Chapter – 5

Collective Bargaining

Introduction

Collective bargaining is a technique adopted by the organizations of workers and employers collectively to resolve their differences with or without the assistance of a third party. Its ultimate aim is to reach some settlements acceptable to both the parties involved in labour-management relations. The phrase ‘Collective Bargaining’ was coined and at first used by Sydney and Beatrice Webb in 1891 and Great Britain is said to be the ‘Home of Collective Bargaining’. Subsequently, Samuel Gompers, the president of American Federation of Labour in USA considered ‘Collective Bargaining’ as the most important for determining the terms and conditions of employment. Gradually, the term came to be extensively used not only by trade unionist and employers, but also by the governmental agencies, academicians and even social organizations and others. It becomes a very important institution in the realm of industrial relations.

In this chapter an attempt has been made to delineate the meaning and concept of collective bargaining together with main features. The chapter then proceeds to explain the theoretical and legal frame work, various levels at which collective bargaining take places, the importance of this vital instrument in resolving the differences and achieving better understanding as well as ensuring industrial harmony. It also covers the key negotiation techniques and skills, the conditions for mutual gains bargaining and the care that needs to be exercised drafting on agreements.

The Concept

The Phrase ‘Collective Bargaining’ is made up two words – Collective which implies group action through its representatives; and Bargaining, which suggests haggling and/or negotiating. The phrase, therefore, implies ‘collective negotiation of a contract between the management’s representatives on one side and those of the workers on the other’. Collective bargaining may be defined as a process of negotiation between the employer and the organized
workers represented by their union in order to determine the terms and conditions of employment.

The term ‘Collective Bargaining’ extends to all negotiations that take place between employer, a group of employers or one or more employers’ organizations, on the one hand, and one or more workers organizations, on the other to–

(i) Determine the working conditions and terms of employment : and/or
(ii) Regulate relations between employers and workers; and/or
(iii) Regulate relations between employers or their organizations and a workers organization or workers organizations.

Collective bargaining is a method by which trade unions protect, safeguard, and improve the conditions of their members’ working lives. It is means of joint regulation by employers (alone or through their organizations) and workers organizations. It provides the opportunity to formulate rules by mutual consent.

Collective bargaining has viewed by different authors in different ways. By the changing times different views has emerged. According to encyclopedia of social sciences, “collective bargaining is a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert. The resulting bargain is an understanding as to the terms and conditions under which a continuing service is to be performed.... More specifically, collective bargaining is a procedure by which employers and a group of employees agree upon the conditions of the work.” The International Labour Organisation (ILO) considers collective bargaining as “Negotiations about working conditions and terms of employment between an employer and a group of employees or one or more employees’ organisation with a view to reaching an agreement wherein the terms serve as a code of defining the rights and obligations of each party in their employment relations with one another; fix a large number of detailed conditions of employment; and during its validity, none of the matters it deals with can in normal circumstances by given as a ground for a dispute concerning an individual worker.”

Hoxie holds, “Collective bargaining is made of fixing the terms of employment by means of bargaining between an organised body of employees and an employer or an association of
employers usually acting through organised agents. The essence of collective bargaining is a bargain between interested parties and not a degree from outside parties.”

Similarly, Richardson says, “Collective bargaining take place when a number of work people enter into a negotiation as bargaining unit with an employer or group of employers with the object of reaching an agreement on the conditions of employment of work people.” A number of other scholars notably Neil w. Chamberlain, John T. Dunlop, and H.W. Davey have explained in detail various aspects of, and issues involved in collective bargaining. For instance, while some emphasize the economic functions (Dunlop, 1958), other highlight the political role (Rose 1969) of trade unions in collective bargaining. In most cases, the dynamics of economic and political factors and forces together determine the outcome of collective bargaining.

**Features of Collective Bargaining**

In some countries, it is considered the duty of employers to engage collective bargaining in good faith, in others (for instance, Australia) it is not. Then there are countries (for instance, Cyprus and Malaysia) that distinguish between interest issues and rights issues. In these countries, collective bargaining can take place on interest issue and not on rights issues. **Interest issues** refer to wages and working conditions. **Rights issues** concern the interpretation of do’s and don’ts in the course of an employment relationship. There is distinction between market relations and managerial aspects. The former can be a candidate for collective bargaining not the latter.

Market relations are concerned with wages and working conditions. Managerial aspects have to do with issues like assignment of work and adjustment of work force. While in some countries, such as India, anything and everything can be bargained for, in other, such as Malaysia, hiring, reward, transfer promotion, assignment of work and adjustment of workforce are explicitly recognised by law as managerial prerogatives.

Collective bargaining provides for procedural and substantial rules. **Procedural rules** concern mechanisms for dealing with interpretations and implementations of agreements as well as resolving conflicts, whereas, **Substantial rules**, concern the substance of the agreement, in
both markets (terms and conditions of employment) and managerial relationship (control on manning, transfer, promotions etc.).

Thus, the main features and characteristics of collective bargaining may be summarized as follows:

(i) **Collective bargaining is two ways process:** – It is a mutual give and take rather than a take- it or leave- it method of arriving at the settlement of disputes. Both parties are involved in it. In many countries, the process tends to promote antagonism and conflict between parties, because of which collective bargaining takes place in a spirit of barring the gain (to the other parties). A rigid, hard or inflexible position does not make for a compromise settlement.

(ii) **Collective bargaining is a civilized confrontation:** – It is a ‘civilized confrontation’ with a view to arriving at an agreement, for the object is not ‘welfare’ but ‘compromise’. The essence of collective bargaining lies in the readiness of the two parties to a dispute to reach an agreement and mutually setting it. It is concerned about the emotions of the people involved was well as with the logic of their interests.

_Bakke and Kear observe_ “Essentially, a successful collective bargaining is an exercise in graceful retreat-retreat without seeming to retreat. This involves ascertaining the maximum concession of the opposing negotiator without disclosing one’s own ultimate concession. In this sense, all negotiations are exploratory until the agreement is consummated.” It can succeed only when both labour and management went it to succeed.

(iii) **Collective bargaining is a continuous process:** – Collective bargaining provides machinery for continuing an organized relationship between management and trade unions. It begins and ends with the writing of a contract. The most important part of it is the bargaining that goes on from day-to-day under the rules established by labour agreements.

(iv) **Collective bargaining is a complementary process** :– It is not a competitive process but it is essentially a complementary process, i.e., each party needs something that the other party has. For example, labour can make a greater production effort and management has the capacity to pay for that effort and to organize for the effort.
Collective bargaining is negotiation process – It is negotiating processes and is a device used by wage-earners to safeguard their interests. It is an important instrument of an industrial organization for discussion and negotiation between the two parties. It is an integral part of industrial security.

**Flanders** identifies *firstly*, the distinctive nature of collective bargaining to be basically a political institution in which the rules are made by the trade unions of workers, employers and corporations/organizations.

*Secondly*, since the two aspects of administration and legislation are interlinked, there is a considerable degree of joint regulation by both the parties governed by the conventions and customs that prevail at the enterprise level.

*Thirdly*, collective bargaining is not merely an economic process, but more a socio-economic one. The values, aspirations and expectations also play a significant role.

**Purpose and Importance of Collective Bargaining**

Collective bargaining has come to occupy a significant place in modern growing industrial societies for various reasons. The Stakeholders of collective bargaining i.e., government, employers/management, workers/trade unions, consumers and community have benefited in numerous ways. It has wide implications for the economy and society as a whole.

**Prof. Butler** has viewed the functions of collective bargaining under three needs:

(i) Collective bargaining as *process of social change*.
(ii) Collective bargaining has served as a *peace treaty* between two parties in continued conflicts.
(iii) Collective bargaining creates a system of “*industrial jurisprudence*”, served as rule making or legislative process.

In view of the above statement following purpose and importance may be identified:–

- **Brings Parties Closer.**

  Collective bargaining is the technique that has been adopted by union and management for compromising their conflicting interests. It brings parties closer and
plays a significant role in improving the labour management relations and ensuring industrial harmony.

- **Develop better understanding, industrial peace and industrial democracy.**
  Collective bargaining helps in development of better understanding of each other’s points of view as well as problems. Through discussion and interactions, both the parties learn more about others and often misunderstandings may be removed.

- **Resolves Conflicts and differences.**
  Collective bargaining helps in easing out many minor differences and there are many instances in which even major disputes are said to be settled without any work stoppages or outside intervention. It plays a vital and significant role in conflict resolution. It builds up safety valves, allowing the opposite groups, excess stream to escape without blowing the whole mechanism to pieces.

- **Guarantees the rights and responsibilities of the workers.**
  Collective bargaining agreements ensure that management does not take any unilateral decision. In other words, collective bargaining is an employer-regulating device, a method of guaranteeing the rights and immunities of the workers by limiting the employer’s freedom of action. A collective bargaining agreement also develops a sense of responsibility to the workers towards organizations.

- **Develop self respect and foster responsibility on both workers and employers.**
  Collective bargaining agreements take places with the consensus of both the parties. It develops a sense of responsibility and of self respect among the workers and employers for honouring the agreements. Collective agreements provide a climate for smooth progress.

- **Brings social change through acceptable solutions.**
  In fact, a collective agreement brings both labour and management together to determine the conditions of employment which, till then, had been decided exclusively by an outside agency, and paves the way to the closing of the psychological and emotional gulf which divides labour and management. It brings a social change through acceptable solutions by both the parties.

- **Formulates terms and conditions under which labour and management will work together.**
Collective bargaining is rule-making or legislative process in which it formulates terms and conditions under which labour and management will co-operate and work together over a certain stated period. It is method of introducing civil rights into industry, that is of requiring the management be conducted by rule rather than by “Arbitrary decision”.

**Functions of Collective Bargaining**

Collective bargaining plays an important role in preventing industrial disputes, settling these disputes and maintaining industrial peace by performing the following functions:

- Increase the economic strength of employees and management.
- Establish uniform conditions of employment.
- Secure a prompt and fair redressal of grievances.
- Lay down fair rates of wages and other norms of working conditions.
- Achieve an efficient functioning of the organization.
- Promote the stability and prosperity of the company.
- It provides a method of the regulation of the conditions of employment of those who are directly concerned about them.
- It provides a solution to the problem of sickness in the industry and ensures old age pension benefits and other fringe benefits.
- It creates new and varied procedure for the solution of the problems as and when they arise problems which vex industrial relations; and its form can be adjusted to meet new situations. Since basic standards are laid down, the employee is assured that he will be required to work under the stipulated conditions incorporated in the agreement; and the employer is protected from unfair competition by those who are engaged in a similar industry.
- It provides a flexible means for the adjustment of wage and employment conditions to economic and technological changes in the industry, as a result of which the changes for conflicts are reduced.
As a vehicle of industrial peace, collective bargaining is the most important and significant aspects of labour management relations, and extends the democratic principles from the political to the industrial field.

It builds up a system of industrial jurisprudence by introducing evil rights in the industry. In other words, it ensures that management is conducted by rules rather than by arbitrary decisions.

Theories of Collective Bargaining

Collective bargaining has been viewed by different authors i.e. Sydney and Beatrice Webb, Samuel Gompers, Chamberlain etc. in different ways having their own approach. Some of the important approaches are discussed as under.

A. Webb’s Approach

As stated earlier, the term ‘Collective Bargaining’ was coined and at first used by Sydney and Beatrice Webb in 1891, famed historians of the British labour movement. It was first given general currency in the United States by Samuel Gompers. It is an extremely useful shorthand phrase for describing a continuous, dynamic process for solving problems arising directly out of the employer - employee relationship.

According to Webbs, “Collective bargaining as an institutional process, the principal object of which is negotiation between company and union representatives in an attempt to reach agreement on the terms and conditions of employment i.e., wages, hours and working conditions.” Such negotiation normally culminates in the signing of a written instrument termed a collective labour agreement or union contract, which sets forth the terms and conditions of employment for a fixed period of time.”

It is customary to distinguish between the negotiation of union contracts (the “legislative” phase of the union-management relationship), the administration of contracts (the “executive” phase of the organized relationship) and the interpretation or application of contracts (the “judicial” phase).

The term “collective bargaining” implied to cover the entire range of organized relationship between unions and management, covering the negotiation, administration,
interpretation, and application of collective labour agreements. This elastic usage is employed to stress the important fact that collective bargaining provides a system for continuous organized relationships between management and unions.

There are admittedly fundamental differences between collective bargaining in its legislative and in its executive and judicial aspects. The **legislative phase** of contract negotiation creates an instrument governing the relationship between the parties for a given period of time usually 1 to 5 years. If the relationship between the parties is to be a stable and constructive one, the existence of such a legislative instrument must be held to preclude the possibility of continuous bargaining for change in its terms. Such bargaining must be confined to specified contract negotiation periods. Of course the parties by mutual consent may choose to modify unworkable provisions or may meet a specific contingency that arises subsequent to the signing of the contract through a ‘memorandum of understanding’.

Too rigid an insistence upon a separation between **negotiation and administration** obscures the continuous nature of the organized relationship between the parties to the contract. It tends to magnify unduly the importance of contract negotiation as contrasted with administration.

When laymen think of collective bargaining, they have in mind the dramatic circumstances surrounding the negotiation of a contract in a smoke-filled room at midnight. Little thought is given to the behaviour of the parties in the interim between contract negotiation periods. Yet it is in this period of contract administration that constructive or disruptive labour-management relationships are developed.

### B. Chamberlain’s Approach

As stated above, the Webbs classical model of collective bargaining remained many years and no one proposed a substantive modification and change in it. It was Chamberlain who revised and modified the old concept in 1951 in his book “Collective Bargaining”.

**Neil W. Chamberlain** has tried to conceptualize the nature of collective bargaining process through three theories:

(i)  The marketing theory;
(ii) The governmental theory and
(iii) The managerial theory.

The first views collective bargaining as a method of selling and buying labour services, the second views the union-management relationship as a governmental system in industry and third as a method of management. The details of these three theories may be discussed as under.

I. The Marketing Theory

The marketing theory views collective bargaining as contract for the sale of labour so it is also known as theory of the ‘Agreement as a contract’. According to this theory, employees sell their labour on terms determined on the basis of contract, made through the process of collective bargaining. It constitutes a process through which demand for and supply of labour are equated in the labour market. It is process which determines under what terms labour will continue to be supplied to a company by its existing employees, and by those newly hired as well.

The marketing theory does not differ in essence from that of the classical approach of Webbs. It also accepts that for ‘most practical purposes the individual labour contract has been replaced by the collective agreement.’ However, Chamberlain has tried to distinguish individual bargaining from that of collective bargaining. In an individual contract an individual commits himself to perform work for a certain period and on a stipulated wage rate. There is an absence of such commitment in collective bargaining. The collective bargaining agreement commits no one to give service, but merely, assures that when service is given it shall be rewarded as provided for in the agreement.

In marketing theory, collective bargaining has been viewed as a method of wage determination. According to chamberlain, it is process of agreement on which employees are willing to continue to sell their individual labour only on terms collectively determined, and collective bargaining is the process by which the terms of sale are ultimately settled.

The ethical foundation of this theory is based on a conception that there is a need to remove bargaining in equality as it was in the individual bargaining. In individual bargaining an individual worker possessed titled bargaining power in comparison to his employer and,
therefore, individual labour contracts were always in favour or employer. The unbalanced situation could be summed up in the phrase “labour’s disadvantage”. The bargaining was to between equals; the contract was forced by circumstances which seemed always to weigh upon the employee to the advantage of the employer. Collective bargaining sought to remove this imbalance and inequality and to replace ‘bargaining between inequals’ by ‘bargaining between equals’.

II. The Governmental Theory

The Governmental Theory considers collective bargaining as a form of industrial government. It constitutes a constitutional system in which the trade union and management participate to regulate the terms and conditions of employment. The management administers the provisions of the contract as an executive authority. The contract is viewed as a constitution, adopted by the representatives of the trade union and management, in the form of compromise or agreement.

This theory views collective bargaining and the labour management relations established through it as a form of governmental system in the industry. The collective agreement or the contract is regarded as a ‘constitution’ on the basis of which an industrial government is reared. The industrial government refers to the bargaining unit concerned which may be a plant, a company or an industry. The industrial constitution i.e., the main collective agreement is written jointly by the representatives of the union and the management in collective bargaining conference which in this regards, takes place periodically. The parties in the bargaining conference enjoy the veto power; it means that the agreement is in the nature of compromise. It is the functions of the constitution or the collective agreement to set up organs of government define and limit them; provide agencies for making, executing and interpreting laws for the industry and means for their enforcement.

Chamberlain says that in common with other governments, the industrial government too has its legislature, executive and judiciary.
The legislature of the industrial government is the shop committees, joint committees which meet frequently and make rules to supplement the basic laws of the main agreement. The bylaws made by these joint bodies must not be contradictory to the basic clauses of the agreement but must be supplementary in nature. The legislation conflicting with the basic terms has no standing. The basic clauses of the main agreement i.e., the constitution of the industrial government, can be charged but not by the local bodies and shop committed but by the joint conference of the parties making the constitution.

The right of initiative characterizes the executive branch of course, within the framework of legislation. The executive authority is vested in management. In the words of Chamberlain, “Change in method of production, introduction of new machinery, determination of the products to be manufactured, scale and timing of production, standards of quality and organisation of personnel in such matters as assignment to jobs, transfers, layoffs and promotions these are typical areas in which the agreement either specifically or tacitly recognizes management as the executive office.” The power initiation must lie within the jointly defined boundaries. It means the management can take action but always follow the procedure laid down in that case in the agreement. Management can discharge on employee for disciplinary reasons but only after satisfying the jointly determined standard such as, not notice, warning, timely action, fair hearing etc.

The third branch is judiciary. In case of labour-management relations also, the need for interpretation of the clauses of agreement arises when management does not comply with the requirement of the joint agreement, the supplementary agreements of the shop committees conflict with the basic agreement etc. The judicial machinery, to settle these issues, is provided by the grievance produce. The issues concerning denial of the rights created under the provisions of the agreement are sent to grievance committee or joint tribunal consisting of equal number of representatives from both the side. The last stage in the grievance procedure is the voluntary arbitration that is to enable the parties to get a solution of the differences in case they themselves fail to resolve them. Thus, grievance procedure interprets the meaning of the clauses of the agreement and provides guidance to the parties concerned. The ruling of the judiciary branch of the industrial government remains valid and authoritative till the clauses of the agreement are not over ruled by an amendment.
The government theory provides continuity in the bargaining process which is not so significant in case of marketing where agreements are reached periodically. The formed differs from the latter in the sense that the latter stresses the “need for an exclusive representation of the employee in the bargaining unit.” In marketing theory, a union may negotiate terms and conditions of employment for its members only, leaving non-members to negotiate settlement either through other unions or individually. In governmental theory, this is not possible. There cannot exist two or more governments simultaneously.

Chamberlain says that “the concept of joint government in industry...... accepts the need for a single, exclusive agency where laws and judicial enforcement are uniform throughout the industrial area included in the bargaining unit, affecting all employees in that unit whether members or the union or not.” Therefore, the concept of governmental theory can exist only in the situation where the concretion of majority representation has been accepted. Under this doctrine all the workers of a bargaining unit are given an opportunity to express their views whether they want to be represented by union A or B or C. The union receiving the largest vote is declared to be the representative or majority union and, therefore, in authorized to act as a bargaining agent on behalf of all the workers, members of this union or others and non-members alike.

The ethical principles underlying the governmental theory are the ‘Sharing of industrial sovereignty.’ The Sovereignty in this regard, is no more a prerogative of management but of both management and union. The theory also seeks to establish author in the industrial management, that is to say, the management and the union would decide their internal matters without any interference from the third party. The union and management therefore, are supposed to state regulation of the terms and conditions of employment because it will charge the autonomous nature of the industrial government. They would oppose any system of compulsory adjudication of their differences which they would like to settle internally. In other words, the parties share the Sovereignty over their internal problems and do not want it to be shared by the state.

III. The Management Theory

The Management Theory views collective bargaining as a ‘method of management’. As both the trade union and management participate in the deliberations and decision-making, the
union representatives are seen as participating in the management of the organization. The managerial theory poses a sharing of management functions that is the decision making function. The area of management functions is vast; the managerial approach concerns itself with only those matters which have been brought under the scope of joint determination. From the functional point of view management can be classified as:

(i) The directive management,
(ii) The administrative management,
(iii) The executive management, and
(iv) The compliance measures.

The sources of final authority in any business rest with the **directive management**. However, in small business units this function is performed by the owners themselves, whereas in incorporated enterprises the boards of directors possess this authority. Now in areas of joint determination agreed upon by the parties, the authority to take final decision regarding policy matters is shared by the union and a collective bargaining conference is competent enough to take such decisions. The decisions taken remain valid for the life of the agreement. That cannot be changed by one party. They can be changed, revised or modified by a joint conference of the representative of both the parties.

The **administrative management** is concerned with carrying out the decisions and in doing so it enjoys certain discretion. However, the decisions of the administrative management are always subject to reversal by the final authority. The unions participate in this function by negotiating supplementary agreements and unions at the shop level do negotiate subsidiary agreement keeping the spirit of the main agreement intact. The **executive management** is charged with the duty of translating the decisions and directives of the two authorities, mentioned earlier into action. The unions have to play little role in this regard. The **compliance machinery** is provided by the grievance procedure which has been mentioned while discussing the governmental theory.

The ethical principle underlying this approach is the “**principle of mutuality**, i.e., those who are integral to the conduct of an enterprise should have a voice in decision of concern to them”. Mutuality in this regard recognizes that property is not the only basis for authority or
management. Property is the basis for authority only over property and not over men. If mean are to be managed, their consent is required because they are not property but the human being. As the areas of joint concern will increase, the participations of unions in management will also increase.

**Chamberlain**, while summarizing the discussion on these three theories says that to same extent—

(i) They represent stages of development of the bargaining process itself,
(ii) They constitute stages of recognition of what collective bargaining is, and
(iii) They represent differing conceptions as to what the bargaining process should be, that is to say they represent normative judgements.

The characteristics as well as the distinguishing features of the three theories may be listed as under:—

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<tr>
<th>Marketing Theory</th>
<th>Governmental Theory</th>
<th>Managerial Theory</th>
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<tr>
<td>• Economics’ Point of view</td>
<td>• Political Science’s view.</td>
<td>• Industrial Relations view.</td>
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<td>• Exchange relationship</td>
<td>• Political relationship.</td>
<td>• Functional Relationship.</td>
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<td>• A means of contracting for the sale of labour</td>
<td>• A forms of Government.</td>
<td>• A method of management.</td>
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<td>• It sought to remove bargaining inequality</td>
<td>• Sharing of industrial sovereignty.</td>
<td>• Principles of mutuality</td>
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<td>• No continuous process</td>
<td>• Continuous process.</td>
<td>• Continuous process.</td>
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<td>• Many contracts possible – bargaining may be possible with any number of unions existing.</td>
<td>• No two government – theory of majority representation</td>
<td>• Based on theory of majority representation.</td>
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<td>• CB–two parties affairs</td>
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<td>• CB – only two parties affairs.</td>
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<td>• No state role</td>
<td>• Autonomy of the industrial government.</td>
<td>• No state role.</td>
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<td>• 1st stage</td>
<td>• No state role</td>
<td>• 3rd stage.</td>
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<td>• CA – a contract</td>
<td>• 2nd stage</td>
<td>• CA – Directive management</td>
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Chamberlain did a commendable job by providing a comprehensive and generic concept of collective bargaining to the stock of knowledge in the field of labour economics and industrial relations. Shister, while discussing the contribution of Chamberlain in the field of industrial relations research mentioned that “he has moved the field more than a small step forward with the analysis, notably in stimulating interest in the questions he raised both explicitly and implicitly.” However Shister pointed out that practical workability of his approach is open to question. He further, says that “While the logical differentiation between the governmental and managerial theories of collective bargaining is sharp enough, the operational relevance of the differentiation is questionable. It would not be out of place if I mention Shister’s approach here. He has suggested that the institution of collective bargaining can best be understood by its principal traits including:–

(i) That is involves group relationship;
(ii) That is involves a continuous relationship;
(iii) That is dynamic and continuous,
(iv) That its specific character varies from one bargaining unit to another.
(v) That the collective bargaining relationship is dominantly a private one, it is influenced by Government Policy and action, and
(vi) That it is conditioned by the Socio-economic climate.

Levels of Collective Bargaining

Collective bargaining in growing global business environment may takes place of various levels. The levels of collective bargaining means in which stage/levels collective bargaining is being conducted with the growth of industrialization, the levels of collective bargaining have changed. During the early days of development it was practiced mainly at plant level. But
gradually with the growth of business environment and growth of Trade Union Movement, emergence of national and industrial labour and employers’ federations and emergence of multinationals, the level of collective bargaining also underwent change. Instead of operating at plant or an enterprise level, it travelled a long way to the local level, regional level, industrial level, national level and now it is at the international level or multinational collective bargaining level. The new trends in the level of operation of collective bargaining have been influenced by economic and political factors, market forces and the level of the growth and development of trade unions and employers’ associations. In this era of globalization, global trade union federations and international trade unions organizations have been striving hard to secure cross-border co-operation between trade unions and to coordinate workers representations and collective bargaining not only at local, industry, and national level, but also at regional and international level (covering whole sectors or several subsidiaries of multinational). The possible levels of collective bargaining as suggested by B.N. Shukla in his book, ‘Collective Bargaining’ can be discussed under three different situations:–

(a) Possible levels of collective bargaining when there is a single employer having only one plant.

(b) Possible levels of collective bargaining when the same employer has many plants in the same industry.

(c) Possible levels of collective bargaining when there are many employers and many plants in the same industry.

(a) Single Employer, One Plant

In this situation it is supposed that the employer has only one plant which may be big or small in size. Here, bargaining may take any of these four forms:–

(i) The employer may either bargain with the craft unions separately;
(ii) He may like to bargain with the industrial union only;
(iii) He may think of bargaining with all of them separately, or,
(iv) He may decide to bargain with a joint negotiating committee which may have been formed for this purpose by all the unions in the plant.

(b) Single Employer, Many Plants
It is presumed here that the employer has many plants in the same industry and in this situation; there could be only two possibilities–

(i) Bargaining may take place independently at each of the plants.

(ii) The employer may enter into one agreement only for all the plants instead of one for each. It may be required to enter into separate agreements with the industrial union, craft unions’ association and general union, or may be only one with the negotiating committee consisting of representatives of all the unions.

(c) Many employers, Many Plants in the same industry

In the given situation, it is presumed that there are many employers and many plants operating simultaneously in the same industry. There may be six possible levels and forms of collective bargaining–

(i) Plant Level Bargaining – Plant level bargaining might take place at the plant level resulting in plant wise agreements. It is presumed that all the employers are members of the same employer’s association and they are abiding with certain norms as fixed by their association while making collective agreements for their plants. While employers generally prefer decentralized bargaining at the plant level, unions insist on bargaining at higher levels. They feel that plant level bargaining reduces their bargaining power, particularly during periods of crisis. For instance, till 1990, in Escorts limited, a private sector conglomerate with over 14 factories and 35,000 workers, collective bargaining was used for the entire company.

(ii) Local Level Bargaining – Local level bargaining usually takes place when employers operating in certain locality unite (in the same industry) and negotiate one agreement with local union which is applicable to all the plants of that industry in that locality. This is prevalent in the U.S.A. and Canada, where much of collective bargaining takes place of the local level between one or more local employers and a local union (which, however, is affiliated with a national union). The primary aim of the local union is to represent its members in relation to their employer or employers.
(iii) **Regional Level Bargaining** – Such type of collective bargaining takes place at regional level or district level. It is always seen that national unions establish regional or district bodies at an intermediate level for many purposes, such as effective administration and co-ordination of collective bargaining. Such regional union organizations serve a number of purposes. They help in the maintenance of a desired degree of decentralization, act as a bargaining representative where employers have a regional organization and prevent the local unions from competing with each other.

These are common across the private sector dominated cotton and jute, textile, engineering and tea industry. However, such agreements are not binding on enterprise management in the particular industry or region unless the management authorizes the respective worker organizations in writing to bargain on their behalf. Regional level bargaining are common in U.K. France, U.S.A. etc.

(iv) **Industrial Level Bargaining** – In industrial level bargaining, collective bargaining takes place usually between the industrial employers association on the one hand and the industrial labour association on the other. At this level, bargaining between one or more employers/companies/corporations or one or more employers associations on the one side, and one or more unions established at the industry nation, region/areas or plant level, on the other. Such type of bargaining is very popular in cotton, jute, engineering and tea industry. In the recent years industrial level bargaining has gained popularity in India, U.S.A. due to various advantages as it discuss the issues/problems at industrial level and find out the solutions. It brings parties closure and creates harmonious relationship between labour and management.

(v) **National Level Bargaining** – It is also known as Economy Level Bargaining which may be conducted at economy level. At this level, bargaining usually takes place between the employer’s confederation on the one hand and trade union confederations on the other. Whatever agreements are reached at this level is usually applicable to all the affiliates of the confederation. Two types of agreements may be reached at this level–
a. Basic agreements with regard to wages, hours of work, and other terms and conditions of employment.

b. Agreements of a more general nature on subjects like welfare facilities, industrial safety, vocational training, time and motion studies, works councils etc.

The peculiar feature of national level sectional bargaining is the presence of a single employer body and the involvement of the concerned administrative ministry from the employer’s side where government is the dominant player. In many sectors, negotiations are conducted by two to five major national trade unions centres with a significant presence through their respective industry federations of workers’ organizations. In banks, coal, ports and docks, steel, insurance, oil and natural gas, civil services etc, the bargaining takes place at national level either by establishing Co-ordination Committees or by National Joint Consultative Committee. For example, about sixty private, public and multinational banks are currently members of the Indian Banks Association. They negotiate long-term settlements with the All India Federation of Bank Employees. Wage Board, Joint Consultative Committee, Commissions, The Oil Coordination Committees etc are the institutions where national level bargaining has taken place. Such type of bargaining level also adopted in France, Italy, U.K., Australia, U.S.A. etc.

(vi). **International Level Collective Bargaining:**– In this era of Globalization, Global Trade Union Federations and International Trade Union Organizations have been striving hard to secure cross-border co-operation between trade unions and to co-ordinate worker representation and collective bargaining not only at local, industry, and national level, but also at the regional and international level (covering whole sectors or several subsidiaries of a multinational). Though often workers have remained divided among themselves by economic self interest within a country and thus, they find it hard to reach any common accord on specific strategies. Yet, the need for transnational worker solidarity is increasingly felt to meet the challenge of emerging employer strategies of global sourcing based on comparative cheap labour and cost cutting competitiveness.

International/global trade union federations are striving to establish minimum framework agreement that serve as benchmarks for their affiliate unions and sector based federation on collective bargaining. While employers want to complete on the basis of cheap labour, trade
unions aim to take wages out of competition through *coordinated international collective bargaining*. However, trade unions will find it hard to achieve their goals if they do not pay attention to the local concerns within and across countries. There is also need to see how affiliate unions will continue to have national autonomy and yet coordinate their collective bargaining efforts at the global level. The agenda includes not only a core demand on pay and working conditions but also a wide agenda including investment, training, employment creation, employability policies, and health and safety measures. The aim is to create a minimum set of labour standards applicable across the bargaining units. It is already beginning to happen through European Union-wide agreement.

In this area the different International Federations such as Global Trade Union (GTU), International Transport Workers’ Federation (ITF), International Union of Food Workers (IUF), International Federation of Chemicals, Energy, Mine and General Workers Union (ICEM), NAFTA are doing well. The International Labour Organisations efforts and commitment to develop labour standard are also very appreciable. The ICFTU has developed a campaign for corporate codes of conduct on international labour rights. To achieve international co-ordination and international collective bargaining is a big challenge. The structures and the concepts of trade unionism vary from country to country. In countries like China there is no concept of collective bargaining while the transition economics have only recently began their tryst with collective bargaining. Worker’s economic interests also differ, with concerns about job shifts from developed to developing countries and later within developing countries themselves as employers pursue strategies to producer where it is cheapest and sell where their products can fetch the best price.

In multinational companies, trade unions at the international level have been pressing for worldwide works councils, regional or international framework agreements for different sectors, and corporate codes through voluntary initiatives to avoid outsourcing to sweat shops. Difficulties persist here in enforcing labour codes of good behaviour in the contracting plants of several countries.

**Prerequisite of Successful Collective Bargaining**
Collective bargaining is a technique that has been adopted by unions and management for compromising their conflicting interests. It plays a significant role in improving the labour management relations and in ensuring industrial harmony. But for the success of this technique the following facts must be recognized. These facts are explained through this figure–

**Fig. : Prerequisites of successful collective bargaining**

1. **Bargaining Agent**

   For success of collective bargaining there must be knowledgeable, skilled, effective and enlightened bargaining agents and must be balance of power between the parties. It is imperative to have a recognized trade union which should be the sole bargaining agent of all the workers in an organization. A responsible and strong trade union is vital. They can bargain effectively keeping in view of the interests of the Stakeholders of collective bargaining. Statutory framework to provide mode of determining the sole bargaining agent on the worker’s side. The bargaining team should have a mixed composition, including production, finance and IR experts.

2. **Commitment and Determination for Peaceful Resolution**

   Both the parties i.e., representatives of employers and employees should be committed and determined to arrive at an agreed solution. The two parties should be determined to resolve their differences on their respective claims in a peaceful manner. The necessity of having open minds, to listen and appreciate the other’s concern and point of view and to have some flexibility in making adjustments to the demands made. Rigid attitudes are out of place in a collective bargaining system. The essence of collective bargaining lies in the readiness of both the parties, to regulate the working conditions and terms of employment together.

3. **Reliance on Facts rather than emotions**
Both the parties should be able to identify grievances, safety and hygiene problems on a routine basis and take appropriate remedial steps. For this parties should rely on facts and figures to support their point of view. Both the parties should adopt constructive approach at the bargaining table rather than the present agitation or litigation oriented approach. Unfair labour practices are to be avoided by both sides and negotiations conducted in an atmosphere of goodwill.

4. **Mutual Recognition of their Rights and Responsibilities**

There should be unanimity between labour and management on the basic objectives of the organization and of the workers, and a mutual recognition of their rights and obligations. Both the parties must recognize the rights and responsibilities for each other and also for the society and nations.

5. **Honouring Agreements**

When the consensus arrived, it should take a form of an agreement. The agreement should be put down in writing. It must be honoured and fairly implemented by both the parties.

6. **Faithful Interpretation**

Both the parties, once agreement is reached, it should be faithfully interpreted. The terms and conditions should be clear and must be prepared in simple language and familiar words. There should not be ambiguity, Vagueness and unnecessary use of Latin and phrase that put the text out of the reach of the workers. A provision for arbitration could be incorporated in the agreement, which could become operative when there is any disagreement on the interpretation of its tenancy and conditions.

Thus, the above pre-requisite conditions must be kept in mind for success of collective bargaining. In case of lapse of any conditions, collective bargaining may fail or unsuccessful.

**Subject Matters/ Issues of Collective Bargaining**

As stated earlier, the concept of collective bargaining is multi dimensional and changeable, therefore, the issues/subject matters under taken under this process are changeable in terms of time, situation, phases of industrial development, development of labour movement, economic and political climate of the country and emergence of the global business scenario. The subject matter of collective bargaining is known as issues discussed in collective
negotiations and included in collective agreements. Earlier where collective bargaining was limited to wage and another monetary benefits gradually cover a lot of issues like holiday and vacation pay, overtime and premium pay, hours, conditions of work, sick leave, severance pay, discharges, grievances, arbitration etc. But now after emergence of the global business environment the subject matter of collective bargaining has steadily widened and covered not only the issues related to wage, allowance, advance, hours of work and holidays, welfare, social security but also covered working environment, conditions of work, modernization, technological change, multi skilling, retraining, quality, productivity, cost consciousness, discipline, work culture, contractualisation and outsourcing issues related to labour at national and international levels.

Bargaining issues can be divided into two parts.

(a) Wage Related Issues
(b) Non-wage Related Issues

Issues for collective bargaining may be explaining through the following table.

**Table**

**Subject Matters (Issues) of Collective Bargaining**

<table>
<thead>
<tr>
<th>Wages related issues</th>
<th>Non-wage related issues</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Wages</strong></td>
<td><strong>Working Conditions/Environment</strong></td>
</tr>
<tr>
<td>Pay level</td>
<td>Economic, Social, Political, Legal &amp; cultural issues.</td>
</tr>
<tr>
<td>Pay form</td>
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<tr>
<td>pay structure</td>
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<tr>
<td>pay system</td>
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<tr>
<td>union effects on pay</td>
<td></td>
</tr>
<tr>
<td>Bonus</td>
<td></td>
</tr>
<tr>
<td><strong>Allowances</strong></td>
<td><strong>Welfare Statutory/Non-statutory</strong></td>
</tr>
<tr>
<td>Dearness allowances, fixed, variable</td>
<td>Canteens</td>
</tr>
<tr>
<td></td>
<td>Crèches or kinder garden</td>
</tr>
<tr>
<td>City Compensatory Allowance</td>
<td>Sports and recreation</td>
</tr>
<tr>
<td>House Rent Allowances</td>
<td>Workers’ housing</td>
</tr>
<tr>
<td>Conveyance Allowance</td>
<td>Co-operative credit</td>
</tr>
<tr>
<td>Shift Allowance</td>
<td>Essential goods at concessional rate</td>
</tr>
<tr>
<td>Lunch Subsidy/Allowance</td>
<td></td>
</tr>
<tr>
<td>Over Time Allowance</td>
<td></td>
</tr>
</tbody>
</table>

- **Advances**
  - House Building
  - Vehicle Purchase
  - Consumer durable goods
  - Consumption
  - Marriages
  - Festivals
  - Children’s Education
  - Provident Fund etc.

- **Social Security Benefits**
  - Sickness benefits
  - Accident benefits/insurance
  - Bereavement benefits
  - Unemployment benefits
  - Maternity benefit
  - Provident fund
  - Gratuity
  - Pension

- **Working hours and number of paid holidays**
  - Casual leave
  - Sick Leave
  - Privilege leave
  - Maternity leave
  - Paternity leave
  - Education leave
  - Special leave
  - Leave without pay

- **Management proposals/other aspects**
  - Mutual role and responsibility
  - Modernization
  - Flexibility
  - Multi skilling, retraining and redeployment
  - Changes in qualifications & skills
  - Quality, Productivity, Cost Consciousness
Besides the above wages related and non-wage related issues, collective bargaining also takes place on procedural matters relating to bargaining. To cite few examples formation of bargaining unit, selection of bargaining agents, recognition of representative union, grievance procedure, unfair labour practices, union security clauses, industrial actions including strikes, lock-out, lay-off, retrenchment and establishment of joint bodies, absorption of surplus labour force etc.

In many countries the parties in collective bargaining enjoy freedom to decide the subject matters of negotiations. In some others, they are free also to bargain for improved standards over and above the minimum standards prescribed under protective, social security and welfare legislation and industrial awards.

Thus, the collective bargaining has undergone changes at different time periods. When the initial notion of acquired interests, based on the assumption that employment like land or capital is an asset, gained currency wage rates were influenced in economic terms more by the law of supply and demand in political terms by the relative balance of power. Subsequently, with the emergence of the concept of welfare state and of communist ideology, employment condition started being determined not only by supply and demand and balance of power, but also by moral notions of the minimum standard of living. In the wake of the rise of market forces, there has been a shift in wage fixation from ‘to each according to his need’, to ‘to each according to his or her skill, effort, responsibility, and working conditions.’
Process of Collective Bargaining, Negotiating Techniques and Skills

Collective Bargaining is a process in which two or more parties who have common and conflicting interests come together and talk with a view to reaching an agreement. It is a technique adopted by the organizations of workers and employers collectively to resolve their differences. Negotiation is concerned with purposeful persuasion and constructive compromise. A bargaining process usually starts with a charter of demands being presented to the management by the union on behalf of their constituent members. A collective bargaining negotiation process generally passes through broad four stages:

1. Preparation stage
2. Discussion stage
3. Bargaining stage
4. Agreement stage

1. Preparation for Negotiation –

Negotiations may commence at the instance of party, the labour or the management. At this stage both the parties should select the skilled and enlightened bargaining agents, careful selection of a management bargaining team may make a significant contribution to the successful outcome of a particular series of negotiations. The negotiators must have sufficient training to participate and must have understanding of the total business operation. It is preferable to have a chief spokesman who is not the final authority to take decisions. Such a man is in a better position than the persons who has to decide for him. If low level persons are deputed by the management, who do not have any authority to commit the management to any course of action at the bargaining table, the union starts feeling that management is not taking the bargaining process seriously. The most popular and apparently effective team consists of–

(i) Persons from an industrial relations/personnel management functions.

(ii) Senior persons of the operating unit affected by the negotiations.

(iii) A representative from finance area.

(iv) A member of the management services function.
Workers bargaining agent should also be enlightened and knowledgeable of the business affairs.

Usually, before entering into collective bargaining process, a management should consider certain points which are mentioned in Box. This is called pre-negotiation phase. Preparation for negotiations passed through following stages.

(i) Collecting informations.

(ii) Setting objectives, ideals, targeted and resistance positions should be decided upon.

(iii) Establishing priorities.

(iv) Assessing the other party and case.

(v) Noting details of important information.

In the process of negotiation the negotiating agents (both employer and employees) should devote a great deal of time to the preparation for negotiation on set an agenda for work. The necessary data may have to be collected from the various sources, inside the company, outside organisations. An area survey of what the comparable organisations in the region have.

(a) Already conceded to and/or

(b) Are in the process of conceding is most essential.

As a part of home-work union demands should be analyzed and classified into three categories—

(i) Demands which may possibly be met;

(ii) Demands which may be rejected; and

(iii) Demands which call for hard bargaining.

An appraisal of the cost of implementing the proposals if they are accepted may be worked out. Management should also draw out a charter of demands so that bargaining is integrative rather than distributive. The management team should carefully formulate their charter of demands; thoroughly study the implications of the union’s demands and think of the
arguments and counter arguments during the bargaining. Contacts with the union should consider also such matters as are of common interest both.

The physical conditions and internal environment also plays vital role in negotiation process. The negotiation process should be conducted in conference room. The physical surroundings in which negotiation take place are invariably taken for granted. The conference room should be air conditioned, adequately lighted, ventilated and sufficiently quiet. The furniture i.e., conference round table and chair should be comfortable with adequate space for making notes. There must be blackboard, pin board, audio visual and projector system for presentation of information. There should be proper arrangements of drinking water, glass and refreshments (tee, coffee etc.). The negotiation should be free from interruption i.e., telephone calls, mobile etc. an additional room are necessary for adjournments to discuss the issues themselves.

2. Discussion or Negotiation –

After completion of the preparation stage, discussion/negotiation process starts. When the participants of collective bargaining assembled in the conference hall and take their seats, give three or four minutes time to settle down; distributes papers and pen related to demand and some loose papers for noting. Wait sometimes for any potential late- comers. Before starting the discussion, the management must, at the outset, make sure that the labour leaders, who are going to negotiate with, are really representative of the workers. Having exchanged the appropriate social greetings call the meeting to order by asking the trade union side to present their case. Normally management’s representative acts as chairman of the proceedings. Once their leading spokesman has begun the initial statement of his position, do not interrupt him even if you feel that he has made an error on a factual point. Both the representatives may listen carefully and observe the reactions of the each other.

The act of listening and registering what is being said across the table as well as remembering the context in which the key words and phrases have been employed can mean the differences between success and failure.

In this opening phase of negotiations, management must expect the speeches to be long and prepared with emotional language. We should not be surprised if the union spokesman is playing to the gallery. He has to convince his own members present and those on the shop floor
that he did his best. This is the ritualistic element full of sound and fury signifying only a little. Unions often take an aggressive initial stand and it is a poor strategy on the part of management team to be equally aggressive or impatient or take what the union state initially at their face value.

3. **Bargaining**

The process of bargaining starts with the process of discussion or negotiations. After placing the charter of demand and discussions there on, some demands which may possible to meet may accepted by the management. But the issues which require hard bargaining should discussed of the middle period so that the parties may discuss the issue with their members relating to views of each other and may set a standard on the issue for negotiation. During this process several tactics may adopted, such as divide and rule etc. for come to an unanimity.

**Arnold Campo** has suggested that the following procedure should be adopted in successful negotiation by union and management.

(i) Be friendly in negotiation,

(ii) Be willing to listen,

(iii) Give everyone an opportunity to state his position and point of views,

(iv) Define each issue clearly in the light of all avoidable facts.

Normally, a negotiation could result in any one of the following situations:

- **Win-lose** – Here in, the negotiating parties think that ‘winning is everything’ or ‘winning is the only thing’.

- **Lose-win** – One party achieves most and other parties loses or gains very little. Here, either party may consider that the ‘relationship is paramount’.

- **Lose-Lose** – Both the parties lose or do not get what they want and reflect an attitude of ‘take it or leave it’ or ‘nothing for nothing’.

- **Win-Win** – Both parties get what they want. Instead of adopting an attitude of ‘winning is everything’ or ‘winning is only thing’, the parties believe in mutual gain.

**Venkata Ratnam** has suggested that for achieving **win-win agreements** requires
integrating the interests of both/all the parties. The parties should keep the following points in mind while negotiating as mentioned in Box.

**Be careful on the following points on win-win agreements**

<p>| | |</p>
<table>
<thead>
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<tbody>
<tr>
<td>(i)</td>
<td>Focus on their interest, not take positions.</td>
</tr>
<tr>
<td>(ii)</td>
<td>Focus on problem, not the person.</td>
</tr>
<tr>
<td>(iii)</td>
<td>Invent multiple solutions.</td>
</tr>
<tr>
<td>(iv)</td>
<td>Be creative</td>
</tr>
<tr>
<td>(v)</td>
<td>Expand the pie.</td>
</tr>
<tr>
<td>(vi)</td>
<td>Non-specific compensation (give the other parties something that is valued more by them but not much by you).</td>
</tr>
<tr>
<td>(vii)</td>
<td>Long rolling- go over the priorities of charter of demands</td>
</tr>
<tr>
<td>(viii)</td>
<td>Bridge the gap in perception through reformulation of the issue.</td>
</tr>
</tbody>
</table>

In case intensive bargaining situation, where negotiation should yield something for all the concerned parties, they should be the best to keep the following pointers in mind as mentioned in Box.

**Be careful on following points on win-win agreements**

<p>| | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>(i)</td>
<td>There cannot be any bargaining if either party takes a fixed stand and is unwilling to move from a set position.</td>
</tr>
<tr>
<td>(ii)</td>
<td>Parties should be willing to make compromises, offer concessions, and develop packages that are mutually beneficial.</td>
</tr>
<tr>
<td>(iii)</td>
<td>If there is statement or deadlock in negotiations because either party does not agree to what the other says or resorts to threats and bluffs- consider different ways of dealing with these situations.</td>
</tr>
<tr>
<td>(iv)</td>
<td>Try to understand the issues rather than be emotional about them or take things personally.</td>
</tr>
<tr>
<td>(v)</td>
<td>Focus on the problem and interests rather than focusing on the person(s) and taking positions.</td>
</tr>
</tbody>
</table>
The entire proceeding should be in good faith must or each on conclusion or settlement.

Concluding the negotiation involves a decision making.

4. Agreement

After concluding the negotiation and if the consensus arrived between the parties on the issues discussed in the bargaining process, takes a shape of an agreement. What so ever, the consensus arrive, should communicated to both the parties. While concluding an agreement, parties should always keep in mind the following points mentioned in box as suggested by Venkata Ratnam.

**Be careful while concluding an agreement**

(i) Define the scope of the agreement, that is, to whom it applies.

(ii) Define the time-frame/duration of the agreement.

(iii) Write down clearly what has been agreed.

(iv) Specify the conditions, if any, for making the agreement operational and the consequences of non compliance to obligations of both the parties as a result of the agreement.

(v) Lay down the procedure for dealing with problems of interpretation and implementation.

(vi) Take your party members into confidence and brief them about the content of the agreement before it is formalized.

(vii) Sign the agreement, if the legal framework warrants, get the agreement registered with the competent authority in the government.

(viii) Circulate copies of the agreement among the members.

(ix) Be tactful while going to the media and issuing statements.

- Do not escalate expectations or tensions.
- Do not allow yourself to lose face.
- Do not cause loss of face to the other party.
- Let the other stakeholders (consumers, community etc.) not get the feeling that your party is gaining at their expense.
The inception of an agreement may begin with a brief recital of the case where as others starts with a certain preamble or may straight away go into the terms and conditions agreed. The charter of demands of unions and the counter proposals, if any by the management may be presented as annexure.

Generally an agreement must be written considering the subsections of introductory paragraphs, terms and conditions agreed upon and the concluding remarks. The introductory paragraph of a collective agreement may begin with the following:-

- The name of the parties
- The relevant section of the I.D. Act or the related law under which the agreement is signed.
- The date of agreement.
- The preamble/purpose/objective of the settlement.
- Coverage which class/categories of employees are covered.
- The effective date of duration and then agreed terms and conditions.

Drafting of an agreement must be in simple language. The essential requirements of a good agreement are clarity, precision, and simplicity. The mistakes to be avoided and ambiguity, vagueness and unnecessary use of Latin and phrases that puts the text out of the reach of the workers.

Fowler has suggested some rules while drafting an agreement are as under:-

- Prefer the familiar word to the farfetched.
- Refer the concrete world to the abstract.
- Prefer the single word to the circumlocution.
- Prefer the short word to the long.

Collective Bargaining in India: Legal Framework

In India, collective bargaining is not mandatory since there is no statutory provision for it. India, which is still undergoing a process of economic development, where there is no central
law requiring parties to negotiate in good faith, where there is a multiplicity of trade unions, outside leadership and too much political involvement of trade unions, the growth and development of collective bargaining has been very slow. Even so, bargaining has grown as a method of settlement of industrial disputes and also as a method of determining terms and conditions of employment.

Article 19(C) of the constitution of India guarantees freedom of association as a fundamental right. This was recognized in the Trade Union Act, 1926, Industrial Disputes Act, 1947 and the Industrial Employment (Standing orders) Act, 1946. India ratified ILO convention No. 11 in 1923 concerning the Right of Association for Agricultural workers. It has, however not ratified ILO convention Nos. 87 and 98 due to ‘technical difficulties’ involving trade union rights for civil servants. This is not a valid reason for non-ratification, because a ratifying country can exempt certain services. The real intention could be to restrict freedom of association to only manual workers (by defining them as workers) and exclude supervisory and managerial workers. The government does not allow the right to collective bargaining in industrial workers in Government understandings, such as the railways, posts, telecommunication, and the Central Public Works Department. Remuneration, etc. is decided by the government on the basis of wage boards, pay commission recommendations, and not through collective bargaining. The labour laws at the national level do not mandate employers either to recognize unions or to engage in collective bargaining. However, some states (for instance, Andhra Pradesh, Bihar, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Orissa and West Bengal) have provisions concerning recognition of trade unions.

Till today, the identification of a collective bargaining agent has remained a totally debated issue. The Royal Commission on Labour (India, 1931) was not in favour of the idea that recognition should depend on the numerical strength of the union. If a union consisted of only a minority of employees, it was not adequate reason for withholding recognition. The 1947 amendment to the Trade Union Act, 1926 and Trade Union Bill, 1950, provided for recognition of more than one union by an employer through neither was passed by parliament. In 1956 the second five year plan stressed the importance of one union, in one industry. In 1958, the Indian Labour conference evolved a ‘Cade of Discipline in Industry’, which did not and still does not have statutory force which contained criteria for recognition of union. It was in favour of workers belonging to non recognized unions operating through the representative union of the
industry or seeking redressal of grievance directly. The **First National Commission on Labour** (India 1969) left the matter of union recognition to be decided on the basis of local circumstances. The Second National Commission on Labour (India, 2002) has made specific recommendation on this issue.

There is no law at the national level for recognition of trade unions. However in some states like Maharashtra, Madhya Pradesh for instance-there are legal provision for it. Thus, in India, there are a number of ways of determining a representative union for the purpose of collective bargaining. These methods include:–

(a) Code of Discipline – which is common across most public sector undertakings.

(b) Secret ballot – which is mandatory in three states, namely Andhra Pradesh since 1975, Orissa since 1994, and West Bengal since 1998.

(c) Check off system – which is favoured by some unions, and

(d) Membership verification.

In 1995, the Supreme Court of India directed a government corporation, the Food Corporation of India, to resolve the trade union recognition disputes through secret ballot. The judgement also mandated the procedure for secret ballot. Earlier, in 1982, the Bombay High Court struck down an order of the industrial court for a secret ballot in the case of Maharashtra General Kamgar Union V. Bayer India Ltd. The matter was taken to the division bench of the High Court, which uphold the order of the single Judge.

The Industrial Disputes Act, 1947 does not contain any stipulation that only a recognized union can raise an industrial disputes. In this, the Code of Discipline, 1958 is at variance with the Industrial Disputes Act, 1982. The Industrial Disputes Act was amended to include the following as unfair labour practices–

(a) Refusal by the employer to bargaining collectively in good faith with recognized trade unions;

(b) Refusal by a recognized union to bargain collectively in good faith with the employer; and
(c) Workers and trade unions of workers including in coercive activities against certification of bargaining representative.

Section 2(p) of the Industrial Disputes Act, 1947 defines ‘Settlement’ and section 29 makes the breach of any term of the settlement punishable with imprisonment for a term of six months or with five or both refusal to bargain collectively in good faith, with recognized trade unions in an unfair labour practices under section 2(ra)/schedule V of the Act and is punishable under section 25(u) with imprisonment for a term which may extend to six months or with five which may extend to Rs. 1,000 or both.

Although in absence of expressed statutory provision, doors are open for collective bargaining in India in public sector, private sector, and government sector, organized and unorganized sector. Collective bargaining is rare in the unorganized sector that have provided for wage lower than the applicable minimum wages. Where such agreements are entered into the through conciliation and or registered with the appropriate government, the labour commissions concerned are expected to ensure that the wages, benefits and other terms and conditions are not less favourable than the applicable minimum wages and other standard laid down in labour laws.

Thus, today, there is a great need for legislation in India which would provide compulsory recognition to trade unions. Accepting the grim realities of multiple and rival unionism, the way to initiate the process of collective bargaining seems to lie primarily in statutory system of recognition of trade unions as representations and sole agents for bargaining. This will itself check a number of other problems.

**Hurdles to collective Bargaining in India**

In India, the history of collective bargaining has not been very successful. With the growth of trade union movement in India. It was assumed that the collective bargaining will take highest place in setting industrial disputes and maintaining peace and harmony in the organization, but an even growth of the trade unions, influence of the outside leadership, problem of recognition of trade unions, political affiliation of trade unions, etc. have not only discourage the growth of strong trade union movement but also creates hurdles in the effective collective bargaining. Lacks of statutory provision and legislation of collective bargaining and voluntariness in recognition of trade unions, inadequate unionization, and ineffective procedure for the determination of representative union. Provision of elaborate adjudication machineries
etc. are the main reasons of ineffective growth of collective bargaining in India. After independence of the country, several national level federations, association has been established to boost up the collective bargaining, which gave a little encouragement in this area. After 1970 a new a trend started taking place in this field and a clear movement of collective bargaining from the plant or enterprise level to the industry level has taken place. After globalization, collective bargaining became weekend in India, due to fall in membership of trade unions, decreasing power and strength of trade union, de-unionization trends of workers and emergence of the knowledge based economy. Notable hurdles in the growth of collective bargaining are as under:

- Law of ineffective procedure for the determination of representative union.
- Influence of outside leadership in trade unions.
- Provision of elaborate adjudication machinery like labour courts, Tribunals, Industrial Tribunals and National Tribunals.
- Restrictions on strikes and lock outs – As per observation made by Hon’ble Supreme Court in 3rd Aug., 2003. “The trade unions which have a guaranteed rights for collective bargaining have no right to go on strike” and that “Government employees have no fundamental, legal or moral rights to go on strike.”
- Comprehensive coverage of labour laws.
- Inadequate unionization.
- Lack of education, skill and awareness of every worker.
- Lack of willingness to organize/unionize.
- Negative attitude/feudal mindset of employer.
- Capacity to pay of employers.
- Centralization of power.

Measures to encourage Collective Bargaining/Factors Contributing to the success of Collective Bargaining

The following measures may suggest encouraging collective bargaining:
Formation of a strong and organized trade union.

Existence if a progressive and strong management.

Unanimity and mutual co-operation.

Delegation of authority and decentralization of power.

Acceptance of fact finding approach.

Openness and transparency in information sharing.

Willingness to find common interest.

A favourable political climate and an institutional framework.

Recognition of right of (a) freedom of association, (b) collective bargaining.

Recognition of unions and their role at micro and macro level.

Realisation of interdependence between and among the parties concerned.

Balance of power between the parties because negotiations between parties with power difference cannot produce fair agreements.

Acting in good faith and mutual respect.

Thus, the failure and success of collective bargaining will depend upon the enlightened approach of the bargaining agents. The management should be progressive and should adopt the modern and practical approach instead of traditional approach. They (Bargaining Agent) should develop mutual recognition, mutual respect, and mutual faith with the desire of mutual gain and should adopt good faith bargaining concept. In this regard the view/recommendations of the Second National Commission on Labour (2002) must be appreciated and implemented.

**Keywords:**


**A. Long Answer Type Questions:**
1. Define Collective Bargaining. Discuss the features and objectives of Collective Bargaining.

2. Discuss the role and importance of collective bargaining in settlement of industrial disputes.

3. Discuss the pre-requisite conditions of successful collective bargaining.

4. What are the causes of slow growth of collective bargaining in India? Suggest measures for success of collective bargaining in India.

5. Discuss the subject matters /issues of collective bargaining.

6. Examine the theories of collective bargaining.

7. Critically examine the Chamberlain theory of collective bargaining.

8. Discuss the Webbs approaches towards collective bargaining.

9. Discuss the process/ negotiating techniques and skills of collective bargaining.

10. Discuss the constitutional and legal framework of collective bargaining in India. Should collective bargaining be mandatory/ legislative?

11. Discuss the various levels of collective bargaining in India.

12. Discuss the hurdles to growth of collective bargaining in India. What factors contributing to the success of collective bargaining in India?

B. Short Answer type Questions:

(i) What do you mean by collective agreement?

(ii) What is Industrial Jurisprudence?

(iii) What do you mean by process of social change?

(iv) What is meant by civilized confrontations?

(v) What is meant by win-win agreement?

(vi) State the various levels of collective bargaining.

(vii) What do you mean by bargaining agents?
What is meant by good faith bargaining?

References:
Encyclopedia of social sciences, vol. III (1951),