



NEW LABOUR CODE - REGRESSION OF WORKERS RIGHT OF COLLECTIVE BARGAINING

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Abstract

Industrial relations play an important role in establishing and maintaining harmonious relation in industrial democracy. The establishment of good industrial relations depends on the attitude on the part of both labour and Management. The maintenance of good human relationship is the main goal of industrial relations, because in its absence the whole organizational structure may collapse. It is an art of living together for the purpose of production, efficiency and industrial progress. Basically the term 'Industrial relations' is used to refer to the relations between the parties within the industry. No industry can flourish without the co-operation between these two parties. To achieve the objectives of industrial jurisprudence more importance is given to collective bargaining. With the new labour code more power is given to government and it diluted the collective bargaining as a rights of workers.

Keywords: *Industrial Jurisprudence, Industrial Relation, Trade Union, Collective Bargaining*



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Introduction

Industrial relations play an important role in establishing and maintaining harmonious relations in industrial democracy. The establishment of good industrial relations depends on the attitude on the part of both labour and Management.¹ The maintenance of good human relationship is the main goal of industrial relations, because in its absence the whole organizational structure may collapse. It is an art of living together for the purpose of production, efficiency and industrial progress. Basically the term 'Industrial relations' is used

¹S.K. Bhatia, 'International Practices in Industrial Relations', Deep and Deep Publications Pvt. Ltd., New Delhi, 2002, pp.7-8.

to refer to the relations between the parties within the industry. No industry can flourish without the co-operation between these two parties.

The concepts of industrial relations have become a part and parcel of management science and receive attention in modern industrial age. The term 'industrial relation' means relationship between management and workmen in an industry. In its wider connotation, it means the organization and practice of multi-pronged relationships between workers and management, unions and workers, and the unions and management in an industry.²

In our country three important pieces of legislation played a major role in shaping Industrial Relations in India.

- 1) The Trade Union Act. 1926³,
- 2) The Industrial Employment Standing Orders' Act of 1946⁴,
- 3) The Industrial Disputes Act of 1947⁵.

The Trade Union Act of 1926 deals with formation and Registration of Trade Union, Whereas The Industrial Employment Orders Act of 1946 provides terms and conditions regulated by rules and regulations. But the Industrial Dispute Act, 1947 governs industrial disputes. The Supreme Court⁶ held that the essential object of the labour legislation to ensure social justice by bringing harmony and cordial industrial relationship. To resolve industrial dispute that may erupt in industries, the Industrial Dispute Act, 1947 provides the machineries that are informal in nature, free from cumbersome technicalities of domestic laws.

Collective Bargaining In Labour Regime

Collective bargaining is the technique to reconcile the conflicts between employer and employee. Collective bargaining plays a vital role in improving Labor-management relations and helps in maintaining industrial harmony.

In India, collective bargaining has conditional, statutory as well as Judiciary recognition. The constitution of India under Article 19 (1) (b) provides the right to assemble peaceably and without arms. Article 19 (1) (c) provides for the right to form the associations or unions. Article 38 (2) directs the state to eliminate the inequalities in status, facilities and opportunities amongst individuals as well as amongst groups of peoples. As per the

² A. M. Sharma, 'Industrial Relations: conceptual and legal frame work', Himalaya Publishing House, Bombay, 1984, p.03.

³Trade Union Act (Act XVI of 1926), 33 INDIA AIR MANUAL 689 (1979).

⁴Industrial Employment (Standing Orders) Act (Act XX of 1946) 23 INDIA AIR MANUAL 84 (1979).

⁵Industrial Dispute Act (Act XIV OF 1947), 22 INDIA, AIR MANUL 590 (1979).

⁶Hindustan History Industries v/s. F. H. Lala, LLJ – (974) I – P.348.

constitution, it is the responsibility of government to eliminate inequality and promote equality. This equality among the group of working class can be achieved only when they entitled the fruits of productions. Proportionate sharing of the fruits can be ensured through collective bargaining by ensuring workers participation in management which has been contemplated in Article 43A of the constitution. These constitutional provisions guarantee the right to association and collective bargaining in part IV.

Some statutory recognition are guaranteed to Right to association and collective bargaining in India by enactment of the Trade Union Act, 1926 and The industrial Dispute Act 1947. In Trade Union Act 1926 recognition are given to the trade union by providing certain immunities and privileges. In *Bank of India Employees Association v. Reserve Bank of India*,⁷ court has highlighted the object of trade union is collective bargaining and it has right to demonstrate in furtherance of their purpose.

Collective bargaining is useful for the management as well as to the trade unions and its workers. It helps to develop a sense of responsibility and self-respect among the workers. It helps to open up channels of communication between the disputed parties. Collective bargaining considered as a weapon of industrial peace and is an important aspect so far as the labour management relations are concerned.

As we discussed a stable and effective industrial relations is vital for the development of a country. With this sound foundation the economic growth with equitable distribution of income, especially to labour can be achieved. Collective bargaining, as an integral component of industrial relations, is essential for economic growth and also constitutes a dynamic process for settling disputes between employers and workers. Collective bargaining is a means to improve the terms and conditions, promote their socio-economic interests and maintain industrial harmony. It can be considered as a written guarantee for stable and harmonious industrial relations.

Though liberalization and globalization has some positive effects in the terms of democracy, but in reality the policy of globalization and liberalization are meant to remove all barriers to exploit human labour. The right to organize and collective bargaining is an effective barrier against the motives of liberalization. Suddenly in almost all countries, attack was on against 'rigid' labour laws and most importantly against collective bargaining. In India, liberalization has taken many dimensions and the States are not able to amend Labour Laws but they are successful in making labour laws meaningless by anti labour judicial

⁷ (1983) 2 LLN (Bom)

decisions, by creating special economic zones, by allowing violations, by not recognizing trade unions. Hence, right to organize and collective bargaining is a prime issue in India. Though the Constitution of our country guarantee the right to association under Article 19(1) (c) but the collective bargaining remained limited in its scope and restricted in its coverage. If we look at the application of various labour laws⁸, it is cleared that only a tiny section of workforce is protected by the labour laws and has guaranteed space for collective bargaining.

The drawback with regard to the collective bargaining is the 'non-mandatory recognition' of trade unions⁹. There is no law on mandatory recognition of trade union by the industry. Both Trade Union Act, 1926 and Industrial Disputes act, 1947, completely silent on recognition of trade unions. No obligation on the part of employers to recognize a union for collective bargaining. Managements are at freedom to recognize either majority or minority trade unions as bargaining agents and are free to make collective agreements with the unions who are in their favour.

It is, however, a high time to give legal recognition to collective bargaining and providing for substantial rights in the Industrial Disputes Act to avoid any confusion regarding the existence of collective bargaining in labour law.

Industrial Relation Code 2020—An Attack on Collective Bargaining

New Socio-Legal Reforms that are taking place in India with the new labour code with the object to simplify the Labour laws and amend the law in order to make it co-exist according to the Constitutional Rights and Human Rights perspective. In India with large number of labour laws created various conflicts in the overriding effects of the laws and to be very confusing to deal with these laws as a whole. The Labour Law reforms can be helpful as it will create more transparency, flexibility and complexity shall be lesser. The new provisions of this act signify the dynamic change and liberalisation of the labour law provisions for proper implementation.

The new *Industrial Relations Code* replaces the major Indian industrial legislation – the *Industrial Disputes Act, 1947*, *Trade Unions Act, 1926* and the *Industrial Employment (Standing Orders) Act, 1946*. These three Acts with the various provisions protected the rights of workers and trade unions in India. The *Industrial Relations Code* hits a severe impact on labour rights and gives a turn to the basis of industrial jurisprudence.

⁸ The Factories Act, 1948 Employees Provident Fund Act, Maternity Benefit Act, Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act, Industrial Disputes Act, 1947

⁹SupriyaRouth, "Right to Association and Collective Bargaining " The ILO Declaration on 'Right At Work' vis-à-vis The Indian Scenario: A Crit ique', Lab I.C. 2004, Page no.327

The Code gives a platform for a new era of labour relations and marks a U-turn in the underlying concept of industrial jurisprudence.

The absence of statutory recognition of trade unions under Trade Union Act, 1926 left a long-standing legal vacuum which has been filled by new labour code by giving acknowledging “negotiating unions” and “negotiating councils”, under the Code and the rules.

The bill introduces a new concept of negotiating union (or sole bargaining agent) of workers to resolve conflicts. It mandates every industrial establishment to have a negotiating union or a negotiating council. If the establishment has only one union, that one becomes the negotiating union or sole bargaining agent. If an organisation has more than one trade union, the union supported by more than 51% of workers forms the negotiating union. If there is no trade union with majority support, then government has an authority to institute a negotiating council.

The new code proposes various provisions to rationalise the regulations the formation and rights of trade union. Provisions relating to bargaining power of recognised union excluded small unions from the process of negotiation. Thus, the new code identifies only a trade union which has fifty one percent or more membership. Collective bargaining will become a unitary process in the hands of big trade union. Smaller union will not get a chance to grow. It leads to monopolise of sole trade union which affects the process of collective bargaining.

The new code does not simplify the law on trade unions rather gives more power to the government to decide who can and cannot be part of a trade union

Conclusion

Trade unions have a modal role to play in mediating and negotiating to settle industrial disputes. They act as bargaining agents and represent workers legally, economically and politically against unfair labour practice, Collective bargaining process helps workers to oppose their exploitation by employers. Recognising the largest union (with 51% or higher membership) as the sole negotiating agent states that smaller trade unions will be unable to represent themselves. It implies an impartial approach towards unitary trade union where workers may be forced to join management-sponsored unions. Moreover, conflicts among big and small trade unions would affect efficient bargaining, again benefiting the employers and disadvantaging the workers.. Again restricting the number of outsiders who can lead trade unions attacks the autonomy of the unions in turn affect collective

bargain. These amendments related to trade unions are alleged to be aimed at weakening unionism. The code

On industrial relation is further exacerbating this process in coming days.

There are no any criteria in new code to determine which unions can formally negotiate with the management. Settlements arrived with unions are binding on the participating unions only. It has its effects on the collective bargaining rights of workers. Again whether non-employees may be permitted in trade union is remain a question only.

The world is currently witnessing drastic changes owing to the pandemic and while India undergoes significant labour law reforms. In this situation introducing negotiating unions and negotiating councils via the Code addresses the absence of a regulatory framework to recognise trade unions at the central level. The Industrial Relation Code looks to be a step towards providing better conditions of the industries in India; however, they do suffer from major drawbacks which require major changes as analyzed above.