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Collective Bargaining and Judicial Attitude

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1. Introduction

The primary function of a Union is to promote and protect the interests of its members. It has to advance the social and economic interests of the members. For the purpose, it has to undertake welfare activities like organizing mutual benefits sources, games and cultural programmes and educate its members in all aspects of their working life. In discharging the basic functions the unions have to operate on many fronts, social, economic, civic and political. The bargaining power of an individual is often quite weak because of factors like, ignorance, illiteracy, poverty, indebtedness, social, economic and political backwardness and like so, he is no match for his economically superior employer when he engages in individual bargaining.

Today the stand adopted by the government in the matter of collective bargaining is quite confusing. On one hand it encouraged compulsory adjudication and on the other hand it prompted direct negotiations between the employer and the workers. The bargaining power of an individual worker is weak unless he has exceptional skills or professional competence. The individual weak worker looks for support and sustenance in the industrial environment where he is disposing of his labour. This support, he assumes, would be available when he along with other like-minded co-workers forms a combination to protect and promote his and his fellow-

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workers interest. Through this combination, known as Trade Union, the concept Unity is Strength manifests itself.

2. Collective Bargaining and Judicial Attitude

Collective Bargaining is an important weapon in the armoury of the workers. Unfortunately, this concept has developed in India only after independent of the country. International Labour Organization has also attempted to provide suitable mechanism for settlement of labour management disputes. The concept of social justice would be meaningless if the working class had no right to collective bargaining, which is one of the cardinal principles in the labour management relationship that has to be preserved.1

The right of the industrial workers to bargain and negotiate are so in extricable interwoven that they may not be easily visible. At times, we do feel that the government of India has taken a rigid stand and has been vocal enough to reject collective bargaining as an institution for settlement of industrial dispute.2 It will not be out of place to quote the opposite sentiments adopted by no less than a former labour minister.

Collective bargaining is not suited to our socialistic pattern of society. It may be valid for a capitalist economy like United State and United Kingdom.3 It is not denying of the fact that a healthy growth of trade union movement leading to industrial peace and harmony is only possible through the application of freedom of workers. It assures fair deals with regard to their conditions of services and security of employments. Right to freedom of association has already found in the Constitution. Gone are the days when the repressive potentialities of the law have been curbed by the industrial houses. In any democratic society, a denial of this right is negation of rule of law. Supreme Court while dwelling upon the subject of as far as back in 1962 in **Kameshwar Prasad vs**. **State of Bihar**4 held.

"Right to make a demonstration is covered by either or both of the two freedom guaranteed by Article 19 (1) (a) and 19(1) (b). It is a form of speech or expression. A demonstration…..in the form of Assembly….. is a means of communication intended to express of the group".

A Democratic country committed to the liberal values of freedom of association must give recognition to collective bargaining through legislative ventures. The first legislation on this subject is the Trade Union Act, 1926 which was intended to remove legal impediments to collective bargaining to do away the common law doctrine of restraint of trade, tortuous liability, civil conspiracy and the rest. We have evidences that Trade Dispute Act, 1929 provided a peripheral role in the Investigation and settlement of trade disputes. The Industrial Dispute Act, 1947 emphasize that the machinery created under the Act was basically meant to strengthen collective bargaining and to entertain the trade dispute, only where collective bargaining is unable to deliver the necessary result. The Act reposed a lot of trust in the Work Committees were found in adequate and found expression in Supreme Court pronouncement, **North-Brooke Jute Company Ltd. vs. Their Workmen**.5

Work Committee in the scheme of act have only a limited role to play. The conciliation and adjudication machinery under the act would ordinarily go to into action only where a settlement is not possible through collective bargaining.

In **All India Bank Employees Association vs. National Industrial Tribunal6** The Apex court has taken an orthodox view:

Even a very liberal interpretation of sub clause © of clause (1) of Article 19 cannot lead to the conclusion that the trade union have a guaranteed right to an effective bargaining.

A contrary expression has been found in second five year plan7 : For the development of an understanding or an industry, Industrial peace in dispensable. Labour Legislation can only provide a suitable framework in which employers and workers can be found by mutual

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agreement. The fourth five year plan8 recognized a decade latter that: "Greater emphasis should be placed on collective bargaining and on strengthen the trade union movement for securing better labour management relation supported by recourse in larger to voluntary arbitration".

The history of Industrial Dispute Act, 1947 and the Judicial Interpretation placed on the provision of the act, however, have not encouraged the collective bargaining. In the Act as originally passed settlement was defined as follows:

Section 2(p) settlement means a settlement arrived that in the course of conciliation proceeding. It appears that a settlement must arrive at otherwise than in the course of conciliation proceedings was not given legal status at all. The Industrial Dispute (Amendment) Act, 1956, showed to remove this lacuna in the law by redefining settlement as that "settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and worker arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner has may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate government and the conciliation officer". In **Ramnagar Sugarcane vs. Jatin Chakravorthy**9. It was held that when a trade union of the worker arrived, at a settlement through conciliation proceeding, the said settlement would bind not only the members of the union which have signed the settlement. But all workmen employed in the establishment which the dispute relates in all workmen who subsequently become employed in the establishment.

Under the Law, there are only two recognized ways of setting an industrial dispute-

(a)Through bilateral negotiations in which case the settlements bind only the members of the Union which has signed the settlement, and (b) Through conciliation proceedings in which case the dispute in so far as establishment is concerned itself stands settled, no reopening of the matter covered by such a settlement is allowed during the time that the settlement arrived at conciliation proceedings is in force. Under the scheme of the act the discretion vested in the conciliation officer to be wide and far-reaching. He is not duty bound to invite all the unions, which are in

existence in the establishment, to participate in the conciliation proceeding. The experiences of Industrial dispute settlement and adjudication during the last 30 years or so bear enough testimony that the law on the subject is in a highly unsatisfactory state.

2.1. Collective Bargaining Under Industrial Dispute Act

The workmen have been given the right of collective bargaining with regards to various matters in which they are interested, their terms of service, the security of their service, their pay, their wages, their bonus etc. which place limitations upon the rights of the employer. But the limitations placed upon the employer are not with regard to all his employees. The limitations are confined to a limited class constituted by the expression workmen used in the act and outside the class of workmen the act imposes no liability on the employer.10 The act is a legislation relating to what is known as collective bargaining in the economic field. This policy of the legislature is also implicit in the definition of Industrial Dispute.11 Collective bargaining between a single employer or an association of employers on the one hand and a Labour Union upon the other which regulates the terms and conditions of employment.12 The term collective as applied to collective bargaining agreement will be seen to reflect the plurality not of the employers who may be parties thereto, but of the employees there is involved. Again the term collective bargaining is reserved to mean bargaining between an employer or group of employers and a bonafide labour union.13 In the language of Ludwig Teiler "The collective bargaining agreement bears in its many provisions the imprints of decade of activity contending for labour equality through recognition of the notions underlying collective negotiation. Indeed in the collective bargaining agreement is to be found culminating purpose of Labour activity".14

It is well known that before the days of collective bargaining Labour was at a great disadvantage in obtaining reasonable terms for contracts of service from its employer. As trade unions developed in the country and collective bargaining became the rule, the employer found it necessary and convenient to deal with the representatives of workmen instead of individual

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workmen not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regard all other disputes.15 Hence having regard to the modern condition of society where capital and labour has organized themselves into groups for the purpose of fighting their disputes and setting them on the basis of their theory that union is Strength collective bargaining has come to stay. Collective bargaining being the order of the day in the democratic social welfare state, legitimate trade union activities, which must shun all kind of trade union activities, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the parts of the employer. Such activities can flow in the healthy channel only on mutual cooperation between employer and the employees and cannot be considered as irksome by the management in the best interest of his business, dialogues with representatives of a union help striking a delicate balance in adjustments and settlement of various contentious claims and issues.16

The policy behind this act is the protect workmen as a class against unfair labour practices. What imparts to the dispute of workmen the corrector of an industrial dispute is that it effects the right of the workmen as a class.17 The word industrial…. as used to the nature of the quality of dispute. Denotes two qualities which distinguish term from ordinary private disputes between individuals namely (i) That the disputes relates to industrial matters and (ii) that on one side at least of the dispute the disputants are the body of men acting collectively and not individually.18 In other words, an element of collective bargaining which is the essential features of modern trade union movement is necessarily involved in industrial adjudication.19 It is the community of interest of the class as a whole class of employers and class or class or workman which furnishes the real nexus between the disputes and parties of the disputes.20 The very nature of attained new industrial conditions, not merely for the specific individuals then working from the specific individual, then employing them not for the movement only, but for the class of employees from

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the class of employers. It is a battle by the claimants, not for them, selves alone.21 Notwithstanding that the language of S. 2 (k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the act appears to contemplate that the machinery provide therein should be set in motion to settle only disputes which involves the right of workmen as a class and that a dispute touching the individual rights of a workmen was not intended to be the subject of an adjudication under the act. The term individual dispute conveys the meaning that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides.22 Even a single employee dispute may develop into an industrial dispute, when it's taken up by a union or a member of workers who make a concerted demand for redress.23

2.2. Persons Bound By Awards (Section - 18)

The applicability of the act to an individual dispute as distinguished from a dispute involving a group of workmen is excluded, unless the workmen as a body or a considerable section of them make common cause with the individual workmen.24 But community interest does not depend on whether the concerned workmen was a member of the union or not at the date when the cause occurred, for even without his being a members, the disputes may be such that other workmen by having a common interest therein would be justified in taking up the dispute as thin as their own and espousing.25 Thus in reality section 18 of Industrial Dispute Act deals with persons on whom settlement and agreement are binding scope of the section 18(1) and 18(3) have already been agitated before the Supreme Court in **Ramnagar Sugarcane Case**. A kind perusal of Section 18 is therefore necessary for the purpose of present discussion. Section 18 persons on whom settlements and awards are binding:

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1. Settlement arrives at by agreement between the employer and workmen otherwise than in the course of conciliations proceedings.26

2. Subject to the provision of subsection (3). An arbitration award27which has become enforcement shall be binding on the parties to the agreement who referred the Dispute to arbitration.

3. A Settlement arrived at in the course of conciliation proceeding under this act or an arbitration award in a case where a notification has been issued, under subsection (3) of section 10-A28or an award of a labour court, Tribunal or national tribunal29 which has become enforceable shall be binding on30 (a) All parties to industrial dispute, (b) All other parties summoned to appear in the proceedings as parties to the dispute, unless the board, arbitrator, labour court, Tribunal or National Tribunal as the case may be records the opinion that they were so summoned without proper cause, (c)where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishement of part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

It would be noted that section 18 divide settlements and awards into two categories the first category consists of settlement which are arrived at otherwise then in the course of any conciliation proceeding and arbitration award under section 10(A). This category consists of settlements that are arrived at in the conciliation proceeding before a conciliation officer or board and the awards of the adjudicating authorities, viz. Labour courts, Tribunals or National Tribunals.31

The binding effects of settlement and awards fallen under the two categories is also different. The employer, of course, is a common party in both type of settlement and awards, but workmen who get bound by settlements and awards fallen under the first category are only those workmen

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who were the parties to the agreement in the case of settlement or were parties to the agreement in the case of settlement or were parties to the reference made to a private arbitration. The case, however is different in respect of the settlements and awards fallen under the second category.

2.3. Binding Effect of Private Settlement

Section 18(1) was introduced Amending Act of 1956 with a view to remedy a different in the then existing law32 and by the same provision original section 18 was numbered as present section 18 (3). Prior to the Amendment there was no provision to make such settlement binding even on the parties thereto, with the result that the workmen notwithstanding such a settlement could raise an Industrial dispute on the identical matters upon by their union.33 Normally, it is the union or representatives of employees who enter into agreement with the employer. All the employees do not as a matter of facts become parties to the agreement. But the settlement signed by such representatives binds all those whom they represent. Therefore, the times of settlement become a part of the contract of employment of each individual workmen represented by such representative.34 If such a settlement is arrived at between the employer and the union representing majority of the workmen, it shall not be binding on the Union, which represent the minority of workmen, which was not the party to that settlement.35

In order or to make such settlement binding on them, it should be arrived at by agreement between employer and workmen. Constructed in light of the over provision of section 18 the definition of terms settlements and the relevant statutory rule, there sub section does not appear to best in the employer and the workmen. Freedom to settle a dispute as they please and clothes it with a binding effect on all workmen or even on all members workmen of the union to which they belong. The settlement has to be in compliance of statutory provision.36

Rule 58 of Industrial Disputes (Central) Rules 1957 provides that a settlement arrived at in the course of Conciliation proceeding or otherwise shall be informed and prescribed the persons by

whom the memorandum of settlement can be signed in cases of the employer and workmen respectively.

3. Conclusion

The Bargaining power of an individual is often quite weak because of factors like ignorance, illiteracy, poverty, indebtedness, social, economic and political backwardness and like so he is no match for his economically superior employer when he engages in individual bargaining. Today, Collective Bargaining Agreements may provide for better protection than what the relevant Statute guarantees. That is, the statutorily guaranteed rights are no doubt implied terms in the contract of employment between the employer and the workmen. But there is no statutory bar against the Bargaining Agency to seek and ensure better terms and conditions.

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