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Collective Bargaining: A Tool for Securing Labours Rights in the Tea Plantation Industry in India

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ABSTRACT

The practice of collective bargaining is vital for Industrial Democracy in India. The 2nd National Labour Commission has suggested that Collective Bargaining ought to happen at the enterprise level. Article 19(1)(c) of the Indian Constitution protects the interest of the Association and Union. This process has been accepted as an essential part of industrial relations in the majority of industrialized nations. However, in this era of globalization and privatization, the employer can hire or fire. They hold more bargaining power than the trade union and are always in a position to dominate the workmen. Collective Bargaining in Tea gardens decides the daily wages and kind benefits as workers' basic living needs were satisfied through Tripartite meetings where the representations were made by workers, employers and the Government side. Despite frequent demand for minimum wages by Tea Garden labours, it has not been fulfilled as a result wages and other benefits to Tea Garden labours were decided by the Tripartite meeting. The Trade Union's representation must be strong and bias-free to make this bargaining process successful. The relationship between management and labours is important for Industrial peace and for the smooth functioning of the Tea Garden without any lockouts and strikes. But the politicization of Trade unions has further deteriorated the situation leading to the possibility of frequent shutting down of Tea Gardens. According to the Employers Federation of India, Survey (1963) Industry-wise bargaining happens in the Plantation and Textile Industries. The paper shall delve into issues of collective bargaining in Tea Gardens and challenges before the Trade Union in making a successful demand before management. Further, the paper looks into the measures adopted by the government to mitigate the issues of Tea Garden labours and the legal machinery adopted in India to combat the same.

Keywords: *Collective Bargaining, Labour Rights, Tea Garden Labourers.*

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I. INTRODUCTION

The institution of collective bargaining has become a vital factor in Industrial relations. The president of the American Federation of Labour Samuel Gompers has stated that Collective Bargaining is fundamental for determining terms and conditions of employment. The prerequisite for conducting the process of collective bargaining is the employer and employee relationship. Different countries have different patterns or stages of collective bargaining due to unequal development. However, in India at the first stage, the Employee or the Trade union group make a presentation before the employer in a collective manner. Secondly, on the basis of the presentation of demand by the employee or Trade Union, the discussion and negotiation happen between the two parties which will be on the basis of mutual give and take accomplishing the demands. Afterwards, if negotiation results in mutual satisfaction between both parties it will lead to the signing of a formal agreement or arriving at an informal understanding between them. If negotiation fails the opposite parties restore to strike or lockout to compel the other party to come to footings. Sometimes states have a vital role to play in the process of Collective Bargaining with the other two representatives mostly for the labour welfare which we termed as a Tripartite meeting. The State government interfere in some events like agent selection for bargaining, determining the enforceability of the agreement, obligating the employer and Trade Unions to bargain collectively and implying a ceiling on industrial action if there is a failure of negotiations and so on.³ Sometimes effective collective bargaining process results in the framing of industrial rules that is being followed by both employer and employee. When it comes to Tea Industry the Collective Bargaining plays an important role by securing the rights of Tea Workers as this is the only means by which Tea workers can compel the management or build pressure on owner of Tea Garden to look after the issues connected to wages of labours, holidays, bonus and working hour etc.

II. COLLECTIVE BARGAINING: CONCEPT AND BACKGROUND

Collective bargaining was initially used by Sidney and Beatrice Webb in Britain in 1891. Chamberlain has given a model of collective bargaining and according to him, bargaining power is a party's ability to secure the other party's agreement to its own term. The bargaining power of a Trade union depends upon the willingness of Management to agree to the union's demands. The bargaining power of the management will succeed if Trade Union agrees to the management's terms and conditions. Initially, individual workers get their wages according to

³ Sinha. P. R. N, "Industrial Relation. Trade Unions, a Labour Legislation" 213-215. Dorling Kindersely, India. 2006.

the employer as they negotiate with the employer for wages and other requirements. But when industrialization started the number of workers increased and employers and employees did not find it suitable to negotiate the wage amount, terms and conditions of work which led to the collective bargaining process. Employers find it easy to deal with a group than an individual. The growth of industrialization, the development of technology and trade unions is the factor for the progress of collective bargaining.⁴ In India, the collective bargaining process evolved along with the development of Trade unionism. Ahmedabad Cotton Textile Industry is the place where the first such arrangement was made for regulating the relationship between Labour and management. However, there was no significant growth till 2nd World War. It was only after independence with the considerable efforts of the government the growth of the Trade union provided importance to the process of collective bargaining. The process has flourished because of the Legal provisions, voluntary procedures, the Industrial Truce Resolution of 1962 and an amendment to the Industrial Dispute Act, of 1947.⁵ The Workers' right to association, right to organize and collective bargaining is recognized under India's First five-year plan as a fundamental root for smooth functioning of industrial relations. However, the state objective is to encourage collective bargaining and mutual settlement of the industrial dispute to minimize governmental intrusion in labour management relations. The 2nd Five-year plan emphasizes mutual settlement for the resolution of industrial disputes. Further, industrial peace is indispensable for the development of the industrial undertaking. Legislative framework relating to Labour can only provide a suitable framework in which employer and worker can function. Industrial peace can be achieved only through the parties themselves. The most suitable solution could be found by mutual agreement. The 3rd five-year plan put emphasis on voluntary negotiation and its adoption in place of compulsory adjudication. It also aims for increasing voluntary arbitration. Now employer has a duty to extend readiness to submit disputes to arbitration. This needs to be a normal practice to adjudicate important obligations adopted by the parties under the code. The fourth and fifth five-year plan has highlighted more on collective bargaining and solidification of the trade union movement for healthier Labour management relations reinforced by voluntary arbitration. According to the Indian Government Report, the National Commission on Labour (1996) made a proper examination of all issues concerning Labour thus framing a sequence of sanctions to make the process of collective bargaining a success. The Commission recommended that strike and lockout should be there in the proposed

⁴ Arun Monappa, Ranjeet Nambudiri, and Patturaja Selvaraj. 2018. *Industrial Relations and Labour Laws*. New Delhi: Tata Mcgraw-Hill Education.

⁵ R. Sivarethnamohan. 2010. *Industrial Relations and Labour Welfare: Text and Cases*. PHI Learning Pvt. Ltd.

scheme as bargaining cannot exist without the right to strike or lockout.⁶ In India collective bargaining has become a part of Industrial adjudication.

(A) Stages of Collective Bargaining:

The first is to form a team from both parties for representation in the negotiation process. Any of the parties employer or employees can initiate a call for collective bargaining negotiation. The Union representatives draft a charter of demands and discussions with members of the union. The charter contains the issues involving with pay, hours of work, benefits, grants, employment term period etc. establishment with multiple unions prefer a common charter of demands that does not mean all union cannot submit different charters. After that, the process of negotiation takes place where both employer and trade union make themselves equipped with required information like facts, data, statistics and policy framework for better arguments during negotiation. Discussion and debates take place on demands made by the Trade Union. In case the employer shows negative towards the demands the Trade Union may go on Strike. This process will take longer time if the employer has to deal with multiple Trade Unions. Collective Bargaining Agreement scheduled between employer or management and employee denoted by Trade Union that may be Bipartite agreement, memorandum of settlement or consent award. The Unions may proceed with a strike if both parties fail to come to one collective agreement or conclusion. But public utility sector employees cannot go on strike before providing a prior notice of Six weeks and may strike for 14 days as provided under the Industrial Dispute Act. After the Conciliation process takes place when the conciliation officer gets the strike notice and lockout notice. The conciliation officer appointed by the state government during the 'Cooling off Period' to investigate the dispute and make settlement arrangements. It may also appoint the Conciliation Board as recommended by both parties. During the process of conciliation, no strike shall be initiated and the process may provide a settlement or if the settlement did not happen the option would be a reference to Labour Court or Industrial Tribunal. When the conciliation and mediation fail to provide any resolution the parties might opt for Voluntary or Required Arbitration. A final ruling must be made within 6 months of the initiation of an investigation. The final print of the arbitration agreement needs to be signed by everyone and the same shall be given to the concerned government officer and officer for conciliation. The government publishes the judgement in Official Gazette within one month of receipt of the copy.⁷

⁶ S.C. Srivastava. *Industrial Relations and Labour Laws 138, 7th Edition*. Vikas Publishing House.

⁷ "India: Trade Unions and Collective Bargaining M U MBAI S ILICON VALLEY BANG ALO RE S ING APO RE MU MBAI BKC NEW DELHI MU NICH." 2019.

(B) Levels of Collective Bargaining:

There is a different level of bargaining in different sectors. At the National Level Bargaining negotiations take place in the industries which are controlled by the government. There will be more than one national-level Trade Union Federation and Employer Organisations. For example, National Level bargaining is common in Iron and steel, postal departments, banks etc. in Industry- cum regional bargaining level involvement of one or more employer's organizations and Trade union federations. It has a range of bargaining patterns and results in the standardization of terms of employment and working condition in industry. This may also happen at a regional or sub-regional level depending upon the issues. For example, in industries like cotton, jute textile and transport this level of bargaining happens. Enterprise-level negotiations take place between management and enterprise-level union representatives which affects all workers within the unit of enterprise. Plant-level bargaining happens when the negotiation or agreement happens between trade union federations at the company level involving representatives of different plants of an establishment. For example, the negotiation between TISCO and Tata Workers Union (1956). This type may result in decentralized agreements.⁸ The bargaining may take place through Bipartite or voluntary agreements, Settlements or Consent awards

III. LAW GOVERNING COLLECTIVE BARGAINING: INTERNATIONAL FRAMEWORK

The twenty-sixth session of the International Labour Organisation General Conference in Philadelphia, 1944 adopts the aims and objectives of ILO with principles which supposed to encourage the strategy framework of its associates. The conference recognizes the obligation of the ILO that would effectively recognize the right of bargaining collectively and the cooperation between management or owner and Labour and the collaboration between employees and employers in the implementation of economic and social measures. It also emphasizes that for effective growth and development, the freedom of Association is fundamental.⁹ The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87) reflects the object of the Preamble to the Constitution of the International Labour Organisation which declares that "recognition of the principle of freedom of association" helps in improving the circumstances of Labour and establishes peace. Further, the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress".

⁸ Piyali Ghosh & Shefali Nandan. 2018. *Industrial Relations and Labour Laws*. Chennai, McGraw Hill Education (India) Private Limited.

⁹ "ILO DECLARATION of PHILADELPHIA Declaration Concerning the Aims and Purposes of the International Labour Organisation."

According to the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) the appropriate measures at the national level should be taken to promote the process of Voluntary negotiation among employer and employer's organization, worker's organizations to control standings through Collective Bargaining. The Collective Bargaining Convention, 1981 (No. 154) focuses on the upgradation of collective bargaining in all branches of economic activity including public service.¹⁰ Tripartite Declaration of Principles Concerning Multinational Enterprises & Social Policy, 1977 India has only ratified two of the conventions and Recommendations mentioned above which relate to the Right to Association and Tripartite Consultation. However, with respect to a few Recommendations India has submitted to the competent Authority. According to Guy Ryder the Director General of the International Labour Organization Collective Bargaining has occupied a very vibrant role throughout a pandemic in counterfeiting resilience by safeguarding Labour and enterprises, preserving business steadiness and securing employment and pay. The more coverage of employees under collective agreements, the less will be the wage difference reflected by the report (Social Dialogue Report 2022: Collective Bargaining for an Inclusive, sustainable and resilient recovery). Over 1/3rd of Employers around 35 per cent in total 98 countries have their, working hours and other countries of work fixed by independent collective bargaining between Labour Union and employer or employer organizations. However, there is a disparity among different nations. According to the study of ILO, Collective Bargaining is an important instrument to bring fundamental change that will improve the work. Countries have engaged in measures to confirm the active acknowledgement of collective bargaining rights for all workers. It will make a significant influence on the inclusion and active governance of work, with confident effects on solidity, equality, obedience and the flexibility of initiatives and Labour markets.¹¹ Article-23 of the Universal Declaration of Human Rights, 1948 also secures the right to form and join trade unions for securing the interests of the members.

IV. LAW GOVERNING COLLECTIVE BARGAINING IN INDIA

The Preamble of the Indian constitution secures social, Economic, and Political justice for its citizens and gives liberty to express their thoughts and expression. Further, Promote equality of status and of opportunities to every citizen. India is a socialist country that secure the interest of all working group. This indicates the worker's group has full freedom of expression of their demands and issues. Collective bargaining provides an opportunity for the working group to express their thoughts and ask for reasonable demands from the employer's organizations. In

¹⁰ "International Labour Standards on Collective Bargaining." n.d. [Www.ilo.org](http://www.ilo.org).

¹¹ "Collective Agreements Contribute to Fighting Inequality, Says ILO." 2022. [Www.ilo.org](http://www.ilo.org). May 5, 2022.

this process both the parties have equal opportunity to express their issues and sufferings. The Constitution's Fundamental Rights and Directive Principles of State policy act as the basis for Labour Policy. Collective bargaining has become a part of Industrial adjudication. In ***Karnal Leather Karamchhari Sangathan Vs. Liberty Footware Co. (1989) 4 SCC 448***, the apex court has observed that “Collective Bargaining is a technique by which dispute as to the condition of employment is resolved amicably by agreement rather than coercion.” This shows that collective bargaining forms the basis of social and economic justice for the working class. According to the report of 2nd National Labour Commission 2002 Collective Bargaining is highly preferable to regulate employment relation and there is high wage and less number of strikes which is very important for our nation. However, to ensure collective bargaining freedom of Association is necessary. In this respect, the International Labour Organisation has adopted Convention No. 87 which touches upon the Freedom of Association and Protection of the right to organize but has not formally ratified the convention. However, it is guaranteed under Indian Constitution under Article 19(1)(c) ensuring the formation or right to join Associations or unions to freely express the matter they want to resolve and other essentials for effective bargaining are the need for a strong and stable trade union, Recognition of Trade Unions and willingness to give and take.¹² Article- 38 of the Constitution ensures the welfare of the people by securing and protecting a social order in which justice is social, economic and political. The state shall aim to minimize Inequity in income and to eliminate inequality in status, facilities and opportunities among citizens. Article 43 directs the state to secure by suitable legislation or any other way to all workers living wage, and condition of work ensuring a decent life standard that can be achieved in Tea Garden through proper collective bargaining. Article -43A of the Indian Constitution ensure workers' right for participating in management and state government play a vital role in tripartite consultation. Trade Union Act, of 1949 provide recognition and protection of the Trade union and laid the rights and responsibilities of the Trade union. Process for registration of unions and rights of their associates like participating in the collective bargaining process. ¹³Industrial Dispute Act, 1947 regulates the whole process of industrial dispute resolution and delivers regulations for the creation and registration of Trade Unions. also appoints conciliation officers, boards and courts to ease dispute resolution. The objective of this Act is to improve Industrial Labour Conditions by providing them with basic amenities of life that will lead to industrial peace. This would lead increase the Labour productivity further

¹² Srivastava, S.C. (2007). *Industrial Relations And Labour Laws*. New Delhi, ND: Vikas Publishing House PVT LTD.

¹³ Pyne, CA Sanat. n.d. “Understanding Collective Bargaining in India: Legal Framework, Process and Case Studies.” CAclubindia. Accessed July 20, 2023

improving the Labour condition as held in *Hindustan Antibiotics vs. The Workmen*¹⁴

V. THE COLLECTIVE BARGAINING IN TEA GARDENS: ISSUES & CHALLENGES

Collective bargaining is the procedure which has the capacity to increase the wages of people at work. But this has proved to be the opposite regarding the workers in Tea Gardens, especially in the North Eastern part of India. where the wages and other factors of benefit are through the bargaining process. It has been evident that in a few states of India collective bargaining has been proved to be a failure in securing the wage hike demands made by the Tea Workers. The main reason for the unsuccessful demand could be the unhealthy Trade union which were always affiliated with some political parties which are there only to grab the attention and have maximum voters in their respective affiliated political parties. Another reason could be the improper representation of workers in Trade unions. The member selected for representation of workers may not be a person who belongs to the Labour class and who cannot understand the real issues faced by the workers. If the workers are from the Labour class he or they may not be competent to bargain in front of the management or the employer. The women Tea plucker are the major workforce in Tea Gardens. However, when it comes to the representation of women in Trade unions and higher positions on women in Trade unions the statistics are very poor. Even if the female worker gets the representation, it will be at the floor level's leadership. Sometimes the women represented in the Trade union would belong to a women's wing from various political parties.¹⁵ The males who contribute less workforce could not understand the real issues faced by the large number of women Tea Labours so the issue particularly relating to women's rights has never been a discussion for Trade Unions. For the success of collective bargaining constructive consultation between the management and the Trade Union of Tea Gardens are necessary. This process will be effectively completed if both sides have equal bargaining power. Both parties should effectively represent their group interest and responsibilities. The give-and-take policy needs to follow in the meeting. Collective bargaining basically depends upon the strength of Trade and Labour Unions. Weak unions cannot able to argue strong negotiation. The prevalence of political interference in the matters of the Trade Union has again created inter-union rivalries. The Trade union has violated the provisions of the Plantation Labour Act by not allocating the leadership to people having the same background as Plantation Labour.¹⁶ The management always has a negative attitude towards unions that hampers the process of collective bargaining which losing its importance now due

¹⁴ AIR 1967 SC 948

¹⁵ "Chapter-6 TRADE UNIONS and WOMEN TEA PLANTATIONS WORKERS." n.d. Accessed July12, 2023.

¹⁶ "Despite Unionisation, Why Are Tea Workers Exploited?" 2019.

to the non-accessibility of adjudication.¹⁷ The Trade Union leaders are losing the confidence of Tea Garden Management because of the existence of various Trade Union having ideological differences which has divided the workers into different groups causing inter-union rivalries that have caused the lives of many workers in Tea Gardens. As everyone heading towards development the needs of the Teagarden workers are also changing but the union leader has failed to represent these issues of workers in the Collective Bargaining process because of their own personal interest. Most of the Trade Union is begin operated or run by Political parties which utilize power for their relative gain and affect the functioning of Trade union movements across the North-Eastern region where Collective Bargaining is considered to be the single tool to protect the Labour's rights. When it comes to the leadership of Trade unions.¹⁸ The Tea Industry is witnessing an eroded bargaining process as Tripartite agreement industry-wide agreements have been minimized. The bargaining power of Unions deteriorated due to the increasing number of Unions. The North Bengal region of West Bengal consists of Twenty-Two operating Unions in the Tea Industry and the majority of these unions were affiliated to regional political Parties.¹⁹ In a few situations the terms and conditions of work, and wages were decided by the individual garden owner because of which variations exist according to the area of gardens. The majority responsibility of owners of Tea gardens is fulfilled by the government welfare scheme such as ration, water, education and healthcare.²⁰ Which may further minimize the scope of bargaining by the Trade Union in the above-listed matters.

VI. CONCLUSION

For the success of collective bargaining constructive consultation between the management and the Trade Union of Tea Gardens are necessary. This process will be effectively completed if both sides have equal bargaining power. Both parties should effectively represent their group interest and responsibilities. The give-and-take policy needs to follow in the meeting. Collective bargaining basically depends upon the strength of Trade and Labour Unions. Weak unions cannot able to argue strong negotiation. The prevalence of political interference in the matters of the Trade Union has again created inter-union rivalries. The management of Tea Gardens always has a negative attitude towards unions that hampers the process of collective bargaining which losing its importance now due to the non-accessibility of adjudication. The women are

¹⁷ R. Sivarethnamohan. 2010. *Industrial Relations and Labour Welfare: Text and Cases*. PHI Learning Pvt. Ltd.

¹⁸ Gurung, Sarad. 2021. "Labour, Trade Union and Tea Industry: Contextualizing Indian Plantation System." *Journal of Advances in Social Science and Humanities* 7 (1): 1395–1401.

¹⁹ Review of Synopsis on Survey of Tea Gardens Conducted by Regional Labour Offices under Jurisdiction of Joint Labour Commissioner, North Bengal Zone. 2013. Siliguri, Darjeeling.

²⁰ Sen, Ratan . n.d. Review of Tea Workers- Distressed in Organized Industry in North Bengal. *Indian Journal of Industrial Relation & Human*. Accessed July 5, 2023.

the main workforce in Tea gardens but when we consider the representation of women in Trade unions, is very limited as they were expected to fulfil their marital and household obligations first. To secure the rights of tea workers the trade union should have more representation from women workers and should be trained with knowledge and skills to negotiate in the Bargaining process.

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