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From Confrontation to Codification: The Evolution of Collective Bargaining in India.

G.Dhritika, Vellore Institute of Technology, Chennai
Vijayendra Kumar M, Vellore Institute of Technology Chennai

1.ABSTRACT

This research article aims to explore and understand the evolution of collective bargaining, how it transformed from industrial confrontation and constant arguments to clear codified rules and regulations. It explores the struggle of workers against unfair practices, the influence of Mahatma Gandhi's ideas and other landmark judgements. It also focuses on the new Industrial Relations Code, 2020 which aims to fix old flawed provisions and restore harmony and stability. It also focuses on the current day scenario and how classical collective bargaining has adapted.

Keywords: collective bargaining, Trade Unions Act 1926, Industrial Disputes Act 1947, Industrial Relations Code 2020, Labour Law reforms, evolution of industrial landscape.

2. INTRODUCTION

Collective Bargaining is the institutionalised process through which workers and employees with the help of representatives negotiate and come to terms on various substantive and procedural terms and conditions of employment. The process of collective bargaining is viewed as a peaceful and civilised alternative to industrial warfare because it acts as a sophisticated way to handle disputes and conduct dispute resolution which focus more on mutual dialogue rather than disruption.

Usually, in an organization where laissez-faire is practised, the individual worker may often be overshadowed by the power of the employer, in such cases, the practise of collective bargaining helps ensure balance. The process of collective bargaining is not merely about making a contract, but instead focuses on ensuring a continuous and healthy relationship between the workers and employees. Hence, collective bargaining provides a structured platform for employees and employers to express their complaints and grievances and it manages industrial friction in such a tactful way that it does not lead to strikes or lockouts. In doing so, Collective bargaining inherently safeguards and protects the economic productivity of the nation, it contributes to the workplace stability as well.

In the global aspect, collective bargaining gained recognition because, the International Labour Organization (ILO) recognised collective bargaining as a cornerstone of human rights. The concept of collective bargaining which established it as a fundamental principle at work was specifically because of Convention No. 87- Freedom of Association and Protection of the Rights to Organise and Convention[1] No. 98- Right to Organise and Collective Bargaining[2]. These conventions played a primary role in establishing that collective bargaining is basically an extension of the fundamental right of freedom of association and upholding that it a vital right which should be considered as a perquisite for social justice. However, India has not ratified both, Conventions 87 and 98, for reasons based on technical constrains regarding the rights of government servants.

[1] **ILO Convention No. 87** – Freedom of Association and Protection of the Right to Organise Convention, 1948
[2] **ILO Convention No. 98** – Right to Organise and Collective Bargaining Convention, 1949

Article 19(1)(c) of the Indian Constitution[3] acts as a bedrock for collective bargaining. Article 19(1)(c) of the Indian Constitutions guarantees citizens the fundamental right to form associations and unions. In many situations, the judiciary has observed though the right to bargain may not be an absolute fundamental right similar to "free speech" but it is a statutory right in a constitutional sense which is necessary and essential for maintaining the dignity of labour.

3. HISTORICAL EVOLUTION

3.1 GLOBAL ROOTS

The idea and concept of collective bargaining did not just emerge randomly, but it was instead a desperate and necessary response to the dehumanizing and inhumane working conditions of employees and workers during the Industrial Revolution in Great Britain that took place in the 18th century. By the beginning of the 19th century, the legal landscape was dominated by the Doctrine of Freedom of Contract. The Doctrine of freedom of contract essentially refers to the idea that every individual should be free and able to bargain with each other and amongst each other to reach a mutual agreement without needing the government to interfere. the doctrine is primarily based on two pillars- party autonomy which means that every individual has the absolute right to decide with whom they want to enter into a contract with and is also based on the other pillar, Sanctity of contract which refers to the concept that, once an individual signs a contract, the only duty of the court is to ensure and enforce it as written and not to question or contemplate if the terms of the contract are moral or fair. Hence, in this era, the doctrine established that both the worker and the employer were equal parties and were to be treated equally.

In the year 1891, Sidney and Beatrice Webb coined the term "collective bargaining"[4], which led to an intellectual breakthrough. The term collective bargaining as introduced in their work, The Cooperative Movement in Great Britain. Later, in their work, Industrial Democracy, 1897, they argued and established that the process of collective bargaining was the most civilized alternative and choice for the chaos of the market. They also went on to put down a few proposals:

- The common rule- means that unions should aim and seek to establish and set a uniform standard rate and standard conditions across the industry to prevent a race to the bottom and unequal treatment of workers and ensure uniformity throughout the industry.
- Industrial democracy- essentially argued that political democracy will be incomplete if there is no democracy in the workplace. This was based on the logic that if a citizen had the right to vote and has an influence on how the country is run, then a worker must also have a voice and say how an organization treats their workers.

These kinds of arguments were very radical and new at that time.

3.2 PRE-INDEPENDENCE INDIA

In India, the evolution was not separate, but it was instead intertwined with the independence struggle. Collective bargaining was viewed and used as a tool for both, political mobilization and economic and social relief. There were two major events that highlighted the evolution of collective bargaining pre-independence. They are:

The Madras Labour Union, 1918

B.P.Wadia established the Madras Labour Union (MLU) in Madras (present Chennai) which was the most significant milestones in the history of India's industrial labour development. This was because during that time, there were no specific legal protections for unions. Wadia had organized the workers of Buckingham and Carnatic Mills. However, the management has filed a civil suit claiming for damages and the conspiracy to interfere with business.

As a result of the suit filed, the Madras High Court granted an injunction against the union. This was because the collective action was treated as a tortious act and conspiracy which left workers often unprotected. This legal anomaly led to massive outcries and protests in both the United Kingdom and India. This outburst forced

[3] **Article 19(1)(c) of the Constitution of India, 1950**

[4] **Webb, S., & Webb, B. (1897).** *Industrial Democracy*..

the British government to pass the Trade Unions Act, 1926[5]. This act was the pioneer act to provide immunity and rights to unions against criminal and civil prosecutions which were a result of collective worker actions.

Mahatma Gandhi's Ahmedabad Experiment, 1918
During the same time that Wadia was tackling legal issues in Madras, there were consecutive developments that were taking place in Ahmedabad. In Ahmedabad, Gandhiji had introduced a moral framework with the help of the Textile Labour Association. The Textile Labour Association is also known as the Majoor Mahajan Sangh. The TLA was a result of a dispute between the mill owners and mill workers in Ahmedabad regarding a certain plague bonus. The workers demanded a 35% wage increase when the owners decided to withdraw bonus. Gandhiji intervened and instead of conducting a generic strike, Gandhiji turned into a Satyagraha. He established that if two parties could not agree and reach a common ground, then an impartial third party should intervene and decide the outcome as opposed to the parties trying to crush each other with their economic power and might. The core of the Gandhian philosophy in this case was the concept of trusteeship, which was a sharp shift from the Marxist concept of class conflict which was prevalent in Europe.
The essence of the philosophy was that capitalists do not own the mill but are instead mere trustees of the wealth which must be used for the benefit of the society. He also stated that workers too should be considered to be trustees of their skills and must behave that way too. Gandhiji also insisted that the whole process of collective bargaining must be based on truth (Satya). He also went on to introduce the core concept of mandatory arbitration. Mandatory arbitration means that if both parties could not reach an agreement, they should approach and appoint an impartial third party which would aid in conflict resolution instead of resorting to violence, strikes or lockouts. This Gandhian model and ideology still remains an integral core of Indian industrial relations.

3.3 POST INDEPENDENCE DEVELOPMENTS

India gained independence in the year 1947. The government decided to adopt a paternalistic approach because the government felt that the labour movement was rather weak and largely unorganized and allowing them to use just collective bargaining alone would result in their exploitation and would be counterproductive.
The year 1947 saw the establishment of the Industrial Disputes Act (IDA) 1947[6], which majorly prioritized the role of the state in intervening during conflicts and disputes. The Industrial Disputes act was not designed and created just to solve industrial disputes and conflicts but was also designed to prevent them. The preamble of the act clarifies that the act aims to make a provision for the investigation and settlement of industrial disputes and conflicts. The primary philosophy behind this act was state paternalism. This requires the state to take the role of the guardian when necessary and step in and ensure that the industrial disputes and conflicts are settled through a formal structured legal process and that the disputes don't escalate into violence like strikes and lockouts.
If the bargain were to be unsuccessful or fail even after the state's intervention, the state would refer the issue an industrial tribunal. For a long time, this process of referring to industrial tribunals led to a disadvantaged situation called litigious trade unionism. Litigious trade unionism means a situation where the leaders started to prefer arguing before a judge rather than negotiating with an employer. This defeated the whole purpose and aim of collective bargaining because the law began encouraging them to litigate rather than negotiate.

By the later periods of the 1950s many leaders like V.V.Giri, who founded the Giri Approach started advocating for voluntary collective bargaining and preferred voluntary collective bargaining rather than compulsory adjudication. Compulsory adjudication refers to the legal mechanism which is often viewed as an antithesis to generic collective bargaining. Compulsory adjudication is the process where the state intervenes ad forces a resolution to the industrial dispute or conflict with the help of a labour court or tribunal regardless of if the parties like it or not. V.V.Giri, was the former President and labour minister. He criticized the practise of compulsory adjudication. He coined the term – "public enemy number one" for the practise because he felt that if a judge were to always settle a dispute or a conflict, the unions will never learn to negotiate and come to terms. The original aim of the practise was to make the unions stronger but compulsory adjudication made the unions to be more litigious rather than strong, which defeated the whole purpose. V.V.Giri was opposed by Gulzarilal Nanda. Gulzarilal Nanda was a politician and economist. This also reflected the unnoticed deeper tensions in the labour policies of India. He was in the view and argued that, India was not ready and capable at that point of time to maintain peace and harmony amongst the parties.

[5] **The Trade Unions Act, 1926** (Act No. 16 of 1926)
[6] **The Industrial Disputes Act, 1947** (Act No. 14 of 1947)

Specific section of the industrial disputes act, 1947 like section 12(3) – the role of the conciliation officer and section 18- the scope of settlements, were used to provide legal safety to settlements. Settlements are agreements which are mutually reached upon through conciliation or through bipartite negotiation. This was the milestone, where the worker was recognised as a negotiator.

3.4 ROLE OF JUDICIARY

The Supreme Court of India has played a passive role by being a silent partner in the evolution of collective bargaining with the help of legal precedents.

Case 1 : Bharat Bank Ltd. V. Employees of Bharat Bank Ltd. (1950)[7]
This case is a landmark decided by the Supreme Court of India. The main legal issue in this case was whether an Industrial Tribunal was to be considered a court and if so, then whose decision should be appealed to the supreme court under article 136. The case is extremely relevant because, it helped clarify that the process and method of settling an industrial dispute was not merely an interpretation of existing laws and provisions but also required the process of social engineering. The supreme court finally observed and held that any industrial tribunal is not to be bound by the generic rigidities of civil law. The court also noted that – " the tribunal can confer rights and privileges on either party which it considers necessary for industrial peace … it may even create new obligations or modify old ones.

Case 2 : Rohtas Industries Ltd. V. Rohtas Industries Staff Union, 1976[8]
This landmark judgement questioned the legality and other related aspects of a worker's strike and contemplated the question if a union could be held responsible and liable for the damages which were caused by the workers to the employee during a worker's strike. This case gave Justice Krishna Iyer the opportunity to obtain an in depth understanding of the real socio-economic labour conditions of India. This case played a major role in providing the judicial justification for the existence and establishments of trade unions and collective bargaining. It also went on to argue that the equality that was promised to the parties was often a lie and was not upheld. In this case, Justice Krishna Iyer had observed that "the law of industrial relations is not a law of contract between equals… It is a law of protection for the weaker party. The bargaining between a giant corporation and a fragmented workforce is like a bargain between a giant and a dwarf".

4.THE LEGAL FRAMEWORK

4.1 THE TRANSITION

The labour landscape witnessed a major shift in the legal landscape from following the Trade Unions Act, 1926 and the Industrial Disputes Act, 1947 to the Industrial Relations code (IR), 2020[9]. The main impact of this transition was the shift from multiplicity to uniformity across the industry.

4.1.1 THE OLD PROVISIONS

The old provisions were the Trade Unions Act, 1926 and the Industrial Disputes Act, 1947, and the functioning of the industries was solely based on these provisions. But there were some inherent flaws in these provisions. For instance, section 7 of the trade unions act, 1926 allowed any 7 members of any trade union to get their union registered. Though this particular section aimed at protecting the fundamental freedoms of the workers to form association and union, it also led to an issue. The issue was that this permitted there to be a multiplicity of unions. This turned out to be chaotic and unstable. This led workers to form a large number of unions which was often very unnecessary.

This led to a fragmentation and disintegration of the representation of unions because no single union was a representative of a reasonable majority. multiplicity of unions also led to conflicts to arise between union and union. This kind of inter-union rivalry often undermined the quality of the collective bargaining and defeated its whole purpose. Both the acts provided a legal status to the union upon registration but it failed to give them

[7] **Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.**, 1950 AIR 188
[8] **Rohtas Industries Ltd. v. Rohtas Industries Staff Union**, 1976 AIR 425
[9] The Industrial Relations Code, 2020

the right to be recognized by their employer. The older provisions created a situation where collective bargaining was a tripartite struggle- between two separate unions and the employer. The employers would often exploit this fragmentation among the unions and use it to their advantage. The Industrial Relations code, 2020 sought to stabilize and cure this kind of chaos and instability.

4.1.2 THE INDUSTRIAL RELATIONS CODE, 2020

The industrial relations code,2020 provided a much needed shift. It did this by giving priority to the approach of bargain-first. Bargain first is a legislative philosophy which gives utmost priority to direct and bilateral negotiations and discussions between the employees and employers rather than giving importance to state driven litigation and adjudication. This is to be done by creating a statutory mandate specifically for the employer to recognize a negotiating agent. Hence, after this, the employer cannot legally ignore any union that satisfies the 51% threshold and would also be legally required to engage in discussion. This is advantageous to the workers because it aids in transferring the powers from the discretion of the labour department and directly to the worker's representatives.

One of the biggest challenges to collective bargaining was that even though employers would allow for registrations but would not recognize them. Majority of the times, the recognitions of these unions had to be voluntary. If the employer refused to address the unions, it would often lead to violent activities like strikes or lockouts. To solve this issue, the industrial relations code provides section 14 and section 15 which provide the possibility of a negotiating union and negotiating council. These sections play a vital role in making the bargaining process a very legal process. If the employer were to disagree to come to recognize a union and come to a negotiation even after all the statutory requirements are fulfilled, the actions of the employer can be treated as unfair labour practices. This removes any gap for adjudication and pushes both parties to negotiate and communicate with each other and arrive at a solution.

The industrial relations code also attempted to reduce the shadow of the state. This was primarily done through direct negotiation and fixed timelines.
Another major issue the code addressed was that in many factories in India, no separate single union represented 51% threshold. The case wanted to reduce fragmentation and regain harmony and coherence. To solve this issue, the negotiating council was introduced by the code. If a union did not have the required 51% then a council must be formed. This council must contain the representatives from every union in that factory that has a minimum of at least 20% membership. Through this, the voices of minority are ensured to be heard as well.

5. CURRENT SCENARIO

The current scenario in 2026, is proving to be a challenge. This is because even though the law has finally provided negotiating unions and other bargaining tools for traditional factories and industries, the economy is seeing rapid developments in gig economies and technologically innovative industries.

5.1 GIG ECONOMIES

A significant challenge to collective bargaining in the present scenario is the increase in the number of platform workers of organizations like Swiggy, Zomato, uber etc. These workers are classified as Gig workers or platform workers under the code on Social Security and are considered to be a completely different category from traditional workers[10]. The main gap seen here is that since gig workers are technically only partners or maybe independent contractors they do not possess the statutory right to form and be part of a negotiating union. And since they do not form negotiating unions, the employer is not really obligated to recognize the union. Hence, in this case the classical collective bargaining fails here because it depends on the employee-employer relationship.

The 2020 codes on social security aims and tries to reduce this gap by creating a social security fund and also giving the provision to workers to represent themselves on welfare boards. However, this is not negotiatory in nature but is rather very consultative. This means that although gig workers can ask their employers and organization for better insurance and conditions they cannot really bargain in a similar way to workers employed in a traditional factory. By calling their workers as partners, platforms are able to dodge the legal

[10] **The Code on Social Security, 2020**

obligations that would make collective bargaining efforts enforceable. However, emerging trends like informal collective action in the form of WhatsApp groups and planned log outs.

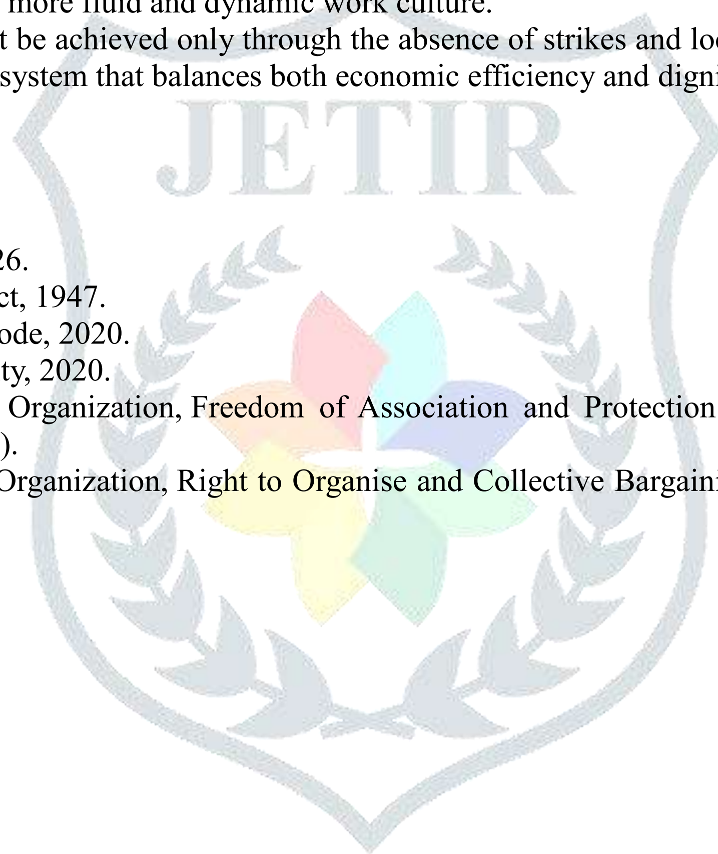
5.2 ARTIFICIAL INTELLIGENCE

In the current scenario, Artificial intelligence is also leaving an impact on collective bargaining. Collective bargaining has been shifting from asking for more wages to demanding data rights. In tech sectors, unions are bargaining for more transparency and evaluation. There is also a move toward the idea of transition bargaining where, negotiating councils are bargaining and negotiating retraining guarantees which ensure that even if a particular process is automated, then the displaced workers should be given the right to be trained for a new tech role.

6. CONCLUSION

The whole evolution and transformation of collective bargaining reflects the developments in the Indian industrial landscape. The legal framework prioritizes direct dialogue rather than litigation. Many of these newly ideas and provisions implanted ensure that there is a meeting of the minds between employees and employers is rooted in statutory recognition over voluntary discretion. Though the current scenario poses many issues, the primary concerns remain in ensuring that these hard-won bargaining rights are not lost or overlooked because of the more fluid and dynamic work culture.

True industrial peace can’t be achieved only through the absence of strikes and lockouts but also through the continuous evolution of a system that balances both economic efficiency and dignity of labour.



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