

# Straight-out the disputes in industries through collective bargaining amid employers – employees in India

S. Mohan

Advocate - Madras High Court Judicature of Madurai High Court Bench, Madurai & former Guest Law Lecturer of Government Law College, Madurai, Tamilnadu, India.

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**Abstract:** Collective bargain is a vital morality and India likes typically populous country desires well-designed collective bargaining process, this is, owing to, all over India, in all sorts of industries, have industrial issues, which pertain to wages bonus, promotion etc. Thus, employees stab to solve their disagreements through trade unions by various stages of collective bargaining, in case, amid the employees and employers do not attain final agreement and it may drive to either strike or lockout, as result, employers, employees anguish in several ways. Thus, for decriminalizing the employee - employer relationship in industries, Indian government captivating numerous steps after independence, so, the Industrial dispute act 1947 and The trade union acts 1926 came in to enforcement to standardize the employer- employer rapport, trade unions in Industries and these acts are typically influenced by India's pre independence legacy of British colonial conflict for ensuring speedy fiscal recovery and safeguard the interest of laborers in India. Now days, the collective bargaining in India swaying by political parties, thus, it leads towards decentralization (i.e. company or uni level bargaining rather than Industrial bargaining) and moreover trade unions are too acting as legal councils rather than agency of collective bargaining, thus, avoiding unnecessary third parties influence at collective bargaining process in India necessitates effective arrangement to safe guard tranquility.

**Keywords:** collective bargaining, decentralization, disputes, employee, employer, final agreement, industries, legal counsel, legislation, political parties, trade unions.

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## 1. INTRODUCTION

All over the world today, we have come to see that freedom of association is a right that is appreciated by all human beings. This is right among its other's benefits ensures that workers in organizations or countries can meet and seek to project their rights and benefits, as it relates to their employment. In this regard, workers and employers can freely relate efficiently negotiates work relations. The right of workers to meet, harmonize and uniformly negotiate their basic rights and interests with their employer is universally referred to as collective bargaining. When combined with workers have an equal voice in negotiation and that the outcomes if such negotiations will be fair and equitable collective bargain allows both sides to negotiate a fairemployment relationship and prevents costly labor dispute and the result of collective bargaining procedure is collective agreement. The agreement reached may cover not only wages, but hiring practice, layoff, promotion, working conditions and hours and benefits program.

As a result, the main purpose of employer – employee relations is to maintain harmonious relationship between management and labor, so for straight - out disputes in industry in the sense of demanding justifiable demands can be done through collective barraging only.

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### 2. WHAT IS DISPUTES IN INDUSTRY

According to Section 2(k) of Industrial Dispute Act 1947,

"Industrial dispute means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with employment or non-employment or the terms of employment or with the conditions of labor of any person"<sup>1</sup> industrial disputes are symptoms of industrial unrest in the same way that are symptoms of disordered body.

Whenever dispute, which occurs, both management and workers try to pressurize each other. The management to strike, ghearo, picketing etc.

### 3. CAUSES OF DISPUTES IN INDUSTRY

We can categorize the causes of disputes in industry in two groups.

**3.1. Economic causes.**

**3.2. Non-Economic causes.**

#### **3.1. Economic causes which includes:**

Wages, bonus, dearness allowance, conditions of works and employment, working hours, leave and holiday with pay and unjust dismissal etc.

#### **3.2. Non-economic causes, which includes:**

Recognition of worker, ill treatment by supervisory staff, sympathetic strikes, political, and political causes etc.

#### **3.3. Other causes of disputes in industry:**

Workers resistance to rationalization, introduction of new machinery and change of place of factory, non – recognition of trade union Wages, recognition of worker, employer spread out rumors and undesirable element, Workers spread out the undesirable element, lack of proper communication, behavior of supervisor and lack of proper communications, and trade unions rivalry etc.

Thus, in industry, the disputes do not arise only when workers are dissatisfied on economic grounds, they also arise over issues which are of non – economic nature. Instances may be quoted when strikes were successful organized to protect against the management's decision to change the location of the plant from one state to another. Similarly, even causes like behavioral of supervisor and trade union rivalries may give rise to disputes in industry. Consequently, the whole concept of employer – employee relation in industries revolves around the principles of friction dynamic, which is the key to the establishment of harmonious relation between labor and management. As the result, evading the disputes in the industries, the collective bargaining is one of the modus operandi for discussion and negotiations amid employer and employee pertain to the proviso of employment and operational circumstances.

### 4. COLLECTIVE BARGAINING

Collective bargaining developed in England at the end of the 18<sup>th</sup> century. The term collective bargaining itself was first coined by a British Labor Historian named Mrs. Sidney Webb in 1981. In the United States of America, the national railway act and the national labor relations act in America made it illegal for any employer to deny union rights to an employee. Another step in this direction came in 1962 when president John Kennedy issued an executive order granting federal employees the right to unionize and collective bargain. Even the Catholic Church of America asserted that it is imperative to protect worker's rights including collective bargaining.

In India, most or deeply established vast array of labor laws and institutions regulate procedural and substantive aspects of labor management relation high level state intervention. This is, due to legacy of British colonial industrial conflict. After independence, Indian Government retained this legislation to ensure speedy economic recovery and to protect interest of labors. So highly intervention role of state established by colonial ruler continued in independence period as far as labor

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legislation in India and three important legislations played crucial role shaping employee- employer relation system in India. They are as follows,

The trade union act – 1926, The Industrial employment standing Act 1946 (IEA-1946) and the industrial dispute act 1947 (IDA- 1947).

In trade union act 1926 provides registration of unions but does not entitle the union reorganization for purpose of collective bargain. Labor is one of the concurrent list in Indian constitution, which means both center and state government, can legislate on this matter.

### 4.1. Meaning of Collective Bargaining:

The supreme court of India defined the collective bargain as,

"The technique by which as conditions of employment is resolved amicably by agreement rather than coercion".<sup>2</sup>

"Collective bargaining has always been the bed rock of the American Labor movement. I hope that you will continue to anchor your movement to this fountain. Free collective bargaining is good for the entire nation. In my view it is only alternative to state regulation of wages and prices a path which leads for down the grim road of totalitarianism. Those who would destroy or further limit the rights of organized labor do disservice to the causes of democracy".<sup>3</sup>

"Collective Bargaining allows workers and employers to reach voluntary agreement on a wide range of topic. Even so, it is limited to some extent by federal and state level laws. A collective bargaining agreement cannot accomplish by contract what the law prohibits. For example, a union and an employer cannot use collective bargaining to deprive employee of rights they would otherwise enjoy under laws such as the civil statutes."<sup>4</sup>

Therefore, collective bargaining consists of negotiation between an employer and group of employees to determine the conditions of employment. The result of collective bargaining procedures is a collective agreement and the employees are often represented in bargaining by a union or other labor organization. Collective bargaining is governed by central and state statutory laws, administrative agency regulations and judicial decision.

### 4.2. Legal Boundaries of Collective Bargaining In India:

The Trade union act 1926 and The Industrial Dispute act 1947, which stretches certain assured legal confines to the rudiments that aiding to straight out the disputes by collective bargaining in industries, they are as follows,

The trade union act 1926 and The Industrial dispute act 1947 are silent on recognition of trade union.

As far as "right to strike" concerns, as per industrial dispute act 1947, it is not a fundamental right but legal right that is governed by this act only.

"As per Section 22 of IDA 1947 it is just and necessary for public utility service must be notice at least 6 weeks before strike".<sup>5</sup>

"There is prohibition of strikes during the pendency of conciliations, arbitration and court proceedings" (section 23 of IDA 1947)<sup>6</sup>.

To the extent that The Trade Union Act 1926, Trade union activities are granted immunity from the applicability of CRPC, but not in case of illegal activities.

Accordingly, these legal boundaries that lend a hand to employee- employer relationship in industries for taking any resolutions with in scaffold of legal status and this tactic helping not to acquire any haziness decision in an instant by either workers (trade unions) or employer.

As result, it helps to sustain very finer relation amid the employees and employers in Industries and it leads specifying to secure the moment of action in industry.

## 5. COLLECTIVE BARGAINING IN INDIA

### 5.1. Trade Union Outlook:

Development of modern industry, especially in western countries, can be traced back to the 18<sup>th</sup> century. Industrial development in India on Western lines nevertheless commenced from the middle of the 19<sup>th</sup> century. The first structured trade union in India named as the Madras Labor Union was formed in 1918. Since then, a large number of unions sprang up in more or less all the industrial centers of the industry. Likewise entrepreneurs also compulsory their industry centers of the country. Similarly entrepreneurs also formed their organization to care for their curiosity. In 1926, the trade unions act was conceded by the Indian government. The act provided legal standing to the registered Trade Unions in their relevant states. These registered trade unions are mandatory to put forward their annual statutory return the registrar regarding their association, general funds, source of income and items of expenditure and particulars of their assets and liabilities, which in turn submit consolidated return of their state in the prescribed proforma to labor bureau.

Now days, many Indian Trade unions have an association with political parties such relationship has also lead to multi unionism, which has created various intricacy for the employers particularly during the collective bargaining.

Normally, the workers are corresponding by trade unions with respect to articulate their grievance concerning service conditions and wages before the employer and the management and referring to bargain collectively in good faith with employer in consideration to be unfair labor practice as per Provisions of the Industrial dispute act 1947.

Thus the legal limitation which comfort to employer – employee relation in industries for captivating any verdicts with in frame exertions of legal status and this stratagem aids not to take any uncertainty decisions by employee and employer through collective bargaining.

Therefore the disparities concluding through the collective bargaining by workers through Trade union in industry is no solitary juncture progression, but it has innumerable multi intricate manner as per legal limitation in India.

### 5.2. Paces of Collective Bargaining:

As far as the Industrialdispute act 1947concerns, it has to bestow the following paces for steadfastness the disputes through collective bargain in employer and employer relation of industries in India.

#### 5.2.1. Charter /Contract demand:

The trade union notifies that the employer call of collective bargaining mediation. Nevertheless, in certain cases, the employer may also instigate the collective bargaining process by notifying the unions and the representatives of the trade unions sketch out a charter demand over innumerable deliberations and talks with unions' members. The charterslogicallycomprises issues pertain toremunerations, additional benefits, working hours, welfares and allowance, terms of employment, day off etc.

#### 5.2.2. Negotiation:

7" As next steps, negotiations instigate after the acquiescence of charter insists by the delegate of trade unions. Priors to such negotiation both the employer and the trade unions prepares for such negotiations by ensuring collections of dates. Policy information and deciding the strategy in negotiations

After such preparation, the negotiations take place, where in trade unions and the employers engage in debates and discussions pertain to the demands made by the trade unions".<sup>7</sup>

In this event that such demands are discards, the trade unions may decide to engage strike.

"For example, the joint wage negotiating committee for Steel Industry , covering workers in four large unions , took more than 3 years from the date of submission if charter / contract demands to the Steel Authority of India Ltd (SALC)."<sup>8</sup>

#### 5.2.3. Collective Bargaining Agreement:

Succeeding, a collective bargain agreement will be drawn up and entered amid the employer and workman exemplified by trade unions and there may be designed as bipartite agreement, memorandum of settlement or consent ward.

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### 5.2.4. Strike:

If the both parties fail to reach collective agreement the unions may go on the strikes. "As per the Industrial dispute act 1947, public utility sector employers must produce 6 weeks' notice of a strike and many strike 14 days after providing such notice and it is called cooling off period"<sup>9</sup>

Under Industrial Act 1947 "neither side may take any industrial actions, while the conciliation proceedings is pending and not until "7" days after the conclusion of conciliation or "2" months after the conclusion of legal proceedings."<sup>10</sup>

### 5.2.5. Conciliation:

A conciliation proceeding begins once conciliation officer receive a notice of the strike or lockout and during this period '(cooling period)' "the state government may appoint a conciliation officer to investigate the dispute, mediate and promote settlement" <sup>11</sup>

On the other hand, "it may be also appoint a Board of Conciliation 'which shall be appointed in equal numbers on the recommendation of both parties and shall be composed of chairman and either two or four members"<sup>12</sup> and " no strike may be conducted during course of conciliation process".<sup>13</sup>

The conciliation proceedings are occluded either one of the following recommendation.

"Settlement "<sup>14</sup>."No settlement "<sup>15</sup>. and "reference to Labor Courts or an Industrial Tribunal."<sup>16</sup>

### 5.2.6. Compulsory arbitration or adjudication by labor courts and industrial tribunal and national tribunal:

When any conciliation and mediation be unsuccessful, parties may either go for voluntary arbitration or the state or central appoints a 'Board of Arbitrators' which consists of representativeas of the trade union and representative of as of employer. "In case of compulsory arbitration, both parties submit the disputes to mutually agreed third party for arbitration, which is typically a government officer. Arbitration may be compulsory, because the arbitrator makes recommendation to the parties without their consent and both parties must accept the conditions recommended by arbitrator"<sup>17</sup>

"The industrial dispute act 1947 provides for labor courts or Industrial tribunal with in each state government consisting of one person appointed to adjudicate prolonged industrial dispute, such as strike and lockout".<sup>18</sup>

The Industrial act 1947 further provides "the constitution of National Tribunal by theCentral government for adjudication of industrial disputes that involves question of national interest or issues related to more than states. In such a case, the government appoints one person national tribunal and appoints two others advisors."<sup>19</sup>

The labor disputes cannot determine via cancellation and mediation, the employer and worker can refer the case by transcribed agreement to labor court, industrial tribunal or national tribunal for adjudication or enforced arbitration and " a final ruling on the industrial disputes must be made within " 6" months from commencement of the inquiry ".<sup>20</sup>

"A copy of the arbitration agreement signed by all parties is then forwarded to the appropriate government office and conciliation officer pursuant to which the government must publish the ruling in official Gazette within one month from receipt of copy".<sup>21</sup>

### 5.2.7. Level of collective Bargaining Agreement:

In India, the collective agreement takes place archetypally in three levels and they are as follows.

#### 5.2.7. a. Bipartite level or Voluntary Agreement:

This is otherwise called as Voluntary agreement and there is no delinquent to implement owing to both employer and employee move in to agreement willingly. (Section 18 of IDA 1947).

#### 5.2.7. b. Settlement:

This is tripartite in nature and typically employer and employee (trade union) and conciliation officer, they partake for settlement for definite disagreement.

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### 5.2.7. c. Consent awards:

The agreement will be reached by consent of both parties, while the dispute, which are pending before compulsory adjudicatory authority.

### 5.2.8. Content of collective agreement :

As a part of employer and employee relationship of collective bargain, the collective bargaining agreement typically structure as memorandum of settlement and normally, clauses in memorandum of settlement concern to the following.

- Terms / duration of memorandum of settlement as may be agreed between parties.
- Settlement terms which typically, may be with respect wages, benefits allowance, arrears with respect to payment to workers concession, works hours, overtime etc.
- Obligation of workers.
- Obligation of employer.
- Penalties with respect to non- compliance of obligation of workmen and employers.
- Disputes resolution.
- Miscellaneous clauses including severability notice etc.

Therefore, the collective bargaining in India remained mostly decentralized i.e. company or unit level bargaining rather than industry level bargaining. However in few sectors (mainly public sector industries), the industry level bargaining was dominant. However, privatization of public sector altered the industry level bargaining to company level bargaining. On the otherhand, due to stern informalization of labor force and economizing in industries, the potency and influence of the trade unions have been profoundly reduced. The trade unions mostly represented of wellbeing of formal workers. Escalating number of informal workers in the companies almost immediately changed the composition of the work force in such a way that the formal workers became a minority. As result of different causes informal workers could not from their own trade unions, and on the other hand are they are not represented by the trade unions of the formal workers. These situations resulted in erupt of individuals bargaining.

Progressing of informalization of workforce united with the individual bargaining in fact changed the character of the trade unions also , in related sectors and industrial regions , it rehabilitated may trade unions (particularly in sector dominated by informal workers ) in to legal consultants ( pursuing individual causes and charging fees for their services ) rather than collective bargaining agents .

## 6. COLLECTIVE BARGAINING OUTSIDE WORKPLACE

"Collective bargaining outside work place is one common approach that is used to outcome challenge posed by limited attachment of Non – standard workers to single employer/ work place. This approach is particularly important, where bargaining take place predominately at work place level in such way that some categories of Non – standard workers tend to be excluded. For those, whose association with a single work place is weak, convenient or equitable outcome."<sup>22</sup>

"Inter sectorial or sectorial bargain arrangement typically represent the interest of boarder converge of both workers and employers"<sup>23</sup>.

"For example in a number of countries, collective bargaining for agency workers takes place at sectorial level (Austria , Belgium , Denmark, Finland , France , Germany , Italy , Luxembourg, the Nether land , Spain , Sweden)".<sup>24</sup>

"For example in Denmark, company level agreement together with sectorial – level bargaining fully regulate the temp agency work sector, since these are no statutory provisions laid down in relevant legislation ."<sup>25</sup>

"InEuropecross – sectorial bargaining and national level social dialogue play a significant role in regulating temp agency work taking place at the sectorial level in number of countries(e.g. Belgium , Ireland , Poland , Spain , Sweden)."<sup>26</sup>

"In the Unites States, the service employees international unions (SEIU) developed the justice for janitors campaigns and enabled the union to win recognition in several major cities , including Miami , Los angles , Boston and Huston ."<sup>27</sup>



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"In India, Joint –employer bargaining takes a variety of forms. First, an Adhoc representative body of contract workers arising out of a spontaneous action negotiates either with the principal employer or the contractors (e.g. Hero Honda). Second, a contract workers or regular workers trade union negotiates with the principal employer and reaches a collective agreement of memorandum of understanding or draws up a letter of exchange to be implemented by the contracts (e.g. – Public sector units such as Neyveli Lignite Corporation and private sector unit such as Sandvik, Reliance energy or Madras Atomic Power station in Kalpakam Co, Tamilnadu). A regular workmen’s union sometimes negotiates on behalf of contract by the contract workers with the principal employer and the understanding is legalized in an agreement by the contract workers representative and the contractors (e.g. Glaxo in Nabha , Thermax in Pune ).These are also cases in which the contract workers union of the regular workers union negotiations directly with the contract workers unions or regular workers union negotiates directly with the contractors and reaches an agreement which the contractors association (e.g. TNPL in Tamilnadu ).The contract workers themselves sometimes form co-operative service society , which supplies contract labors to the principal employer and negotiates or plays an important role in determining their services conditions (e.g. NLC, Kalpakam Atomic energy and others especially in Tamilnadu)."<sup>28</sup>

### 7. CONCLUSION

“The ILO Declaration of social justice for fair globalization also underscores the signification of fundamental principles of freedom of association and the enabling conditions for attaining the ILO’s strategic objectives – promoting employment developing and enhancing measures of social protections promoting social dialogue and tripartism , and respecting promoting and realizing the fundamental principles and right at work ”.<sup>29</sup>

Seeing that the disputes in industry bring undesirable possession on industrial manufacturers, competence, and excellence, human fulfillment, and obedience, hi – tech and fiscal progress and to conclude on the wellbeing of the humanity, government prepared a methodical modus operandi to settle the disputes as discussed in aforementioned paragraphs. Industrial tranquility and building optimistic self-esteem can be achieved merely through the capable grievance settlement and dispute settlement machinery. The industrial disputes Act 1947 is a mile stone in the growth of labor interest for promoting industrial synchronization, harmony and good relation which guides to increase manufactures and outputs .The settlement machinery under the Industrial dispute Act 1947 endeavor to bring the desired results as the number of disputes settled is swiftly mounting in recent times.

Though India is led the way in support of collective bargaining in the course of Ghandian doctrine owing to widespread politicization of unions , increased anticipation associated with wakefulness built by the media an additional resources , the grievance also move stealthily in many ways foremosting to disputes , interference of third party becomes predictable and it is extremely being ware of in India in more or less all industrially advanced countries as the enormity of the labor dilemma increasing which requires effectual arrangement to safeguard tranquility .

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