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ROLE OF COLLECTIVE BARGAINING IN SETTLEMENT OF INDUSTRIAL DISPUTES *

ABSTRACT

Our country the principal techniques for dispute settlement provided under the I.D.Act are collective bargaining, mediation, conciliation, investigation, adjudication and voluntary arbitration. Out of these various methods of settlement of Industrial Disputes Collective Bargaining plays an important role. It is a method by which problems of wages, conditions of employment are resolved amicably, peaceably and voluntarily between labour and management.

Collective Bargaining process demands the parties to deal with problem with open heart and fair mind and thus stabilize employment relations and prevent obstructions to free exchange of terms. It demands certain standard of good faith.

Employer is obliged to initiate collective bargaining. But he must respond to such negotiation when requested by the proper agent of his employees. Failure to do so amounts to unfair labour practice. The union having a majority of workers as its members of the union with a stipulated minimum of workers alone should be recognized.

Collective Bargaining Agreement once recognized shall remain for a period of three years and continue to be recognized until it is successfully challenged.

Now it is a welcome sign that the Govt. is to consider the introduction of a law to ensure smooth collective bargaining and active participation of trade unions for promoting harmonious industrial relations. The extension of collective Bargaining in India is the first and foremost requirement. This requires immediate modification of central Labour Legislation to provide its prerequisites. The recognition of trade union should be made compulsory.

Key words

Recognition of Trade Union, collective Agreement, Bargaining Process, Tripartism.

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INTRODUCTION

An individual is free to bargain for himself and safeguard his own interest. If an individual workman seeks employment he stands in a weak position before his master, who having command over wealth stands in 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 to settle their terms with their 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 condition of service like, wages, hours of work, leave, gratuity, bonus, allowances and other 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]

The two parties employers/ management and workers and their trade unions rely on themselves for the resolution of their differences for the settlement of their disputes. They do not approach a third party, i.e., the Government and seek its intervention. This method is quite sound, for it lays stress on bipartite dialogue. It can result in a stable and mature relationship between the two parties if both are well-organised recognize each other and accommodate each others point of views. These agreements reached voluntarily between the two parties are backed by moral sanction.

Collective Bargaining:

The role of collective bargaining in the modern industrial set up is assuming importance as a peaceful method to resolve industrial disputes.

What is?

Collective bargaining is that arrangement where by the wages and conditions of employment of workman are settled through a bargain between the employer and the workman collectively whether represented through their union or by some of them on behalf of all of them.[2] Though collective bargaining has not been defined in the I.D. Act or any other enactments it is to be understood in the sense according to Ludwig Teller, "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". According to the Encyclopedia Britanica, "Collective Bargaining is a negotiation between an employer or group of employers and a group of work people to reach agreement on working condition.[3] The encyclopedia a Social Science defines collective bargaining as a "process of discussion and negotiation between the two parties, one or both of whom is a group of persons acting in concert, more specially it is the procedure by which an employer or employers or a group of employers agree upon the conditions of work".[4]

Collective bargaining is recognized as a right of social importance and greater emphasis is given on it by India's five year plans. It is accepted as a best method of solving industrial disputes in Western Countries. Even it is recognized in our system in Principle.

Origin

The concept of collective bargaining is the off shoot of Trade Union activity. It is a historical fact that before the advent of collective bargaining era in the labour market, the labour was at a great disadvantage in obtaining reasonable terms of contract of service from his employer. With the growth of Unionism and consciousness of the working class the trade agreement on collective basis have become a rule rather than exception.

Pre-requisites of Collective Bargaining

The Pre-requisites of Collective Bargaining are:

a) Strong Independent and well organized Unions.[5]

b) Recognition of the Union as the bargaining agent.[6]

c) Willingness to "Give and Take".[7]

d) Mutual Trust and good faith.[8]

e) Absence of unfair labour practice.[9]

Importance of Collective Bargaining

Collective Bargaining is the means by which a "normative system" is created for regulating industrial conflict. However, it does not prevent industrial conflict but it provides a forum for discussion and a means for systematic social change in the working code governing management – men relations. By providing a forum for meeting between management and union, collective bargaining can help to facilitate improved relations and gradual change of industry and productivity.[10] It is a forum of self government[11] and as such promotes the democratic virtue of independence and responsibilities. Moreover, it has the great merit of flexibility. Industrial processes are constantly changing so at the conditions of employment. These problems can be settled satisfactorily only if the workers are intimately connected with the management.[12]

Bargaining Process

Collective bargaining process is a complicated one like business deal yielding less and gaining more; it is a diplomatic endeavor continuously probing into the strength and weakness of the opposite party and thus skillfully and tactfully handling the issues. It demands the parties to deal with the problem with open heart and fair mind and thus stabilize employment relations and prevent obstructions to free exchange of terms. It demands certain standards of good faith.

Long before the collective bargaining conference, the parties hold separate meetings and discuss elaborately the stand to be taken before the conference table. These meetings are important and often they are lively because it is there that the representatives get the necessary mandate to their commitment and demands at the collective bargaining time. The problems are to be discussed horizontally and vertically and the maximum and minimum demands are to be evolved in such meetings after mature deliberations. The union leaders at this stage are expected to play a constructive role. They should adopt a rational approach to the problem bearing considerations of the capacity of the employer and the socio-economic effects and the consequences of their extreme demands. They are to feel the modes and feelings of the rank and file, but should not be fully carried away by that. The emotions are to be standardized into

proper channel and that they have to look at the problem with rational approach. Similarly, the employers are also expected to adopt a flexible stand with a give and take spirit. After such private meetings the representatives come before the conference table. It involves face to face conference. In the bargaining sessions the issues and problems are discussed and debated. The representatives express their stand. Proposals and counter proposals are made. Sometimes adjournments take place to enable the representatives to have further discussions with the workers or employers, as the case may be. By this complicated process the parties may come to some settlement in which case contract will be drafted which is known as the collective bargaining contract.

Function

Prof. Butler has viewed the functions of collective bargaining under these heads.[13]

1. Collective Bargaining as a Process of Social Change.
2. Collective Bargaining as a peace treaty between two parties in continual conflict.
3. Collective Bargaining as a system of industrial jurisprudence.

Collective Bargaining is quick and efficient and the parties do not waste their time in unnecessary litigation. It is more democratic where the parties themselves resolve their disputes. Hence it results harmonious relationship between employers and workers, benefitting both, in a democratic manner.

Recognition of Unions as Bargaining Agent.

Recognition of Union is the most important step for collective bargaining.

In India, so far no serious effort has been made at the national level to lay down a proper procedure for recognition of the bargaining agent. Neither the Indian Trade Union Act, 1926, nor the Industrial Disputes Act, 1947 provided for compulsory recognition of a Trade Union. The Standing Labour Committee as the 18th Session and the NCL favoured a statutory provision for recognition of Unions as bargaining agent. The NCL has attached considerable importance to the matter of recognition of unions.

It said;

"Industrial democracy implies that the majority Union should have the right to sole representation i.e. the right to speak and act for all workers and enter into agreements with the employer."

The NCL suggested the following steps for granting recognition to trade Unions.

a) Statutory Recognition:

It would be desirable to make Union recognition compulsory under Central law. In all undertaking where 100 or more workers are employed or where the capital invested is more than stipulated size. A Trade Union seeking recognition from an individual employer should have a membership of at least 30% of the workers in the establishment and where more than one Union seek for recognition.

The Union having a large number of members should be recognized.

b) Method of determining Representative Character:

Serious differences exist, however on the manner in which the Union is to be recognized. Two methods advocated are (a) verification of the fee paying membership of the Unions, or (b) election by secret ballot. The NCL left it to the discretion of an independent body, i.e. the proposed industrial relations commission to choose one of the above methods.

It was unanimously agreed in the National Labour Conference held in September 17th, 18th of 1982 at Vigyan Bhavan that there should be a collective bargaining agent at the unit/ industry level.[14] Collective bargaining agent once recognized shall remain for a period of three years and continue to be recognized until it is successfully challenged.[15]

It is said that the Government's attitude was politically motivated. It is also said that the Government fear monopolization by the communist backed labour organisations, if recognition and procedure thereof were formalized. The absence of a comprehensive recognition procedure is one of the reasons for the ineffectiveness of the collective bargaining process in India.

Impact of the presence of outsiders in the process of collective bargaining:

Collective bargaining machinery essentially is a reflection of a particular social and political climate. The history of the trade union movement shows that the union is affiliated to any one of the political parties. As a result, most of the trade unions are controlled by outsiders. Critics say that the presence of outsiders, is one of the most important reasons for the failure of collective bargaining in India.

In controversy about 'outsiders' in a union is as old as the Trade Union Act itself, perhaps even earlier. Under the Trade Unions Act, 1926, any person not actually engaged or employed in the industry concerned is deemed to be an outsider. But the argument of the labour union is that any one who has devoted his life for union work and has been a full time union workers, whether he had ever worked as an employee in an industry or not, should not be treated as outsider. However, the Trade Union Act, 1926, permit outsiders to be the office bearers of an Union to the extent of half the total number of office bearers.

The National Commission on Labour does not favour a legal ban on non-employees for holding the union office. It says that without creating conditions for building up the internal leadership, a complete banning of outsiders would only make unions weaker. NCL hopes internal leadership would develop through their education and training.

It is observed that outsiders can bargain with the management without fear of victimization and they can be treated as equal to that of management. This argument is however confined to the under developed trade Unionism.[16]

But this view does not seem to be correct even in the early stage of trade unionism. It shows that outsiders having little knowledge of the background of labour problem and the technique of the industry and with little general education assumes the charge of labour union by which the employers have been reluctant to discuss and negotiate industrial matters with outsiders, who have no personal or direct knowledge with day to day affairs of the industry.

Therefore, the state must outright ban 'outsiders' from the trade union body. Further provision for political fund by trade union should be eliminated, since it invariably encourages the politicians to prey upon the trade union.

Structure of Collective Bargaining:

Since the collective bargaining is in its initial stage in India it is not yet time to say which is appropriate. It depends upon many factors, like pace of industrialization, means of communication, scope of the industry, development of the trade union movement, etc.[17]

If the scope of the industry is limited to small unit for local consumption, plant level bargaining would be appropriate and the most fruitful method. If there are many enterprises in the same industry and all are situated in one area then industrywide bargaining would be useful and economical. For example, collective bargaining contracts in the textile industry in Bombay, Ahmedabad etc. If the industries are spread over a region, and the union is strong, then collective bargaining may be conducted for the whole of the region. For example, United Planters Association of South India, The Workers Unions. When the activities of the industry are spread throughout the country a nation-wide bargaining is good, Examples Railway, Post and Telegraph, petroleum companies, banking etc.

Subject-matter of collective bargaining contract:

In United States and England the parties determine their subjects freely within the legal limit. In Latin American countries, the law specifies that such collective bargaining contracts must include clauses regulating wages, working hours, rest period, holidays, etc. In India, the parties decide the subject. But this is circumscribed by the laws. For example, such contracts must be in conformity with the provision of Factories Act, 1948, Industrial Employment (Standing Orders) Act, Minimum Wages Act, Payment of Wages Act etc. These Acts prescribe safety precaution, health measures, amenities, conditions of employment, minimum wages, payment of wages, etc.

Enforcement of collective bargaining:

In England, collective bargaining agreement is treated as gentlemen's agreement. However, the Industrial Relations Act, 1971 provides for enforcement of the agreement through labour tribunals. But this provision is repealed by a 1974 Amendment Act. Hence, in England collective bargaining contract remains as gentlemen's agreement. This means, the enforcement of the agreement depends on the good will of the parties. In some other countries, such contracts are enforced by special legislation. The unions or the individual worker can enforce such contracts through court of law. In Latin American countries, Germany, etc. such Courts are set up for enforcement of this agreement.

In India, collective bargaining contracts are enforceable under Section 18 of the Industrial Disputes Act as a settlement arrived at between workers and employers. Government may refer the dispute over the breach of contract to a labour Court or to an Industrial Tribunal as the case may be.

Critical Evaluation:

The system of collective bargaining as an institution is yet to mature and become stabilized in India. The blame for the slow progress of the system lies with the two parties and with the Government. Employers/managements have not shown any enthusiasm or initiative in developing stable relation with labour. They have been reluctant to settle issues with the labour through the process of collective bargaining.

However, it has been customary to blame Trade Union for their multiplicity and fragmented character, statutory provisions for recognizing unions as bargaining agents are absent. Neither are there any provisions which require employer and workers to bargain in 'good faith'.

Moreover, the advocates of adjudication contended that as the Collective bargaining procedure might end in a strike or lock-out, which implies a great loss to the parties concerned and the country, for the sake of industrial peace, the adjudication becomes necessary. It is argued that 'unions and employers alike have not been fully satisfied with the system of compulsory arbitration by Courts and Tribunals. In the name of industrial harmony, difference are settled by an iron clad system of adjudication. And it is agreed that industrial peace can be established by the adjudication for the time being. In the absence of effective collective bargaining the anti-productivity tendencies is bound to appear. In fact industrial adjudication is a barbaric approach to the labour management relationship.

Till now Government has not realized the true significance of collective bargaining. in spite of creating suitable norms towards progressive bargaining, the Government seems to favour the worst method of adjudicatory process. Kirkaldy reminded the government that it should not forget, that,

> …… the relations between men and management are human relations ….. no statute and no court decision ever made a marriage happy and successful. This is just as true in industrial relations. It is just as hard and just as impracticable

> to prescribe iron-bound rules of behaviour in the dealings between labour and management as it would be to prescribe than for husband and wives. The solution lies on the hands of employers employees and their representatives….. peace and harmony and efficiency can not be legislated can not come by decree or command.[18]

However, it is a welcome sign that the government is considering the introduction of a law to ensure smooth collective bargaining and active participation of trade unions for promoting harmonious industrial relations.[19]

The importance of collective bargaining need not be under estimated. The extension of collective bargaining in India is the first and foremost requirement. This requires immediate modification of the central labour legislation to provide for its necessary prerequisites. The recognition of Trade Union should be made compulsory as bargaining agent. To start with, one union for one factory may be provided for to achieve the ultimate goal of one union for one industry.

As the multiplicity of Trade Unions which results in inter union and intra-union rivalry, is an impediment in the way of collective bargaining, it has to be done away with by restricting mushroom growth of the Trade Unions. Section-4 of the Indian Trade Union Act, 1926 will have to be amended to increase the minimum number of persons required to register a Trade Union. Multiplicity of unionism can be minimized if recognition provision will be introduced.

When these above mentioned suggestions will be given effect then collective bargaining will carry some meaningful importance.

Tripartism:[20]

Tripartism means a reliance upon the advice of three parties to industrial relations and disputes. Trade unions, employers and Government are three parties. Under this the parties do not decide anything, but they try to debate and advice about everything. Their representatives sit together in one kind of meeting or another and strive to reach consensus and on that basis make recommendations. The Government is the most active party, even though it decides nothing as one participant, it does take the initiative in calling the management and labour

together. This arrangement became popular in the Nanda period from 1957. This was against the so called "Giri approach." The late Sri V.V.Giri stressed, advocated and insisted that labour should be self-reliant.

Even as back as 1947 the tripartism was embodied by the True resolution of 1947. That resolution exhorted for the friendly co-operation between labour and management. However, it became an accomplished fact only since 1957.

The chief instrument for tripartism is the Annual Labour Conference which advocated proposals like workers participation in management, workers education, workers committees, minimum wages legislation etc.

In 1958, "Code of Discipline in Industry" was adopted. This great document which is considered to be the keystone of the tripartite arch highlighted the rights and responsibilities of labour and management under all agreements. This also considers the need to educate management personnel and workers about those rights and responsibilities. It pledged the parties to avoid strikes and lock-outs without notice, to avoid unilateral actions to rely on settlement by discussion, voluntary arbitration or by law's machinery. It also pledged to avoid coercion, victimization, partial strikes and lock-outs. It also provided for the establishing and following grievance procedures.

The annual Conference and Standing Labour Committees promulgated a model grievance machinery and procedure providing for negotiations on several stages. The Standing Labour Committee also recommended to set up machineries at the Central and State level for proper implementation of labour award, agreements and code of discipline. Many such arrangements are set up at the Central and State level.

Tripartism is an approach which stresses the identity of interests between capital and labour. This postulates a spirit of partnership. The ideal was focused from the Gandhian approach to industrial disputes. Tripartism proceeds from two basic concepts:

(i) The relationship between workers and employers is one of partnership in the maintenance of production and the building up of national economy; and

(ii) The community as a whole and the individual employers are obliged to protect the well-being of workers and to secure to them their due share in the gains of economic development.

There are many tripartite commitees like the Workers Education, Works Committees, Joint Management Councils, Bonus Commission, Wage Board, etc. Since 1977 tripartism importance has gone down, as the Annual Labour Conference are not held. Anyhow, recently a move to revive the national level tripartite labour conference is made. The Labour Minister at the Centre recently conferred with the trade union leaders on this matter. There was no tripartite national level labour conference since 1977. Now the necessity of such conference is highlighted by all.

In January, 1990, after a long break, such a conference was held in which the ideal of labour participation in management was highlighted. In 1997 also such a conference was held.