therefore deny them space for collective bargaining. However, in India fortunately we have not reached that stage of creating the above kinds of collective bargaining agreements. Both the labour and management should adopt a balanced approach with the overall interest of the consumers of the country.

[32] Indian Law Institute, 'Labour Law and Labour Relations" (1968) p. 29.