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## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **AN ANALYSIS OF COLLECTIVE BARGAINING** **WITH REFERENCE TO INDIA**

AUTHORED BY: SWATI MISHRA

Profile: Student, III year BALLB,

Ramaiah college of Law.

## **Abstract**

This paper delves the importance of collective bargaining in workplace members and its impact on people's rights and place of business fairness. Through an in-intensity analysis of the ancient context, legal framework, and realistic implications of collective bargaining, this study pursuits to shed light at the blessings it offers to both personnel and employers. By inspecting case studies and empirical proof, this paper highlights the fine outcomes of collective bargaining, consisting of improved working situations, honest wages, and task safety. Additionally, it explores the challenges and capacity solutions to efficaciously put into effect collective bargaining in numerous industries and regions. The findings of this studies contribute to the continued communicate surrounding, exertions of rights and offer insights for policymakers, employers, and employees to foster harmonious work environments and ensure the wellness of people.

## **Introduction**

The era has turned into a capitalistic state wherein the work life is glorified where the worth of the workers are determined by the work they do. In this surge of the working lifestyle it is often exploited which comprises the rights of them. The shift in the work culture had led to the glorification of the toxic hustle.

But, in practical life, is it even reasonable to adopt this toxic work culture? Probably not. With the employers having upper-edge in the authority, they are often seen to manipulate the employees and putting them into the endless spiral of work mostly with rights and basic amenities being devoid to them.

The exploitation of the workers dates back to Laissez Faire era where the employers had the privilege to hire and fire as per their own accord. They themselves had the power to make

decisions without taking into the considerations of the employees, hence giving no space to negotiations and bargaining. All these practices actually became a catalyst for the collective bargaining to emerge in the workplace domain.

To have a harmonious work environment, it was imperative to do away with these dominating practices by the employers. In the case of Tamil Nadu electricity workers federation v. Madras Electricity Board, collective bargaining is defined as, "the foundation of this movement and it is in the interests of labour that statutory recognition has been accorded to the trade union, and their capacity to represent workmen, who are members of such bodies."<sup>1</sup>

In the developed countries such as UK and US who are also industrially advanced, the method of collective bargaining is being adopted as a method of negotiation and settlement of the dispute. Apart from them, several African and Asian Countries have also made the settlement by collective bargaining compulsory.

India too have made the principle collective bargaining compulsory but in practice there has been hardly any legislative methods to make it work.<sup>2</sup>

Hence, with the above understanding we can derive that collective bargaining means the mutual negotiations taking place between the workers and the employees, commonly demanding for the rights of the workers often backed by the labour unions. Generally, the negotiations that takes place are regarding basic amenities and joint rights of the workers, such as working conditions, wages, reasonable working hours of the employees, and any compensation taking place. When the welfare state had taken over it became imperative to ensure the basic requirements of the workers, helping them to avoid exploitation and address economical imbalances in the rise of the gig economy.<sup>3</sup>

## **Origin of collective bargaining**

The origin of collective bargaining can be traced back to great Britain in 1874 especially among coal workers. It became apparent during the Industrial revolution when the capitalism was on zenith and the workers had been devoid of their basic rights and had to face poor living conditions.

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<sup>1</sup> Tamil Nadu Electricity workers Federation v. Madras Electricity Board, AIR 1965 Madras 111.

<sup>2</sup> Srivastava Sc, Industrial Relations and Labour Laws, 4th edition, 2000

<sup>3</sup> <https://www.investopedia.com/terms/c/collective-bargaining.asp>

The wave of collective bargaining can be seen spreading through United Kingdom to Western Europe, North America and towards other parts of the world. This was due to the shift in the dynamics of manual working style to a more industrial machinery based system wherein the process of urbanisation can also be seen so the intensity of workers in the cities also increased. The rise in the number of workers also led to the increased demands of them with regards to proper working conditions and the urge to protect themselves from the exploitative conditions by forming associations and organisations and represent themselves with respect to collective demands and rights which tend to pressurise the government. With the passage of time concept of collective bargaining emerged and the terms like paid leave, working hours, job security, maternity leave, and equal remuneration for both men and women. All these revolution was revolted by the employers and they were reluctant to agree to a joint statement as they wanted to preserve their superior roles. Their claims were backed by the policies which envisaged the idea of economic liberalism hence for a while they were able to maintain the dominance giving emphasis to individual contract rather than harping upon trade unions' agreement which hindered the growth of collective bargaining. But the privileges of the employers were short lived as breeze of change occurred which made the states to look upon their policies and amend them to a more democratic approach giving the employees the right to strike and paved the way to a more efficient way to form trade unions, removing all the restrictions by the means of legislation which supported collective bargaining. Thus, collective bargaining started to gain momentum which also led its recognition in several international organisations<sup>4</sup> such as ILO which also adopted the Philadelphia Declaration which further recognised the rights and aims of working class and thereby accentuated the phrase that Labour is not a commodity and highlighted several aspects of social justice. In 1998 the ILO also adopted declaration on fundamental principles and rights of work which makes the member states obligatory to these provisions. Again in 2008 ILO had adopted Declaration on Social Justice for a Fair Globalisation which ensured collective bargaining to be one of the important factor to attain economic and social progress together.

### **Meaning of collective Bargaining**

Collective Bargaining was first termed by Mr. Sydney Webb and Breatrice who had contributed immensely in their writings first in 1874.

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<sup>4</sup> [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/article/wcms\\_173298.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/article/wcms_173298.pdf)

The subject matter of collective bargaining has always been a controversial issue and has been defined by various scholars differently. For instance, Harbison had defined collective bargaining as, "a process of accommodation between two institutions which have both common and conflicting interest".<sup>5</sup>

In another manual published by the international labour office they defined collective bargaining as the negotiations which take place with regards to the working condition of the employees and the employers with a goal to meet an agreement<sup>6</sup>.

Golden, the another scholar sees collective bargaining as a measure to provide the benefits equitably among all the members of the which includes the union, employers, employees, organisation of representative workers on the both of the sides to come up with the agreement.<sup>7</sup> Supreme Court had also defined collective bargaining as the the means to resolve the disputes amicably by agreement rather than putting coercion.

By the above definitions we can derive that there is no standardised meaning of collective bargaining and each definitions embarks its own meaning. But by looking at all of these expression of collective bargaining, it can be derived that collective bargaining is a combined efforts by the union, employers and employees to reach an agreement which is accepted by them jointly.

## **Functions of Collective Bargaining**

There exist multitude functions of collective bargaining which plays an important role in safeguarding the rights of the employees. It is the entity which provides for a diplomatic approach which enhances the cooperation between employers and the employees to come up with a mutual solution.

The scholars such as John Dulop and Derek Bop shone light on five of the collective bargaining's important function<sup>8</sup>:

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<sup>5</sup> F.H Harbison, Goals and strategy in collective bargaining, (Harper and Bros, 1951).

<sup>6</sup> International Labour Office, Collective Bargaining (a worker's education Manual), in (1960) p.3.

<sup>7</sup> C.S Golden, causes of industrial peace under collective bargaining, USA, the national planning association, 1949.

<sup>8</sup> <https://egyankosh.ac.in/bitstream/123456789/24700/1/Unit-9.pdf>

1) Setting out rules of the workplace

The collective bargaining acts as a legislative framework wherein rules and regulations are established in a workplace which makes the employees and employers accountable to them.

2) compensation providing machinery

Compensation and its form are determined by collective bargaining agreements which tells how much and what kind of compensation shall be given to the employees.

3) Making compensation standardised

The compensation is standardised and no disproportionate value is given is ensured by collective bargaining. It was also seen that the centralisation of collective bargaining on the national platform was deemed more effective.

4) understanding the priorities of workers and the working class

Collective bargaining helps to negotiate and come up with a mutual cooperation between employees and employers and helps to determine their own priorities.

5) Making the procedure of bargaining better

It helps to redesign the machinery of bargaining by giving out several solutions and methods which leads to the development of bargaining process.

## **Elements of Collective Bargaining**

Collective Bargaining roughly consists of three elements:

1) Matter in question:

The issues which are faced between employer relationships are taken into consideration for the unions to seek and come up with the solutions.

The issues maybe with regards to several work situations like wages, workplace environment, benefits, compensation, also personal issues such as transfer, promotion etc, and they tend to seek recognition from the workers.

2) process of consideration of the matters in questions:

The collective bargaining process depends upon the nature of the issues and terms between the employers and the employees. The way of negotiating mostly differs if there is not any centralised procedure for collective bargaining in the specified place. They may or may not involve a third party to solve their problems and may tend to resolve them between themselves.

### 3) Implementation for Collective Bargaining

The third and the last element of the collective bargaining is its implementation provided that it is concluded by mutual understanding and in the writings by the employees and employers recognised by the national legislation.

## **ILO's recommendation 91**

In the recommendation 91, several guidelines has been laid out by ILO pertaining to collective bargaining.<sup>9</sup>

Some of them are given. Below:

- There shall exist an appropriate machinery for collective parallel to the conditions which is established by some sort of legislation in the respective countries.
- The procedure of these negotiation shall be appropriate and shall be recognised by the laws by the countries under those conditions.
- The contracts made by the parties shall be binding and the parties who are the signatories shall not commit those acts which are contrary to the provisions given the contract.
- If at all there exist acts which is contrary to the provisions given in the contract then that agreement shall be deemed as null and void.
- By any chance the stipulation in the contract resulted in a more favourable conditions for the employees then the contract shall not be regarded as null and void.
- When the disputes arises pertaining to the interpretation of the collective bargaining arises then, the parties in dispute shall resolve the issue by appropriate means and by laws and regulations given recognised by the national commissions.
- The proper supervision shall exist to check and supervise whether collective bargaining process is working properly or not by employers, employees or any other authorities appointed for the same purpose.

## **Efficacy of collective bargaining**

Collective Bargaining actually has been a major stalwart in solving the contentions between employers and employees in a tranquil manner.

- Medium of workers' voice

It reflects the systematic approach to the process of negotiations where the workers are

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<sup>9</sup> Collective Bargaining, A workers' education manual,1960)

represented adequately and fairly. Without the notion of collective bargaining, it would be difficult for the workers to approach convey their grievances to the employers and the employers in return may exploit them by providing them a 'give or take' situation. Hence, collective bargaining helps in framing workers voice and enhances the plea of workers.

- Standard of living improved

One of the merits of collective bargaining is that ameliorates the quality of life of the workers by providing them their demands. When the rights of the workers are met, they help to increase their way of life and uproots their standard of living.

- Increased transparency

When in effect, collective bargaining puts pressure on the working conditions to be more transparent and increase democratic work environment by holding the employers accountable and provide the details to the employees about their wage structure.

- Provides peaceful medium to end conflicts

Collective bargaining helps people to resort in a very cooperative procedure without any resentment and cooperation by means of negotiating and avoiding strikes and rebellions.

- Provides Job security

Collective bargaining actually gives out job security to the workers by protecting them from unjustified lay offs or termination of their jobs without any notice or compensation, making the employers accountable.

- Advocated for the empowerment of the employees

It was emerged as the cornerstone for empowering the employees to raise their voices against the exploitation faced by them in the workplace and it also ensures that everyone is not bereft of equal rights.<sup>10</sup>

- Helps in avoiding litigation

The machinery of collective bargaining results in speedy redressal of disputes, which in turn helps in avoiding the unnecessary delay in the litigation and also reduces their burden.

## Collective Bargaining in India

Solving Industrial dispute through the process of collective bargaining in India is relatively a recent development. Nevertheless, the debate of using collective bargaining has been emerging

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<sup>10</sup> <https://www.legalserviceindia.com/legal/article-12092-efficacy-of-collective-bargaining-and-workers-association.html#:~:text=Collective Bargaining enhances workers' voices,trade union effectively represent workers.>

since the British Raj. It was finally recognised in the Industrial Dispute act.

The first five year plan to boost the Indian economy had identified the importance of workers' right of association, organisation and collective bargaining as the basics of a peaceful industrial relations.

It laid emphasis on the least governmental intervention in the disputes arising in the workplace and collective bargaining shall be encouraged to reach towards a mutual agreement without any coercive means.

The second five year plan also recognised the pressing need of the development of the collective bargaining which highlighted the advantages of the mutual joint settlements for the resolution pertaining to the industrial disputes. The government of India elaborating upon the second five year plan said that the best solution arising out of labour dispute can be done by reaching a mutual agreement and the industrial development in the country can be reached by the stakeholders themselves and the labour legislation can only provide to framework.<sup>11</sup>

In the third five year plan too, voluntary arbitration was encouraged as a means of settlement, rather than taking any compulsory adjudication machinery.

The fourth year plan finally laid a direct emphasis on collective bargaining and recognised the importance of trade unions, the government stressed upon strengthening the mechanism of the trade unions hence harping upon a more democratic means of resolutions for striving a better workplace environment.

## **National commission on labour's Two cents on Collective Bargaining**

The National commission on Labour as appointed by the Government of India in 1966 thoroughly investigating all sorts of disputes which can arise from labour markets ; and on basis of that it imparted multitudes of recommendation to resolve these disputes peacefully and hence promotes collective bargaining.

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<sup>11</sup> Government of India, second five year plan (1956) p. 574.

One of the foremost recommendation made by them is,

The statutory provisions for union shall be made in agreement which is satisfactory in Nature which respects the working condition of the people and shall be made in such a way that the arrangements can succeed in the future. They also emphasised on proper implementations of strikes and lockouts as collective bargaining will not exist without the right of strikes and lockout, hence a proper scheme shall be added for them.

Further, it added that the collective bargaining in the foreign countries work differently than in India.

In India the concept of collective bargaining is nascent and still evolving. There are various factors of labour conditions to be kept in mind before implementing collective bargaining in India. The question of government intervention too is seen controversial whether the intervention of the government is necessary or not. The most primary function of the collective bargaining should be just the resolving of the industrial disputes and it shall evolve gradually.

### **Factors hindering successful collective bargaining in India**

The formation of trade unions have been affected by the labour laws.

First, the protest movement has been weakened by it and secondly, the adequate protection to the workers has been also compromised for their own trade union activities.

The trade unions in different countries of the world has the history which reflects the several oppressions, exploitations, industrial undertaking, and impersonal handling has lead to several protests and encouraged the formation of several unions to be formed.

In India, however several statutes in labour law are far advanced in the level dictated by the workers' strength and protests movements too. Also the value of the trade unions have been minimised due to the existence of the works committees and also system of adjudication system. Further, the standing orders from the institutions and also the several provisions regarding the disputes which dissolve the needs of forming trade unions across India.

Many provisions relating to the protection of the trade union employees have not been yet be enforced such as Trade unions act, 1947, prohibiting unfair practices of the management. Many

laws too curtails the proper functioning of the trade unions and limits the scope of collective bargaining in India. For instance, The Industrial dispute act, 1947 has limited the scope of striking for Indian workers. In the case of All India bank case the supreme court held that right to strike is not a fundamental right.

The absence of any central and standardised provision for trade unions representatives also affect the power of bargaining in the trade union. Also the section 10 of the industrial dispute had affected the rights of the workers which issues the prohibitory order.

The trade unions are also devoid of any special status by the labour laws.

Hence, these factors affect the development of collective bargaining immensely in India, and to change that proper recognition of trade unions by the legislature is required.

Instances of Collective Bargaining in India:

With the passage of time, collective bargaining as a method to settle disputes have been emerging in India.

During 1961, 334 cases of disputes have been resolved by mutual agreements out of 1,291 terminated cases and 324 by direct negotiations. In 1962, there were 261 collective agreements out of 410 awards. 226 collective agreement were reached in 1963.

The national commission had also recognised the growth of collective bargaining in India and had supported its use for the development of the economy.

From the following, it can be derived that the collective bargaining can become a real deal only if the compulsory adjudication is removed from the statutes.

The definition of settlement under the industrial dispute act has not even recognised the essence of collective bargaining as in section 2(p): “settlement” means a settlement arrived at in the course of conciliation proceedings.” If the settlement is made without the conciliation proceedings then they were bereft of any legal recognition. The amendment of 1956 redefined the definition and added written agreement between the employers and the employees instead of conciliation proceedings provided that they compliance with the rules.

In the case of Ramnagar sugar cane v. Jatin chakravorty, it was held that the settlement by conciliation is binding upon all the employees and the employers working in that establishment and not only the interested representatives who had signed the settlement.

## **Conclusion**

Hence, we can arrive at the conclusion by analysing the effects of collective bargaining in the workplace which is seen as a speedy option to resolve dispute in a very peaceful manner. The dispute resolution is done by mutual understanding which takes place in the negotiations and there is no space for the coercive methods. Collective bargaining is an important part of work members. It entails negotiations among employers and personnel or their representatives to establish truthful working conditions, wages, and benefits. It gives a platform for workers to specify their worries and make certain they may be dealt with cooperation. Collective bargaining helps to keep a effective work environment and promotes the welfare of employees. The legislation of collective bargaining is important for its development and to attain growth the binding nature of collective bargaining has to emerge as it's a crucial system for accomplishing equity and stability in the administrative centre.<sup>12</sup>

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<sup>12</sup> Srivastava sc, Industrial Relations and Labour Laws, 4th elm, Vikas Publishing house 2004