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Laws and Realities of Collective Bargaining Agreement (CBA) in Indian Industries

DEBAYAN NANDI

Department of Business Administration Siliguri Institute of Technology Salbari. P.O. Sukna.

ABSTRACT

Collective bargaining is a process of negotiation between employers and employees aimed at accomplishment for conformity to standardize working conditions. The interests of the employees are generally presented by representatives of a trade union to which the employees belong. The collective agreements reached by these negotiations usually set out wage scales, working hours, training, health and safety, overtime, grievance mechanisms, and rights to participate in workplace or company affairs. The parties often refer to the result of the negotiation as a collective bargaining agreement (CBA) or as a Collective Employment Agreement (CEA).

This study analyzes the consequence of legalized unionization on economic growth, and reckons the "dead-weight loss" resulting from unionization. By uplifting the cost of labor, unions lessen the number of job opportunities in unionized industries. Those, roll the supply of labour in the non-union sector, in that way driving down wages in those industries. The effect of this situation is to increase the natural rate of unemployment, thus imposing a dead-weight loss of economic productivity on the economy.

KEYWORDS : Collective Bargaining Agreement, Unionization, Dead-weight loss.

INTRODUCTION

The International Labour Organization defines collective bargaining, "As negotiations about working conditions and terms of employment between an employer, or a group of employers, or one or more employers' organizations, on the one hand, and one or more representative workers' organization on the other with a view to reaching agreement." Collective Bargaining in India is an issue of industrial arbitration from the time. In Karol Leather Karamchari Sangathan v. Liberty Footwear Company(1961 I LLJ. 504) the Supreme Court commented that, "Collective bargaining is a technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion." According to the Court, the Industrial Disputes Act, 1947 seeks to achieve social justice on the basis of collective bargaining. In an earlier judgment in Titagarh Jute Co. Ltd. v. Sriram Tiwari(1982 II LLJ 491) , the Calcutta High Court clarified that this policy of the legislature is also implied in the definition of 'industrial dispute'. In Bharat Iron Works v. Bhagubhai Balubhai Patel(AIR 1990 SC 247), it was held that "Collective bargaining, being the order of the day in the democratic, social welfare State, legitimate trade union activities, which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activities can flow in healthy channel only on mutual cooperation between the employer and the employees and cannot be considered as irksome by the management in the best interests of its business. Dialogue with representatives of a union help striking a delicate balance in adjustments and settlement of various contentious claims and issues." These elucidations focus the basic component in the concept i.e., enlightened disagreement between employers and employees and the whole process is regulated by statutory provisions. The effect of this situation increases the natural rate of industrial harmony, thus entail a dead-weight loss of economic productivity.

LEGAL FRAMEWORK FOR COLLECTIVE BARGAINING IN INDIA

The collective bargaining in India stay put restricted in its capacity and constrained in its exposure by a well defined legal constitution. In reality, the labour laws steadily promoted and keep in continuation a duality of labour-formal sector workers enjoying some space for collective bargaining and for informal ones with no scope for collective bargaining. The Factories Act, 1948 provides for the health, safety, welfare and other aspects of workers while at work in the factories. Under this Act, an establishment where the manufacturing process is carried on with the help of power and employs 10 workers or an establishment where the manufacturing process runs without power and employs 20 workers is considered to be a factory. However, the following provisions of the Act are not pertinent to all factories; stipulation of a rest room will be applicable only if there are 150 or more workers. Provision of canteen will be applicable only if there are 250 or more workers; provisions for ambulance, dispensary, and medical and para-medical staff: applicable only if there are 500 or more workers.

Employees Provident and Miscellaneous Provisions Act, Maternity Benefit Act and Payment of Gratuity Act apply to all establishments with 10 or more workers. Though Employees State Insurance Act applies to only those establishments with 20 or more workers. Minimum Wages Act applies to all establishments and all workers, but the Payment of Wages Act applies only to those establishments with 10 or more workers. On the other hand, the Payment of Bonus Act is applicable to only those enterprises employing 20 or more workers. Industrial Disputes Act, 1947 lays down the procedures for the settlement of industrial disputes. Its bureaucratic aspects are applicable to all enterprises for the settlement of industrial disputes. However, in point of fact defensive clauses for the workers pertaining to closures, layoffs and retrenchment having limited applicability. Industrial Employment (Standing Orders) Act makes it compulsory to have Standing Orders in each enterprise to describe misconducts and other service conditions, and also entails that for any misconduct no worker will be punished without due process of law using the principles of natural justice. But this law does not apply to those enterprises employing less than 100 workers (only in few states like Uttar Pradesh, it is made applicable to all factories (i.e. employing 10 or more workers). Trade Union Act applies to all establishments with 7 or more workers, since a minimum of 7 members are necessary in order to register a trade union.

Specifically, only a small section of workforce is protected by the labour laws and has assured space for collective bargaining in well defined legal boundaries. Therefore, protective labour laws apply to only less than 3% of the companies; and in rest of the 97 % companies only Industrial Disputes Act, Minimum Wages Act, the Workmen's Compensation Act, Equal remuneration Act, and the Shops and Establishments Act (enacted by each state separately) and some pieces of labour legislation enacted for specific occupations are applicable.

Trade Union Act of India provides right to association only with a very limited scope and limited revelation. The Trade Union Act 1926 was amended in 2001 and later to the amendment it became more difficult to form the trade unions. In the Act of 1926, only 7 members were required to register a trade union, but after amendment at least 10% or 100, whichever is less, subject to a minimum of 7 workmen engaged or employed in the establishment are required to be the members of the union prior to its registration. The amendment also introduces a limitation on the number of outsiders among the office bearers. Collective bargaining is limited within the scope provided in Industrial Disputes Act 1947. It is also important to mention that only when the unions are recognized by the management then only they get the full-fledged rights as bargaining agent on behalf of workers.

Types of Collective Bargaining

Conjunctive / Distributive Bargaining: Distributive bargaining is the most common type of bargaining & involves zero-sum negotiations, in other words, one side wins and the other loses.

Cooperative /Integrative Bargaining: Integrative bargaining is similar to problem solving sessions in which both sides are trying to reach a mutually beneficial alternative, i.e. a win-win situation.

Productivity Bargaining: The concept of productivity bargain involves a good understanding of the following concepts. Based on these concepts both the parties must develop a productivity linked scheme.

Composite Bargaining: Workers believed that productivity bargaining agreements increased their workloads. Rationalization, introduction of new technology, tight productivity norms have added to this burden and made the life of a worker somewhat uneasy.

Methodology

By using a descriptive research methodology the study was carried out and various constructs mentioned above were measured by various scales adopted in prior literature. Depending on the objectives of the study a few modifications had to be made to gather data from a cross section of respondents who frequently visit organized retail chains. In all, 200 employees were requested to give their responses on five point Likert scales. After careful scrutiny of the responses provided it was observed that twenty questionnaires could not be considered due to incomplete responses on various scales administered in the questionnaire. The employee's attitude towards collective bargaining environment at organizations were measured by a five point scale The impact of legal bindings were measured by a dummy variable. The scales used in our study were tested for reporting various reliability and validity frequently reported in the psychometric literature. Cronbach's alpha values and the factor analyses would be reported to establish the internal consistency reliability and the construct validity.

Findings and Discussions

Cronbach's alpha values and the factor analyses reported to establish the internal consistency reliability and the construct validity. Attitude towards collective bargaining of the employees showed Alpha 0.732 and individual bargaining behavior Alpha 0.691. The result of Cronbach's alpha values support that in the employees often prefer to go for bargaining of their employment benefits collectively. Two factor solution substantiated construct validity. Overall percentage of variance explained 62.66%. Positive association has been observed between trade union involvement and collective bargaining habits and significant relation between legal bindings and collective bargaining have been established. As hypothesized, the public interests for employment benefits are quiet strongly associated with bargaining together through legal amendments of the existing laws. The data provided in this report make available a depiction of the pressures, issues, and results dominating collective bargaining in India today. The results suggest that a revitalization of discussions is necessary both at the policy and practitioner levels, about the future of collective bargaining as an institution. Although the cross-sectional nature of the data makes it unsuitable to conjecture trends, the results cover a adequately understandable picture to necessitate further discussion. One limitation of this study is that the collective bargaining is composed of many legal procedures which are often not fully known to the majority of the employees. We can take the example of new amendment of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 implemented from September 2014 are not fully clear to the employees, especially the Employee Pension Schemes(EPS).

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