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Legislative Trend on Collective Agreement

(A critical analysis to related with collective bargaining under industrial Disputes Act,1947)

Chand Dinesh* and Gurjar Sunita

Research scholar, Sunrise University, Alwar
Email-shuklachdinesh@gmail.com. Mob.09460524366

ABSTRACT

Collective bargaining is a mechanism which involves a kind of negotiation between the employers and their group of employees aiming to settle the disputes relating to employment, unemployment, and term of employment or conditions of workman the strength of the sanctions available to each side. The key feature of the process is the collective interests of both the parties involved. The strength of the process is that it results in the collective agreement. The concept of collective bargaining evolved during the labour struggle in England which had taken place since the 18th sanctuary and took shape during the 19th sanctuary where it defined the nature of the relationships between the employees and the employers as a positive process of collective negotiations and agreements. Collective bargaining has now emerged as a major method or tool for the determination of the terms and conditions of employment in most of the countries of the world voluntarily or under legal obligation. In India, since independence the Government policy of 'free collective bargaining' has left the collective bargaining institute to develop voluntarily. The western concept of collective bargaining is not a compulsory part in the settlement of industrial dispute in India There is, however, no proper central legislation governing the conclusion, regulation and supervision of collective bargaining. The paper holds to review the legislative condition under industrial disputes act 1947 of collective bargaining in India.

KEYWORDS: collective agreement, industrial dispute act, 1947

Corresponding Author:-

Dinesh Chand

Research scholar,
Sunrise University, Alwar
Email-shuklachdinesh@gmail.com.
Mob.09460524366

INTRODUCTION

The concept of Collective bargaining has emerged in the field of industrial world to harmonize labour relations and to promote industrial peace by creating equality of bargaining power between the labour and the capital. Collective bargaining has been defined as “negotiations about working conditions and term of employment between an employer, a group of employers or one or more organizations of employers on the one hand and one or more representative organizations of workers on the other, with a view to conclude agreements”¹ After independence India has adopted a new social order based on social and economic justice and has made rapid strides in the field of industrial relationships. The government has played an important role in the shaping of industrial relations through labour legislation dealing with the industrial disputes by way of the adjudication .Our legislature has enacted several social legislation particularly in the field of the labour laws, to achieve the goals set by the constitution. In these pursuance of the above the concept of collective agreement could have been a major tool but it is in the beginning stage in India. Attempts have been made under the industrial disputes act 1947, by the legislature in this area. But it is unfortunate that it’s not mandatory for settlement of industrial disputes in India. The purpose of this paper is to examine the legislative trends of collective agreement in India as for the scheme mentioned below.

Collective agreement under industrial disputes act 1947

The process of collective bargaining in India has emerged long back during the first half of the 20th sanctuary when the trade union movements were at its peak especially after the World War I. The strength of the trade union movements and the working class was that collective bargaining mechanism started taking shape and successfully achieving its ground even without no legal support from the then government. But the growth of the same was not very smooth because neither during the British rule nor after independence, the proper and strong legal support was provided for the same. Few small steps have been taken in this direction under the legislation those can be said to have laid the path to the growth of the collective bargaining in India.

This begins with the passage of Bombay Industrial Disputes Act, 1938 which marks the introduction of standard contracts in India Employment Standing Order Act, 1946. The subject matter covered by these standing orders was the conditions of recruitment, dismissal, discharge or proceedings relating to disciplinary actions etc. Such agreements are not the outcome of give and take spirit of the

parties and they are in the nature of statutory impositions, admitting very little scope for modification by agreement of the parties.

The next step was the Industrial dispute Act, 1947. The act provides the mechanism for the settlement of the disputes. It is the kind of collective agreements arrived at otherwise than in the course of conciliation proceedings. Settlement may be reached with or without the intervention of the Conciliation Officer, or during the pendency of the dispute before the labour Court of Industrial Tribunal.

A few steps also made in the direction through the state specific acts such as Bombay Industrial relation act, 1946 and Madhya Pradesh Industrial relation act 1960. Though these acts don't provide the sufficient mechanism for the collective bargaining to take place in complete sense, they certainly provide the basis for the further growth of the concept.

(i) Role of Conciliation Officer in Collective Agreement

Under the Industrial Disputes Act, the Conciliation Officer is an independent agency created with a view to promote industrial peace by making available Government facilities in the process of collective bargaining. His main task is to go from one camp to other to find out the greatest common measure of agreement.² He has to investigate the dispute and do all such things as he thinks, to arrive at a fair and amicable settlement of the dispute.³ If a settlement is arrived at in the course of conciliation proceedings, the Conciliator has to draw up a memorandum of settlement and get it signed by both the parties. Thereafter he sends his report and memorandum of settlement to the authority prescribed by law, who records it.⁴ The duties of a conciliation officer as laid down in section 12(1) and 12(3) of the industrial disputes act are mainly hold conciliation proceedings in the prescribed manner, where come to the existence of any industrial dispute between the parties. but there is no such a power to pass any independent order under the act. he is not competent to adjudicate upon the dispute between the management and the workmen.⁵

(ii) Binding Character of Private Settlement:

The concept of collective bargaining, though in a limited form, has been introduced in the Industrial Disputes Act, 1947. In the year 1956 by amending the definition of settlement in Section 2 (2) of the I.D. Act in the present definition of settlement, a written agreement between the employer and workmen arrived at otherwise than in course of conciliation proceeding has been included. Prior to

amendment, definition of settlement provided only for a settlement arrived at in the course of conciliation proceeding and did not include a private settlement between the parties to the dispute arrived at otherwise, than in the course of conciliation proceedings. But even before the amendment of 1956, the private settlement had been held to be a proof patent of the fact that any dispute existing between the parties relating to the matters covered by settlement had come to an end.⁶

Before amendment of 2(p) there was some controversy in judicial decision over binding nature of private settlement but the amendment of Section 2 (2) of Industrial Disputes Act, 1947, it has been set at rest by Legislature. As such, pronouncements holding that private settlement of the industrial dispute does not bind the parties to it, has no place in the Industrial Law of the country, have now become obsolete and is not good law.⁷ Section 18(1) of Industrial Disputes Act, 1947 makes such a settlement and Section 29 prescribes penalty for the breach of such a settlement. It would thus appear that the process of collective bargaining rests on the statutory crunches likewise, in the provisions in the State legislations also; the system of collective bargaining is hedged by statutory safeguards.

(iii) Settlement reached though Conciliation parties on whom binding:

The normal rule of the law is that no agreement or even a judicial adjudication will bind person not parties thereto. Normally, a trade union can and does only represent its members. When it enters into an agreement with the management, it can do so only on behalf of its members. But the whole policy of section 18 of the Industrial Disputes Act, 1947 and of the similar State enactments⁸ appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceedings and that the object with which the four categories of persons bound by such settlement are specified in Section 18, sub section 3 of the Industrial Disputes Act, 1947.⁹

Thus settlements arrived at through conciliation are binding on (a) all parties to the industrial disputes; (b) all parties summoned to appear in the proceeding as parties to the dispute; (c) in case of employer all the heirs and the successors and assignees in respect of the establishment to which the dispute relates; and (d) in respect of employees to all persons who were employed in the establishment or part of the establishment to which the dispute relates on the date of dispute and all persons who subsequently become employed in that establishment or part of it.

Again, a settlement reached in the course of conciliation proceedings has been placed by the statute on a higher footing than a mere agreement between the parties. The fact that one union did not

join in such a settlement on the identical subject matter of the dispute cannot obviously affect its binding character on all the employees, irrespective of their participation or non-participation the binding nature of the settlement depends on the states. A settlement, therefore, entered into between the employer and a recognized union of the workmen, when bonafide one, resulting through the agency of the conciliation officer, binds the workmen including the members of the other unions of workers employed in the same establishment.¹⁰ The principle involved in the provisions of Section 18 of the Industrial Disputes Act, 1947 is the principle of collective bargaining. A number of workers acting together are considered to be in better position to secure benefits for the workers as a class than individual workers. A few workers, it is thought, should not be permitted to jeopardize the interest of the majority. But the principle of this section is, however, held not of universal application; it can be relied upon if the Legislature prescribes that it should be applied. The settlement outside the purview of Industrial Disputes Act cannot be held to be enforceable against the non-participant workers of the establishment concerned under Section 18 of the Act.

Finally, on the basis of the above discussion, we come to the conclusion that the settlement of the industrial disputes by way of the adjudication has been preferred to comparatively collective agreement and there is no such proper law enacted by the legislature for the strengthening of the approach of collective agreement in true sense in India.

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