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# Collective Bargaining in India: A Critical Analysis of its Structure and Framework

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## ABSTRACT

*Collective bargaining is the term used to define the process whereby employers must attempt to negotiate an agreement with the trade unions rather than with specific workers over terms of employment and working conditions. This is typically done with the objective to enable workers voice their concerns and engage in improved negotiations with their employers in order to fulfil certain demands and rights of the workers, including those pertaining to working hours, salary, working conditions, etc. This practice is often quite effective since it frequently results in companies acting to address the concerns of the employees. In India's private and public businesses, this method of resolving industrial disputes has revolutionised labour relations. This is due to the fact that business and commerce will inevitably encounter problems, and it is impractical to have courts adjudicate every one of them. As a result, using collective bargaining as a form of dispute resolution in the workplace has proven to be effective. This paper's primary objective is to critically analyse the concept of collective bargaining in general, including a study of its scope, aims, types, conditions, environment, theories, and various levels, among other topics. Additionally, it makes an effort to examine its concept from an Indian perspective in order to comprehend its framework and structure in the Indian context.*

**Keywords:** Negotiation, agreement, trade union, industrial disputes, conciliation.

## I. INTRODUCTION

In the course of collective bargaining, a company's employees and employer come together to amicably resolve labour conflicts through negotiations and agreements. It includes organising workers into labour unions, negotiating, administering, and interpreting collective bargaining agreements that set wages, working hours, and other working conditions, as well as engaging in concerted economic activity dispute settlement processes. It is a two-sided process in which the sole parties are the employee and the employer. Only these two parties have the authority to participate in negotiations. The conversation is conducted collaboratively without the involvement of a third party.

The International Labour Organization (ILO) states that the right to collective bargaining is a

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fundamental right that belongs to every worker. This suggests that each employee has the right to voice their complaints to their employers in an effort to find a solution. Collective bargaining, according to the ILO, protects workers' rights to a fair workplace and also helps to lessen inequalities there.

Collective bargaining addresses a wide range of concerns. These concerns can be divided into three groups: mandatory subjects, voluntary subjects, and illegal subjects. Anything that the law requires of the employer is a mandatory subject that must be covered, including wage, overtime, and workplace safety. Voluntary subjects include things that can be negotiated but which the law does not mandate, such as decisions regarding employer board members and union matters. Anything that violates the law, such as workplace discrimination, is considered an illegal subject.

Although India's industrialization was delayed, after independence the genuine meaning of collective bargaining gained ground. In West Bengal in 1947, the Dunlop Rubber Company drafted the first collective bargaining agreement. Following that, in 1951, the Indian Aluminium Corporation in Belur and the Bata Shoe Company in West Bengal drafted their own five-year agreements. This idea of collective bargaining was first introduced by the Imperial Tobacco Company in 1952. By 1955, many large Indian corporations, including the Tata Iron and Steel Company and Hindustan Lever, as well as numerous small businesses, had adopted it.<sup>2</sup>

### **(A) Methodology**

This research's sole objective is to analyse critically the idea of collective bargaining as a whole, taking into account its many levels, types, conditions, environment, theories, and scope, among other things. Additionally, this paper also focuses on examining the framework and structure of collective bargaining in the Indian context. To do this, I will employ the mode of secondary research and, as a result, gather data from a variety of sources, including journal articles, books, websites, and review articles.

## **II. MEANING AND CONCEPT OF COLLECTIVE BARGAINING**

Collective bargaining is the process of negotiating the terms and circumstances of employment between an employer and a group of employees, who are typically represented by a union. The negotiation covers a wide range of topics such as wages, hours of work, benefits, working conditions, and job security.

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<sup>2</sup> Dr. Punam Kumari, *Collective Bargaining – An Overview*, 7 IJSRST.1, 377 (2020), <https://ijsrst.com/paper/7145.pdf>

The words collective, which indicates joined or a group activity, and bargaining, which suggests negotiating, make form the phrase "collective bargaining." Together, they denote group or collective negotiating. On one side of the negotiation are the representatives of management, and on the other are the representatives of the workforce or unions. The aim of collective bargaining is to come to a fair agreement that benefits both the company and the employees, and that creates a cooperative working environment.

According to Article 2 of the Collective Bargaining Convention, 1981 (No. 154) of the International Labour Organisation<sup>3</sup>, "*collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for*

*(a) determining working conditions and terms of employment; and/or*

*(b) regulating relations between employers and workers; and/or*

*(c) regulating relations between employers or their organisations and workers or workers' organisations".*

Many nations, including the United States and the members of the European Union, view collective bargaining as a fundamental right. The process is designed to provide employees with a voice in the workplace and to help ensure that their rights and interests are protected. The terms and circumstances of the agreement are typically outlined in a collective bargaining agreement and are legally binding if established through collective bargaining (CBA).

Collective bargaining is a key aspect of labor relations and can play an important role in maintaining stability in the workplace, promoting economic growth, and improving the standard of living for workers. By negotiating with a collective voice, employees are able to negotiate better wages, benefits, and working conditions than they would be able to individually. Collective bargaining can also help to reduce conflicts and improve the overall quality of life in the workplace.

### III. CHARACTERISTICS OF COLLECTIVE BARGAINING

Collective bargaining is a process of negotiating the terms and conditions of employment between an employer and a union representing the employees. Some of the key features of collective bargaining include:

1. **Negotiations:** Collective bargaining involves negotiations between the employer and

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<sup>3</sup> Art. 2, International Labour Organization (ILO), *Collective Bargaining Convention, C154*, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312299](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312299)

the union to reach an agreement on the terms and conditions of employment.

2. **Representation:** Collective bargaining provides a voice for employees in the workplace, allowing them to negotiate their rights and benefits through a union representative.
3. **Contractual agreement:** The outcome of collective bargaining is a written contract, known as a collective bargaining agreement (CBA), that sets forth the terms and conditions of employment.
4. **Binding agreement:** The CBA is a legally binding agreement that is enforceable in a court of law.
5. **Improved working conditions:** Collective bargaining can lead to improved working conditions, such as better pay, benefits, working hours, and job security.
6. **Conflict resolution:** Collective bargaining provides a mechanism for resolving disputes between employees and employers.
7. **Collective action:** Collective bargaining allows employees to engage in collective action, such as strikes and boycotts, to secure their rights and interests.
8. **Protects employee rights:** Collective bargaining helps to protect the rights of employees and ensures that they are treated fairly in the workplace.

#### IV. IMPORTANCE OF COLLECTIVE BARGAINING

An agreement between an employer and employee representatives that outlines the terms and conditions of a contract after a "collective bargaining procedure" is known as a collective agreement. In essence, collective bargaining is the process through which employee representatives bargain with an employer on behalf of the employees they have been designated to represent. In some circumstances, the collective agreement may be applicable to the entire workforce, while in others, it may only be relevant to a particular set of employees, known as the "bargaining unit" in this context.<sup>4</sup>

Collective bargaining is a key component of industrial relations, which encompasses the relationships and interactions between employers, workers, and their representatives. The primary role of collective bargaining in industrial relations is to facilitate negotiations between workers and employers over employment conditions, wages, benefits, and other aspects of the

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<sup>4</sup> Anne Morris, *Collective Bargaining & Agreements*, DAVIDSON MORRIS, <https://www.davidsonmorris.com/collective-bargaining/>

workplace.

Collective bargaining plays several specific roles in industrial relations, including:

1. **Balancing power dynamics:** Collective bargaining helps to balance the power dynamic between employers and workers by allowing workers to negotiate as a group and present a united front. This can help to prevent employers from taking advantage of individual workers or making unilateral decisions that could harm workers' interests.
2. **Promoting communication and collaboration:** The collective bargaining process involves communication and collaboration between workers and employers, which can help to build trust and foster a more positive relationship between the two parties. This can lead to greater job satisfaction and productivity, as well as improved workplace safety and working conditions.
3. **Resolving conflicts:** Collective bargaining can also help to resolve conflicts between workers and employers by providing a structured and negotiated process for addressing grievances and disputes. This can help to prevent strikes, lockouts, and other forms of labor unrest that could be harmful to both workers and employers.
4. **Improving working conditions:** Through collective bargaining, workers can negotiate for better working conditions, including safer equipment, improved facilities, and reduced workloads. This can help to improve job satisfaction and productivity, as well as reduce absenteeism and turnover.
5. **Establishing fair wages and benefits:** Collective bargaining allows workers to negotiate for fair wages and benefits that reflect the value of their work and the cost of living. This can help to reduce income inequality and promote social and economic equity.

One recent example of collective bargaining is the agreement reached between the United Auto Workers (UAW) union and General Motors (GM) in 2019. After a month-long strike, the UAW and GM agreed to a new four-year contract that included higher wages, improved benefits, and a path for temporary workers to become permanent employees. The negotiations between the UAW and GM involved representatives from both sides working together to come to an agreement that satisfied the interests of the workers, the company, and the union. The agreement was ratified by the UAW membership and helped to end the strike and return employees to work.<sup>5</sup> This is just one example of collective bargaining, which is a process in which workers

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<sup>5</sup> Debapratim Purkayastha; Hadiya Faheem, *Collective Bargaining: The General Motors-United Auto Workers Deal*, THE CASE CENTRE, <https://www.thecasecentre.org/products/view?id=81774>

collectively negotiate with their employer for better wages, benefits, and working conditions.

Therefore, collective bargaining plays a critical role in industrial relations by facilitating negotiations and promoting cooperation and collaboration between workers and employers. By creating a more stable and predictable work environment, collective bargaining can help to improve job satisfaction and productivity, while also promoting social and economic justice.

## V. PRE-REQUISITES FOR COLLECTIVE BARGAINING

Systematic base preparation is crucial for successful negotiations and enforcement in the framework of collective bargaining in order to foster a sense of solidarity among workers. A solid foundation of staff support, understanding, and dedication is also built through methodical base preparation, which is essential for effective outcomes. As a result, rigorous preparation of the base or ground for bargaining is necessary for efficient negotiations and enforcement, which includes the following three processes:<sup>6</sup>

1. **Recognition of the Bargaining Agent:** The management ought to acknowledge the trade union for taking part in the collective bargaining process. If there are multiple unions, selection could be made by membership verification by a government agency that represents all the major unions through joint consultations. So, before taking any action, it is important to correctly identify the workers' bargaining representative.
2. **Deciding the Level of Bargaining:** It should be determined whether the deals are restricted to an enterprise level, an industry level, a regional level, or a national level because the nature, extent, and enforcement agencies vary depending on the situation.
3. **Determining the Scope and Coverage of Bargaining:** It would be better to fully comprehend the issues up for negotiation. Even while discussions during negotiations are typically restricted to issues including compensation and working conditions, it would be advantageous for both the union and the management to address as many issues as possible to prevent further hostility and contention. Hence, it is necessary to take into account all the pertinent and relevant issues.

## VI. STAGES OF COLLECTIVE BARGAINING

A good negotiator and a willingness to make concessions on both sides are essential in the difficult and complex process of collective negotiation. This may be a challenging and frustrating procedure for all sides because there can be lot of back-and-forth with bids and

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<sup>6</sup> Ronil Goger, *Pre-Requisites and Process of Collective Bargaining*, LEGAL SERVICES INDIA, <https://www.legalservicesindia.com/article/1441/Pre-Requisites-and-Process-of-Collective-Bargaining.html>

counteroffers. Yet coming to a consensus is the ultimate objective.

There are several stages to the procedure. The following is a summary of these steps:

### **Forming a union**

Seven employees are required to form a trade union, according to Section 9A of the Trade Unions Act of 1926<sup>7</sup>. Although registering a union is not required, there are several benefits, including proper worker representation, the ability to use funds for specific goals, protection from legal lawsuits, etc.

### **Making a charter of demands**

The union or the business may now begin the collective bargaining procedure. After lengthy meetings with each of its members, the labour organisation then drafts a charter of demands.

### **Negotiation**

The charter of demands is submitted to start the negotiations. In most cases, the union is the one who formally proposes modifications to the current collective bargaining agreements during the first meeting. The management is then given the chance to make counterproposals. They keep doing this until they reach a consensus. A third person may be chosen as a mediator or arbitrator if they are unable to come to an agreement on their own.

### **Forming an agreement**

After a successful negotiation, a written agreement is created between management and the union. A collective bargaining agreement is the name given to this arrangement.

### **Strikes**

The union has the right to call a strike if negotiations are unsuccessful. Employees in the public utility industry are required to give six weeks' notice of a strike under Section 22 of the Industrial Disputes Act<sup>8</sup>, and they have fourteen days to strike after giving that notice. While the conciliation is ongoing and for seven days following the conclusion of the conciliation processes or for two months following the conclusion of the legal proceedings, neither management nor the union may engage in any form of industrial action.

### **Conciliation**

When the conciliation officer gets a strike notice, the conciliation process starts. There are two options available to you at this step. According to Section 4 of the Act, the state government

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<sup>7</sup> Trade Unions Act, 1926, , § 9A, No. 16, Acts of Parliament, 1926 (India).

<sup>8</sup> Industrial Disputes Act, 1947, § 22, No. 14, Acts of Parliament, 1947 (India).



may designate a conciliation officer for the purpose of investigating, mediating, and advocating settlement during the cooling-off period. The second option is for the state government to appoint a Board of Conciliation, which shall be made up of a chairman and either two or four members, in accordance with Section 5 of the Act. According to Sections 22 and 23 of the Act, strikes are not organised during the conciliation procedure. According to Section 20 of the Act, this process must finish with a settlement or a referral to an industrial tribunal or labour court, however occasionally no settlement is reached.

### **Arbitration or adjudication by industrial tribunals or labour courts**

If the conciliation procedure fails, the parties may choose to arbitrate either voluntarily or involuntarily, and the arbitrator's recommendations may have legal force. A state's labour court or industrial tribunal may decide certain disputes, according to Section 7A of the Act. In order to settle disputes involving matters of national importance, national tribunals may be established under Section 7B of the Act. The case may be sent by written agreement between the employer and the employees to a national tribunal, industrial tribunal, or labour court for arbitration or adjudication.

## **VII. LEVELS OF COLLECTIVE BARGAINING**

Every level of a firm experiences conflicts, whether they are localised to a particular craft or widespread across the country. Regions, unions, and other factors influence the amounts of collective bargaining. The issue may be resolved more quickly and the behaviour of the industry can be predicted when an organization's industrial conflicts are categorised according to levels. Collective bargaining often takes place at four levels.<sup>9</sup>

### **National-Level Bargaining**

Typically, this negotiation is conducted with the management and the national level union. When negotiations take place at the national level, the main benefit is that issues are recognised by all industries and all industrial employees. The uniformity and standardisation of pay and wage structures are advantages of bargaining at this level. It keeps arguments and differences at bay.

### **Industry-Level Bargaining**

These unions are set up as industry federations for each individual industry. The discussions and bargaining include basic salary, allowances, production capacity, production norms, and

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<sup>9</sup> Divyangi, *Collective Bargaining*, LEGAL SERVICES INDIA, <https://www.legalserviceindia.com/legal/article-8300-collective-bargaining.html>

working conditions specific to that industry. In one industry, industry-wide negotiations guarantee uniformity in labour costs and working conditions. A combination of industry- and region-based negotiating is another option for industry-level negotiations.

Standard salary and allowances are not imaginable as considerations at industry-level negotiation because of the disparities in performance, technology, and productivity. Industry-level negotiating has become less successful over time.

### **Corporate-Level Bargaining**

Corporate collective bargaining is the process by which the management of a company with many locations negotiates a single contract with a wide range of unions on behalf of each of its factories. Collective bargaining sessions with representatives from various factories are routinely held by corporate management. Corporate level negotiations have the advantage of ensuring uniformity across all of the company's locations and averting problems caused by differences.

Due to the corporate level's multi-plant structure, it is simple to ignore issues that are important at the plant level when collective bargaining is taking place. However, the management's power to bargain is constrained when this is done for large public sector organisations like HMT, ONGC, or BHEL due to political participation, especially in the Indian context. There are regulations from both the Bureau of Public Enterprises (BPE) and the Ministry of Public Enterprises (MoPE). Due to corporate management's inability to negotiate seriously, many matters that are important to different factories may be missed.

### **Plant-Level Bargaining**

The majority of private sector businesses in India participate in collective bargaining at the plant level. Collective bargaining at the plant level occurs with the management of a specific plant or industrial location. The issues are unique to a certain facility or business. The cornerstone and basis of such agreements are conversations on pay productivity or performance. Plant-level negotiations also have the benefit of allowing for separate conversations. These discussions can benefit from the variations in cost of living from place to place, offering a practical negotiation ground.

## **VIII. TYPES OF COLLECTIVE BARGAINING AGREEMENTS**

In essence, a collective bargaining agreement is a written legal contract between an employer and the trade or labour union that represents the employees. It is the contract that results from

the negotiation process between the employer and the union or the employees.<sup>10</sup> When the negotiations are successful, the employer and the union arrive at a crucial stage in the collective bargaining process.

There are primarily three different kinds of collective bargaining agreements in India, which are outlined below:

### **Bipartite or voluntary agreement**

Bipartite agreements are settlements or agreements reached via open dialogue throughout the course of collective bargaining. Such agreements are enforceable against the parties concerned in accordance with Section 18 of the Industrial Disputes Act.<sup>11</sup>

### **Settlement**

A tripartite agreement is referred to as a settlement when a third party is engaged in its creation. With the aid of a conciliation officer, the employer and the employees come to this agreement. The conciliation officer withdraws it himself if he believes that a settlement is possible during the conciliation procedure. After that, the parties review the agreement's provisions and submit a report to the officer within a certain time frame.

### **Consent award**

The parties can still bargain among themselves while a dispute is being heard by a mandatory adjudicating authority. The agreement that results from such negotiations must also be included in the authority's award in order for it to have legal force.

## **IX. COLLECTIVE BARGAINING IN INDIA**

Collective bargaining has been defined by the Supreme Court ("SC") as "the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion".<sup>12</sup> It is a dialogue and negotiation process concerning the terms of employment between the employer and the employees. Employees are often represented by trade unions when they want to raise issues with management and the company regarding compensation and working conditions. The Industrial Disputes Act, 1947 (the "IDA") defines unfair labour practise as the refusal to engage in good faith collective bargaining with the employer. This tactic is often successful since it frequently results in employers acting to resolve employees'

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<sup>10</sup> Adhila Muhammed Arif, *All about a collective bargaining agreement in India*, iPleaders, [https://blog.ipleaders.in/all-about-a-collective-bargaining-agreement-in-india/#Types\\_of\\_collective\\_bargaining\\_agreements](https://blog.ipleaders.in/all-about-a-collective-bargaining-agreement-in-india/#Types_of_collective_bargaining_agreements)

<sup>11</sup> Industrial Disputes Act, 1947, § 18, No. 14, Acts of Parliament, 1947 (India).

<sup>12</sup> Karol Leather Karamchari Sangathan v. Liberty Footwear Company, (1989) 4 SCC 448

concerns. Nonetheless, it is difficult to pursue collective bargaining in India due to the complex legal system.

## **X. LEGALISTIC FRAMEWORK OF COLLECTIVE BARGAINING IN INDIA**

Collective bargaining is a process wherein labour unions and management come to a cordial, peaceful, and voluntary agreement to handle employment-related conflicts. A clearly defined legislative framework in India nevertheless places restrictions on the collective bargaining's coverage and scope. However, there are a few statutes that recognize collective bargaining in India.

### **Trade Union Act, 1926**

This Act covers a trade union's registration, rights, obligations, and privileges. The most crucial role of a trade union is to control how a company or management interacts with its workforce.

In the 1952 case of *D.N. Banerjee v. P.R. Mukherjee*<sup>13</sup>, Justice Chandra Shekhar Aiyer noted that because capital and labour have grown more important in today's society, they have organised into groups to resolve disagreements. This is predicated on the idea that cooperation strengthens us, and that's how collective bargaining came about.

### **The Industrial Employment (Standing Orders) Act, 1946**

Section 2(g) of this Act defines "Standing Order"<sup>14</sup> as the regulations governing things like worker classification, attendance, leave eligibility requirements, how to inform employees of information about their jobs and pay, etc. According to Section 3 of the Act,<sup>15</sup> the employer must first provide the Certifying Officer with a draught of the standing order and, to the greatest extent feasible, must follow the model established for the standing order. The Officer then sends copies of the document to the workers' union or to the unionised workers. The officer must give both parties a chance to be heard if there is no trade union to ask for concerns before certifying the standing order with the required changes and sending its copies to both the parties. Here, it is clear that the certifying officer serves as the mediator and that both the employer and the employees are involved in the process of crafting a standing order. In essence, this clause uses the collective bargaining process.

### **Industrial Disputes Act, 1947**

This Act was passed in order to regulate the examination and resolution of labour disputes. Any

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<sup>13</sup> 1953 AIR 58, 1953 SCR 302

<sup>14</sup>The Industrial Employment (Standing Orders) Act, 1946 § 2, No. 20, Acts of Parliament, 1946 (India).

<sup>15</sup> The Industrial Employment (Standing Orders) Act, 1946 § 3, No. 20, Acts of Parliament, 1946 (India).

resolution other than a conciliation that is reached through an agreement between an employer and his employees is required to be binding on them, according to Section 18 of the Act. In essence, this indicates that Section 18 acknowledges the use of collective bargaining to resolve industrial disputes.

The Industrial Disputes Act, 1947 was created to ensure social justice via collective bargaining, the Supreme Court said in the matter of *Karnal Leather Karamchari Sanghatan v. Liberty Footwear Company (Regd.) and Ors.* (1990).<sup>16</sup> The court added that statutory tribunals had jurisdiction over arbitration. The affected employees must be able to communicate their arguments and claims to the arbitrator and must be aware of what is being presented to him. Although the labour union aids in dispute resolution, the workers must be involved in the procedure and offer solutions.

Even though there are numerous indirect provisions for collective bargaining, the workers or the trade union nonetheless encounter opposition. This is brought on by a few legal restrictions.

Among them are:

- The C-98, C-87, and ILO Conventions have not been ratified.
- Under the framework of the Trade Union Act and Industrial Dispute Act, collective bargaining has a highly constrained range of application.
- Regarding the recognition of unions, both statutes are silent, which has important ramifications for employees' rights.
- The fact that the right to strike is a legal right governed by the Industrial Dispute Act of 1947 rather than a fundamental right is one of the main consequences. In accordance with Section 10K of the Industrial Disputes Act, strikes and lockouts may be banned.
- A strike affecting public utility services must be announced at least six weeks in advance, according to Section 22 of the IDA.
- According to Section 23 of the IDA, strikes are not permitted while conciliation, arbitration, and legal proceedings are ongoing.
- Trade union action is exempt from the CRPC, albeit illegal strikes are an exception.

## **XI. CONCLUSION**

Collective bargaining is a method for arriving at decisions together and, in essence, it reflects a

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<sup>16</sup> 1990 AIR 247, 1989 SCR (3)1065

democratic way of life in business. For collective bargaining to be successful, the parties involved must be prepared to compromise and the process must start with recommendations rather than demands. Otherwise, the goal of collective bargaining would be unsuccessful. The issue in the Indian context is that the trade union's bargaining strength is impacted by the lack of any Central Level statutory requirements for the recognition of a representative trade union by an employer. Along with being a barrier, unorganised labour, the unions are typically weak. Another trait of Indian Trade Unions that hinders effective collective bargaining is rivalry based on caste, creed, and religion. Moreover, the development of trade unions is slowed down by divisions within unions based on political views and poor financial standing.

Consequently, it is advised that India make provisions for the central level recognition of trade unions in order to ensure peace and harmony between management and employees, which in turn can improve services to the society and thereby promote economic progress. India is obligated under international law to establish efficient mechanisms for collective bargaining. In this connection, ratification of ILO Conventions Nos. 87 of 1948 and No. 98 of 1949, which both guarantee the right to effective collective bargaining, is also advised for India. In summary, we could argue that the time has come for history to be repeated.

According to Sir Henry Maine, a society that is progressive moves from status to contract. The progressive society, however, must develop in the opposite direction, that is, from status to contract rather than from contract to status, given the necessity of collective bargaining as an effective mechanism for the resolution of industrial disputes.

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