

# Causes of Declining Collective Bargaining in India

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**Abstract:** *Collective bargaining is the negotiation between the employer and employee about the working conditions, terms of service and other aspects relating to employment and reaching a voluntary agreement among them. Though collective bargaining brings effective way of settling industrial disputes amicably between an employer side and the employee side (i.e. mostly trade union on behalf of employee), it resulted in failure in India due to various reasons.*

**Keywords:** Collective bargaining, multiple trade unions, industrial dispute

## 1. Introduction

The term of employment and conditions of service has to be decided by the parties related to such employment. There was a time when the terms of employment and conditions of service are decided only by the employers. After the establishment of trade unions in India, the trade unions represent the employees in deciding the terms of employment and conditions of service. This process can be termed as collective bargaining. The collective bargaining in India remained limited in scope and restricted in its coverage without a well-defined legal structure. In reality, the labour-formal sector workers enjoying better space for collective bargaining and informal ones with no scope for collective bargaining.

## 2. Definition of Collective Bargaining

Sydney and Beatrice Webb coined the term collective bargaining for the first time. Collective bargaining was widely accepted and used in the United States of America for settling industrial disputes. The Great Britain is considered as the motherland of collective bargaining. In India, the first collective bargaining agreement was concluded in 1920 at the instance of Mahatma Gandhi, to regulate labour-management relations between a group of employers and their workers in the textile industry in Ahmedabad<sup>1</sup>.

K. Alexander defined collective bargaining as

“Collective bargaining is a process of bargaining between employers and their workers by which they settle the disputes among themselves relating to employment, non-employment, terms of employment, conditions of service of workers, on strength of sanctions available to each side.”

The manual published by International Labour Office<sup>2</sup> in 1960 defined collective bargaining as

“Collective bargaining is the negotiations about working conditions and terms of employment between an employer

and a group of employers or one or more employer's organisation on one hand, and one or more representatives of workers organisation on the other with a view to reaching agreement.”

In KAROL LEATHER KARAMCHARI SANGATHAN v. LIBERTY FOOTWEAR CO<sup>3</sup>

Collective bargaining was defined as “A technique by which disputes as to conditions of employment are resolved amicably, by agreement rather than by coercion, the dispute is settled peacefully and voluntarily, although reluctantly between labour and management.”

In RAM PRASAD VISWAKARMA v. INDUSTRIAL TRIBUNAL<sup>4</sup>

The court observed that “It is well known how before the days of ‘collective bargaining’, labour was at great disadvantage in obtaining reasonable terms for contracts of service from its employer. As trade unions developed in the country and collective bargaining became the rule, the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workmen, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or workmen and as regards of other disputes.”

In TITAGARH JUTE CO. LTD. v. SRIRAM TIWARI<sup>5</sup>

The court observed that, “Industrial Disputes Act, 1947 seeks to achieve social justice on the basis of collective bargaining i.e., this policy of legislature is also implicit in the definition of industrial dispute.”

## 3. Plans of Adopting Collective Bargaining in India

Though attention was paid to, adopt collective bargaining as a method to resolve industrial disputes since, the drawn of planning era in India; it received increasing emphasis since the days of the National Commission of Labour<sup>6</sup>.

<sup>1</sup>Nirmal Singh, S.K. Bhatia, Industrial Relations and Collective Bargaining, Deep & Deep Publications Pvt. Ltd., Edn: 2006, p: 117

<sup>2</sup>Nirmal Singh, S.K. Bhatia, Industrial Relations and Collective Bargaining, Deep & Deep Publications Pvt. Ltd., Edn: 2006, pp: 155-156

<sup>3</sup>1961 I LLJ. 504

<sup>4</sup>1972, LLJ. 212

<sup>5</sup>1982 II LLJ 491

<sup>6</sup><http://www.yourarticlelibrary.com/hrm/collective-bargaining-in-india-an-overview/35470> Retrieved on 21-10-2018, 12:30

The origin and development of collective bargaining in India can be delineated as:

The First Five Year Plan duly recognised the need for collective bargaining to resolve labour disputes and maintain peaceful industrial relations in the country. It clearly stated that collective bargaining can derive reality only from the organised strength of workers on the one hand, and a genuine desire on the part of the employer to co-operate with the employee's representatives on the other. The state wishes to encourage collective bargaining for peaceful settlement of industrial disputes in order to minimize and avoid, to the extent possible, its intervention in union management relations.

Increasing emphasis was given to collective bargaining in the subsequent Second Five Year Plan. It noted that for the development of an undertaking or an industry, industrial peace is indispensable. Obviously this can best be achieved by the parties themselves. The best solution to the common problems, however, can be found by mutual agreement or collective bargaining.

The concern for collective bargaining continued in the Third Five Year Plan also. The main emphasis was given to the adoption of voluntary arbitration in the place of compulsory adjudication.

Similarly, the Fourth Five Year Plan stressed the need for greater emphasis on collective bargaining as also a strong trade union to ensure better relations between the employer and the employees.

#### **4. National Commission of Labour on Collective Bargaining**

The emergence of the National Commission on Labour in 1966 was an epoch-making in the history of collective bargaining in India. The Commission made comprehensive investigations into almost all the problems relating to labour. The role of collective bargaining in solving labour problems was duly appreciated by making a series of recommendations to make collective bargaining more effective in future.

The important among several recommendations it made are:

1. Collective bargaining as it has developed in the West may not be quite suitable for India given its different socio-industrial background.
2. There is a need to evolve satisfactory arrangements for union recognition by statute as also to create favourable conditions to make such arrangements succeed.
3. No collective bargaining can exist and succeed without the right to strike or lockout.

However, in spite of all these, collective bargaining in India could not make much headway due to various reasons.

#### **FACTORS WHICH LED GROWTH OF COLLECTIVE BARGAINING IN INDIA<sup>7</sup>**

- a) Statutory provisions, which have laid down some general principles of negotiation, procedure for collective agreements and the character of the representation of the negotiating parties.
- b) Voluntary measures, such as tripartite conferences, joint consultative boards and industrial committees at the industry level have provided an ingenious mechanism for the promotion of collective bargaining practices.
- c) Measures taken by the Government schemes for participation of labour in management, the evolution of the code of Inter-Union Harmony, the Code of Discipline, the formation of joint management councils, works committees, and shop councils, and the formulation of grievances redressal procedure at the plant level have encouraged the growth of collective bargaining.
- d) The Industrial Truce Resolution of 1962 has also influenced the growth of collective bargaining. The Resolution required managements and workers to "strive for constructive co-operation in all possible ways and enjoined on them to resolve their disputes peacefully through mutual discussion, conciliation and voluntary arbitration."
- e) The amendments to the Industrial Disputes Act, which were passed by the Parliament in 1964, provided for the termination of an award or a settlement only when a proper notice to that effect had been given by a majority of workers and not by any trade union representing a minority. They also ensured that the agreements or settlements which were arrived at by a process of negotiation or conciliation were not terminated by a section of the workers.

#### **In BHARAT IRON WORKS v. BHAGUBHAI PATEL<sup>8</sup>**

It was held that "Collective bargaining, being the order of the day in the democratic, social welfare State, legitimate trade union activities, which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activities can flow in healthy channel only on mutual cooperation between the employer and the employees and cannot be considered as irksome by the management in the best interests of its business. Dialogue with representatives of a union help striking a delicate balance in adjustments and settlement of various contentious claims and settlements".

#### **5. Parties to Collective Bargaining**

The parties to the collective bargaining are:

- a) A employer or a group of employers or one or more employers organisation

<sup>7</sup>Nirmal Singh, S.K. Bhatia, Industrial Relations and Collective Bargaining, Deep & Deep Publications Pvt. Ltd., Edn: 2006, p: 121

<sup>8</sup>AIR 1990 SC 247

- b) One or more representatives of the workers organisation. (on behalf of the workers, trade unions represent in collective bargaining)

It is also said that one more party should also be included for negotiating in collective bargaining i.e., representatives from consumer side also be present. Because the impact of collective bargaining would be effected on the consumers side. But the consumer representation has never been considered in collective bargaining negotiations so far.

A major issue here is to identify which union is to be recognised as the representative or the workers for bargaining purposes. In those organisations in which there is a single trade union, that union is generally granted recognition to represent the workers. But where there is more than one union, any of these criteria may be used for identifying the representative union namely:

- 1) Selection of the representative union by secret ballot;
- 2) Selection through verification of membership by some Government agency;
- 3) Bargaining with a joint committee of all major unions;
- 4) Bargaining with a negotiation committee in which different unions would be represented in proportion to their verified membership; and
- 5) Bargaining with a negotiation committee which consists of elected representatives of every department of the organisation selected by secret ballot irrespective of their union alliance.

The secret ballot system is widely used in countries like United States, West Germany, etc. In India, AITUC, HMS, UTUC and CITU have supported this method but INTUC has opposed it due to various reasons. The National Commission on Labour had preferred to leave the determination of the representative union to the proposed Industrial Relations Commission, which might use either secret ballot or the verification procedure for that purpose. The attempt to form joint committee may be opposed by the largest or the recognised union (if there is one) which may claim the right to speak on behalf of all the employees of the undertaking or industry. The Bargaining Committee with proportional strength of the unions should be attempted only when the largest union is still a minority union, and there are strong rivals to it<sup>9</sup>. Recognition of trade unions is one of the basic issues in Indian industrial relations system because employers are under no obligation to give recognition to any union. The employers many a time have refused recognition to trade union either on the basis that union consists of only a minority of employee; or that two or more unions existed.

## 6. Recommendations of National Commission on Labour

The National Commission on Labour has made the following recommendations in regard to recognition:

<sup>9</sup>Nirmal Singh, S.K. Bhatia, Industrial Relations and Collective Bargaining, Deep & Deep Publications Pvt. Ltd., Edn: 2006, pp: 208-209

- A. It would be desirable to make recognition compulsory under a central law in all undertakings employing hundred or more workers or where the capital invested is above a stipulated size. A trade union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30% of workers in the establishment. The minimum membership should be 25% if recognition is sought for an industry in a local area.

- B. The proposed National / State Industrial Relations Committee will have the power to decide the representative character of a union, either by examination of membership records, or, if it considers necessary, by holding an election by secret ballot open to all employees. The Commission shall deal with various aspects of union recognition, such as:

- a) Determining the level of recognition- whether plant, industry centre-cum-industry to decide the majority union;
- b) Certifying the majority union as a recognised union for collective bargaining; and
- c) Generally dealing with other related matters.

- C. The recognised union should be statutorily given certain exclusive rights and facilities, such as right of sole representation, entering into collective agreements on terms of employment and conditions of service, collection of membership subscription within the premises of undertaking, the right of check-off, holding of discussions with departmental representatives of its worker members within factory premises, inspecting, by agreement, the place of work of any of its members, and nominating its representatives on works grievance committees and other tripartite committees.

- D. The minority unions should be allowed only the right to represent cases of dismissal and discharge of their members before the Labour Court.

The recommendation of the National Commission on Labour regarding verification of membership by secret ballot was opposed by the members of the INTUC on various grounds and they emphasised on verification of membership by an independent judicial agency. It was contended that it will be dangerous to allow workers to cast their votes in secret ballot to elect the union to be recognised. In that event not many workers would be willing to pay the membership fee of the unions and the financial position of the unions would be much worse. Secret ballot would also introduce all the electioneering tactics in the industrial enterprise including reckless election promises, politicalisation of the trade unions, encouraging such diverse forces as caste, community, linguistic and regional differences, etc.<sup>10</sup>

<sup>10</sup>Nirmal Singh, S.K. Bhatia, Industrial Relations and Collective Bargaining, Deep & Deep Publications Pvt. Ltd., Edn: 2006, pp: 208-209

RAM KAPIL SINGH v. ALI HASAN<sup>11</sup>

It was held that unregistered trade unions cannot participate in collective bargaining. Workmen of unregistered trade union can be represented by an officer of registered trade union connected with or by any other workman employed in the industry in which the worker is employed, provided there is an authorisation to represent in prescribed manner.

#### PROCEDURE FOR COLLECTIVE BARGAINING

##### a) A charter of demands

The trade union will notify the employer for initiating collective bargaining negotiations. The representatives of the trade union draft a charter of demands which contains issues related to terms of employment and the working conditions namely wages and allowances, bonuses, working hours, benefits, holidays. In some cases, an employer may also notify the trade union and initiate collective bargaining negotiations.

##### a) Negotiations

Negotiation is the next step after the submission of the charter of demands by the trade union. Both the employer and the employee seek opportunities to suggest compromise solutions in their favour until an agreement is reached. If it is possible to reach out to an agreement, a third party (mediator / arbitrator) may be brought in from outside. If, even with the assistance of the third party, no viable solution can be found to resolve the parties' differences, the trade union may decide to engage in strikes<sup>12</sup>.

##### b) Collective bargaining agreement

Pursuant to the negotiations between the parties, a collective bargaining agreement will be executed between the employer and workmen represented by trade unions, setting out the terms of employment and working conditions of labour.

Section 18(1) of the Industrial Disputes Act, 1947 impliedly speaks about collective bargaining agreement:

“<sup>13</sup>[Settlement arrived at otherwise than in the course of conciliation proceedings i.e., without aid of statutory agency.”

Ludwig Teller defines collective bargaining agreement as: “An agreement between a single employer or an association of employers on the one hand and a labour union upon the other, which regulates terms and conditions of employment.”

<sup>11</sup>AIR 1964 Pat. 271.

<sup>12</sup>[www.businessworld.in/article/Collective-Bargaining-in-India-Procedure-and-Types/21-07-2018-155451/](http://www.businessworld.in/article/Collective-Bargaining-in-India-Procedure-and-Types/21-07-2018-155451/) Retrieved on 22-10-2018, 7:08

<sup>13</sup>Subs. By Act 36 of 1964, s. 9, for “An arbitration award” (w.e.f. 19-12-1964).

Types of collective bargaining agreements<sup>14</sup>:

##### i. Procedure agreements

Procedure agreements spell out the steps by which the industrial relations process are carried out. Procedure agreements are collective agreements which relate to:

- Machinery for consultation, negotiation or arbitration on terms and conditions of employment or for any other matters which arise between trade unions and employers;
- Negotiating rights;
- Facilities for trade union officials; and
- Disciplinary matters and individual workers' grievances.

##### ii. Substantive agreements

These contain the ‘substance’ of any agreement on terms and conditions of employment. They cover payments of all kinds, i.e. wage rates, shift allowances, incentive payments, also holidays and fringe benefits such as pensions and sick pay and various other allowances.

##### c) Strikes

If both parties fail to reach an agreement because of mutual consensus, the union may go on a strike, which shall be in accordance with the provisions of the Industrial Disputes Act, 1947.

##### d) Conciliation

Once the conciliation officer receives a notice of strike or lockout, the conciliation proceedings shall commence. The State Government may appoint a conciliation officer or a Board of Conciliation to investigate disputes, mediate and promote a settlement. Workers are prohibited from going on strike during the pendency of such conciliation proceedings. Conciliation proceeding may have one of the three outcomes, namely:

- (i) A settlement; or
- (ii) No settlement; or
- (iii) Reference being made to the appropriate labour court or any other industrial tribunal.

ROYAL CALCUTTA GOLF CLUB MAZDDO UNION v. STATE OF WEST BENGAL<sup>15</sup>

The main task of the Conciliation Officer is to go from one camp to the other and find out the greatest 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.

##### e) Compulsory arbitration or adjudication

<sup>14</sup>Nirmal Singh, S.K. Bhatia, Industrial Relations and Collective Bargaining, Deep & Deep Publications Pvt. Ltd., Edn: 2006, p:193

<sup>15</sup>AIR 1956 Cal. 550.



When conciliation and mediation fail, parties may either resort to compulsory or voluntary arbitration. Arbitration and the recommendations of the arbitrator may be binding to the parties. Section 7A of the Industrial Disputes Act, 1947 provides for a labour court or industrial tribunal within a state to adjudicate protracted industrial disputes such as strikes and lockouts. Section 7B of the Industrial Disputes Act, 1947 provides for constitution of national tribunals involving questions of national interest or issues concerning more than two states. In the event, a labour dispute is not resolved by conciliation and mediation, the employer, and the workers may refer the case by a written agreement to a labour court, industrial tribunal or national tribunal for adjudication or compulsory arbitration.

#### LEGAL BOUNDARIES FOR COLLECTIVE BARGAINING

- i. India has not ratified convention- 87 (convention on Freedom of Association and Protection of the Right to Organize, 1948) and convention- 98 (Right to Organize and Collective Bargaining Convention, 1949) of International Labour Organisation<sup>16</sup>.
- ii. There is only a limited scope and coverage of collective bargaining within legal boundaries of Trade Union Act, 1926 and Industrial Disputes Act, 1947<sup>17</sup>. The Trade Union Act, 1926 was amended in 2001 and after the amendment it became more difficult to form trade unions. In the Act of 1926, only seven members were required to register a trade union, but after amendment at least 10% or 100, whichever is less, subject to a minimum of seven workmen engaged or employed in the establishment are required to be the members of the union before its registration. The amendment also introduces a limitation on the number of outsiders among the office bearers.
- iii. Trade Union Act, 1926 and Industrial Disputes Act, 1947 remains silent regarding the recognition of trade unions. Only when the unions are recognised by the management then only they have the full-fledged right as bargaining agent on behalf of workers. But there is no legal obligation on employers to recognise a union or engage in collective bargaining. The statutes of only few states of India like Maharashtra, Gujarat, Madhya Pradesh and Rajasthan have made some provisions for recognition of unions with a specific percentage of the workforce.
- iv. In India, right to protest is a fundamental right under Article 19 of the Constitution; but right to strike is not a fundamental right under Part III of the

Constitution but a legal right governed by Industrial Disputes Act, 1947.

- Section 22 (1) : No person employed in a public utility service, shall go on strike in breach of contract-
  - (a) Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
  - (b) Within fourteen days of giving such notice; or
  - (c) Before the expiry of the date of strike specified in any such notice as aforesaid; or
  - (d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings
- Section 23 : No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-
  - (a) During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
  - (b) During the pendency of proceedings before <sup>18</sup>[a Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings;<sup>19\*\*\*</sup>  
<sup>20</sup>[(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or]
  - (c) During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

#### TAMIL NADU ELECTRICITY WORKERS FEDERATION v. MADRAS STATE ELECTRICITY BOARD<sup>21</sup>

Collective bargaining is the foundation of the movement and it is in the interest of the 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.

- v. Trade Union activities are granted immunity from the applicability of CRPC under section 18 of Trade Unions Act, 1926 and immunity from civil suit in certain cases under section 18 of Trade Unions Act, 1926.
- vi. Moreover, in recent decades, a number of judgments came from the Supreme Court setting precedents against the right to strike.

There are two reasons to believe that labour standards may finally be able to claim a place on the public agenda. The

<sup>16</sup><https://amrc.org.hk/content/collective-bargaining-india-recent-trends&nl=en-IN> Retrieved on 22-10-2018, 7:43.

<sup>17</sup><https://blog.ipleaders.in/collective-bargaining-in-india-laws-and-realities/amp/&hl=en-IN>. Retrieved on 21-10-2018, 15:29

<sup>18</sup>Subs. By Act 36 of 1956, s. 17, for “a Tribunal” w.e.f. 10-3-1957).

<sup>19</sup>The word “or” omitted by Act 36 of 1964, s.11 (w.e.f. 19-12-1964).

<sup>20</sup>Ins. by s. 11, *ibid.* (w.e.f. 19-12-1964).

<sup>21</sup>AIR 1956 Mad. 111.

first is that positive evidence is accumulating that attention to decent labour standards may help to improve economic performance; the second is that discontent with falling and occasionally exploitive standards may be emerging as a concern for a broad spectrum of workers and voters.<sup>22</sup> 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 offer advantageous to him, concerning his employment.<sup>23</sup>

#### TYPES OF COLLECTIVE BARGAINING AGREEMENTS IN INDIA<sup>24</sup>

##### (a) Bipartite agreements

These agreements are as a result of voluntary negotiations between employer and trade union and are binding, as per the provisions of the Industrial Disputes Act, 1947. These depend for their enforcement on moral force and on the goodwill and cooperation of the parties.

##### (b) Settlements

It is tripartite in nature as it involves the employer, trade union and the conciliation officer. Settlements arise out of specific a dispute which is resolved by a conciliation officer. If, during the conciliation proceedings, the conciliation officer believes at any point of time that there is a possibility of reaching a settlement, then the officer may withdraw himself from the negotiations. The parties are free to finalise the terms of the agreement and must inform the conciliation officer within a specified timeframe if such an agreement is reached after his withdrawal. These are called settlements under Industrial Disputes Act, 1947.

##### (c) Consent awards

These are agreements reached while a dispute is pending before an adjudicatory authority. Such agreement is incorporated in the authority's award and although the agreement is reached voluntarily between parties, it becomes binding under the award passed by the authority. In simple words, agreements which are negotiated by the parties on a voluntary basis when disputes are subjudice and which are later submitted to industrial tribunals, labour courts or labour arbitrators for incorporation into the documents as parts of awards<sup>25</sup> are known as consent awards.

<sup>22</sup>P.L. Jayanti Reddy, *Collective Bargaining a Global Perspective*, The Iefai University Press, Edn: 2007, p: 227.

<sup>23</sup>S.N. Misra, *Labour & Industrial Laws*, Central Law Publications, Edn: 2016, p: 410.

<sup>24</sup><http://bwpeople.businessworld.in/article/Collective-Bargaining-in-India-Procedure-and-Types/21-07-2018-155451/> Retrieved on 30-08-2018, 7:37.

<sup>25</sup>Nirmal Singh, S.K. Bhatia, *Industrial Relations and Collective Bargaining*, Deep & Deep Publications Pvt. Ltd., Edn: 2006, p: 119.

## 7. Reasons for Failure of Collective Bargaining in India

Though it is argued that collective bargaining has grown in India due to the statutory provisions and voluntary measures, its success is limited. Collective bargaining has not made much headway in India when compared to other industrial nations<sup>26</sup>. Collective bargaining machinery essentially is a reflection of a particular social and political climate. The Indian trade unions are weak in collective bargaining. This is because of various political, economical and social factors prevailing in India. The reasons are:

##### i. Weak unions

Collective bargaining process mainly depends on the strength of unions. Indian unions are marked with multiplicity, inter and intra-union rivalry, weak financial position and non-recognition. Weak trade unions cannot initiate strong arguments during negotiations. All in all, the lack of unified and strong trade union movement represents a missing link in the existing industrial relations framework.

##### ii. Problems from Government

The Government has not been making any strong efforts for the development of collective bargaining. The regulatory framework covering the industrial relations scene is quite tight, leaving very little room for bargaining to flourish on a voluntary basis.

##### iii. Legal problems

Now adjudication is easily accessible. No attempt has been made by the Government to rationalise or simplify the multifarious laws covering labour management relations.

##### iv. Attitude of Management

Employers have failed to read the writing on the wall, they do not appreciate the fact that unions have come to stay with almost equal bargaining strength. Such negative attitudes have come in the way of negotiating with unions voluntarily.

##### v. Employers' uncertainty about who is the recognised bargaining agent

Employers quite often are not very sure who the recognised bargaining agent is. When there are multiple unions, bargaining with one union may prove to be a tough battle.

##### vi. Statutory fixation of conditions of work

Areas of collective bargaining have not grown in view of the encouragement given to wage boards, pay commissions, statutory fixation of other conditions of work and social security measures.

##### vii. Political interference

<sup>26</sup><http://www.shareyouressays.com/knowledge/7-factors-for-inhibiting-collective-bargaining-in-india/94661> Retrieved on 22-10-2018, 15:45

Almost all unions are associated with some political party or the other. The political parties interfere in the smooth functioning of the union. Some of the politically affiliated Central trade unions<sup>27</sup> in India are:

- (a) BMS- Bharatiya Mazdoor Sangh (linked with far right political party BJP)- members: 6 million
- (b) INTUC- Indian National Trade Union Congress (linked with centrist Congress party)- members: 3.8 million
- (c) AITUC- All India Trade Union Congress (linked with Communist party of India)- members: 3.3 million
- (d) CITU- Centre of Indian Trade Unions [linked with the Communist Party of India (Marxist)]- members: 2.6 million
- (e) UTUC(LS)- United Trade Union Congress (Lenin Sarani) (linked with the party named Socialist Unity Center of India)
- (f) UTUC United Trade Union Congress (linked with political party- Revolutionary Socialist Party)
- (g) TUCC- Trade Union Co-ordination Centre (linked with political party- All India Forward Bloc)
- (h) LPF- Labour Progressive Front (linked with political party- Dravida Munnetra Kazhagam)
- (i) ICCTU- All India Central Council of Trade Unions (linked with Communist Party of India (Marxist-Leninist)- Liberation group)
- (j) INTTUC- Indian National Trinamool Trade Union Congress (linked to the political party- All India Trinamool Congress)<sup>28</sup>

Justice Gupta in his "Our Industrial Jurisprudence" made the observation: "If our experience is any guide, it reveals that level of increase in wages etc., (in public sector undertaking) is now decided by the Bureau of Public Enterprises which takes into consideration only the Political impact and 'Consumer resistance' as two dominant factors. This is the reason why the prices of almost all products of necessity like coal, iron and steel, cement, sugar etc., have been constantly increasing. A survey of the last ten years reveals that there was no industrial dispute regarding wage structure or bonus in any industry of some significance."

#### viii. Outsiders in the process of collective bargaining

The Trade Unions Act, 1926, permits outsiders to be the office bearers of a union to the extent of half the total number of office bearers. So, it permits one to be the leader of the union who does not actually work in the industry. Sometimes a dismissed employee working as a

union leader may create difficulties in the relationship between the union and the employer. Nevertheless, experience shows that outsiders who have little knowledge of the background of labour problems, history of labour movement, fundamentals of trade unionism and the technique of the industry and with even little general education assume the charge of labour union and become the self-appointed custodian of the welfare of the workers. The employers, therefore, have been reluctant to discuss and negotiate industrial matters with outsiders, who have no personal or direct knowledge of day to day affairs of the industry.

Accordingly, employers refuse recognition to the unions which are either controlled by the politicians or affiliated to a particular political party or controlled by a particular individual. Government cannot morally compel employers to accord recognition to unions without driving out the politicians from them. The State must outright ban "outsiders" from the trade union body. Further, provision for political funds by trade unions should be eliminated, since it invariably encourages the politicians to prey upon them. The National Commission on Labour has overlooked this aspect. The Commission 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 would develop through their education and training. Accordingly the Commission suggests proportion of the outsiders and the workers in a union executive. On realising the problems of outsiders in the Union, the Industrial Relations Bill, 1988 proposes to reduce the number of outsiders to two only.<sup>29</sup> Critic says that the presence of outsiders is one of the important reasons for the failure of collective bargaining in India.

#### ix. Industrial relations framework

Collective bargaining is a voluntary process. It presupposes an appropriate industrial relations framework which provides scope for effective interaction of the parties within the parameters set by the requirement of peaceful existence of civilisation. It has been opined that in India, the conditions necessary for such interaction are either non-existent or not feasible thus making the industrial relations framework less hospitable for the development of a collective bargaining relationship in machinery.<sup>30</sup>

#### x. Other factors

The unorganised trade unions in India are also the root cause of inefficient collective bargaining of trade unions. In India the Government policies are not conducive to the trade unions. This leads to in weakness on part of trade unions to negotiate effectively with management. There is

<sup>27</sup> Any federation of trade unions, with at least 500,000 members spread over at least four states and in four industries is eligible to be considered as a National Federation or Central Trade Union Organization. But it does not mean that there are only these national level federations. There are federations but because they do not have required membership and therefore they do not qualify to be put in the list.

<sup>28</sup> <https://amrc.org.hk/content/collective-bargaining-india-recent-trends&nl=en-IN> Retrieved on 22-10-2018, 16:15

<sup>29</sup> <https://www.wisdomjobs.com/e-university/industrial-relations-management-tutorial-357/collective-bargaining-in-india-introduction-11788.html&hl=en-IN> Retrieved on 22-10-2018, 08:57

<sup>30</sup> Nirmal Singh, S.K. Bhatia, Industrial Relations and Collective Bargaining, Deep & Deep Publications Pvt. Ltd., Edn: 2006, p: 130

no apex body of trade unions in India. This further lowers the chances of proper collective bargaining<sup>31</sup>.

Unfortunately in India, due to certain factors such as inter-union and intra-union rivalry, multiplicity of trade unions, self-seeking politicians dabbling in trade unions, encouragement to the workers for indulging in coercion measures, intimidation, violence, etc. collective bargaining has mainly been distributive bargaining. However, instances of two-way traffic are available. There have been agreements when there is noticeable shift towards integrative bargaining. Shri M.K. Verma<sup>32</sup> has emphasised that the Management's charter of demands is not a matter of confronting the union with the counter-irritant; not is it merely a matter of making a cheap attempt at counter-balancing the impact of union's demands. It goes much deeper than that. It springs from the fact that in any industrial or commercial undertaking, growing competition and even increasing costs have no alternative for the organisation but to internally generate sufficient efficiencies and cost reductions so as to enable it to retain its business position while meeting numerous demands, including those of the union.

## 8. Conclusion

Refusal by the employer to bargain collectively in good faith is an unfair labour practice as per the Industrial Disputes Act, 1947. For a successful process of collective bargaining, it must begin with proposals rather than demands and the parties should be ready to negotiate and compromise. The process of collective bargaining enables healthy discussions between workers and employers and facilitates the growth of industrial relations. Collective bargaining by trade unions often tends to be an arm-twisting exercise given the political affiliation of trade unions in India and it is more about the show of strength by the trade union as opposed to a good faith effort to negotiate genuine demands of workers.

## 9. Suggestions

- (a) It is necessary for the management to recognise the union and to bargain in more good faith.
- (b) There should be a change in the attitude of employers and employees. Both the parties should keep in mind that they have to resolve their differences on their respective claims quietly and calmly.
- (c) It is also appreciable to have open minds; each party should listen to others' concern and point of views and should have some flexibility in making adjustments to the demands.
- (d) Either side should avoid putting any irrational or unreasonable demand.

- (e) Negotiations can be successful only when the parties rely on facts and figures to support their points of view. That is why trade union should be supported by specialists, viz., economists, productivity experts, etc.

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<sup>31</sup>[www.managementparadise.com/forums/human-resources-management/201118-collective-bargaining-india-html](http://www.managementparadise.com/forums/human-resources-management/201118-collective-bargaining-india-html) Retrieved on 22-10-2018, 09:29

<sup>32</sup>Nirmal Singh, S.K. Bhatia, Industrial Relations and Collective Bargaining, Deep & Deep Publications Pvt. Ltd., Edn: 2006, p: 140