CHAPTER IV

COLLECTIVE BARGAINING AND GOVERNMENT POLICY

Collective bargaining in Bangladesh has a statutory basis like all other aspects of industrial relations. Broadly speaking, all union activities including collective bargaining are controlled by statutory provisions. These provisions are equally applicable both to the public and private sector employment (except for a few categories in the public sector). As such, collective bargaining in the jute industry comes under the purview of these statutory provisions. The present form of many of the legal provisions is practically the consequence of many ups and downs that occurred in the past in the government's labour policies and labour legislation. Hence, this chapter is an attempt to study the official policy of the government announced both in the pre and post 1971 era and the overall effect of legislation and national conventions on the growth of trade unions and collective bargaining in Bangladesh. An attempt is also made to the gap between professed and actual performance, as well as the various paradoxes in such policy matters.

1Ministry of Law and Parliamentary Affairs, Govt. of Pakistan, The Industrial Relations Ordinance, 1969 (adopted by the Govt. of the People's Republic of Bangladesh in 1972) and its up-to-date amendments.

2Sub-section (3) of section 1 of the Industrial Relations Ordinance, 1969 describes, "It shall not apply to any person employed in the police or any of the Defence Services of Bangladesh or any services or installations connected with or incidental to the Armed Forces of Bangladesh, including an Ordnance Factory maintained by the ... Government or to any person employed in the Administration of the State other than those employed as workmen by the Railways, Posts, Telegraph and Telephone Departments."
The Historical Background

The early history of trade unionism in Bangladesh dates back to the British period since the country was a part of British India from 1757 to 1947. Although organised trade union activities in India started in 1890 through the formation of the "Bombay Millhands' Association",\(^3\) formal legislation protecting workers' interests and the right to organise came into force only during the nineteen twenties and afterwards. "During the major part of the period 1919 to 1940, the labour policy of the Government of India was a passive regulator of labour in industry."\(^4\)

Meanwhile, several labour laws,\(^5\) such as the Indian Trade Union Act, 1926, the Indian Trade Disputes Act, 1929, etc., were enacted with a view to protect labour against industrial and economic exploitation and to maintain peace and order. Of these enactments, the Indian Trade Union Act, 1926 "had its roots in the desire of the British capital to protect its industries from Indian labour and of local capital to regulate labour activities under pressure from the political awakening".\(^6\)

The Act provided the statutory basis for the formation of trade unions and for registration of

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\(^6\)Muzaffer Ahmad, *op. cit.*, p. 65.
unions under certain conditions, and immunity from civil and criminal proceedings for normal trade union activities. The basic limitation of the Act was that it did not provide for compulsory recognition of a trade union by an employer. In addition to this, it was not strong enough to grant protection against victimization of union officers. The Indian Trade Disputes Act, 1929 for the first time conceded indirectly the right of strike and lock-out with the main object of providing a conciliation machinery to bring about settlement of industrial disputes.

Between 1940 and 1947, the policy of the government changed and the state emerged as a powerful institution interfering more and more in labour relations. Under the Defence of India Rules, 1943, the State could exercise more power to prohibit strike and lock-out and by the same token it could refer any dispute for conciliation or adjudication. Further, the Government of India established a Labour Investigation Committee in 1944 under the chairmanship of D.V. Rege. The main task of this Committee was to up-to-date the report of the Royal Commission on Labour, 1931. The Investigation Committee, apart from giving valuable information on labour matters, officially brought out for the first time the need for stressing collective bargaining methods to settle disputes between labour and management. Thereafter, the Industrial Disputes Act, 1947 was passed repealing the Indian Trade Disputes Act, 1929. The Act empowered the government to refer any dispute for adjudication to industrial tribunals. This compulsory arbitration as an alternative to

7V.V. Giri, op. cit., p. 151.
mediation and conciliation was envisaged to operate through industrial tribunals which could make enforceable awards. Strikes and lock-outs were banned when settlement proceedings were in progress. In addition, essential industries could be prohibited from going on strike.

In 1947 the Government of Pakistan adopted the Indian Trade Union Act, 1926 and the Industrial Disputes Act, 1947 along with some other legislation for regulating industrial relations and registration of trade unions. To begin with, the government included some trade unionists as its members of the cabinet who were very much mindful of formulating a labour policy according to ILO convention and on democratic patterns. Even then the first labour policy was articulated in August, 1955 nearly eight years after the partition. This policy noted the government's desire "to encourage growth of genuine and healthy trade unions in order to promote healthy collective bargaining on the part of labour and to enable it to conduct negotiations with the appreciation of the country's economy". The recognition of unions was recommended to be an adjudicable matter. Further, it incorporated all assurances to protect legitimate trade union activities. But the First Five Year Plan of Pakistan (1955-60) was

8Kamruddin Ahmad, op.cit., pp. 31-35.

9Out of 107 conventions adopted by the ILO upto the 40th session of the International Labour Conference held in 1957, only 23 conventions had been ratified by Pakistan. Of them, convention No. 87 on "Freedom of Association and Protection of Right to Organise" and convention No. 98 on "Right to Organise and Collective Bargaining" were ratified on 14th Feb., 1951 and 26th May, 1952 respectively.

10Govt. of Pakistan, Labour Policy, Karachi, August, 1955. As reproduced by Kamruddin Ahmad, op.cit., Appendix II, p. V.
against free collective bargaining practices. According to the plan,

In a system of free collective bargaining there are cases where, for instance, inexperience and miscalculation leads to strikes or lock-outs before agreement is reached. The government can do a good deal to help through an effective system of conciliation by experienced officers whose responsibility is to assist the parties to reach a mutually satisfactory agreement. With the growth in organised industry and commerce there will be growing need for effective conciliation services.11

However, the plan reiterated the government policy to encourage the growth of genuine and healthy trade unions, and emphasized mainly on the statutory recognition of unions.

The subject of trade unions and collective bargaining again drew the attention of the government under the Martial Law regime of Ayub Khan. The second labour policy was announced in 1959. In this policy, the government reiterated its belief in sound trade unionism for promoting a stable social structure based on industrial peace, higher productivity and equitable distribution. The policy also promised suitable amendment of the 1926 Act and machinery for compulsory recognition of trade unions by employers. As regards collective bargaining the policy mentioned that "the employers and workers should negotiate with each other the terms and conditions of employment and conclude agreements in fulfilling commitment made by government in ratifying the ILO convention (No. 98) concerning the "Right to Organize" and "Bargain Collectively".12

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Between 1956 and 1962, a number of amendments were enacted in the various labour-relations Acts. Consecutive amendments in the Industrial Disputes Act laid more stress on conciliation and adjudication of disputes rather than on the workers' right of strike and the employers' right of lock-out, though these are considered the most important instruments for free and successful collective bargaining. The amendments in the Trade Union Act provided for compulsory recognition of trade unions. Besides, the industrial courts were empowered to hear and decide disputes arising out of the refusal by employers to recognise a particular trade union. It also proceeded to list unfair labour practices both by the employers and workers. The unfair labour practices on the part of employers were: (i) to interfere with, restrain or coerce workers in their right to form and join labour organisations; (ii) to interfere with or support a union; (iii) to victimize, discriminate against or dismiss a union officer because of his union relationship; (iv) to discriminate against a worker giving evidence under the ordinance. The unfair practices on the part of the workers were spelled out as: (i) to engage in irregular or illegal strikes, to instigate such, and failure to take action against members who engage in such activities; (ii) to coerce a worker to join a union against his will; (iii) to cause an untruth to be told in any report required of the union.

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13 The Industrial Disputes Act, 1947 was amended first in 1956 and again in 1957. It was then repealed by the Martial Law government in 1959 and named as Industrial Disputes Ordinance, 1959, and further amended in 1961 and 1962. The Trade Union Act, 1926 was amended first in 1960 and again in 1961.

14 A.M. Mesbahuddin, *op. cit.*
The second Five Year Plan of Pakistan (1960-65) did not point out anything new. It simply stressed on the arrangement made in the Industrial Disputes Ordinance, 1959 for the settlement of disputes. Unlike the Second Five Year Plan, the Third Five Year Plan of Pakistan (1965-70) did march one step forward towards collective bargaining. Sub-clause (iv) of clause 68 stated that a statutory grievance procedure should be introduced for settling industrial disputes along the following lines:

(a) As a first step all collective disputes should be submitted by one party to the other, for direct bilateral collective bargaining in good faith between the employers and the employees or their unions without threat or notice of strike. The refusal of any party to enter into such negotiations should be treated as an unfair practice.

(b) Direct negotiations between the employers and the employees or their unions should continue without threat of strike or lock-out for a specified period, during which any strike or lock-out should be considered as illegal.

(c) Only in case of failure of bilateral negotiations between the parties concerned, but not earlier than the expiry of the specified period, the serving of strike notice should be allowed, copies of which should be sent to the Government Conciliation authorities.

It appears that the plan, on the one hand, advocated much for

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(b) Kamruddin Ahmad, *op.cit.*, pp. 69-72.


17 *Ministry of Planning, Govt. of Pakistan, Third Five Year Plan (1965-70), Karachi, p. 272.*
recognising collective bargaining as a statutory method of settlement, and on the other, favoured to put certain restrictions on strikes and lock-outs.

Under the constitution of 1962 of the Government of Pakistan, the subject "Labour", which was in the concurrent list, became a provincial issue. With this authority, the Government of East Pakistan enacted several Acts in 1965 repealing the central Acts and Ordinances. The East Pakistan Trade Unions Act, 1965 and the East Pakistan Labour Disputes Act, 1965, were among the new Acts. These two Acts failed to a great extent to incorporate the professed government principles outlined in the Third Five Year Plan regarding collective bargaining. Although, the right of strike or lock-out was recognised, it was in fact not legally possible to go on strike or to declare a lock-out. One important feature of the East Pakistan Labour Disputes Act was that it restricted the right to raise a labour dispute to a recognised trade union, or in the absence thereof, to a group of seven (7) workers duly authorised by the workers. By and large, the new Acts relaxed the right to organise and strengthened the machinery for conciliation and adjudication of disputes.18

The question of the right to organise, as well as of collective bargaining, was again reviewed in the labour policy declared in 1969 under the second Martial Law government. Its

labour policy outline promised every encouragement to the growth of healthy trade union movement through liberalisation of legislation. The policy for the first time made distinction between conflicts arising out of matters of interest which must follow bilateral negotiation, conciliation by government agency, voluntary arbitration and finally strikes and lock-outs, and conflicts arising out of matters of right (breach of contract) which were to be dealt in the courts of law. In addition, it advocated for determination of CBA to raise demands or disputes and to negotiate with management for settlement. Emphasizing the need for collective bargaining in the public sector, the policy explained,

The public sector employees about one half of the total number of urban workers. A large part of the public sector employees are employed in industry. The problems of these public sector workers are similar to those of private sector workers. In the last few years some of the most organised expression of industrial conflicts has been in the Railways and Docks. Because of the very size of public enterprises, it is essential that their system of settlement of disputes through collective bargaining should be strengthened.19

Subsequently, the Industrial Relations Ordinance, 1969 (hereafter to be referred as IRO, 1969) was promulgated codifying some of the important features of the labour policy. This Ordinance also repealed some labour-relations Acts20 followed in both the wings of Pakistan. It was for the first time in the history of Pakistan

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20 (a) The East Pakistan Trade Unions Act, 1965.
(b) The East Pakistan Labour Disputes Act, 1965.
(c) The West Pakistan Industrial Disputes Ordinance, 1968.
(d) The West Pakistan Trade Unions Ordinance, 1968.
that "Collective Bargaining Agent" (CBA) became a legal term and was legally defined. Truly speaking, this step marked a turning point in the history of the country's trade unionism and collective bargaining. Though it was quite unexpected, the Martial Law government undertook this venture in order to win over popular support in general and the workers' support in particular after the grim political upheaval of 1969.

**Formal Policy Since Independence (1971)**

Collective bargaining has been a widely discussed subject especially by the government since Bangladesh became independent. The most crucial task that the government strongly felt just after independence was to determine the principles to be followed in the field of labour-management relations in the changed politico-economic environment of the country. On several occasion, the government irrevocably expressed its desire to emancipate the conditions of workers who were actively involved in the liberation struggle of Bangladesh and whose interests were deliberately denied in the pre-liberation period. Besides, the government strongly emphasized on persistent industrial peace and increased productivity for rapid economic progress and prosperity of the country. While declaring the preliminary industrial policy which included nationalisation of major industries, the government made it known that the labour policy would be announced after consultation with the ministries concerned. But from the

21 For details see chapter III of this study, pp. 30-61.
very beginning, a dual attitude towards the mode of workers representation was observed among the high government officials. While inaugurating a meeting of the leaders of the leading trade union federation arranged by the Labour Department on 3rd April, 1972 in Dacca, the Prime Minister explained his personal opinion about "Collective Bargaining" and "Workers' Participation in Management". According to him, the two systems could hardly go together and where workers' participation in the management was allowed the workers would not have the right of collective bargaining. He also indicated that workers' participation in the management would be allowed only in the public sector and the right of collective bargaining would be given to both the private sector and joint ventures between foreign investors and the government. Later, too, the government tendency seemed to favour workers' participation in management rather than collective bargaining.

In May, 1972 the Planning Commission set up a "Study Circle" to prepare a report on "Workers' Participation in the Management". Some of the important points of the report of the "Study Circle" were:

1) The differences between labour and management should be settled through peaceful and constitutional means such as joint consultation, mediation, conciliation, voluntary arbitration and adjudication.

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22The Bangladesh Observer; Dainik Ittefaq, Dacca, The 4th April, 1972.
ii) There should be a National Wage Board consisting of representatives of government, workers and employers which would after hearing all the concerned parties give an award for at least two years for the whole industry on the basis of its capacity to pay and the essential needs of workers.

iii) In the nationalised sector a Management Board should be set up in which workers should participate in decision-making.

iv) Collective bargaining agents would be entitled to bargain on all matters except those which concern financial commitments like wages, dearness allowance, medical allowance, house rent allowance, etc.

The above report influenced to a considerable extent the labour policy of the government and the labour policy outline hinted in the First Five Year Plan of Bangladesh (1973-78). The labour policy which was announced in September, 1972 had to be withdrawn later because of severe criticism and resentment. The policy in detail reflected the government attitude towards collective bargaining\(^2\) and the functioning of trade

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\(^{2}\)For settlement of disputes in the private and public sectors the measures suggested in the labour policy were:

"(a) Private Sector : Differences between the labour and management in private sector industries should normally be resolved through bipartite negotiation between the labour and the management. In case such settlement is not possible through bipartite negotiation, the parties can utilise services of the conciliators of the Labour Directorate for bringing out an amicable settlement. If no settlement is effected at this level also, either of the parties can go to the Labour Court for adjudication. The parties aggrieved by the award of the Labour Court may go to the Labour Appellate Tribunal for redress and there will be no scope for appeal to the High Court.

(b) Public Sector : Differences between labour and management in the nationalised and taken over industries will be resolved through joint consultations in the Management Board and Workers' Management Council." Govt. of the People's Republic of Bangladesh, Labour Policy, 1972, Dacca, p. 2.
unions. The First Five Year Plan, in brief, touched upon the entire problem of labour policy. The plan recognised that the achievement of national objective in the sphere of production is dependent on the proper and prompt responses of the workers. In order to promote this response, the plan recognised the need to eliminate the conflicts between labour and capital by associating workers in the management of their enterprises. The plan recommended a labour policy which would assign a constructive role to trade unions through "Works Committees" to convey the views of labour to management and to motivate labour to achieve targets. Besides, the plan recommended a single trade union for an enterprise and the trade unions in turn were to be federated on the basis of each industry. Such a trade union, the planners

25 The absence of collective bargaining by workers in nationalised or taken over industries will not mean cessation of trade union activities. Government will always encourage growth of democratic trade union movement in the country.

The functions of the trade unions will be:

1) In relation to industries and establishment owned and managed directly by Government, nationalised and taken over industries, to promote measures for well-being of the working class, take care of safety and protection of labour at work place, provide training, education and other welfare facilities to the workers and thereby create conditions for higher productivity in the overall interests of the country.

ii) In relation to private industries and establishment, to achieve improved terms and conditions of employment for the workers, improved physical environment at work place and other welfare measures through the process of collective bargaining." Govt. of the People's Republic of Bangladesh, Labour Policy, 1972, Dacca, p. 3.

thought, would make its association possible with policy-making. Truly speaking, the plan pleaded more for workers' participation in the management than for collective bargaining.

The constitution of Bangladesh, under Article 38, guarantees to all the right to form associations or unions unless they come into clash with public interests. Such a right to form an association or union is a fundamental right. But by itself it does not guarantee that the trade unions have the right to an effective bargaining. It only secures the right to form and join trade unions subject to the law of the land.

From 1972 to 1975, the provisions of the IRO, 1969 (partially amended in 1970) on trade unions and collective bargaining were followed strictly in the field of labour-management relations. The Martial Law government promulgated the Industrial Relations (Regulation) Ordinance in December, 1975 (henceforth to be referred as IR(R)O, 1975) as an addition to the IRO, 1969. In July, 1977 the government amended the IRO, 1969 and the new ordinance was named as Industrial Relations (Amendment) Ordinance, 1977 (hereafter to be referred as IR(A)O, 1977). Further amendment of the IRO, 1969 was made in July, 1980 and the new one was named as Industrial Relations (Amendment) Act, 1980 (hereafter to be referred as IR(A)A, 1980). One important feature of this Act was that it repealed the IR(R)O, 1975. The IR(A)A, 1980 was promulgated incorporating some of the important principles.

27 Proviso to Article 38 of the constitution was omitted by the Second Proclamation Order No. III of 1976, and it was again incorporated in November, 1978.
outlined in the labour policy announced by the newly elected government on 1st March, 1980 after many months of tripartite consultations in the Tripartite Consultative Committee. The basic objective of the labour policy was to ensure "healthy labour relations needed for increased production and overall national economic development for improving the conditions as well as the standard of living of the people and the workers".\(^{28}\) The policy mentioned that "the government believes in the process of collective bargaining for resolving industrial disputes and establishment of good labour-management relations".\(^{29}\) As to the formation of trade unions, the policy noted the government belief that "there is need for the growth of healthy trade unionism for ensuring industrial peace, increased productivity and establishment of stable social structure".\(^{30}\) One significant feature of the labour policy was that it recognised "Collective Bargaining", "Collective Bargaining Agent", and strike by workers and lock-out by employers as instruments of collective bargaining both in the public and private sectors.

**Legal Framework**

This part attempts at describing in brief the legal provisions on trade unions, collective bargaining agent, collective

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\(^{29}\) *ibid.*, p. 4.

\(^{30}\) *ibid.*, p. 3.
bargaining, conciliation, and works council/participation committee as provided for in the various Ordinances or Acts adopted, enacted or amended during the period 1972-1980.

Trade Union

A "Trade Union" has been defined as "any combination of workmen or employers formed primarily for the purpose of regulating the relations between workmen and employers or workmen and workmen or employers and employers or for imposing restrictive conditions on the conduct of any trade or business and includes a federation of two or more trade unions". For formation of a trade union the legal provision is: "Workers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join associations of their own choosing without previous authorisation." But the trade union activities are restricted to only the registered trade unions or federation of trade unions. Such a restriction was not in existence till the promulgation of the IR(A)O, 1977. According to this ordinance, "No trade union which is unregistered or whose registration has been cancelled shall function as a trade union." There was also no minimum limit regarding the number of members of a trade union for registration both in the IRS, 1969.

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31 Ministry of Law and Parliamentary Affairs, Govt. of Pakistan, The Industrial Relations Ordinance, 1969, Section 2(XXVI).
32 Ibid., Section 3(a).
33 Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, The Industrial Relations (Amendment) Ordinance, 1977, Section 11A(1).
and the IR(R)0, 1975. One effect of this non-restriction was that even two persons could form a trade union, and also could apply for registration. The IR(A)0, 1977 has restricted the minimum number of members for registration of a union to 30 per cent of the total workers of the enterprise concerned.

Membership of a trade union was open to all categories of workers as per the IRO, 1969. The IR(R)0, 1975 has restricted such right for certain workers. In this respect the provision of this ordinance is: "Persons employed as members of the watch and ward or security staff or confidential assistants of any establishment shall have no right to be members or officers of any union." In the IR(A)A, 1980, the above categories of employees are not covered within the definition of "worker" and "workmen". Like the membership clause, there was no provision restricting the right of dual membership of a worker till the promulgation of the IR(A)0, 1977. As per this ordinance, "No worker shall be entitled to enrol himself as, or to continue to be, a member of more than one trade union at the same time."35

The outsiders participation in the Executive Committee of a trade union was valid as per the IRO, 1969. The IR(R)0, 1975 has abolished non-workers right to be members or officers

34Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, The Industrial Relations (Regulation) Ordinance, 1975, Section 5(1).

35Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, op.cit., Section 11B.
of trade unions. For this, the provisions of the ordinance are:

i) No person shall be entitled to be member or officer of any trade union formed for any establishment if he is not actually employed or engaged in that establishment.

ii) A member or officer of trade unions who is not actually employed or engaged in the establishment for which such trade union has been formed shall, on the commencement of this ordinance, cease to be member of officer of that trade union.36, 37

Notwithstanding the above arrangement in the IR(R)O, 1975, the provision of the IR(A)O, 1977 is similar to the IRO, 1969. However, the provision of the IR(A)A, 1980 is very clear. According to this Act, "A member or officer of a trade union who is not actually employed or engaged in the establishment or group of establishments for which such trade union has been formed shall, on the commencement of the Industrial Relations (Amendment) Act, 1980 ( ... of 1980), cease to be member or officer of that union."38

Collective Bargaining Agent

The term "Collective Bargaining Agent" (CBA), as indicated earlier, got legal currency in the IRO, 1969. According to this ordinance, a CBA in relation to an establishment or

36Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, op. cit., Section 6(1&2).

37This rule does not apply to any federation of trade unions.

38Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, The Industrial Relations (Amendment) Act, 1980, Section 7A(b).
industry means "the trade union of workmen which, under section 22, is the agent of the workmen in the establishment, or as the case may be, industry, in the matter of collective bargaining". 39

The mode of determining CBA has been elaborately described in the IRO, 1969. The IR(A)O, 1977 has made certain amendments in the original provisions for determination of CBA in a fair manner. By and large, the contents of both the ordinances in relation to CBA are same. As per these ordinances, where there is only one registered trade union in an establishment or industrial unit, or only one federation in the whole industry, and it has not less than one third of the workmen as its members, 40 that registered trade union or federation of unions shall be deemed to be the CBA for such establishment or industrial unit or for such whole industry as the case may be. Alternatively, where there are more than one registered trade unions in an establishment, or more than one federation in a whole industry, then one CBA is to be elected through secret ballot. To participate in the election, a union must have as members at least one third of the workers, 41 and to be CBA, a union shall have to secure the votes of at least one third of the total number of workmen employed in such establishment or group of establishments. Where a registered

39 Ministry of Law and Parliamentary Affairs, Govt. of Pakistan, op. cit., Section 2(V).


41 ibid.
trade union has been declared as CBA for an establishment or group of establishments, no further application for determination of CBA shall be entertained within a period of two years from the date of such declaration.

The rights and functions of CBA have also been defined. The rights to raise any industrial dispute lies absolutely with the CBA. In this respect the legal provision is: "No industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a collective bargaining agent." The right to strike - the most important instrument of collective bargaining - has been given to the CBA. A CBA may, without prejudice to its own position, implead as a party to any proceedings of which it is itself a party, any federation of trade unions of which it is a member. If a CBA so requests, the employer of the workmen who are members of a trade union can deduct from the wages of the workmen such amounts towards their subscription to the funds of the trade union as may be specified with the approval of each individual workman named in the demand statement furnished by the trade union. The entire amount so deducted must be deposited within 15 days in the account of the CBA on whose behalf the deductions have been made. The executives of the trade union or federation which is the CBA in relation to an establishment or industrial unit, or as the case may be, in relation to a whole

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42 Ministry of Law and Parliamentary Affairs, Govt. of Pakistan, op.cit., Section 43.
industry are entitled to:

(a) Nominate representatives of workmen on the Board of Trustees of any welfare institutions or Provident Funds, and of the Workers' Participation Fund established under the Companies Profits (Workers' Participation) Act, 1968 (Act XII of 1968).

(b) Undertake collective bargaining with the employer or employers on matters connected with employment, non-employment, the terms of employment or the conditions of work of any person.

(c) Represent all or any of the workmen in any proceedings.

(d) Give notice of, and declare, a strike in accordance with the provisions of this ordinance.

Collective Bargaining

"Collective Bargaining" has been defined as "negotiation with a view to arriving at a collective agreement". "Collective Agreement", as per the IRO, 1969 means "an agreement in writing relating to the terms of employment and conditions of work of workmen employed in an establishment or industry which is arrived at between the employer of such workmen and a collective bargaining agent". The legal provisions relating to negotiations of an industrial dispute are:

(1) If at any time an employer or a collective bargaining agent finds that an industrial dispute is likely to arise between the employer and any of the workmen, the employer or as the case may be, the collective bargaining agent shall communicate his or its views in writing to the other party.

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3[^ibid., Section 22(6).]
4[^ibid., Section 2(IV).]
5[^ibid., Section 2(III).]
(2) Within ten days of the receipt of a communication under sub-section (1) the party receiving it shall, in consultation with the representative of the other party, arrange a meeting with the representatives of the other party, for collective bargaining on the issues in the communication with a view to reaching an agreement thereon through the procedures of a dialogue.

(3) If the parties reach a settlement on the issues discussed, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded to the conciliator and the authorities mentioned in clause (XXIV) of section P.M. The end result of successful negotiations, as stated in the above sub-section (3), is a settlement. "Settlement", as is defined in the ordinance, means "a settlement arrived at in the course of a conciliation proceeding, and includes an agreement between an employer and his workmen arrived at otherwise than in the course of any conciliation proceedings, where such agreement is in writing, has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the . . . Government, the Conciliator and such other persons as may be prescribed". Any settlement arrived at by agreement between the employer and the CBA otherwise than in the course of conciliation proceedings is binding on the parties to the agreement. The provisions as to the date for giving effect to the terms of the settlement are: "A settlement shall be effective - (a) if a

\[superscript{4}\text{6}\] The Government.

\[superscript{4}\text{7}\] Ministry of Law and Parliamentary Affairs, Govt. of Pakistan, op. cit., Section 26(3).

\[superscript{4}\text{8}\] ibid., Section 2(XXIV).
date is agreed upon by the parties to the dispute to which it relates, on such date; and (b) if a date is not so agreed upon, on the date on which the memorandum of the settlement is signed by the parties.\textsuperscript{49}

A settlement is normally binding for such period as is agreed upon by the parties. In case no such period is fixed, it stands binding for a period of one year from the date on which the memorandum of settlement is signed. But after the expiry of one year, the settlement continues to be binding on the parties until the expiry of two months from the date on which either party informs the other one in writing of its intention no longer to be bound by the settlement.\textsuperscript{50}

The IR(C)O, 1969 provides that where no settlement is reached through direct negotiations, any party can serve 21 days' notice of strike or lock-out on the other. Under these circumstances, a copy of the notice shall have to be given to the conciliator. On the contrary, the IR(R)O, 1975 provides that where direct negotiation fails to settle industrial disputes within 14 days of the receipt of the dispute by one party from the other or where a Consultative Committee\textsuperscript{51} fails to suggest

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  \item \textsuperscript{49}ibid., Section 40(1).
  \item \textsuperscript{50}ibid., Section 40(2).
  \item \textsuperscript{51}Section 8 of the Industrial Relations (Regulation) Ordinance, 1975 states that where there is no collective bargaining agent in any establishment, the Registrar shall constitute a consultative committee for such establishment which shall consist of equal number of representatives of workers and employers to be selected by the Registrar. The consultative committee shall examine workers' grievances and suggest measures for redressing such grievances.
\end{itemize}
any measure for redressing the grievances of the workers within 14 days of the submission of the grievances, the dispute of the grievances as the case may be, may be referred by any of the parties to a conciliator within 14 days of such failure. It is apparent that the IR(R)O, 1975 is quite silent about serving the notice of strike. But the IR(A)A, 1980, which has repealed the IR(R)O, 1975, admits the CBA's right to serve notice of strike subject to the fulfillment of certain conditions. The Act provides that "no collective bargaining agent shall serve any notice of strike unless three-fourths of its members have given their consent to it through a secret ballot specifically held for the purpose". 52

Conciliation

There is no legal definition regarding conciliation. By and large, conciliation starts when the conciliator takes cognizance of the notice served upon him by any of the parties to an industrial dispute for which direct negotiations has failed. But the conciliator shall have to verify some important facts before proceeding for conciliation. The IR(A)A, 1980 provides that

before proceeding to conciliate in the dispute the conciliator shall satisfy himself as to the validity of the notice of strike and if the notice does not conform to the provisions of this Ordinance53 or the rules or of the constitution of the trade union concerned, the notice of strike shall not be deemed to have been given under the provisions of this Ordinance, and in such cases, whether the notice relates to a public utility service or not, the conciliator may,

52Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, The Industrial Relations (Amendment) Act, 1980, Section 8.

53The Industrial Relations Ordinance, 1969.
at his discretion, decide not to proceed with the conciliation: Provided further that no conciliation proceeding which has been undertaken by the Conciliator under this section shall however be invalid merely on the ground that such notice of strike does not so conform. 54

The legal provisions relating to the conciliation proceedings55 are:

(1) The Conciliator shall, as soon as possible, call a meeting of the parties to the dispute for the purpose of bringing about a settlement.

(2) The parties to the dispute shall appear before the Conciliator in person or shall be represented before him by person nominated by them and authorised to negotiate and enter into an agreement binding on the parties:

"Provided that in the case of a dispute in which a state-owned manufacturing industry is involved, the representative of the Ministry or Division administratively concerned with that industry may also appear before the Conciliator." 56

(3) The Conciliator shall perform such functions in relation to a dispute before him as may be prescribed and may, in particular, suggest to either party to the dispute such concessions or modifications in its demand as are in the opinion of the Conciliator likely to promote an amicable settlement of the dispute.

(4) If a settlement of the dispute or of any matter in dispute is arrived at in the course of the proceedings before him the Conciliator shall send a report thereof to the ... Government together with a memorandum of settlement signed by the parties to the dispute. 57

54 Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, op.cit., Section 9.

55 Sub-section (VI) of section 2 of the Industrial Relations Ordinance, 1969 defines "Conciliation Proceedings" as "Any Proceeding before a Conciliator."

56 Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, op.cit., Section 10(b).

57 Ministry of Law and Parliamentary Affairs, Govt. of Pakistan, op.cit., Section 30(1,2,3 and 4).
A settlement arrived at in the course of a conciliation proceeding is binding on all workmen who were employed in the establishment or industry to which the industrial dispute relates on the date on which the dispute first arose or who are employed therein after that date. As to effective date of settlement, the provisions relating to collective bargaining are applicable to it.\(^5\) Conciliation proceedings are deemed to have concluded:

(a) where a settlement is arrived at, on the date on which a memorandum of settlement is signed by the parties to the dispute, and,

(b) where no settlement is arrived at: (i) on the date on which the arbitrator gives an award in case the dispute is referred to him, (ii) on the date on which the notice of strike or lock-out expires.\(^5\)

When no settlement is arrived at during the course of conciliation proceedings, the conciliator can try to persuade the parties to agree to refer the dispute to an arbitrator. But if the parties to the dispute do not agree to do so, the workmen may go on strike or, as the case may be, the employer may declare a lock-out, in accordance with the notice of strike or lock-out.\(^6\)

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\(^5\)Refer to pp. 115-116 of this chapter.

\(^5\)Ministry of Law and Parliamentary Affairs, Govt. of Pakistan, *op. cit.*, Section 3(1) (1 and 2).

\(^6\)ibid., Section 3(1).
Whereas, the IR(R)O, 1975 provides that

(3) If a Conciliator fails to settle any dispute or suggest any measures for redressing the grievances referred to him within 30 days of such reference, he shall issue a certificate of failure, and in that case any of the parties may refer the dispute or the grievances as the case may be, to a Labour Court within 21 days of the date of the issue of such certificate.

(4) If no reference is made to the Labour Court under clause (3), the industrial dispute or the grievances concerning shall be deemed to have ceased to exist and none of the parties shall thereafter be entitled to take any action in respect thereof.

(5) The Government may, at any time, refer any industrial dispute or workers grievances to a Conciliator or Labour Court for settlement of such dispute or suggesting measures for redress of such grievances.61

Works Council/Participation Committee

The IRC, 1969 provides that where there are fifty or more workmen in an establishment employed on any day in the preceding twelve months, the employer is required to constitute a works council comprising equal number of representatives both from the employer as well as the workmen. The number of representatives, in no case, should be less than 10 and more than 20.62 In the case of an establishment where there are one or more trade unions, only the CBA can nominate the representatives

61Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, The Industrial Relations (Regulation) Ordinance, 1975, Section 9(3, 4 and 5).

of the workmen to such works council. In the absence of CBk, the workmen can choose their representatives through secret ballot. The functions of a works council is to promote measures for securing and preserving good relations between employer and his workmen in general and, in particular—

(a) to endeavour to maintain continuous sympathy and understanding between the employer and the workmen;

(b) to promote security of employment for the workmen and conditions of safety, health and job satisfaction in their work;

(c) to encourage vocational training within the establishment;

(d) to take measures for facilitating good and harmonious working conditions in the establishment; to provide educational facilities for children of workmen in secretarial and accounting procedures and to promote their absorption in these departments of the establishment; and

(e) to discuss any other matter of mutual interest with a view to promoting better labour-management relations.63

The term "Works Council" has been substituted by the term "Participation Committee" through the promulgation of the IR(A)A, 1980. The essential ingredients required for the formation of participation committee and for determination of workers representatives to it are similar to those of the works council. The legal provisions as to the functions of the

63 Ministry of Law and Parliamentary Affairs, Govt. of Pakistan, op.cit., Section 25.
The functions of the participation committee shall be to include and develop a sense of belonging and workers' commitment in general and, in particular—

a) to endeavour to promote mutual trust, understanding and co-operation between the employer and the workmen; (b) to ensure application of labour laws; (c) to foster a sense of discipline and to improve and maintain safety, occupational health and working condition; (d) to encourage vocational training, workers' education and family welfare training; (e) to adopt measures for improvement of welfare services for the workers and their families; (f) to fulfil production target, reduce production cost and wastes and raise quality of products.\(^6\)

**An Appraisal**

An analysis of the discussions in the second part of the present chapter reveals that there was no formal labour policy of the government till 1st March, 1980. However, a number of other steps such as ratification of the ILO conventions on freedom of association and collective bargaining,\(^5\) acceptance of IRC, 1969, promulgation of IR(R)0, 1975, IR(A)0, 1977 and IR(A)A, 1980 and the announcement of labour policy have made it clear that the declared policy of the government has been to encourage healthy trade union development and the settlement of differences by mutual agreement. In all such steps, Bangladesh has recognised all the ILO conventions which were in force in Pakistan after becoming the member of ILO in 1972.

\(^{6}\)Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, The Industrial Relations (Amendment) Act, 1980, Section 7.

\(^{5}\)Bangladesh has recognised all the ILO conventions which were in force in Pakistan after becoming the member of ILO in 1972.
official ratifications, proclamations and pronouncements, there is just one theme, just one running thread that confirms the conclusion that the government is irrevocably and unquestionably committed to the system of collective bargaining. The various Ordinances and Acts have, excepting a few minor differences, some common text for collective bargaining. This is definitely a positive step which reveals the concern of the government towards collective bargaining. It is a true reflection of the governmental arrangement for better collective bargaining relationship. The provisions of the various Ordinances and Acts as described in this chapter, in brief, imply that:

(a) There is ample scope for exchange of views among the parties. The parties are under obligation to arrange a meeting to discuss the problems immediately after receiving a written complaint filed by any of the parties in a particular place at a particular time. Truly speaking, collective bargaining is a continuous affair: it requires a constant watch on day-to-day problems; it requires a continuous dialogue between the parties; mutual discussions and negotiations are its chief characteristics. The theme of such a collective bargaining relationship is reflected in the existing legal framework which is equally applicable to both private and public sector enterprises.

(b) There are several procedures for dispute settlement such as collective bargaining, conciliation, arbitration and adjudication.

(c) Establishment of works councils/participation committees and consultative committees are essential. The
formation of a consultative committee arises only when there is no determined CRA. The IRO, 1969 has strictly limited union representation to the works council in favour of that union which is declared as CRA. This is equally true in the case of participation committee.

(d) The determination of representative union, in case the number of unions in a particular enterprise or industry is more than one, is compulsory.

(e) Legal restriction on CRA right to serve any notice of strike unless three-fourths of its members give their consent to it through a secret ballot.

(f) Government intervention takes place only when both direct negotiations and conciliation fail or strikes continue for long periods.

(g) Full encouragement towards the development of rank and file leadership at the enterprise level by refusing to admit outsiders as member or officer of the plant union.

(h) Any agreement, settlement or award reached through the dispute settlement devices is binding on the parties relating to such agreement according to the terms of the agreement, settlement or award. Any act done by any party leading to breach of such an agreement, settlement or award is punishable.

It may be interesting to examine the Indian scene in this context. Professor Van Dusen Kennedy has very lucidly summed up this position:

The Legislation, in effect, grants labour relations rights of a sort to all unions, no matter how small,
but concedes no preferred status to majority unions; it permits two or more rival unions to represent workers and make demands on employers in what would in the United States be single bargaining units, without providing a means of settling representation disputes; it provides for works committees in establishments regardless of whether unions already exist in them; it requires employers to institute standing orders covering certain terms and conditions of employment by a procedure which, in effect, bypasses bargaining; it does not make bargaining compulsory and does provide alternative government machinery for dispute settlement. These are a far cry from the collective bargaining objectives announced in the First Five Year Plan.66

Thus, it seems that compared to the Indian scene, the legal steps in Bangladesh are more congenial and appropriate for effective collective bargaining relationships.

But this is not the complete story of the governmental arrangement or actions in the field of collective bargaining. A critical review of many government steps reflects a quite different picture.

The legislative framework67 fabricated to deal with the principles of management of state-owned industries is hardly

66Van Dusen Kennedy, "The Role of Union in the Plan in India". As quoted by B.K. Tandon, op.cit., p. 349.

67The government promulgated the State Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1973 to provide for the implementation of certain recommendations of the IWWC set up on 1st June, 1973 for fixation of wages and other fringe benefits. The Ordinance was repealed in 1974 and the new one was named as the State Owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974. The new Act contained all provisions of the earlier Ordinance except section 5 which reads: "Any person who receives or enjoys or allows any wage, bonus, medical allowance, house rent allowance, conveyance allowance, or leaves in excess of what is determined by the Government under section 3(1) shall be punishable with imprisonment which may extend to six months, or
consistent with the government's professed faith in collective bargaining. The government order banning the unfettered right of workers to strike is hardly calculated to encourage and promote trade unionism and collective bargaining. This is all the more true of the IR(R)O, 1975 which was enacted curtailing the union activities, stopping registration of new unions and election of CBAs and excluding strikes and lock-outs from the process of dispute settlement. The more surprising is the act of omitting the constitutionally granted right of freedom

f.n. 67 (Contd.)

with fine which may extend to Taka one thousand, or with both." According to section 3(1), "Notwithstanding anything contained in the Industrial Relations Ordinance, 1969 (XXIII of 1969), or in any other law or any rule, regulation, bye-law, agreement, award, settlement, custom, usage or terms and conditions of service for the time being, in force, the Government may, with a view to implementing such recommendations of the commission as may be accepted by it, by notification in the official gazette, determine the wage, bonus, medical allowance, house rent allowance, conveyance allowance and leave which shall be payable or admissible to any worker employed in the state-owned manufacturing industry, and no such worker shall receive or enjoy, and no person shall allow to such worker any wage, bonus, leave, medical allowance, house rent allowance and conveyance allowance in excess of what is so determined." Govt. of the People's Republic of Bangladesh, The State Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1973, Dacca, 1973.

68 The right of strikes and lock-outs in all undertakings and establishments in Bangladesh, both in private and public sectors, was prohibited by S.R.O. 14-1/75/S-VII/14(17)/75/22, dated 6.1.75 issued by the government under Emergency Power Rules, 1975. This right has again been recognised in the labour policy, 1980 announced almost five years after the ban. The Industrial Relations (Amendment) Act, 1980 also has incorporated provision regarding the right of strikes and lockouts.
of association through the Second Proclamation Order No. III of 1976. Besides these, although there are many high sounding provisions, in fact there exists a sharp contrast between the provisions of the IRO, 1969 and the IR(R)O, 1975 on matters relating to the settlement of disputes. The areas of differences are:

(1) The IRO, 1969 has not provided for any specific time limit for completion of direct negotiation between the contending parties. According to the IR(R)O, 1975, it is only 14 days from the date of receipt of the dispute by any one party from the other.

(2) As per the IRO, 1969, where the collective bargaining proceedings have failed, the employer or the CFA may serve on the other party to the dispute 21 days' notice of strike or lock-out and a copy of such notice shall be given to the conciliator who will arrange a meeting of the parties to the dispute for the purpose of bringing about a settlement. But in the IR(R)O, 1975, there is no such arrangement other than direct reference of dispute to the conciliator.

(3) According to the IRO, 1969, if conciliation fails the parties could either resort to strike or lock-out or may agree to refer the dispute to an arbitrator whose decision is final and not appealable. But in case of the IR(R)O, 1975, if a conciliator fails to settle the dispute referred to him within 30 days of

such reference he shall have to issue a certificate of failure, and in such case any one of the parties may refer the dispute or the grievances to a Labour Court within 21 days of the issue of failure certificate failing which none of the parties shall be entitled to take any action thereto.

(4) As per the IRO, 1969, the government may, by order in writing, prohibit strike or lock-out at any time in case of public utility services and in other cases if strike or lock-out continues for more than 30 days. There is no such provision in the IR(R)O, 1975. Rather it has provided that the government may, at any time, refer any industrial dispute or workers grievances to a conciliator or Labour Court for settlement of such dispute or suggesting measures for redress of such grievances.

Apart from the various government steps restricting the fair and free exercise of collective bargaining activities and the differences within the legal sanctions, there are many instances of non-execution of certain legal provisions by the government itself. The cumulative effect of all such things is that confusion and misunderstanding develop among the parties associated with collective bargaining and the atmosphere for better collective bargaining relationships between labour and management becomes totally vitiated. Once again, this goes against the government aim of having better industrial relations in the country "with a view to achieving higher national produc-

70For details see chapter VII, VIII and IX of this study.
tivity and maintaining industrial peace and discipline".71

While interviewing respondents, a mixed reaction was observed about the adequacy of present legal framework for successful collective bargaining. Data relating to the attitude of the respondents are shown in Table 4.1.

### TABLE 4.1

<table>
<thead>
<tr>
<th>Actors</th>
<th>Response to the Statement: Present Legal Framework is Adequate for Successful Collective Bargaining</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Agree</td>
</tr>
<tr>
<td>----------------</td>
<td>--------</td>
</tr>
<tr>
<td>Managers</td>
<td>16 (53.33)</td>
</tr>
<tr>
<td>Union Leaders</td>
<td>11 (36.67)</td>
</tr>
<tr>
<td>Workers</td>
<td>29 (25.22)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>56 (32.00)</td>
</tr>
</tbody>
</table>

Figures in brackets denote percentages.

Table 4.1 shows that in all 41.71% of the respondents from all categories disagreed with the statement; those who agreed were 32% and those who were undecided were 26.29%. Analysing

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71 Ministry of Law and Parliamentary Affairs, Govt. of the People's Republic of Bangladesh, The Industrial Relations (Regulation) Ordinance, 1975.
the responses group-wise, it seems that unlike union leaders and workers, the majority of managers (53.33%) expressed their agreement. In the undecided category 33.04% were workers and 26.67% managers.

To sum up, though the government is basically concerned with the development of a strong, well organised, independent and responsible trade union movement and an effective system of collective bargaining, in practice the restrictive legal steps and improper execution of legal provisions interrupt considerably the healthy growth and operation of the collective bargaining system as a whole.