BARGAINING THEORY IN INDIA IN RELATION TO ILO CONVENTION NO. 87 AND 98

Suryanarayana S.M.

The Tamil Nadu National Law School, Tiruchirapalli

"I know that I am among civilized men because they are fighting so savagely" – Voltaire

Bargaining Theory is an integral component of every industrial society. Collective bargaining is undoubtedly a most dynamic process at work in most of the developing economies today. India is no exception to this phenomenon. India, a founder member of the ILO is among a small minority of 19 ILO member states that have not ratified either of the two fundamental Conventions on freedom of association (No.87) and the Collective Bargaining Convention (No.98). Collective bargaining is universally acknowledged as the most ideal method for regulating the labour management conflict. This paper will analyse the problems behind hindrance in ratification of the Collective bargaining conventions, along with several other issues.

The researcher will analyse the impact of bargaining principles proposed by ILO in India. Alongside, the research will also cover the Challenges and prospects of Convention No. 87 and 98 in India. The role of Trade unions in achieving the collective bargaining principle will also be analysed. The methodology adopted by the researcher is purely Doctrinal in nature, with the aid of both primary and secondary sources. This will involve a comparative study between the Collective Bargaining with that of the convention No. 87 and 98 through Content analysis method. The data is also derived from various doctrinal and non-doctrinal researches, thereby enabling a standard in the analysis.

Keywords

ILO Conventions – Collective Bargaining – Freedom of Association – Reports – Trade Unions – Dispute Redressal mechanism

INTRODUCTION

MEANING

The expression of "Collective Bargaining" was coined by Sydney and Beatrice.[1] This was widely accepted in United States of America. The meaning of the expression "Collective

[1] Sydney and Beatrice, *Industrial Democracy, (1897,879-900,*Vol 2), Universities of Connecticut libraries London

bargaining" has been the subject matter of controversy and it is defined in a variety of ways. Harbison defines collective bargaining as "a process of accommodation between two institutions which have both common and conflicting interests."[2] In 1960, in the manual published by the International Labour Office "Collective bargaining" has been defined as "negotiations about working condition and terms of employment between an employer a group of employers or one or more employers organization on the one hand and one or more representative workers organisation on the other, with a view to reaching agreement." [3] The Supreme Court in "Karnal Leather Karmachari Sangatham v. Liberty Footwear Co."[4] defines Bargaining theory as *"A technique by which disputes as to Conditions of Employment are resolved amicably, by agreement rather than coercion. The Dispute is settled peacefully and voluntarily, although reluctantly, between the labour and management."* In simple words, it is the process of discussion and negotiation between an employer and employee culminating in a written agreement or contract and the adjustment of problems arising under the agreement and all the Industrial dispute Act and other labour legislations seeks to achieve social justice on the basis of collective bargaining.

HISTORY

Freedom of association including the right to form and join unions for the protection of one's rights and interests has been recognized as one of the fundamental human rights. It is derived from the inherent dignity of the human person. The Preamble to the Constitution of the ILO indicates that recognition of the principles of freedom of association is vital for the improvement of the conditions of labour and the achievement of universal and lasting peace. The Declaration concerning the aims and principles of the ILO called the 'Declaration of Philadelphia' that is appended to the Constitution of the ILO reaffirms that freedom of association is essential to sustained progress.

The two main instruments of the ILO that protect the freedom of association and the Collective bargaining theory are the Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention No. 87) and the Right to Organize and Collective Bargaining Convention, 1949. (Convention No. 98). On account of the importance of the principles contained in the two Conventions, they have been categorised as 'fundamental conventions' requiring universal observance.

The International Confederation of Free Trade Union called collective bargaining *"A worker's Bill of Rights*". It has enumerated the following as the objects of unions and Collective Bargaining:

1. To establish and build union recognition as an authority in the work place.
2. To raise workers standard of living and win a better share in the company's profit.

[2] F.H Harbison, *Goals and strategy in Collective Bargaining,(Harper and Bros,1951)* University of Illinois.
[3] International Labour Office, *Collective Bargaining (*A Worker's Education Manual), Geneva.(1960), (P.3)
[4] *1990 Lab IC 301 (SC)*

3. To express in a practical terms the worker's desire to be treated with due respect and to achieve democratic participation in decisions affecting their working conditions.

4. To establish orderly practices for sharing in these decisions and to settle dispute which may arise in day to day life of the company.

5. To achieve board general objectives such as defending and promoting the workers interest throughout the country.[5]

SCOPE

The scope of Collective bargaining can be put into two categories.

1. Those which set out standard of employment which are directly applicable to the relations between the individual employer and worker.

2. Those which regulate the relations between the parties to the agreement themselves and having no bearing on individual relations between the employers and workers.

First category includes wages, working hours, holiday with pay and period of native of termination of contract. The second category includes eight items, i.e. the provision of enforcing collective bargaining, methods of settling individual dispute, collective bargaining dispute including grievance procedure and reference to conciliation and arbitration, recognition of union as the bargaining agent of the workers, giving preference in recruitment to union member seeking employment, duration of agreement, undertaking not to resort to strike or lockout during the period and procedures for negotiation of new agreements.

NATURE

The nature of collective bargaining is changing and dynamic. With the changes taking place in technology, economic order, political environment, structure of trade union organizations, ownership of individual enterprises, and role of the government and so on, the various ingredients of collective bargaining are also changing. The pattern of collective bargaining in different countries is not the same nor is collective bargaining at the same stage of development all over the world.[6] The main steps involved in collective bargaining include: presentation in a collective manner to the employer their demands by the employees, discussions and negotiations on the basis of mutual give and take for fulfilling the demands, signing of a formal agreement or arriving at an informal understanding when negotiations result in mutual satisfaction and in the event of the failure of negotiations a likely resort to strike or lock out to force the opposite party to come to terms.[7]

[5] Mary Sur, *Collective Bargaining (1956)*
[6] Wolman, Leo. "The Area of Collective Bargaining." *Political Science Quarterly* 59.4 (1944): 481-88
[7] Dayal, Sahab. "Revival of Collective Bargaining in India: Some Recent Evidence." *Indian Journal of Industrial Relations* 17.3 (1982): 329-37

Ratification of Conventions 87 and 98 would ensure that that the national legislation relating to the freedom of association and collective bargaining rights of workers were in par with them. Ratification would also help ensure that all categories of workers in India are entitled to these rights. The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work. Collective bargaining permits workers to achieve a form of workplace democracy and to ensure the rule of law in the workplace. Workers gain a voice to influence the establishment of rules that control a major aspect of their lives.

INTERNATIONAL LABOUR ORGANISATION'S CONVENTIONS ON BARGAINING THEORY

ILO PRINCIPLES & CONVENTION:

The standards and principles emerging from the ILO's conventions, recommendations and other instruments on the right to Collective bargaining and the principles set forth by the Committee and the freedom of association may be summarized as follows:

1. The right to collective bargaining is a fundamental right endorsed by the members of the ILO in joining the Organisation, under which they have an obligation to respect, promote and to realise, in good faith (ILO Declaration on fundamental principles and right at work and its follow up) the right to collective bargaining.

2. Collective bargaining is the right of the employers and their organisations, on the one hand and organisation of workers, on the other hand (first level trade union, federations and confederation) only in the absence of these latter organisation, may representatives of the workers concerned conclude collective agreements.

3. The right to collective bargaining should be recognised throughout the private and public sectors and it is only the armed forces, the police and the public servants engaged in the administration of the state who may be excluded from the exercise thereof. (Convention No.98.)[8] 160 member states of the ILO have ratified Convention No. 98.

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (NO. 87)

This is one of the important fundamental Convention which explains about the right of the workers' and employers' organizations shall have the right to establish and join federations and confederations. The Convention also guarantees to workers' and employers' organizations the right to draw up their constitutions and rules, and elect their representatives in full freedom & to organize their administration and activities and to formulate their programmes. This convention does not guarantee any right to strike.

[8] S.C. Srivastava*, Industrial relations and Labour Laws, 148,(*16th Ed, first reprint 2014), Vikas publishing House Pvt .td, New Delhi

However, the right to strike is considered to be an intrinsic corollary of the right to organize guaranteed in the Articles 3, 8 and 10 of the convention and also guarantee to trade unions the right to organize their administration and activities and to formulate their programmes and further the interests of workers have been interpreted as being inclusive of the right to strike. 150 member states of the ILO have ratified Convention No. 87.

RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949 (NO. 98)

The Convention requires member states to take appropriate measures to encourage and promote collective bargaining between workers' organizations and employers or employers' organizations and workers' organizations in order to regulate the terms and conditions of employment by means of collective agreements. It guarantees to all workers adequate protection against acts of anti-union discrimination in respect of their employment and provides that such protection shall apply more particularly in respect of acts calculated to make the employment of a worker, subject to the condition that he shall not join a union or shall relinquish trade union membership. 160 member states of the ILO have ratified Convention No. 98.

The Industrial Disputes Act recognizes the right of workers and their unions to collectively bargain with employers and enter into collective agreements with them. This right is evident from sections 2(p), 18 and 19 of the Act and also the fifth schedule to the Industrial Disputes Act which sets out the acts described as 'unfair labour practices' on the part of employers and their organizations and also on the part of workers and their trade unions.

ILO DECLARATION IN RELATION TO COLLECTIVE BARGAINING

ILO Declaration of Fundamental Principles and Rights at Work and Its Follow-Up

These are some informal normative instruments as considered an informal labour standards. The Declaration requires all member states to respect, promote and realize the principles contained in the "Eight fundamental conventions relating to the freedom of association and the effective recognition of the right of collective bargaining". It proclaims that all member states have an obligation to do so, arising from the very fact of their membership of the organization. The Member States which have not ratified the core conventions on freedom of association and collective bargaining are required to submit annual reports[9] indicating the status of law and practice regarding these principles in their countries, the measures taken to realize the rights, the difficulties encountered in the realization of the rights and the kind of technical assistance needed from the ILO to realize these rights. The International Labour Office compiles information on the basis of the annual reports submitted by the concerned member States and the observations made thereon by employers' and workers' organizations.

[9] International Labour Organisation *ILO Declaration Of Fundamental Principles And Rights At Work And Its Follow-Up* http://www.ilo.org/declaration/lang--en/index.htm Last accessed on 17.09.2016 at 10.44 pm (N.T.M*)*

ILO Declaration on Social Justice for a Fair Globalization, 2006

This declares that decent work should be placed at the center of economic and social policies of member states. It sets out the four objectives of the Decent Work Agenda[10]:

- promoting employment by a creating a sustainable institutional and economic environment;
- developing and enhancing measures of social protection;
- promoting social dialogue and tripartism as the most appropriate methods
- Respecting, promoting and realizing the fundamental principles and rights at work.

Following the International Conventions and the principles, it becomes the role of the municipal laws of each country to ratify and adopt the underlying principles of each convention. Hence, the next chapter will focus on such relationship.

INDIAN LABOUR LAWS AND COLLECTIVE BARGAINING RIGHTS

The extent of the Constitutional rights available for the workers for enforcing the principles of Collective Bargaining has been examined. Alongside, the difference between the Bargaining concept in India and in various other countries has also been studied.[11] The main focus goes on analysing, whether the central laws concerning the freedom of association and collective bargaining rights of workers in India are in conformity with the standards contained in conventions nos. 87 and 98, though it remain unratified in India.

THE CONSTITUTION OF INDIA, 1950

The constitution of India in the parts on fundamental rights justify the legality of collective bargaining. In this context, Article 19(1)(c) guarantees the right to form association and unions. Directives principles of the state policy also justifies the provisions for improving the conditions of the labour in general and Article 43-A in particular provides that state shall ensure the participation of workers in the management. The conflict lies between the DPSP emphasized on the intervention of states in the labour policies and the fundamental right to form trade unions and association. This was one of the debatable question and was raised in All India bank employees' association *v.* National industrial tribunal[12], where the Apex court of India considered the issue "*whether the right guaranteed by Article 19(1)(c) would be inclusive of the right to collective bargaining and the right to strike"*. The Supreme Court derived to a conclusion that collective bargaining is not elevated to a position of fundamental right under Art 19(1)(c) which only guarantees the right to form

[10]International Labour Organisation*, About the ILO,*http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.html Last accessed on 17.09.2016 at 10.48 pm (N.T.M)
[11] The Area of Collective Bargaining - Leo Wolman

[12] AIR 1962 SC 171.

an association or union. In Re Kerala education bill[13] case, the supreme court observed that though the directives principles cannot override the fundamental rights, nevertheless, in determining the scope and ambit of fundamental rights the court may not entirely ignore the directive principles but should adopt "the principles of harmonious construction and should attempt to give effect to both as much as possible". Therefore it is crystal clear from the above statements that the concept of collective bargaining does not fall under Part-III of the Constitution of India.

TRADE UNION ACT, 1926

The Trade Unions Act provides for the registration of trade union and determines the rights, liabilities and immunities of the union. The object of this piece of legislation was to regulate the relations between the employer and employee or among themselves and it is well established that collective bargaining is one of the means of regulating such a relation. In the case of "D.N. Banerjee vs. P.R. Mukherjee"[14], the court has recognised the concept of Collective bargaining.

The amendments to the act effected in 2001 imposing a minimum membership requirement on unions (Section 4) for the purpose of registration and placing restrictions on outsiders holding office in the union may be viewed as falling short of international labour standards. Collective bargaining is the foundation of this movement, and it is in the interest of labour that statutory recognition has been accorded to trade unions and their capacity to represent workmen, who are members of such bodies. In the case of "Tamil Nadu electricity workers Federation vs. Madras state electricity board"[15], the Madras High Court observed that the whole theory of organised labour and its statutory recognition in industrial legislation is based upon the unequal bargaining power that prevails as between the capital employer and in individual workman, or disunited workman.

INDUSTRIAL DISPUTES ACT, 1947

The Industrial Dispute Act, 1947 is enacted for providing solution, dispute settlement system for the disputes arising in industries. The Industrial Disputes Act affords protection to office bearers and members of trade unions from acts of anti-union discrimination, but it does not enable a union to represent its members. In "**Workmen of Dimakuchi tea estate v. The management, Dimakuchi tea estate"[16],** the examination of the salient provisions of the Act shows that the principal objects of the Act were,

- The promotion of measures for securing and preserving amity and good relations between the employer and workmen
- an investigation and settlement of industrial disputes, between employers and employers, employers and workmen, or workmen and workmen, with a right of

[13] (1959) 1 SCR 995
[14] AIR 1953 SC 58.
[15] AIR 1965 Mad.111
[16] AIR 1958 SC 353

representation by a registered trade union or federation of trade unions or association of employers or a federation of associations of employers; and

- Collective bargaining.

COLLECTIVE BARGAINING RIGHTS

The Industrial Disputes Act[17] recognises the right of workers and their unions to collectively bargain with employers and enter into collective agreements with them. The following are the statues which recognized the collective bargaining Rights,

- S.2(p)[18]
- S.18[19]
- S.29[20]
- S.19[21]
- S.23(c)[22]
- 5th Schedule - unfair labour practices on the part of the employers and their organisation.
- Item 15 (Part I of 5th schedule) - any refusal on the part of the employer to bargain collectively in good faith with the recognised trade union is an unfair labour practice.
- Item 3 (Part II 5th schedule)

RATIFICACTION OF THE CONVENTION NOS. 87 AND 98

The Status quo remains to be ideal, as India did not ratify the two principle conventions for the past 60 years. Regardless of the fact of its non-ratification of the Conventions, India is expected to give effect to the principles contained in the Conventions by reason of its very membership of the ILO and is consequently being bound by the principles contained in the Constitution of the ILO and the Declaration of Philadelphia. This obligation is

[17] See, Industrial Dispute Act, 1947 , S.2(p),18,19,23,29.
[18] "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorised in this behalf by] the appropriate Government and the conciliation officer;]
[19] Persons on whom settlements and awards are binding
[20] Penalty for breach of settlement or award
[21] Period of operation of settlements and awards
[22] No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award

reinforced by the ILO Declaration of Fundamental Principles and Rights at Work, 1998.[23] At the same time, ratification of these Conventions is important for the reason that it is only upon ratification that India will be legally bound to ensure that the principles contained in the Conventions are observed in law as well as in practice, in the country. However, over the last six decades since the Conventions came into force, notwithstanding the various efforts made by the ILO to achieve the universal ratification of these Conventions, the Government of India has consistently indicated its inability to ratify the Conventions.

The non-ratification by India of these two Conventions has been a matter of concern to the world community at large considering the huge size of India's workforce and the fact that these Conventions contain basic human rights principles that need to be universally observed in order to ensure decent work for workers, the world over. In the last two decades, this concern has been heightened on account of the changed economic context of India. There is no central statutory enactment in India regarding the recognition of trade unions. In most Indian states, there are also no state enactments regarding the recognition of trade unions. There is thus a legislative vacuum in India on the crucial subject of recognition of trade unions. As a result, employers in most states in India are not statutorily bound to grant recognition to trade unions representing the majority of the workers. In practice, this has resulted in employers often ignoring or by-passing representative unions and choosing to enter into "agreements/settlements" with employer established trade unions or individual workers. Such practices seriously undermine the collective bargaining rights of workers and trade unions. Such practices also threaten industrial peace.[24]

The aforesaid legislative vacuum thus seriously hinders the collective bargaining process in India. There is an urgent need for the central Government to adopt appropriate legislative provisions incorporating form the Conventions. Such a measure would help ensure that the principle enshrined in Article 4 of Convention No. 98 that collective bargaining between employers and workers' organizations should be encouraged and promoted, is respected in the country.

RECOMMENDATIONS OF THE SECOND NATIONAL COMMISSION ON LABOUR[25]

The report of the Second National Commission on Labour had also recommended that criteria for recognition of unions should be derived out. The report recommended that recognition be granted on the basis of the check off system and that the process of secret ballot be adopted for the purpose of recognition only in establishment where less than 300 workers are employed. It recommended that for securing recognition as the negotiating agent, a union would have to secure 66% of the vote. In the event of no one union, securing

[23] http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm
[24] Sheth, N. R. "Trade Unions in India—A Sociological Approach." *Sociological Bulletin* 17.1 (1968): 5-18.
[25] http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf

66% of the vote, every union that has secured more than 25% of the vote will have negotiating status while unions which have not even secured even 10% of the vote, will have no standing in the establishment.

UNIONIZATION IN INDIA[26]

The rate of unionization of workers in the country is as such low and is particularly low for workers in the unorganized sector or informal sector workers. The changed economic context of India since 1991 and the consequent change in employment patterns in industrial establishments in the country has affected the unionization of workers. The decrease in the permanent workforce and increased informalisation of the workforce coupled with increased contracting and sub-contracting of core production work and the consequent insecurity of employment has placed such workers in a position where they are unable to form and join unions of their choice and exercise their collective bargaining rights. The Government of India has indicated that it is not interested in formal ratification and that it can ratify the Conventions only when implementation of their provisions is fully achieved in Indian law and in practice. This stand of the Government is impractical for the reason that achieving and sustaining compliance with the provisions of the Conventions under the law and in practice is a continuing process. If this were to be the criterion for ratification, barely any convention can be ratified by any country. India had also not adopted this yardstick when it came to the ratification of two other freedom of association related Conventions, namely, the Right of Association (Agriculture) Convention, 1921, (No.11) and the Rural Workers' Organizations Convention (No. 141).

The main reservation of the Government of India to the ratification of Conventions Nos. 87 and 98 seems to stem from the fears it has concerning the extension of the guarantees contained in the Conventions to government employees in India. The Government has expressed its inability to ratify the Conventions on the ground that the trade union system of the country is highly politicized and that therefore permitting the unionization of government employees and the exercise of collective bargaining rights by them would impair their impartial functioning.[27] This position of the Government is firstly not in conformity with freedom of association principles and cannot justify the denial of the rights set out in the Conventions to all government employees in the country, as a class. The ILO supervisory bodies have held that government employees should have the right to form and join trade unions of their own choosing without previous authorization. However, it may be admissible for first level organizations of public servants to be limited to that category of workers, subject to two conditions-firstly, that their organizations are not restricted to employees of any particular ministry, department or service and secondly, that they may join freely federations or confederations of their own choosing. The supervisory bodies have also held that government employees should enjoy collective bargaining rights. They have

[26] Rao, E.M. "The Rise and Fall of Indian Trade Unions: A Legislative and Judicial Perspective." *Indian Journal of Industrial Relations* 42.4 (2007): 678-95.

[27] Challenges, Prospects and Opportunities of Ratifying ILO Conventions Nos. 87 and 98 in India Bureau for Workers' Activities Geneva ILO Decent Work Team for South Asia New Delhi. p.47

held that an exception may be made only in the case of public servants directly involved in the administration of the state such as civil servants employed in government ministries. Moreover, the Labour Relations (Public Service) Convention (No. 151)[28] permits the exclusion only of high level employees whose functions are normally considered as policy making or managerial and employees whose duties are of a highly confidential nature. Therefore, any restriction on the freedom of association and collective bargaining rights of government employees ought to be only in accordance with the aforesaid principles. Adherence to freedom of association and collective bargaining standards would also help counter balance the market power of employers and reduce income inequality which in turn would help to accelerate economic development. The observance of core labour standards, particularly freedom of association and collective bargaining rights also helps ensure that the benefits of growth are shared and this has a positive effect on the economic development of a country.[29]

BENEFITS OF RATIFICATION

India's ratification of the Conventions would indicate its commitment to the observance of internationally recognized core labour standards and increase its influence and enhance its standing in the international arena. Ratification of the Conventions would obviously be beneficial to workers in the country and their organizations as it would lead to an improvement in the national labour standards concerning the freedom of association and collective bargaining rights and also help ensure better implementation of these standards in practice. Respect for freedom of association and collective bargaining rights can lead to better labour management relations and co-operation between them thereby reducing costly labour-management conflicts and promote industrial harmony and social stability.[30] Studies on the relationship between trade unions and productivity have indicated that trade unions can enhance productivity and efficiency and that unionized workers are more likely to adopt productivity raising innovations relating to technological change, changing product mix and reorganization of work.[31] It is also obvious that adherence to core labour standards and the promotion of decent work would facilitate human capital development which is necessary to achieve long term growth. Thus, ratification of the Conventions would be beneficial to the country as such and also the workers and the employers in the country.

DISADVANTAGES OF NON-RATIFICATION

[28]http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C151

[29] Challenges, Prospects and Opportunities of Ratifying ILO Conventions Nos. 87 and 98 in India Bureau for Workers' Activities Geneva ILO Decent Work Team for South Asia New Delhi. p.51

[30] Patil, B. R. "Collective Bargaining and Conciliation in India." *Indian Journal of Industrial Relations* 12.1 (1976): 41-60.

[31] Rao, E.M. "The Rise and Fall of Indian Trade Unions: A Legislative and Judicial Perspective." *Indian Journal of Industrial Relations* 42.4 (2007): 678-95

India's failure to ratify the Conventions undermines its credibility in the international arena. It conveys the impression that India is a country that wishes to achieve rapid economic growth at the expense of basic human rights. Giving such an impression at a time when there is a clear international consensus on the need to adhere to core labour standards and promote the goal of decent work for all, certainly hurts its reputation. Apart from this, India's failure to ratify the Conventions also leaves its workers more vulnerable to exploitation and unfair labour practices which in turn adversely affects the country's economic development as well as human capital development.[32]

RECOMMDATIONS AND SUGGESTIONS

The Indian Labour Laws are ineffective as it failed to adopt the conventions relating to the freedom of association and collective bargaining rights of workers. The Unionization of unorganized sector of India is very low and the changed economic context of India since 1991 and the consequent change in employment patterns in industrial establishments in the country has affected the unionization of workers. Even permanent workers in industrial establishments are often unable to form and join trade unions of their choice and exercise their collective rights on account of widespread anti-union acts by employers. Employers often refuse to recognize representative unions. India has so far not ratified conventions 87, 98, 138 and 182 which are the core ILO conventions. The main reason for non-ratification of the above conventions create legally binding obligations which are inconsistent with our Indian laws and practices. The ratification of these Conventions would lead to involve granting of certain rights that are prohibited under the statutory rules for government employees namely, to organize strike, restrictions on maintaining any political funds, to openly criticize Government policies, to freely accept financial contribution, to freely join foreign organizations etc. The smaller union or organisations generally do not prefer the collective bargaining principles for handling the dispute between the employer and workman.

India, following the socialist model of democracy have to make laws for the welfare of the labour and union. The collective bargaining principles are most relied upon the "Laissez Faire" which has deep roots form capitalist agendas. In Indian context, there should be a partial intervention of the state in order to uplift the living stands of the workers. As far India is concerned, after the LPG in 1991, India shifted towards the socialist model to capitalist model of welfare state. This shift which ultimately creates the balance between the bargaining principles and intervention of state in Industrial Disputes. Hence, such changes as it deems fit to the Indian scenario has to be adopted, thereby leading to the betterment of the employees and employers.

[32] Mary Sur, Collective Bargaining – A comparative study of the developments in India and other Countries, Asia Publishing House.