CHAPTER – 5
COLLECTIVE BARGAINING AND TRADE UNIONS

5.1 Collective Bargaining and Trade Unions

Industrial harmony is essential for economic progress and the concept of Industrial harmony wants the existence of undertaking, cooperation and sense of partnership between employers and employees. There may be conflicting interests between employer and workmen but this attitude leads to an understanding for achieving common goals, such as production and prosperity.

The phrase “collective bargaining was first coined by Sidney and Beatrice Webb. This was widely accepted, particularly in the developed countries.

Generally by collective bargaining we mean, an essential element of economic democracy, is a ‘two party’ procedure for arriving at a commonly agreed solution. The term is thus used to describe the procedure, whereby employers must attempt to reach agreement about wage-rates and basic conditions of labour with trade unions, instead of with individual workers. In other words, it is the process of discussion and negotiation between an employer and a union culminating in a written agreement or contract and the adjustment of problems arising under the agreement.

“Collective bargaining” writes Harbison¹ “is a process of accommodation between two institutions which have both common and conflicting interests”. Its aim is not to seek industrial peace at any price.

¹ Goals and Strategy in Collective Bargaining by F.H. Harbison, Harper &Bros. USA.1951
Constructive bargaining should seek “to promote the attainment of the commonly held goals of a free society.”

In the context of the present day egalitarian society, with its fast changing social norms, a concept like ‘collective bargaining’ is not capable of a precise definition. The content and scope of ‘collective bargaining’ is a process of bargaining between the employers and their workers, by which they settle their disputes relating to employment or non-employment, terms of employment or conditions of labour of the workmen, among themselves, on the strength of the sanctions available to each side.

Collective bargaining is 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, seeks to achieve social justice on the basis of collective bargaining

5.2 Meaning of Collective Bargaining

As put by Louis E. Howard, collective bargaining means “……. To get together (right of meeting), to enter a common organization (right of association), to determine that whatever conditions of work are allotted shall be the same for all workers and to make a bargain with employers to that effect (rights of combinations and bargaining) and eventually in case the employers should refuse to enter on such a bargain or fail to honour it when entered upon, to confront them with a united refusal to go to work or to continue at work (right of strike).

Collective bargaining as a technique for the fulfilment of the needs and objectives of workers and employers is an integral part of industrial

---

2 Karnal Leather Karamchari Sanghathan V Liberty Footwear Co 1990 Lab IC 301, 307 (SC), per Jagannatha Shetty J.
society. It is, in fact, an extension of the principles and practices of democracy to industry. It is a dynamic process and is constantly expanding.

Collective bargaining is the principal factor behind formation of trade unions. While the Common law did not recognize Collective bargaining, it became a norm only when large scale industries developed and it became necessary to regulate the capital-labour relations with a view to better the working conditions of labour and sustaining the industrial peace in the country. The ILO conventions and the Constitution of India which the people of India have given to themselves amply recognize the right of employees to form Unions to espouse their cause. The Trade Unions Act, 1926 is one of the earliest labour legislations in India to recognize this valuable and significant right of the labour. The Act besides providing for registration of trade unions seeks to grant recognition to trade unions and provides a broad legislative parameter within which the trade unions have to function.

The common law had recognised relations between individuals as master and servant. It did not recognise collective bargaining or anybody that is entitled to represent the body of workmen in negotiations relating to employment or the terms of employment or with the conditions of labour of any person. In common law, if a number of employees in concert and combination withdraw their labour and decide not to work, it would amount to a breach of contract, which was actionable in common law.

In the UK the Industrial Relations Act, 1971 establishes a presumption in favour of the collective agreements and in the US under the National Labour Relations Act, 1935 collective bargaining by employers with chosen representatives of employees is compulsory. Collective bargaining is put on statutory basis in Canada, Australia and other

"The vital significance of collective bargaining for the law of contract thus lies in its following aspects; first, it resembles a standard contract of business and industry in that standardized terms regulate the conditions of employment of millions of individuals”.

Secondly, it is a most important instance of a public law function delegated, by the permissive or even imperative authority of the State, from government to social groups. Thirdly, the freedom of the individual to bargain in his terms of employment is inevitably curtailed by the prevalence of collective bargaining. It is even excluded where the 'closed shop' is recognised either legally or de facto. Fourthly, this lack of freedom is compensated by a substantial restoration of equality of bargaining power. It is not the individual employee who has regained equality, but the trade union negotiating on his behalf. Although the trade union is not strictly speaking the agent it has in effect absorbed and consolidated the bargaining power formerly vested in the individual.

Collective bargaining could be an effective instrument in the settlement of disputes and advancement of the cause of labour if certain basic conditions are fulfilled. Firstly, the primary condition for the successful process of collective bargaining is the existence of well-organized and fully recognized trade unions with well-defined policies. It follows that collective bargaining is not very useful in the early stages of development when unions are not well organized. Secondly, collective

bargaining can be an effective technique of settling industrial disputes when there is a spirit of give and take between the employers and the workers. Thirdly, as there is no legal sanction behind the terms and conditions voluntarily agreed upon, the parties concerned must do things and act in good faith on the basis of mutual agreement. Fourthly, much depends upon the moral fibre of the labour leaders as well as the employers. There should be a complete and true understanding and appreciation of each other’s viewpoints. Face to face meetings between the representatives of workers and employers can serve a useful purpose only when the traditional prejudices are kept aside by both the parties. Finally, there should be no uncertainty about the fields in which the parties are legally required to bargain collectively⁴.

5.3 Subject Matter of Collective Bargaining

The International Labour Organisation has divided the subject-matter of collective bargaining into two categories:

(i) Those which set out standards of employment which are directly applicable to relations between an individual employer and worker;

(ii) Those which regulate the relations between the parties to the agreement themselves and have no bearing on individual relations between employers and workers.

The first category includes subjects like wages, working hours (including overtime), holidays with pay and period of notice for termination of contract. The second category according to ILO includes eight items viz., (i) provisions for enforcement of collective bargaining; (ii) methods of settling individual dispute; (iii) collective disputes including grievance procedure and reference to conciliation and arbitration; (iv)

recognition of a union as bargaining agent for the workers; (v) giving of preference in recruitment to union members seeking employment; (vi) duration of the agreement; (vii) undertaking not to resort to strike or lockout during the period; and (viii) procedures for negotiation of new agreements.

The ILO also states that:

In collective bargaining, the object is to reach agreement on wages and other conditions of employment about which the parties begin with divergent viewpoints but try to reach a compromise. When a bargain is reached, the terms of the agreement are put into effect.

5.4 Prerequisites for Collective Bargaining

(a) Freedom of Association

In order to achieve collective bargaining, it is essential to ensure that the denial of such freedom negates collective bargaining. In this respect it is significant to note that the International Labour Organisation adopted the Convention No. 87 concerning “Freedom of Association and Protection of the Right to Organize” which seeks to provide for freedom of association. India has, however, not formally ratified that convention, perhaps due to administrative and constitutional problems. However, Article 19 (1) (c) of the Constitution of India guarantees "the right to form Associations or Unions" as a fundamental right.

(b) Strong and Stable Trade Unions

For the success of collective bargaining, it is also essential that there should be strong, independent, democratic and well organized trade unions.

---

The unorganized labour is the hurdle in its success. In India, however, the unions are generally weak. Rivalry on the basis of caste, creed, religion is another characteristic of Indian trade unions which come in the way of successful collective bargaining. Division of unions on the basis of political ideologies further retards the growth of trade unions. Moreover: most of the workers are illiterate. Lastly, the financial-position of trade unions is weak, and some of them are even unable to maintain a proper office.

(c) Recognition of Trade Unions

Recognition of Trade Unions as a bargaining agent is the backbone of collective bargaining. We have already discussed the problems relating to recognition of trade unions in the previous Chapter.

(d) Willingness to Give and Take

The mutual trust and appreciation of the viewpoints of the management and union is also essential said the ILO. The fact of entering into negotiations implies that the differences between two parties can be adjusted by compromise and concession in the expectation that agreement can be reached. Obviously, if one or both sides merely make demands when they meet, there can be no negotiation or agreement.

5.5 Response of the National Commission, on Labour

The National Commission on Labour which was appointed by the Government of India in 1966 made comprehensive investigation into almost all the problems relating to labour. It also made a series of recommendations to promote the collective bargaining. Important among them are:

We have to evolve satisfactory arrangements for union recognition by statute as also to create conditions in which such arrangements have a chance to succeed. Apart from this; we have to indicate the place which strike or lock-out will have in the scheme we propose. Collective bargaining cannot exist without the 'right to strike or lock-out.'

Collective bargaining as it has developed in the West may not be quite suitable for India; it cannot appropriately co-exist with the concept of a planned economy where certain specified production targets have to be fulfilled. Though we are not convinced that collective bargaining is antithetical to consumer interests even in a sheltered market, we envisage that in a democratic system pressure on Government to intervene or not to intervene in a dispute may be powerful. 'It may hardly be able to resist such pressures and the best way to meet them will be to evolve a regulatory procedure in which the State can be seen in the public eye to absolve itself of possible charges of political intervention; The requirements of national policy make it imperative that State regulation will have to co-exist with collective bargaining. At the same time there are dangers in maintaining status quo. There is a case for shift in emphasis and this shift will have to be in the direction of an increasing by greater scope for, and reliance on, collective bargaining. But, any 'sudden change replacing adjudication by a system of collective bargaining would neither be called for nor practicable. The process has to be gradual. A beginning has to be made in the move towards collective bargaining by declaring that it will acquire primacy in the procedure for settling industrial disputes.\(^8\)

5.6 **Growth of Collective bargaining**

The collective bargaining was reputedly carried by Sydney and Beatrice Webb, the famous historians of the British labour movement. It

was first introduced in the United States by Samuel Gompers. It has now achieved significant maturity and widespread recognition and has travelled all the way with difficulties trials and tribulations. It covers negotiations, administration, interpretation, application and enforcement of written agreements between employers and unions representing their employees settling for the joint understanding as to the policies and procedures governing wages, rates of pay, hours of work and other conditions of employment.

The growth of collective bargaining is closely associated with growth of trade unionism. The trade union movement revolves around collective bargaining. The important trend in collective bargaining, however, is the expansion in the number and the type of subjects which it covers. Of the reasons for the increase in the subject-matter of collective bargaining, the growth and development of the trade unions which are organized stronger may be stated to be one factor, the other significant factors in the extension of subjects for collective bargaining being the influence of recent legislation and the liberal attitude taken by the State.

United Kingdom is said to be “home of collective bargaining. In U.K it differs from industry to industry and there is hardly any set pattern. This is due to “their revolutionary development and the structural diversity of organization among employers and employees, as well as many factors peculiar to each industry its geographical distribution, the size of the undertakings, the form of wage payment”. The workers and the employers in U.K are quite conscious of their responsibilities to set up full industrial democracy by giving due recognition to trade union activities and to the principles and practices of collective bargaining.

9 Dr.T.N.Bhagoliwala, Economics of Labour and Social Welfare, Sahitya Bhavan Pub. (1974) p.120
In India, as also in many other counties, collective bargaining got some impetus from statutory provisions which laid down general principles of negotiation, procedures for collective agreements and the character of representation of the parties negotiating disputes.

Of late, the Code of Discipline which came into force in 1958 by voluntary agreement between workers and employers aimed at avoiding work-stoppages as well as litigation, securing settlement of disputes and grievances by negotiation, conciliation and arbitration facilitating free growth of trade unions. While the Code attempted to establish faith of the parties in the voluntary approach, it provided a suitable climate for the growth of collective bargaining in India.

The Webbs did not consider that collective bargaining depended on or necessarily had its origin in trade unions. It could and did take place in British industry through committees set up to settle specific issues, but they added that “it was the trade union alone which can provide the machinery for any but its most casual and limited application.” Actually the development of collective bargaining in all countries was because of the trade unions and sometimes with the growth of employers’ associations also.

Collective bargaining in nineteenth century Britain was very different from our conception of it today. It generally began with craft unions of skilled workers organized to protect their skill by preventing employers from undercutting job rates.

There was no real bargaining involved. If the craft was strong enough and skilled labour scarce they succeeded, but often the employers felt they were being coerced and did not feel bound to keep their word. As
soon as there was a recession in trade and skilled men were plentiful in the labour market, the employers took the opportunity to reduce their rates. The craft unions discovered, therefore, that it was only by strengthening their organization and forcing the issue at district and at national level that genuine standards could be achieved.

It was only at the end of the nineteenth century that general unions began to develop in Britain and to bargain for all levels of employees. The semi-skilled and unskilled workers’ outlook differed from that of the craft workers.

Though craft unions still exist in Britain and the U.S.A., the larger unions today in these countries are the general and industrial unions, for mechanization and mass production have given much more importance to the semi-skilled worker. In the newly industrialized and developing countries trade unions have naturally grown up as associations of all the workers in a workshop or undertaking or industry, and they are therefore concerned with working conditions for all and with pay rates primarily for the mass of workers in the semi-skilled and unskilled groups rather than for small groups of skilled craftsmen.

In workers education manual issued by the International Labour Office, collective bargaining is defined as “negotiations about working conditions and terms of employment between an employer or a group of employers or more employers’ organizations on one hand, and on the other one or more representative workers organizations, with a view to reaching agreement.”

The International Confederation of Free Trade Unions in a teaching guide for union training has described a collective agreement as “a
workers’ Bill of Rights" and stated the union’s objects in collective bargaining as follows:
1. To establish build up union recognition as an authority in the work place.
2. To raise workers standards of living and win a better share in company’s profits.
3. To express in practical terms the workers’ desire to be treated with due respect and to achieve democratic participation in decisions affecting their working conditions
4. To establish orderly practices for sharing in these decisions and to settle disputes which may arise in the day-to-day life of the company
5. To achieve broad general objectives such as defending and promoting the workers’ interests throughout the country.

The whole structure of industry has changed so greatly in the present century that we can no longer think in terms of two opposing forces, capital and labour, or employer and employee. Capital is now represented by hundreds of shareholders instead of a single owner, and the various executives, who make up what is often called ‘top management’ organize and run the business instead of the owner-manager of former days. Employers’ associations are not bodies of individual employers but of impersonal companies or corporations.

Those who are engaged full-time in the enterprise are actually salaried staff just like other employees. They cannot be compared with the owners of one man or partnership business, for the profits will not go into their pockets. Their relationship to the employees is different from that of an actual employer because their function is different. “The bargainer has replaced the autocrat at the head of business life.”

---
American trade unions have been more realistic about efficiency in industry than trade unions in many other countries. They have realized that higher pay is linked with greater efficiency and they work to improve the latter in order to be able to bargain better for the former. They appreciate that their real objectives are not to get something for nothing, but to claim higher pay and more ‘fringe benefits’ in return for an offer to raise production, and they accept that this may involve technological changes. The class war concept carried to its logical conclusion would leave no room for collective bargaining in this sense. It would be merely a trail of strength in which workers could only win conspicuous gains in a period of full employment when they could sell their labour at a premium. This is in fact what happened in the early days of trade unionism. It is no longer appropriate today when progress in industry depends on rapid adaption to new techniques, new processes and new machines.

Healthy collective bargaining relationship would see that the benefits derived from industry were distributed equitably among all the parties involved: the employees, the unions, the management, the customers, the suppliers and the public.

5.7 Legal framework of Collective bargaining

Article 19(1)(c) of the Indian Constitution guarantees freedom of associations and unions as a fundamental right. This was recognized in the Trade Unions Act, 1926, Industrial Disputes Act, 1947 and the Industrial Employment (Standing Orders) Act, 1948. India ratified ILO Convention NO.11 concerning the Right of Association for Agricultural Workers during British rule in 1923. It has, however, not ratified ILO Convention Nos. 87 and 98 due to 'technical difficulties' involving trade union rights for civil servants. This is not a valid reason for non-ratification, because a ratifying country can exempt certain services. The real intention could be,
as Surendra Nath (1997), former Chief Labour Commissioner of India, observes, "to restrict freedom of association to only manual workers (by defining them as workmen) and exclude supervisory and managerial workers. The other interest of the government is not to allow the right of collective bargaining even to industrial workers in government departmental undertakings like the Railways, Post and Telecommunications, and Central Public Works Department. Their pay etc. is decided by the government, on the basis of the Pay Commission's recommendations, and not through collective bargaining. The labour laws at the national level do not mandate employers either to recognise unions or to engage in collective bargaining. Some states (for instance, Andhra Pradesh, Bihar, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Orissa, and West Bengal) have provisions concerning recognition of trade unions".

The National Commission on Labour (1969) left the matter to be decided on the basis of local circumstances. The 1947 amendment to the Trade Unions Act, 1926 and the Trade Union Bill, 1950 provided for recognition of more than one union by an employer. The 1947 amendment was never enforced and the 1950 bill was not passed. In 1956 the Second Five-Year Plan document highlighted the importance of ‘one-union one-industry’. In 1958 the Indian Labour Conference evolved a code of discipline in industry which did not and still does not have statutory force which contained “Criteria for recognition of unions. It favoured workmen belonging to non-recognised unions to operate through the representative union of the industry or seek redressal of grievances directly”.

---

Under Section 2(p) of the Industrial Disputes Act, 1947 collective agreements to settle disputes can be reached with or without the involvement of the conciliation machinery established by legislation. A settlement (written agreement between the employer and the workmen) arrived at in the course of conciliation proceedings is binding, under Section 18(3) of the Act, not only on the actual parties to the industrial dispute but also on the heirs, successors or assignees of the employer on one hand and all the workmen in the establishment, present or future, on the other. The conciliation officer is duty-bound to promote a right settlement and to do everything he can to induce the parties to act towards a fair and amicable settlement of the dispute. A settlement with one trade union is not binding on members of another or other unions unless arrived at during conciliation proceedings; the other union(s) - including a minority union - can, therefore, raise an industrial dispute. Section 36(1) of the Industrial Disputes Act deals with representation of workmen. Any collective agreement would be binding on the workmen who negotiated and individually signed the settlement. It would not, however, bind a workman who did not sign the settlement or authorize any other workman to sign on his behalf.

A collective agreement presupposes the participation and consent of all the interested parties. When workmen are members of different unions, every union, without regard to whether or not it represents a majority, cannot but are considered an interested party. Also, a few workmen may not choose to be members of any union, and one or more unions may, for reasons of their own, not like to reach a settlement. Sections 2(p), 4 and 18(3) of the Industrial Disputes Act, 1947 deal with such practical difficulties by making collective agreements binding even on indifferent or unwilling workmen as the conciliation officer's presence is supposed to ensure that the agreement is bonafide.
The process of collective bargaining, though in a vague and limited form, has been introduced in the year 1956, by amending the definition of ‘settlement’ in s 2(p) of the Industrial Disputes Act 1947. The pertinent purpose of collective bargaining is that the workers must be involved in it. There cannot be a collective bargaining without involving the workers. The union only helps the workers in resolving their dispute with the management, but ultimately, it would be for the workers to take the decision and suggest remedies.

In the present definition of a ‘settlement’, a written agreement ‘between the employer and the workmen, arrived at otherwise than in the course of conciliation proceedings’ has been included. Rule 58 of the Industrial Disputes (Central) Rules 1957, prescribes the memorandum of settlement in Form H and also lays down the procedure for signing the settlement. Section 18(I) makes such a settlement binding on the parties to the agreement of settlement. Section 19 prescribes the periods of operation, inter alia, of such a settlement, while S 29 prescribes the penalty for the breach of such a settlement. It would thus appear that the process of collective bargaining, yet, rests on statutory limits.

In Virudhachalam v Management of Lotus Mills, the Supreme Court observed that collective bargaining for resolving industrial disputes, while maintaining industrial peace, is the bed-rock of the Act. Therefore, the employer or the class of employers on the one hand, and accredited representatives of the workmen on the other, are expected to resolve the disputes amicably, either by direct negotiations or through the conciliatory machinery of the Act. In collective bargaining, the individual workman necessarily recedes in the background and the reigns of bargaining on his

---

12 By s 3 of the Act 36 of 1956, the present cl (p) was substituted for the previous one.
13 Civil appeal No. 4852 of 1989, decided by the Supreme Court on 9 December 1997
behalf are handed over to the union representing such workman. The unions espouse the common cause, on behalf of all their members. Hence, a settlement arrived at by them, with the employer, would bind at least their members and if such settlement is arrived at during the conciliation proceedings; it would bind even the non-members. Settlements, therefore, are the 'live wires' of the Act, for ensuring industrial peace and prosperity.

Collective bargaining, by voluntary agreement has been adopted as the standard system in the United States of America. But in India, the tradition of free collective bargaining has always been weak. Hence, with respect to the merits and demerits of collective bargaining, vis-a-vis compulsory industrial adjudication, there is a serious conflict and overlapping of views.

5.8 Collective bargaining and compulsory adjudication

Compulsory adjudication means a mandatory settlement of disputes by labour courts, Industrial tribunals or national tribunals. Section 7, 7A and 7B deals with the constitution of adjudicatory authorities. Section 10 deals with compulsory intervention of appropriate government by referring a dispute to labour courts, tribunals and national tribunals and imposes ban on strikes and lock outs during the pendency of adjudicatory proceedings before the authorities.

Collective bargaining, without the intervention of a third agency, will alone lead to a healthy development of the trade union movement and will, in the end, be conducive to the growth of industrial harmony. This view advocates that state intervention by way compulsory adjudication, has hampered the growth of trade unionism in India. Another view supports the settlement of disputes basically, through collective bargaining, but it advocates the retention of adjudication till all trade unions attain sufficient
strength to bargain with the employers, from a position of equality. Adjudication, therefore, by the very logic of its functioning, has inhibited the growth of trade unions and made them litigious. The only way, therefore, is the total rejection of the third party intervention in the settlement of industrial disputes. The supporters of all these views, however, accept that a strike is a legitimate weapon of the workers in the process of collective bargaining and the statutory curbs on the right to strike negate the very principle of genuine collective bargaining, because collective bargaining, to be genuine, implies the ability to resort to sanctions\textsuperscript{14}.

The NCL (2) 2002 stated:

Four specific points made in this connection are:

(i) the circumstances which necessitated the provision of compulsory adjudication when the Industrial Disputes Act was enacted in 1947, still continue;

(ii) the parties, particularly unions, are still unprepared and incapable, because of organizational and other weaknesses, to shoulder the full responsibilities of collective bargaining;

(iii) an immediate withdrawal of state intervention through adjudication will lead to chaos in the industrial field, which the country can ill afford; and

(iv) there is always the third party to the dispute, viz, the community; and the state representing the community, must have the right to intervene and compel the parties to submit to the decision of an adjudicator..., empirical data can be no guide to settle this controversy\textsuperscript{15}.

\textsuperscript{14} O.P.Malhothra, the law of Industrial Disputes Volume I, Lexis Nexus Butter Worths Pub. New Delhi, 2004, pp.12

\textsuperscript{15} Govt. of India, Report of National Commission on Labour, Chapter 23, p.326.
The NCL observes:

“There is thus a general preference for collective bargaining, with a built-in provision for arbitration in the event of failure of collective bargaining. The idea of leaving a certain area of disputes, i.e., public utility services, and cases where national interests are involved—where adjudication should be permitted, enjoys a large measure of support.16"

The Second National Commission on Labour, while recognizing that adjudication continues to be the prevailing mode in the area of determination of industrial disputes in our country, expressed the hope that, over time, collective bargaining and inbuilt arbitration would result in the bulk of the disputes between parties being settled expeditiously.17

The Act is a legislation relating to what is known as ‘collective bargaining’ in the economic field. This policy of the legislature is also implicit in the definition of ‘industrial dispute’18. A collective bargaining agreement has been broadly defined by Ludwig Teller as: “An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment."

The term 'collective', as applied to 'collective bargaining agreement', will be seen to "reflect the plurality not of the employers, who may be parties thereto, but of the employees involved therein. Again, the term

---

16 ibid p.326, paras 23-24
17 Reports of the Second National Commission on Labour, Conclusions and Recommendations, Chap. 13, p.45. para 6.94.
18 Titagarh Jute Co Ltd V Sriram Tiwari 1979 Lab IC 513 (Cal).
'collective bargaining' is reserved to mean bargaining between an employer or a group of employers and a bona fide labour union\textsuperscript{20}.

The collective bargaining agreement bears in its many provisions, the imprints of decades of activity, contending for labour equality through recognition of the notions underlying collective negotiation indeed. In the collective bargaining agreement is to be found a culminating purpose of labour activity\textsuperscript{21}.

Before the days of 'collective bargaining', labour was at a great disadvantage in obtaining reasonable terms for its contract 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 the workmen, instead of the individual workmen, not only for the making or modification of the contracts, but also in the matter of taking disciplinary action against one or more workmen and as regards all other disputes. Hence, having regard to the modern conditions of the society, where capital and labour have organized themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that 'unity is strength', collective bargaining has come to stay. Collective bargaining being the order of the day in a 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 its dealings with the employer\textsuperscript{22}.

\textsuperscript{20} Ludwig Teller, Labor Disputes and Collective bargaining, Vol.1, 476, s 154
\textsuperscript{21} Ibid.
The word 'industrial' ... as used to the nature of quality of the disputes, ... denotes two qualities which distinguish them from ordinary private disputes between individuals, namely (i) that the dispute relates to industrial matters, and (ii) that on one side at least of the dispute, the disputants are a body of men acting collectively and not individually. In other words, 'an element of collective bargaining, which is the essential feature of the modern trade union movement, is necessarily involved in industrial adjudication'. It is the community of interest of the class as a whole-class of employers or class of workmen which furnishes the real nexus between the dispute and. the parties to the dispute.23

The term 'industrial dispute' conveys the meaning that the dispute must be such as would affect large groups of workmen and employers, ranged on opposite sides24. Even a single employee's dispute may develop into an industrial dispute, when it is taken up by a union or a number of workers, who make a concerted demand for redress25. The applicability of the Act to an individual dispute, as distinguished from a dispute involving a group of workmen, is excluded, unless the workmen, as a body or a considerable section of them, make common cause with the individual workman26.

Industrial Disputes Act, Sec 18 Sub section (1) provides a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement.

This sub section was introduced by the Amending Act of 1956, with a view to remedy a defect in the then existing law. Prior to this amendment

24 DN Banerji v PR Mukherjee (1953) 1 LLJ 195, 199,
25 Ibid
there was no provision to make such settlement binding even on the parties, with the result that the workmen notwithstanding, such a settlement could raise a ‘industrial dispute’ on the identical matter agreed upon by their union. By same amending Act the definition of ‘settlement’ was also amended as the original definition contemplated only a settlement arrived in the course of conciliation proceedings.\footnote{27 O.P. Malhotra, the law of Industrial Disputes, Vol.II, 2004, pp.1803.}

The present amendment include written agreements between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agreement is signed by parties in the prescribed manner and a copy of the same is sent to the appropriate government.

By making amendment the intention of legislature is to develop voluntary settlements between employer and workmen so that the technique of collective bargaining can be improved for the peaceful settlements of the industrial disputes. However in Tata Chemicals Ltd. vs. Workmen\footnote{28 1978 Lab IC 637} the court held a settlement under section 18(1) of the industrial Disputes Act, between employer and the union representing majority workmen will not bind the minority union.

Under Section 18(1) a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceedings are binding only on the parties to the agreement. A settlement arrived at in the course of a conciliation proceeding is binding not only on the parties to the industrial dispute but also on other persons specified in clauses (b), (c) and (d) of sub-section (3) of Section 18 of the Act\footnote{29 Tata Chemicals v. Workmen, Tata Chemicals, AIR 1978 SC 828.}. Even if
settlement regarding certain demands is arrived at otherwise than during the conciliation proceeding between the employer and the union representing majority of workmen, the same is not binding on the other union which represents minority workmen and which was not a party to that settlement. The other union can, therefore, raise the dispute in respect of the demand covered by the settlement and the same can be validly referred for adjudication. In the above situation the settlement will not operate as estoppel against minority union raising same demands even though the benefits flowing from the settlement are accepted by workmen who were not signatories to it.

Where the workmen are represented by a recognized union, the settlement may be arrived at between the employer and the union. If there is a recognized union of the workmen and the constitution of the union provides that any of its office-bearers can enter into settlement with the management on behalf of the union and its members, then a settlement may be arrived at between the employer and such office-bearer. But where the constitution does not so provide specially the office-bearer who wishes to enter into a settlement with the employer should have necessary authorization by executive committee of the union or by the workmen. In Herbertsons Ltd case the Supreme Court has held that when recognized union negotiates with an employer, the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognized union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interest of labour. This would be the normal rule; there may be exceptional cases where there may be allegations of

---

30 Hindustan Housing Factory Ltd. v. Hindustan Housing Factory Employees' Union, (1959) Lab IC 1450 (Delhi).
malafides, fraud or even corruption or other inducements. But in the absence of such allegation, a settlement in the course of collective bargaining is entitled to due weight and consideration.

But the Supreme Court in Dunlop India Ltd. v. Workmen\(^{32}\) has held "that where the employer enters into an agreement with one of the labour unions which represent only one section of the employees such an agreement will bind only such of employees as are members of the labour union which is a party to the agreement. Settlement has to be accepted or rejected as a whole. It is not possible to accept a settlement in pieces". Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the court will be slow to hold a settlement as unfair\(^{33}\).

A settlement arrived at between employer and workmen who is principally related to the question of bonus will not be binding on the workers if the settlement was not reached in the course of conciliation proceeding.

There may be several factors that may influence the parties to come to a settlement, as phased endeavor in the course of collective bargaining. It is a process of give and take. By a settlement, the labour may scale down its claims and score in some other aspects and save unnecessary expenses in uncertain litigation. Once cordiality is established between the employer and labour in arriving at a settlement, which operates well for the period for which it is enforced, there is always a likelihood of further advances in

\(^{32}\) Dunlop India Ltd. v. Workmen, AIR 1972 SC 2326.

\(^{33}\) Herbertson Ltd. v. Workmen, AIR 1977 SC, 322.
the shape of improved emoluments by voluntary settlement, avoiding friction and unhealthy litigation.\(^{34}\)

A settlement is the result of collective bargaining and when a recognized union negotiates with an employer, the workers as individuals, do not come into the picture and it is not necessary that such individual workers should know the implications of the settlement, since a recognized union, which is expected to protect the legitimate interests of the labour, enters into a settlement with the best interests of the labourers in view.

There may be exceptional cases where there may be allegations of malafide, fraud or even corruption or other factors, which cannot altogether be ruled out. The settlements in the course of collective bargaining, ought to be weighed in their proper perspective and to be considered by law courts while implementing the same as representing the wishes and desires of the workmen of the concerned organisation.\(^{35}\)

The Karnataka High Court has gone to the extent to say that even if the settlement is technically not in accordance with the law, it should not be interfered with in judicial review, where it is between the management and the majority of the workmen, who have taken benefit under the settlement and thereafter, resumed normal production and industrial peace, unless it is shown that the terms of the settlement are onerous and against the interests of the majority of the workmen. It is well-settled that the extraordinary jurisdiction of the writ court or judicial review should not be exercised, even if the aggrieved party has made out a case on a question of

---

\(^{34}\) General Manager, Security Paper Mill Hoshangabad v RS Sharma 1986 Labour 667, 670

law, unless a substantial injustice has been caused to it. In the above case, the court was influenced by the fact that the majority of the workmen had taken benefits under the settlement, even though it was not a settlement in the course of conciliation proceedings. The court also apprehended that the interference with the settlement was likely to disturb industrial peace, as there was likelihood of an eruption of violence between the two groups of workmen.

But a settlement obtained by fraud vitiated on account of its being involuntary, will be no settlement in the eye of law.

An agreement or arrangement will not be a settlement merely because the parties to the dispute choose to call it a 'settlement' and such agreement or arrangement is incorporated in a memorandum of settlement, signed by the parties for the purposes of settlement. The agreement or arrangement must decide some part of the dispute or some matter in the dispute or decide the procedure by which the dispute is to be resolved, or affect the dispute in some manner or the other, or provide for some act or forbearance in relation to the dispute, on the part of a party or parties to the dispute.

5.9 Strike as a weapon of collective bargaining

The Industrial Disputes Act, 1947, under Sections 22 and 23, provides for right to strike subject to restrictions given in the above sections.

Thus a strike is the antithesis of a lockout. It is regarded as a powerful weapon of collective bargaining, even though it sounds

---

36 Micro Employees' Assn v State of Karnataka (1987) 1 LLJ 300, 322 (Kanr)
37 Tata Engineering & Locomotive Co Ltd v Their Workmen (1981) 2 LLJ 429
38 Indian Tobacco Co Ltd v Government of West Bengal (1971) 1 LLJ 89
unpleasant, with all its attendant hardships and evils, the occurrence of which is regarded as one of the powerful levers to bring about agreements.

This bargaining strength would be considerably reduced if it is not permitted to demonstrate by adopting agitational methods, such as work to rule, go-slow, and absenteeism, sit-down strike and strike. This right has been recognized by almost all democratic countries.39

The strike itself is a part of the bargaining process. It tests the economic bargaining power of each side and forces each to face squarely, the need it has for the other's contribution. As the strike progresses, the workers' savings disappear, the union treasury dwindles and management faces mounting losses. Demands are tempered offers are extended, and compromises previously unthinkable, become acceptable. The very economic pressure of the strike facilitates, which makes agreement possible. Even when no strike occurs, it plays its part in the bargaining process, for the very prospects of the hardship which the strike will bring, provides a source to compromise. Collective bargaining is a process of reaching an agreement and 'strikes' are an integral and frequently necessary part of that process.

An example of the effect of the threat of a strike is provided in the decision of the House of Lords in Rookes v Barnard. One Douglas Edwin Rookes was employed for many years in BOAC, as a skilled draughtsman at London Airport. He was a member of a trade union, viz, the Association of Engineering and Ship-Building Draughtsman, to which all who were employed in the drawing office of BOAC belonged. He and another man became dissatisfied with the conduct of the union and resigned from it.

39 BR Singh v Union of India 1990 Lab IC 389, 396 (SC)
40 (1964) 2 All ER 579 (CA)
There was a practice of closed shop agreement in Britain. According to which the employer has to recruit only the members of the trade union. If employee withdrew his membership, then the union members will threaten employer by saying sack him or we will go on strike. The union was very anxious to preserve the position that no non-member should be employed in that office and they took energetic steps to get Rookes to rejoin. On the refusal of Rookes, the union threatened. Under this threat, the BOAC was induced first to suspend and then to terminate the employment of Rookes.

No doubt, strike is a recognized mode of agitation, to press home the demand of the workers, in the process of collective bargaining, but a strike cannot be resorted to, to pressurize the management to accede to the demands which they cannot get lawfully. For instance, the weapon of strike cannot be used to pressurize the management to pay an additional amount of bonus, apart from the bonus permissible under the Payment of Bonus Act.

5.10 Levels of Collective Bargaining
(a) Bargaining at the National Level

Prior to the 1970s wage boards appointed by the government gave awards on wages and working conditions. The number of wage boards declined from 19 in the late 1960s to one (for journalists) in the late 1990s. Since the early 1970s sectoral bargaining at the national level is occurring mainly in industries in which the government is a dominant player. These include banks and coal (approximately 800,000 workers each), steel and ports and docks (250,000 workers each). Fifty-eight private, public and multinational banks are members of the Indian Banks' Associations. They negotiate long-term settlements with the all-India federations of bank employees. Over 200 coking and non-coking mines spread all over the country - with some owned by state governments and many by the central
government - were nationalized in the early 1970s. There is one national agreement for the entire coal industry. In steel there is a permanent bipartite committee for integrated steel mills in the public and private sectors. Since 1969, this committee, called the National Joint Consultative Committee for Steel Industry (NJCS), has signed six long-term settlements. The 11 major ports in the country have formed the Indian Ports' Association. They hold negotiations with the industrial federations of the major national trade union centres in the country\textsuperscript{41}.

In banks, coal and ports and docks, invariably all agreements have been preceded by strikes or strike threats. It is only in the steel industry that this has not happened during the past 29 years.

(b) \textbf{Industry-cum-Region-wide Agreements:} These are common in cotton, jute textiles, engineering and tea, which are dominated by the private sector. But such agreements are not binding on enterprise managements in the respective 'industry or regions unless they authorize the respective employer associations in writing' to bargain on their behalf. Employment in the regional agreements in textile, jute and plantations was around 1,200,000, 300,00 and 250,000 respectively\textsuperscript{42}.

(c) \textbf{Decentralized Firm/Plant-level Agreements} In the rest of the private sector while employers generally press for decentralized bargaining at the plant level, unions insist on bargaining at least at the company level where employees are formed into federations (combining several plants/locations). In 1998 there was a 39-day strike in Escorts, a private sector automobile and engineering conglomerate with over 14 factories and

35,000 workers in an industrial center close to New Delhi, on the issue- of centralized bargaining. This does not, however, mean that employers in multiunit private sector enterprises do not bargain with trade union federations at the company level.

**Duration**

Till the 1970s collective agreements were for a period of two to three years. During the 1970s and the 1980s the duration of agreements increased to three to four years. In the 1990s, over four-fifths of central public sector agreements were signed for duration of five years each. Most of the collective agreements in the private sector continue to be valid for a period of three or, in some rare cases, four years. Some agreements, which have dealt exclusively with one aspect such as incentives, have been for a period of six years.

**5.11 Collective Bargaining and Recognition**

In India there is considerable divergence in the determination of the representative union for the purposes of collective bargaining. These include: (a) code of discipline, which is common in most public sector undertakings; (b) secret ballot, which is mandatory in three states, namely, Andhra Pradesh (since 1975), Orissa (since 1994) and West Bengal (since 1998); (c) check-off system, which is favoured by some unions and, (d) membership verification. In 1995, the Supreme Court of India asked a government corporation, the Food Corporation of India, to resolve the trade union recognition dispute through secret ballot. The judgement also mandated the procedure for the secret ballot. In 1982 the Bombay High Court struck down an order of the industrial court for a secret ballot in the case of Maharashtra General Kamgar Union v. Bayer India Limited. The

---

matter was taken to the division bench of the high court which upheld the order of the single judge: in the present case what is required to be proved by the Maharashtra Union is that the membership of the Mazdoor Congress has fallen to less than 30 per cent during the requisite six-month period. It was argued that in a hypothetical case if 25 out of 100 workers in an establishment vote for the recognised union, it would mean that the membership has fallen below the requisite percentage but, in the absence of the identity of the voters, it would not be possible to prove that the members of the union have voted against it.

5.12 International Labour Organisation and collective bargaining

At an international level of the concern felt by the International Labour Organization for evolving an international instrument for recognition of trade unions resulted in ILO Convention No. 87 on “Freedom of Association and Protection of the Right to Organize” in 1948 and Convention No. 98 concerning the right to organize and bargain collectively in 1949. The former states: workers and employers, without distinction whatsoever; shall have the right to establish and subject only to the rules of the organisation concerned, to join organisation of their own choosing without previous authorization. The Convention empowers the workers organisation to frame their constitution, to elect representatives and among, others to organize their activities. To establish and join federations, Article 8 of the Convention requires that workers and their respective organizations, like all other, shall respect the law of the land. The law of the land shall not be such as to impair nor shall it be so applied as to impair, the guarantees provided for in the Constitution.

44 Ibid.
The latter confers protection to workers against acts of anti-union discrimination in respect of their employment. The protection is, directed in respect to acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership and (b) cause the dismissal of, or otherwise prejudice a worker by reason of union membership or because of his participation in union activities outside working hours.

5.13 Trade Unions (Amendment) Act, 1947 and Recognition

In India, it has been observed earlier, that there is no Central enactment governing recognition of "trade unions. The Trade Unions (Amendment) Act, 1947, however, provided for recognition of unions, (i) by agreements, and. (ii) by order of the Court on satisfying the conditions laid down in relevant sections of the Act. But the Act, as stated earlier, has not been enforced.

(a) Machinery for Determination of Representative Unions

Section 28E of the Trade Unions (Amendment) Act, 1947; empowers the Labour Court to grant recognition where a registered trade union having applied for recognition to an employer fail to obtain the same within a period of three months.

(b) Conditions for Recognition

Section 25 D provides that a Trade Union shall not be entitled for recognition by order of a Labour Court under Section 25 E unless it fulfills the following conditions, namely:

a) that all its ordinary members are workmen employed in the same industry-or in industries closely allied to or connected with another.

b) that it is representative of all the workmen employed by the employer in that, industry or those industries;
c) that its rules do not provide for the exclusion of any class of the workmen referred to in clause (b);

d) that its rules provide for the procedure for declaring a strike;

e) that its rules provide that a meeting of its executive shall be held at least once in every six months;

f) that it is a registered Trade Union, and that it has complied with all provisions of this Act.

The aforesaid provisions of the Act raise various problems (i) Can an employer voluntarily recognise a union which is not registered under the Act and which is in fact a majority union? (ii) Can an employer be compelled to recognise more than one union? Notwithstanding the relative importance of these questions and rather unsatisfactory answer that we get from the statute, the significance of Trade Unions (Amendment) Act, 1947, must not be overlooked. But, even this could not be put into force.

(c) Rights of Recognized Trade Unions

The recognized trade unions have been conferred the right to negotiate with employers in respect of matters connected with employment, non-employment, the terms of employment or the conditions of labour of all or any of its members, and the employer is under an obligation to receive and send replies to letters sent by the executive and grant interviews to them regarding such matter.45

(d) Withdrawal of Recognition of Trade Unions

Under Section 28 G of the Trade Unions (Amendment) Act, 1947, the Registrar or the employer is entitled to apply to the Labour Court in writing for the withdrawal of the recognition on anyone of the following grounds:

a) that the executive or the members of the trade union have committed any unfair labour practice set out in Section 28 J within three months prior to the date of the application;
b) that the trade union has failed to submit any return referred to in Section 28 I;
c) That the trade union has ceased to be representative of the workmen referred to in Clause (b) of Section 28 D.

On receipt of the application the Labour Court is required to serve a show cause notice in the prescribed manner on the trade union as to why its recognition should not be withdrawn. If the Court is satisfied that trade union did not satisfy conditions for the grant of recognition it shall make an order declaring the withdrawal of recognition.

The aforesaid provisions raise a question as to whether recognition of trade union can be withdrawn on the ground that recognized trade union has lost its status as a representative union.

(e) Re-Rognition of Trade Unions

Section 28H of the Trade Union (Amendment) Act, 1947, permits the registered trade union whose recognition is withdrawn under sub-section (3) of Section 28G to make an application for re-recognition after six months from the date of withdrawal of recognition.

5.14 The Trade Unions Bill, 1950

In 1950 the Trade Unions Bill, 1950 was introduced in the Parliament. The Bill was primarily a consolidating measure, but there were some new provisions which were added, namely:
a) A trade union of civil servants shall not be entitled to recognition by the appropriate government if it does not consist wholly of civil servants or
if such union is affiliated to a federation of trade unions to which a trade union consisting of members other than civil servants is affiliated.

b) A trade union shall not be entitled to recognition by an employer in relation to any hospital or educational institution by order of a Labour Court if it does not consist wholly of employees of any hospital or educational institutions, as the case may be.

c) A trade union consisting partly of supervisor and partly of other employees, or partly of watch and ward staff and partly of other employees shall not be entitled to recognition by an employer by order of a Labour Court.

The Labour Court is empowered under the Bill to order for recognition of unions. The Bill could not, however, be brought in the form of the Act because of its opposition by several quarters. The Bill lapsed on the dissolution of the Legislature.

5.15 Non-Statutory Code of Discipline in Industry

To fill the lacuna in the Central Law the 16th Session of the Indian Labour Conference provides for the recognition of trade unions. It lays down the following criteria for their recognition:

1. Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply.

2. The membership of the union should cover at least 15 per cent of the workers in the establishment concerned. Membership would be counted only of those who had paid their subscription for at least three months during the period of six months immediately preceding the reckoning.

________________________

46 Ibid 105
3. A union may claim to be recognised as a representative union for an industry in a local area if it has a membership of at least 25 per cent of the workers of that industry in that area.

4. When a union has been recognised, there should be no change in its position for a period of two years.

5. Where there are several unions in an industry or establishment, the one with the largest membership should be recognised.

6. A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has membership of 50 per cent or more of the workers of that establishment it should have the right to deal with matters of purely local interest such as, for instance, the handling of grievances pertaining to its own members. All other workers who are not members of that union might either operate through the representative union for industry or seek redress directly.

7. In the case of trade union federation which is not affiliated to any of the four central organizations of labour the question of recognition would have to be dealt with separately.

8. Only unions which observed the Code of Discipline would, are entitled to recognition.

This Code, however, has not been effectively implemented and it is respected-more in its breach than in its observance. The failure of enforcement machinery of the Code is revealed by the fact that during 1960-70, 10,402 cases of breach of Code of Discipline were reported. In addition to this there are numerous unreported cases as well. The Central Implementation and Evaluation Division have made much work in this regard. The division secured recognition to twenty-four unions during 1968-70. Faced with the problem of infringement of the Code of Discipline the Committee took certain decisions:
1) When a union is recommended for recognition by the implementation machinery after proper verification of its membership, the employer, Government of India, Annual Report of the Department of Labour and Employment of relevant year should recognise it within a month. If it fails to do so, he should be considered responsible for infringement of the Code of Discipline and action should be taken against it by the Central Organisation concerned.

2) A union which is not affiliated to any of the four central organizations of workers should wait for a period of one year after it has accepted the Code of Discipline before its claim for recognition can be considered.

3) When the breach of the Code by a union has been established by the appropriate implementation machine, it would be open to the employer concerned to de-recognise the union.

5.16 National Commission on Labour and Recognition

Scheme for recognition The National Commission on Labour has recommended for compulsory recognition of trade unions by the employers under the Central legislation in industrial undertakings employing one hundred or more workers or where the capital invested is above the stipulated size. In order to claim recognition by the individual employer, the union must have the total membership of 30 per cent of the plant or establishment. The industry-wise union in local area may, however, be recognised if the minimum membership is 25 per cent. The Commission has recommended that where recognition is sought by more than one union, the larger union should be recognised. But the Commission was in favour of recognition of industry-wise union over plant or unit union.

Mode of determination of representative character. The National Commission on Labour has suggested alternative methods namely, "verification" and "ballot". It suggested that the proposed Industrial
Relations Commission should be empowered to decide the representative character of union either by examination of membership or holding an election through secret ballot of all employees.

**Machinery for determination of representative character.** The National Commission recommended that the Industrial Relations Commission at centre and states (as proposed by the Commission) should be empowered issue certificate to unions as representative for collective bargaining.

**Rights of recognized trade unions.** The National Commission on Labour recommended that the recognised trade unions should be given certain rights and privileges such as (i) right of sole representation (ii) entering into collective agreement on terms of employment and conditions of service; (iii) collection of membership subscription within the premises of the undertaking and the right to check-off, (iv) holding discussion with departmental representatives of its workers members within factory premises; (v) inspecting by prior agreement the place of work of any of its members; and (vi) nominating its representatives on works/grievance committees and other bipartite committees.

### 5.17 Bargaining Council

Trade Unions and Industrial Disputes (Amendment), Bill, 1988 which was later withdrawn mentioned the provision for bargaining council. The Bill seeks to provide for the constitution of a “bargaining council to negotiate and settle industrial disputes with the employer.” Thus, under Chapter II-D every employer is required to establish a bargaining council, for the industrial establishment for which he is the employer consisting of representatives of all the trade unions having membership among the workmen employed in the establishment not being trade unions formed on the basis of craft or occupation, each trade union being called a bargaining agent.
Where there are more than one trade unions having members among the workmen employed in an industrial establishment, the representation of all such trade unions on the bargaining council shall be in proportion to the number of the members in that establishment as determined under the Trade Unions Act, 1926.

The trade union with the highest membership of workmen employed in that establishment and having in case less than forty per cent of the total membership among the workmen shall be known as the principal bargaining agent.

Where there is only one Trade Union having members among the workmen employed in an industrial establishment that trade union shall be the bargaining council for that establishment and such bargaining council shall also act as the sole bargaining agent.

The chairman of the bargaining council shall be a person chosen by the principal or sole bargaining agent from amongst its representatives. However, if there is no trade union having membership of at least forty per cent of the total membership of the trade unions of workmen in an industrial establishment, the one with the highest membership among the workmen employed in the establishment shall have the right to nominate one of its representatives as the chairman of the bargaining council.\textsuperscript{48}

If there is no trade union having members among the workmen employed in an industrial establishment, a workmen's council shall be established by the employer in the prescribed manner and such workmen's council shall be the bargaining council for that establishment.

The State Government is empowered to establish a bargaining council in a class of industry in a local area in respect of which it is the appropriate Government on the basis of the relative strength of the trade unions of workmen concerned as determined under the provisions of the Trade Unions Act 1926, in such manner as may be prescribed.

Similarly the Central Government may establish a bargaining council in respect of an industrial undertaking or a class of industry in respect of which it is the appropriate Government on the basis of the relative strength of the trade unions of workmen concerned as determined under the provisions of the Trade Unions Act in the prescribed manner.

The Central Government is also empowered to set up in consultation with the State Government concerned a council at the national level to be called the National Bargaining Council in respect of a class of industry or a group of 'Central Public Sector undertakings in relation to which the appropriate Government is the State Government.

The National Bargaining Council shall comprise of representatives of the Central Government, the State Government concerned, employers or trade unions of employers and trade unions of workmen, being represented in proportion to their relative strength of membership as determined under the provisions of the Trade Unions Act, 1926.

Every bargaining council established under Section 9, other than a national bargaining council established shall be registered with the Labour Court in such manner as may be prescribed. The term of office of bargaining council registered shall be three years.
A registered bargaining council shall, subject to the provisions of this Act be entitled:
a) to raise industrial disputes with the employer or employers;
b) to settle industrial disputes with the employer or employers;
c) to sign on behalf of the workmen the documents settling industrial disputes;
d) to represent the workmen in any industrial disputes; and
e) To exercise such other powers as may be prescribed.

Where a Labour Court finds a bargaining agent guilty of indulging in all or any of the unfair labour practices listed at Item No. 1 (Illegal strike), item No. 5 (in so far as it relates to go slow) and item No. 8 (Violence) of Part II of the Fifth Schedule, it may disqualify such bargaining agent to function as such for such period as may be determined by it.

5.18 Collective Bargaining and Economic Reforms

In the wake of the economic reforms of the 1990s, the collective bargaining scene in the public sector has also undergone a significant change. In 1994 the Department of Public Enterprises, which exercises control over the 240-odd central public sector undertakings in the country, issued guidelines providing for limited autonomy for decentralized bargaining and moving away from parity among the different central public sector undertakings. The government allowed public enterprises to sign fresh wage agreements only if they would meet the extra financial commitment arising out of wage revisions from their own resources and if the unit labour costs and unit sale prices did not rise as a result of wage revision. About 100 public enterprises, which became financially unviable, did not revise wages till December 1998.
a) **Emerging Trends**

Till the 1970s, collective bargaining showed two trends. First, as far as possible, considering the adversarial relationship in most situations, the attitude of both the managements and the trade unions was to bar the gain to the other party. Second, workers' unions served a charter of demands on managements. Managements used to bargain that it was not possible to give so much. After some negotiations, agreements were reached, with managements reluctantly giving in and workers collecting some additional benefits. In the 1980s managements began to serve counter-proposals before or after receiving the charter of demands from the unions. The idea was to give and to take in the name of 'productivity bargaining'. Trade unions used to agree to give up restrictive and wasteful practices in return for higher wages and benefits.

b) **Changes in Work Norms/Practices**

Trade unions in India no longer out rightly resist changes in work practices relating to modernization, computerization, multiskilling, flexible deployment, working time norms, etc. The major dispute in this regard is over contract labour. Recent court judgments have given trade unions a lever to press managements to regularize contract labour in certain areas. In January 1999, over 5000 workers belonging to several unions in one public sector oil refinery went on a day's token strike because they felt that the introduction of enterprise resource planning' (ERP) would affect their jobs adversely.49

c) **Flexible Wage system**

In the organized sector, wages double every six to seven years. Wage-sensitivity of firms varies because labour costs range from 2 per cent

---

in process industries to over 100 per cent in sick units. In most cases, firms become sensitive when wage costs exceed 12 to 20 per cent.

Collective agreements have found many innovative ways of warding off temporary crisis: (a) two-tier wage system where newcomers get less pay for three years in the same or a new grade, the difference usually tapers off in three years; this is justified on the grounds that newcomers take time to become fully productive; (b) temporarily linking dearness allowance to productivity instead of cost of living during times of financial crisis in the firm or plant; (c) a wage freeze/reduction when the firm or plant becomes financially unviable/non-competitive (wages are unfrozen and previous wage levels restored depending on productivity and/or profitability); and through (d) wage-job trade-off, etc.

d) Concession Bargaining

Due to economic recession the concession bargaining came into existence. Trade unions typically face a dilemma in decentralized bargaining where the plant firm is facing a crisis due to market failure and/or financial sickness, whether or not such problems are a product of recession. In their anxiety to protect all or most jobs, in several cases they have agreed to workforce reduction and cutback or freezing of pay and benefits and even to suspension of trade union rights. The following types of drastic measures were 'mutually agreed upon' as essential for survival in most such situations:

- Reduction in wages and allowances
- Freeze in dearness allowance
- Changes in working patterns
- Stoppage or modification of incentive schemes
- Early retirement
• Layoff/Retrenchment
• Retraining
• Redeployment

Often, doubts were expressed whether such concessions by trade unions alone would ensure the firm's survival and the security of the jobs. The Board of Industrial and Financial Reconstruction, set up in 1987 with quasi-judicial powers to dispose of cases of closure or rehabilitation of sick companies, realizes that some sick units are potentially viable while others are not. Industry characteristics and firm size, technology and corporate strategy are among the major determinants of the potential, viability of a sick unit. The experiences of several companies like Jaipur Metals & Electricals Limited, Kamani Tubes, New Central Jute Mills, and Waichandnagar Industries indicate that such bargaining helped these companies to bounce back from the brink of liquidation and record impressive performance subsequently. As a result, in these and several other similar instances, employment, employee earnings and productivity have significantly increased.