CHAPTER 4

CONCEPT OF COLLECTIVE BARGAINING

4.1 General

Be they managements, trade union functionaries, Government leaders or academicians, all are unanimous on one thing: that collective bargaining is the most desirable method of conflict resolution in industry. This is so because of several reasons, some of which are listed below:

a) Unilateral decisions by the managements and the imposition of such decisions are avoided.

b) The parties to the conflict voluntarily agree on the terms and conditions of service.

c) The decision making process is across the table, generally in an atmosphere of cordiality and mutual respect.

d) The process is quicker with no financial burden on the parties.

e) No trail of bitterness and negative attitude is left.

Where collective bargaining is practised, it is believed that the disputant parties are capable of protecting their sectional interest, and a foundation for positive and mature relationship for joint efforts is laid. Once the major areas of differences are either eliminated or settled, co-operation can be spontaneous and natural.

4.2 Definitions

Here are several definitions of the term 'collective bargaining'. They are mostly given by theorists and labour analysts. There are two major schools of thought: one accept the concept and analysis given by those authors who coined the term 'collective bargaining'; and the other considers the process as 'collective negotiation'.

4.2.1 By Sidney and Beatrice Webbs

The students and practitioners of industrial relations owe the term 'collective bargaining' to Sidney and Beatrice Webbs who expounded it in their monumental work 'Industrial Democracy' (1904). The laymen and the practitioners at the grass-roots level, disinterested in any scientific theoretical analysis, feel contented with their vague understanding of the meaning of the term. However, commentators on the classical model of collective
bargaining have attempted to analyse the concept. Some of them have even gone to the extent of giving their own cautious definitions. A giant among them, in his critique of Webbs, has attempted to reappraise the concept, in the light of present day knowledge and conditions. The Webbs dealt with collective bargaining as one of several methods adopted by trade unions to further their basic purpose of maintaining or improving the conditions of their working life.

The Webbs did not give any precise definition of collective bargaining as such. However, they offered comparisons by way of explanations. Their views are quoted below:

"In unorganised trades the individual workmen, applying for jobs, accept or refuse the terms offered by the employer without communication with the fellow workmen, and without any other consideration than the exigencies of his own position. For the sale of labour, he makes, with the employer, a strictly individual bargain. But, if a group of workmen concert together and send representatives to conduct the bargaining on behalf of the whole body, the position is at once changed. Instead of the employer making a series of separate contracts with isolated individuals, he meets with a collective will, and settles, in a single settlement, the principle upon which, for the time being all work-


\textsuperscript{3} Sidney and Beatrice Webbs, \textit{Industrial Democracy}, 1904 p.173.
men of a particular group, or class, or grade, will be engaged. 4.

The Webbs explained how with the growth of trade unions, the scope of collective bargaining was progressively enlarged from a single unit to the whole local area and the whole industry on a national basis. Thus the workmen sought to enhance their bargaining power without the limiting influence of a particular unit. 5 According to Webbs, collective bargaining is equivalent and alternative to individual bargaining. The workers secured higher price for their labour when they bargained collectively, unlike with their earlier individual bargaining. Likewise, they believed that higher the scale of their bargaining unit, greater was the advantage. 6

4.2.2 Views of Flaunders

Flaunders 7 questions this theory, as according to him, the Webbs have overlooked the emergence and the role of the stronger employers' organizations in the bargaining process 8. Further, he argues that if the words are given consistent and unambiguous meaning, then collective bargaining meant by Webbs are not really collective bargaining 9.

4 Ibid.
5 Ibid p.174
6 Ibid, p.181
8 Ibid, p.3.
9 Ibid, p.3.
To establish his contention, he attempts to make a contrast between individual bargaining and collective bargaining. He quotes R.H. MacIver and C.H. Page defining collective bargaining as the process by which the antithetical interests of supply and demand, of buyer and seller, are finally adjusted, so as to end in the act of exchange. Flinders argues that individual bargaining concluded between employers and employees in labour markets, which is given a legal form of employment contract accords with this definition. It provides for exchange of work for wages, and, in stipulating the conditions of the exchange, adjusts for the time being conflicts of interest between a buyer and seller of labour. A collective agreement, on the other hand, though it is called a 'collective bargaining' and in some countries where it has legal force of a collective contract, does not commit anyone to buy or sell. It does something different. It is meant to ensure that when labour is bought and sold, its price and other terms of the transaction will accord with the provisions of the agreement. These provisions are in fact a body of rules intended to regulate, among other things, the terms of employment contracts. Thus according to him collective bargaining is essentially a 'rule making-process' and this is a feature which has no proper counterpart in individual bargaining.

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11 Flinders, op.cit p.4.
Webbs have not ruled out the rule making character at certain stages of collective bargaining. Collective bargaining has a series of stages. And it is true that rule making is a major stage. If it is admitted that collective bargaining starts with the submission of demands, and ends with the conclusion of an agreement, it may have some validity as well. In fact the conclusion of an agreement is the beginning stage of a series of collective negotiations throughout the lifetime of the agreement. Having characterised individual bargaining as an economic process of purchase and sale in the market place which does not involve rule making, how does collective bargaining become just a rule making process is left unexplained.

4.2.3 Political and Economic Implications

The distinction drawn by Flaunders between bargaining and negotiation leads him to usages and definitions. He has declared that the

1) the process of negotiation bears no resemblance to the process of bargaining as a market activity; 12

2) that bargains are something quite different from compromise settlements of power conflict; 13

and

3) that the process of negotiation is best described as a diplomatic use of power. 14

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12 Ibid, p.218
13 Ibid.
His proposition 1 is a simple statement of his definition. Proposition 2 illustrates one curious consequence on them. These may be a general agreement resulting from a compromise settlement. This is precisely what many bargains are. Proposition 3 asserts as characteristics only of collective negotiation which can also be true of individual bargaining.

Fleinders then proceeds to the proposition that, whereas bargaining is an economic process, negotiation is a political process. Whether or not one agrees that rule making is not involved, one would certainly be inclined to accept the proposition that in compromise settlements power politics are involved.

4.2.4 Chamberlain's Theories

The many deficiencies in the traditional view of collective bargaining stimulated thinking and analysis for evolving a more comprehensive theory. An attempt made to evolve a generic definition of the institution, considering the present day development is found in the works of Chamberlain. Chamberlain held that the different theories about the nature of collective bargaining could be reduced to three. 'They are collective bargaining is (1) a means of contracting for the sale of labour, (2) a form of industrial Government, and, (3) a method of management.' He named

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15 Ibid.

them respectively the marketing, the Governmental and Managerial theories. No doubt, they are presented against the American background. Yet they have relevance to the Indian context as well.

Chamberlain's marketing theory does not differ in its essentials from that of Webbs, although he was more concerned with the contractual aspect. Distinction can be drawn but for most practical purposes the individual labour contract has been replaced by the collective agreement. Consequently, collective bargaining may be viewed as the labour process which determines under what terms will be continued to be supplied to a unit by its existing employees, and by those newly employed as well.¹⁷

The Governmental theory admits the contractual character of bargaining relationships, but sees the contract mainly as providing a constitution for industrial self-government. Its principal function is to set up organs of government, to define and limit them, provide agencies for making, executing and interpreting laws for industry and means of their enforcement.¹⁸

The managerial theory, in contrast, stresses the functional relationship between unions and companies. They jointly make decisions on matters in which both have vital interests.¹⁹ The fact that union officials disclaim any

¹⁷ Ibid. p.121.
¹⁸ Ibid. p.137
¹⁹ Ibid. 
intention of usurping managements functions is immaterial, as collective bargaining, by its very nature, involves them in managerial role. They are actually de facto managers.

4.2.5 Negotiations at Management Level

Webbs are attacked on another count also. Their examples and explanations fail to accommodate the present day unionization among white-collar employees, highly skilled specialists and those personnel in the managerial cadre itself. A study on the impact of collective bargaining on the managements in America concludes that agreements have limited the managerial discretion in three principal ways: (i) by requiring that management follows rules for lay-offs, transfers, promotions, retirements, assigning overtime, setting production standards and rates, etc; (ii) by requiring that management be reasonable and fair or that management act only with just cause or after consultation with the union or with the consent of the union; and (iii) by prohibiting certain types of conduct such as excessive overtime.

20 Ibid.


Here the question is whether the degree of penetration turns collective bargaining into a method of management and involves trade union in the managerial function. Even when the subjects covered by collective agreements penetrate deeply into the managerial functions, the responsibility accepted by the trade unions in signing them does not go beyond upholding the observance of the rules they have helped to make. The managements, as a result, have to conduct themselves within the limits set by the rules, but otherwise, their responsibility for running the establishment remains unaffected. Schemes which provide for representation of trade unions on the board of directors, for joint consultation or for workers' participation in management are considered to be of a different category from that of collective bargaining.

A leading proposition in Chamberlain's original argument was that managerial theory can be viewed as a collective agreement consisting of administrative standards in the operation of the business. This was so because, apart from the known standards formulated in the written agreements, there were also 'the assumed standards which are indefinite.' But when an agreement is looked upon in this way 'as providing guidance in areas of managerial dis-

24 Ibid.
creation, its application proceeds from the interest to accomplish certain jointly conceived objectives. This is a functional conception, and when the terms of agreements fail to achieve that function in a particular case, it is the joint objective and not the terms that must control.  

4.2.6 The ILO Definition

The International Labour Organisation (ILO) gives the following definition in its Recommendation 91 on Collective Bargaining in 1951 at its 34th session:

"The term collective agreements means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers, or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or in the absence of such organisations, the representatives of workers duly elected and authorised by them in accordance with the national laws and regulations on the other.

Nothing in the present definition should be interpreted as implying the recognition of any association of workers established, dominated or financed by employers or their representatives."

This definition stipulates that all collective bargaining agreements shall be in writing. The subject

25Ibid.
matters covered in such agreements should be working conditions and 'terms of employment'. The parties to agreements so concluded can be: a single employer and representatives of one or more employees organizations; one or a group of employers or one or more employers' organisations on the one hand and one or more representatives of workers' organisations on the other. In the absence of workers' organisations, the representatives of workers duly authorised by them in accordance with the national law or regulations can be a party on the workers' side. The second part of the definition does not recognise any agreements as collective bargaining agreements, if any association of workers established, dominated or financed by employers or their representatives conclude agreements with any employer employers or employers' organisations.

The first part in the body of Recommendation 91 also speaks about the collective bargaining machinery.

1. Machinery appropriate to the conditions existing in each country should be established, by means of agreements or laws or regulations as may be appropriate under national conditions, to negotiate, conclude, revise and renew collective agreements or to be available to assist the parties in the negotiation, conclusion, revision and renewal of collective bargaining.
2. The organisation, methods of operation and functions of such machinery should be determined by agreements between the parties or by national laws or regulations, as may be appropriate under national conditions.

The second part in the first para of the recommendation suggests an alternative to the machinery for direct negotiation. This, taken together with the second para, clearly indicates that machinery other than bilateral can be made available to assist the parties in negotiation, conclusion, revision and renewal of collective agreements. This opens wide the scope of collective bargaining process. Such agreements, and settlements arrived at between the parties in a process other than direct bargain can also be brought under the coverage of collective bargaining, if the ILO definition is accepted as all inclusive.

It is true that conciliation is something different from pure collective bargaining between the disputant parties as accepted in the legal sense in India. But, according to the ILO definition, if there is a machinery created by mutual agreement or under the law or regulation appropriate under national conditions and if that machinery is made available to assist the parties in negotiation, conclusion, revision and renewal of collective agreements,

27 ILO op.cit. p.140.
then such a machinery is a collective bargaining machinery. And the resulting agreements are collective bargaining agreements. This view is shared by top Indian industrial leaders. The managements and the workers of the units under study see even in the wage board system the elements of collective bargaining.

In conciliation, the conciliator does not impose anything on either of the parties. His role is that of a facilitator, helping both parties to understand and appreciate each other's stand, to narrow down the differences by persuasion, parading data if required and to create the necessary psychological climate for agreement. In a newly developing country where collective bargaining principles are just finding roots, large scale bargaining practice may be too much to expect as well. In such circumstances, conciliation could be seen as an intermediary stage which indirectly acts as complementary to bilateral agreements.

In the absence of such a machinery, the parties might take more serious attempts in collective bargaining. Equally true is that they might, due to ignorance or rigidity, prefer a trial of strength. Thereafter, even if they settle the issues themselves across the table, it is less desirable than settlement at conciliation, which avoids confrontation.

In both conciliation and the wage board system, there is an element of bargaining. No one party can dictate terms to the other. It is only after obtaining the consent of the parties is the agreement put down in writing. The presence of a third party, without the power to impose his decision on any of the conflicting interest groups, need not make the process other than collective bargaining, if the other conditions are satisfied. The ILO definition provides for such third party assistance and aid by a machinery created under national laws and regulations. For the purpose of the analysis in the succeeding chapters, we take the definition of ILO.

4.3 Pre-conditions for Collective Bargaining

Collective bargaining practice does not take roots in all environmental conditions. There are several favourable conditions which may promote the idea, make it acceptable to the parties and even stimulate the parties to opt for a particular method from among several alternatives available. They are:

- the level of industrial development;
- the size and quality of the labour force;
- the freedom of association of the labour force;
- the stability and strength of workers' and employers' organisations;
- the creation of a machinery for bargaining;
- the willingness of the parties to adjust and accommodate;
- the avoidance of unfair practice;
- the provision of the legal framework;
- the political climate for collective bargaining;
- willingness to adjust and accommodate; and
- avoidance of unfair labour practice.

Details of these environmental pre-requisites are discussed in the following sub-sections.

4.3.1 Industrial Development

It is in the industrial societies that trade unions have emerged first. The agrarian economy did not, and normally does not, provide the environmental conditions for the inception of trade unions. This is true of India too. The only reported exceptions may be the trade union activities of the agricultural labour in Kuttanad, Kerala, since 1953. Here the agriculturists are also organised. The Government set up an informal Industrial Relations Committee which takes upon itself the responsibility of conflict resolution.

The very idea of workers' combined strength and collective bargaining is the contribution of the industrial

societies. In the early times, the workers formed groups and approached the employers with their grievances in respect of working and service conditions. On a few occasions, they succeeded, not because of their strength, alone, but the employers were convinced of the rationality and bona fides of their requests. In the textile centres of India, the early attempts to improve the conditions of workers were not the outcome of their combined strength. The justification for their demand coupled with the stature of the personalities who supported the workers' cause and, to some extent, the pressure from the British textile interests, both employers and workers, helped to secure them periodic relief. However, the workers, when they failed to evoke sympathetic consideration by the employers, resorted to withdrawal of their labour.

In many countries, formation of association for the purpose of making concerted demands on employers and the subsequent withdrawal of their labour were considered as illegal conspiracies. This was true in Indian condition too. The trade unions in the circumstances were not permanent, but temporary and weak organisations which lacked cohesion, stability and authority to negotiate binding agreements with employers. In the Indian situation

the early unions were in the form of strike committees\textsuperscript{31} without any continuity of activities or even existence.

It is around the middle of the nineteenth century that the earlier illegal and underground workers' organisations found acceptability in the form of friendly societies. In India too, the trade unions had to be clothed in the garb of friendly societies\textsuperscript{32} as the law did not permit full-fledged trade union organisations. Only later, with the set up of large-scale mass production centres did trade unions get established, and thus the first pre-condition for collective bargaining became a reality. Yet it remained confined to the unskilled and semi-skilled workers. Unionisation among skilled and white-collar employees is a phenomenon of the twentieth century. In India, trade union itself is a twentieth century phenomenon and the white-collar unionism a post Independent\textsuperscript{33} development. It acquired stability and acceptability only in the post-independent era. In the circumstances collective bargaining could not have been developed and widely practised as in the developed countries. In the developed countries, a stage has reached that trade unions exist within trade unions, i.e., the employees employed in large trade union offices have their own unions, which bargain with their employers(union) and settle the conditions of service.

\textsuperscript{31}Ibid, p.13.

\textsuperscript{32}Govt. of India, Royal Commission Report, 1931, New Delhi p.332.

\textsuperscript{33}S.D. Punekar & Maduri, White Collar Trade Unionism.
This is a natural consequence of the practical application of the trade union principles.

Agriculture still remains the predominant occupation of the people in the industrially under-developed countries. Indian condition is also not different. Eighty per cent of her population still lives in the rural areas depending directly on agriculture or on related economic activities. Industries, wherever they exist, are mainly agro-based, small ventures requiring no large-scale concentration of workers and well-developed organisational infrastructure. This situation can be compared with the conditions that obtained in the medieval period of the present industrial societies. Regulation of conditions at work and of service in this sector remains difficult even today. One of the reasons for the non-application of labour legislation to agricultural occupation in India is the anticipated difficulties in their implementation.34

In the medieval days, when workers had no social status unlike at present, and when they lived under conditions of serfdom with no mobility of employment or wage earnings, but engaged only a share of the produce in kind, they had one thing - security. Wage payment in kind is not an alien practice in India. Even today, it is practised in the agricultural sector, but is regulated under the Minimum Wages

34 V.K.R. Menon, Impact of ILO on Labour Legislation in India, ILO India Branch, New Delhi, 1956, p.16.
Act, 1948, wherever the Act is made applicable. Bonded labour, a form of serfdom, was in practice in India till 1975, when it was abolished under the emergency rule.

With the establishment of industry in a modest scale, craftsmen became the masters, and the workers had to depend on them and even to live with them. Conditions of employment as well as any grievances could be discussed personally at the workbench or at the house of the master to arrive at a speedy settlement. In these circumstances, trade unions could not have developed and collective bargaining need not have been resorted to.

The modern industry organised on large scales tends to make direct personal relationships between employers and employees almost impossible to maintain. The ownership is not vested with any single person or a family. Normally there may be thousands of share-holders. These representatives of management are mainly interested in securing better financial results for their own growth which is tied up with the growth of the enterprises to which they belong. The relationship is more contractual than anything else. In the circumstances, the security the workers had enjoyed earlier, whatever its worth might have been, has been lost. The workers thus needed protection in the new environment, and the trade unions provided it.
In the underdeveloped countries, the status and role of trade unions have been quite different from those of the developed countries. In some developed countries, trade unions are associated with national planning bodies and several other lower level policy formulating bodies. Participation in direct administration is also experimented in some countries. But the position existing in underdeveloped countries is altogether different. The industrial base of such countries is small, the units are small and few, the technology used is not of a higher order demanding concentration of work force at any one place, the industrial-employment strength is limited and the national income generated from industry, although significant does not enjoy a major share of the total. It is true that new industries are being planned and started in a scale that the economy permits. Yet the total number of people absorbed in industry in relation to the total population is very small. Out of the 65 crore population of India, only 1.25 crore are absorbed in industry.

Under developed countries are handicapped because they cannot employ modern technology. In some countries primitive and most modern technologies co-exist. In India also, such extremes co-exist. But the vast majority of industries are run on intermediary technology. While the vast majority of the people are engaged at a near-primitive technological level, sophisticated technology is used in selective areas.

The agricultural output accounts for more than 50 per cent of the national income. There is little, if any, of mass production in that sector. Rural and small scale urban industries predominate the industrial scene. Their share is no less than that of the well-organised industries. The consequences of all these are that industries are small in size, and collective bargaining is limited to negotiation with individual employers or at best with a small group of local employers. The exceptions are all India organizations like Railways, Banks, Insurance Companies, etc., and industries like Coal Mining, Plantations, etc.

When the industrial base is small, the number of industrial employees is invariably small. A 25 per cent union density makes the union membership still smaller. Many of the unions may have only a few hundred members, their membership is unstable and fund-short; multiplicity of unions is common than rare, and politicalisation of unions is real. There are some of the reasons why the employers are reluctant to recognise and bargain collectively with the unions, which they consider to be the representatives of workers.

The several difficulties confronted by trade unions and the failure of the unions to play even their basic roles, made some Governments in the underdeveloped
area to appoint Government officials to advise and assist trade unions in their conduct. For instance, the General Labour Officer appointed under the Bombay Industrial Relations Act, 1946 was meant to help the workers in the redressal of their grievances and to represent them before the employer.

Apart from the national federations and some international federation of trade unions, some Governments in the Asian countries also involve themselves in imparting workers education and training in trade union functions. The Central Board of Workers Education, under the Ministry of Labour, Government of India, is established with the objective of developing trade union officials to fulfil their responsibilities more faithfully and efficiently.

37 Sec. 34 of B.I.R. Act, 1946, "It shall be the duty of the Labour Officer to:
   i) watch the interest of the employees and promote harmonious relations between the employers and employees,
   ii) investigate the grievances of employees and represent to employers such grievances and make recommendations to these in consultation with the employees concerned for their redress,
   iii) Report to the State Government the existence of any industrial dispute of which no notice of charge has been given to gather with the names of the parties thereto".

38 I.C.F.T.U. College, New Delhi is meant to give trade union training to trade union officials in the Asian region. The INTUC and HMS are affiliated to ICFTU and therefore beneficiaries of the training programmes. The Steel workers College, Jamshedpur has been working over a decade for training trade union officials in steel industry. Other federations have adhoc training programmes, organised independently or with the financial aid from the CBWE.
4.3.2 The Size and Quality of Labour Force

We have seen in the preceding paragraphs that trade unions have come into being with industrialisation. Agrarian economy did not favour its birth or its growth. This is one major reason why trade unions have not developed in the less developed countries. Just as collective bargaining is not possible where there are no trade unions, no trade unions are possible where there are no industry/large scale employment.

In the underdeveloped countries with no industrial base, trade unions may however come into existence if there are large plantations or major farms. This is so because the concentration of workmen at one work-place can enable them to experiment with the idea of trade unionism. As the trade unions in the more developed countries consider it their fraternal responsibility to help their less developed counterparts by providing them with men, material and money, it has helped to spread the trade union movement. For instance, Malaysia is normally viewed as a developing country with an agrarian base. However, the trade union in their plantations are strong and have a record of stable collective bargaining. The Philippines is another Asian country moving towards development, but already with stable workers' organisations and established collective bargaining practices.
From these examples we can draw the following inference. These countries although basically agrarian and on the path of industrial development, since a large segment of their work-force is concentrated at one area and is employed in a particular economic activity, offer potential scope for the birth and emergence of trade unions.

It is a fact that trade union movement is totally absent among the agricultural labour in India, except in the State of Kerala. However, strong movements of workers do exist and have operated for several decades in the Assam, Tamil Nadu and Kerala plantations. There are several achievements to their credit. The stability and relative success of these movements can perhaps be attributed to the intrinsic homogeneity of the largely concentrated and localised labour force in these regions. In fact, except for the management personnel, the whole population in the plantation area comprising several square kilometers is either plantation labour or their dependents only. Their homogeneous culture and interdependence in all social activities securely bind them together. Compared to this, industrial workers in a city are a collection of heterogeneous individuals having no specific identity or common interests.

4.3.3 Freedom of Association

Freedom of association is one of the basic prerequisites for any organization to work collectively and conduct its activities in a lawful manner. If that basic
right is denied, movements may still exist and operate but underground, and not in the open. When one organisation is not legally permitted even to exist, it cannot have the status of a bargaining agent.

Prior to 1926, when the Trade Unions Act was passed, the freedom of association for trade union activities was not available to the Indian working class. Some of the earlier unions registered under the Societies Act, 1860 and the Companies Act, 1859 did so not only because of the absence of a permissive legislation like the Trade Unions Act, 1926, but also because of the prosecution against trade unionists for their collective action.

Removal of legislative restriction on concerted action of introduction of any permissive law for freedom of association does not automatically encourage workers to form trade unions. At best, it facilitates. Still it is left to the workers to decide whether they want to organise themselves in trade unions or not. Even if there are underground organisations or there exists legally permitted unions, it is again left to the workers to join them or not. Where workers form unions, it is the beginning of an attempt to have collective bargaining at some stage, immediate or distant. However, where freedom of association is denied,

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38 The Amalgamated Society of Indo-Burma Railwaymen Registered in 1806 was under the Companies Act, 1882.

39 Wadia was prosecuted for criminal conspiracy as he organised a strike in Buckingham and Carnatic Mills in 1920.
collective bargaining is impracticable, and where that freedom is restricted collective bargaining is also restricted.

4.3.4 Stability of Workers' and Employers' Organisations

In the early stages of trade union development in any country, industry or occupation, the small size of the unions and their instability in membership have acted against developing collective bargaining on an enduring basis. This is particularly true even today in the underdeveloped countries. Legislative restricting may not prohibit union formation. On the contrary, freedom of association to form unions may be guaranteed under national laws. Yet, unless the workers exercise their right and build up strong and stable unions, collective bargaining will still be elusive.

If the membership base is very small compared to the total number of workers, the employers may well refuse to recognise such unions for any meaningful dialogue. The reason is that such unions will not be able to bind the workers to the commitment they make with the management. Under the Code of Discipline, a 15 per cent minimum is the required percentage membership for unit-wise employer to recognise a union as collective bargaining agent. Normally the union with the maximum membership above the minimum prescribed level will qualify for recognition, if there are rival claimants for such recognition.
Similar to member strength, the workers' commitment to union and union activities, i.e. regular payment of membership subscription, active participation in union activities, etc. also contributes towards union stability and collective bargaining strength. Rivalry among unions is always a cause of the instability in workers' organisations.

Strong and stable unions at unit level create the structural framework for collective bargaining at that level. Federation of unions and employers' organisations on industry basis at local, regional and national levels provide the structural framework for collective bargaining on a larger scale. Those unions which flourish, but are limited to the unit level, achieve only a limited objective. The higher the scale of operations, the greater is their strength, influence and bargaining capacity.

Employers as a class have well-knit organisations at local, industry and national levels. But the level of their enlightenment varies. Some of them are definitely out of tune with the reality of the day. Yet, when compelled by circumstances, they react positively. And once they realise the advantage of industrial peace resulting from collective bargaining, they generally prefer that method for conflict resolution.
4.3.5 Creation of Machinery

In all democratic societies, irrespective of their level of development, the right to form associations is guaranteed. When trade unions are permitted to function, agitation, picketing, go slow, work stoppage, etc. may occur as part of rightful trade union activities. And this may create discomfort to the industrialists. But there are the price one has to pay, in a free democratic system, where people can dissent, criticise and protest without being unlawful.

Even if freedom of association is guaranteed, and workers have organised themselves into strong and stable trade unions, collective bargaining practice will not develop, unless the necessary machinery is created for a mutual dialogue. In collective bargaining, recognition of union(s) by employer(s) as collective bargaining agent(s) creates the necessary machinery. In the under-developed countries where the tradition of bargaining has yet to become deep-rooted, there occurs certain amount of reluctance on the part of employers to recognise unions. In other forms of conflict resolution, this recognition by the employer is not required. Multiplicity of unions provides the employers to a convenient excuse to play one union against the others. Some employers even install company sponsored unions for their self interest. Employers recognising or dealing with more than one union in multi-union situations are also not uncommon. But where the national laws stipu-
late compulsory recognition of unions for collective bargaining, the creation of the necessary machinery does not pose problems. In India voluntarism has been the Government policy in this respect. Except in Maharashtra there is no legal compulsion on employers to recognise trade unions. In its own establishments, the Government of India has not followed a definite policy in the matter.

4.3.6 The Legal Framework

Industrial relations legislation have great impact on collective bargaining. Some national legislation specifically mention collective bargaining as the principal method for establishing industrial peace and orderly growth. Some others have different methods, and bargaining remains as one among several. In countries which are not developed, trade unions are also not highly developed to give collective bargaining the full scope.

The legal framework acts in two ways:

i) It encourages or limit the scope of collective bargaining.

ii) It provides legal sanctity to collective bargaining agreements.

Where there are too many legislation, almost touching all the areas of labour-management relationship, even if collective bargaining is encouraged in policy statements, the real effect could be the curtailment of the scope.

of collective bargaining. In the case of India, with
the array of legislation on standing orders, provident
funds, gratuity, maternity, incapacity to work due to
employment injury, bonus, etc. the actual scope for bargai-
ning in these areas has become limited. This situation
is a legacy of the past. It is true that if there were
no such legislation, all the working population could not
have enjoyed these benefits. This advantage conferred on
a vast majority of workers had, however, limited the scope
and range of collective bargaining in the country.

The legal sanction\textsuperscript{42} accorded to bargaining agree-
ments is a guarantee for their implementation, their non-
implementation attracting liability of prosecution. Where
such legal sanction is not accorded, or where the collective
bargaining agreements enjoy a lesser degree of legal sanctity
for enforcement than the results of other forms of conflict
resolution, the parties are likely to opt for other methods.
Registration\textsuperscript{43} of bargaining agreements with the Government
or signing a bargaining agreement before a conciliation
officer is brought about by the higher legal sanction those
methods enjoy than that of pure collective bargaining agree-
ments.

\textsuperscript{42}No legal sanction is accorded to pure and simple bilateral
or multilateral collective bargaining agreements.

\textsuperscript{43}Under Sec. 2 (p) of I D Act, 1947.
Among the several environmental factors, the political climate obtaining in a country is the most important contributory reason influencing the practice of collective bargaining. It is in democracies that the system has gained ground and flourished. In dictatorial regimes, democratic functioning of trade unions is not tolerated. Even where the system was practised, the parties' freedom often got curtained under emergency conditions. It is therefore necessary that both the Government and the public should be convinced of the efficacy of this institution.

In some countries, the Government may be indifferent or even hostile to the system. Nevertheless, the system can survive and be a common practice. In some other countries, the system may be tolerated without giving any positive encouragement. In such situations it is an uphill task even to have a limited success. In contrast to this, some countries make positive steps. They encourage bargaining in a positive way. Removing legal restrictions against unions, regulating the conduct of both employers and trade unions, conferring legal enforceability to bargaining agreements, making provisions for registration of agreements, training up trade union leaders in their functional area, etc. are some these positive steps. If the political part in power does not believe in free collective bargaining on
ideological grounds, the practice can hardly survive.

4.3.6 Willingness to Adjust and Accommodate

Bargaining implies two things:

i) Existence of differences;

ii) Hope for adjustment and accommodation.

If there is no difference, there is no necessity for bargaining. Likewise, if there is no hope for adjustment and accommodation, there exists no scope for bargaining.

When the parties prepare themselves for bargaining, they admit the existence of conflicts, and simultaneously attempt hopefully to narrow down the differences and arrive at a final agreement. Obviously, if one or both parties merely make a few demands, when they meet, there cannot be negotiation or agreements. Consequently, at the beginning, each side normally puts forward claims, which are intended to provide the basis for bargaining, and as the negotiations proceed, one side may agree to reduce its claim on one or more items, or even put off the claims on one or more issues in return for some liberal consideration by the other side on some other item or items.

Bargaining is an art. During bargaining each participating party attempts to identify the other party's strong and weak positions. Assessment of one's own strength and weaknesses as well as study of the environmental influences help them to develop the course they should follow.
Wherever stable bargaining practices are in vogue, none takes a rigid stand on any disputed issue. On one item, any party may be relatively rigid than on others, but may be subject to adjustment according to the circumstances. A union, quite legitimate in getting its demands in toto, may not at times press for the same. Similarly a company which has no capacity to commit itself to granting liberal concessions to labour may do so at times, if convinced that alternatives are disasterous. This is a process of adjustment and accommodation. Both parties do it for industrial peace and for self-welfare.

4.3.9 Avoidance of Unfair Practices

Unfair practices by any one party spoil the mutual respect and shatter the confidence in the bargaining process. Where such practice is resorted to, relations become bitter and strained, and consequently negotiations become difficult. Yet, unfair practices are resorted to by the employers as well as the trade unions. That is why some national laws contain provisions prohibiting unfair practices. Such laws aim at regulating the conduct of the parties in collective bargaining.

In India, a voluntary code of prescribed which is meant to regulate the conduct of the parties. The code is divided into three sections:

44In USA under the Taft-Hartley Act, 1948.
Section 1 mentions the unfair practices on the part of employers.

Section II deals with the unfair practices of unions.

Section III is concerned with employers in their general conduct.

4.4 The Process of Collective Bargaining

Collective bargaining consists of three stages:

i) Negotiation and agreement;

ii) Administration of agreements, and

iii) Grievance settlements.

4.4.1 Negotiation and Agreement

A negotiation for an agreement is to the beginning of the process. Negotiation may succeed or fail to produce an agreement. Yet the process is known and understood as collective bargaining. On the other hand, even after coming to the negotiation table, if one party takes up a stiff position - an attitude of 'take it or leave it' - then there is no real bargaining, and, therefore, it cannot be treated as collective bargaining.

Similarly, if the unions do not care to consider the counter-demands, if any, made by the employers, there again the process cannot be termed as bargaining. In fact, such stands can be treated as 'ultimatum'. 
A new negotiation normally starts at the expiry of an agreement, settlement or an award. In the Indian situation, as per the law regulating such things, any one of the parties can terminate the existing terms on completion of its stipulated life, and ask for a revision. Normally, the unions present demands popularly known as 'charter of demands'. This forms the basis of negotiation.

In the charter of demands, the trade unions list items for revision and the extent of their quantum. They may also include new rights and privileges as additional terms and conditions. These additional items may be introduced for the first time in industry, or they may be existing elsewhere as an industrial practice. They may, in some cases, give justification for each demand. The quantum of such demands may be either a percentage of the existing one or an absolute figure or a combination of both.

Where stable collective bargaining is in practice, the employer, or employers' association, invites the trade union(s) for a negotiation conference. In a multi-union situation, any one union may not have substantial following. Therefore, several unions operating in the unit or industry are invited for negotiation. Where the rival unions have a common approach or maintain a working relationship for bargaining purposes, they may participate at the negotiation conferences together. In other cases, the employer or employers' organisation may have separate negotiation meetings with each union.
Bargaining may take place on unit basis, company basis or even industry basis. Unit base bargaining is more common. If the same company has more than one unit in the same industry, company-wise bargaining is attempted. Bargaining at the all India level is rare, except in organisations like railways, banks, insurance port and dock, etc. in which the nature of work, nomenclature of the job and job contents, etc. are the same or similar. Industry-cum-region basis bargaining is also not uncommon. The textile industry at Ahmedabad, Bombay and Coimbatore, the jute industry at Calcutta, and the Plantation industry at Assam, Tamil Nadu and Kerala are best examples.

Collective bargaining over the terms of an agreement can be better understood if it is recognised as three-way negotiations. There are negotiations between the trade unions in a multiple union situation, or between the different constituents in case of federation of unions, or the management representatives and their principals. Negotiations across the bargaining table tend to mask these two negotiations. But they are important in establishing priorities of each side.

A trade union organisation may have members with such as, conflicting interests, skilled, semi-skilled, young and old, day-workers and those on shifts. All have to work under the same agreement. The trade unions, therefore,
have to make choices of the needs of diverse groups. Similarly, they have to decide priority items on which they are prepared to make the least relaxation, the issues on which they can be flexible depending on the trend and the subjects that can be conveniently put off for the time being. Similar is the dilemma of the management.

When the workers and management are unable to reach an agreement, they may resort to strike or lock-out. Such strikes and lock-outs are to be understood as a means of stimulating a change in the position and of inducing the parties to reach an agreement.

4.4.2 Administration of Agreement

The process of administering a collective bargaining agreement provides the flesh and blood to the bare bone of the contract language. The agreement may have been written with care and with the help of attorneys. Yet, all possible circumstances may not be covered in the written down agreement. Therefore, difficulties arise in the operation of agreements. Ambiguities creeping into the agreement have to be cleared. Here, there is a need for interpretation of the different provisions of the agreement. Then alone can their administration be possible. Where collective bargaining is a stable practice, the agreements

themselves contain provisions for referring such differences of opinion for arbitration.

4.4.3 Grievance Settlements

Wrongful administration gives rise to grievances. It may happen as a day-to-day reality. This is normally remedied through grievance handling procedure. This prevents arbitrary actions of fitment, lay-off, retrenchment, promotion, transfer, discipline, etc. and sets up an orderly procedure for handling grievances.

4.5 Bargaining Teams

The teams to represent the parties at the bargaining table are chosen by the respective organisations. Single-unit, multi-unit company-wise or industry-wise may be the basis for bargaining. In single and multi-union situation, the bargaining teams could be the single union or the recognised bargaining agent, or all the rival unions. In a multi-union situation, where the legislative restrictions demand and single bargaining agent, the party representing workers will be only one. Where no such restrictions exist, association of all the major unions in negotiation is the pragmatic approach, as otherwise those unions neglected can create crisis situations. Here, the union with majority membership may assume the leadership. Although rivals, wherever they maintain working relationship for common good, they may have consultations and even joint pre-negotiation conferences. If the relationship among
rival unions are strained, one may try to outwit the other, and joint negotiation with the employer is therefore not possible in such cases.

The employers' representatives at unit level could be the person who holds ultimate control over the affairs of the organization or his nominee, assisted by a group of senior managerial personnel. The initial stage probing and preparation of the ground for meaningful discussion are usually done by the persons holding the industrial relations responsibilities. Other members of the teams are selected on the basis of the position they hold and the skill in collective bargaining they have established.

4.6 Negotiation Meetings

The basis of negotiation is the claims made by the unions in the form of a charter of demands. The items included in the charter of demands are normally many more than the unions themselves anticipate to get accepted. Similarly the quantum demanded may bear no relationship to what finally gets settled. As the employers generally make counter demands from this stage onwards, the negotiations is on the issues raised by the unions and the employers. The employers may be willing to accept some or even all the demands of the unions at reduced scales, but on condition that the unions agree to the counter demands made by the employers.

The first few sessions may be exploratory, to understand each other and to identify which among the dif-
different demands are more crucial to the workers and on which the unions are not that serious. They may sort out the items which need be given priority in negotiation. They may pick up the minor ones from among them. The way each party reacts to the situation can indicate the likely trend in the negotiation.

There may occur many meetings before final settlement is arrived at. If the Industrial Relations Department makes adequate background work and preparatory studies, the number of sittings by the negotiating bodies can be reduced. In between two meetings, there may take place meetings of smaller groups to explain and understand the implications of the demands or the terms about which there is already partial understanding.

The meetings are held with advance notice. The venue of the meetings is generally a common place except in the case of initial meetings. Normally the employer meets the expenditure connected with such negotiations.

4.7 Patterns of Bargaining

There are three patterns of bargaining. They represent three stages in the development of collective bargaining practices. They are: conventional, modern and productivity bargaining.
4.7.1 The Conventional Approach

This is the earliest form of approach and is still followed in many parts of the world, including India. Here, the unions initiate the process by presenting a charter of demands. Negotiations take place. They may succeed or fail. If they succeed, industrial peace is maintained. Failures result in strained industrial relations. The employers want to concede as little as possible, and the workers want to get as large a concession as possible. This is a one-way negotiation. No effort is made to commit the labour for higher productivity. This approach cannot therefore qualify as a positive one.

4.7.2 A More Modern Approach

This is one step ahead of the conventional approach. While the managements agree for negotiation on union demands, they put conditions for higher output, higher productivity, better discipline, etc. This makes negotiation a two-way process unlike in the conventional pattern. Here, the managements can be more generous with unions in their demands, if they in turn get agreement on at least part of what they expect.

4.7.3 The Productivity Approach

This approach has a recorded history dating back to 1960 only. Under this pattern, employers offer speci-
fic contributions from workers to achieve higher productivity. Wherever this type of bargaining has been the practice, the terms and conditions of service are much superior than those in situations where they are absent. This is a positive, dynamic and novel approach to collective bargaining.