



# Decline of Collective Bargaining and Subsequent Developments in Labour Management Relations

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## Abstract

Collective bargaining was a milestone in the labour-management relations in the context of welfare of labourers in the post-industrial revolution era. It was introduced to integrate the employers with the employees and to provide a common platform which could act as a grievance redressal mechanism. It instantly created a tremendous impact after being adopted as a part of ILO Declaration on Fundamental Principles and Rights at Work in 1998, and was binding on the member states.

Despite the worldwide positive impact, collective bargaining began to lose its influence due to a plethora of social, economic and political changes. Opening up of economies due to phenomena like liberalization, privatization and globalization have resulted in a paradigm shift from centralized collective bargaining, to various forms of decentralized bargaining structures like unit, individual, commercial and collaborative bargaining. Market forces and heterogeneity in the workforce, due to immigration, part-time workers and impetus to gender equality, have placed an immense burden on the part of trade unions. This paper deals with the emergence and significance of the concept by

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examining the history of collective bargaining in India and its evolution, pre and post 1991. The paper specifically focuses on the reasons that led to the decline in collective bargaining. It also highlights the emerging trends as substitutes for collective bargaining in the labour-management relations, with their viability (along with the empirical data) and structure in the conclusion.

**Keywords:** Collective Bargaining, Decentralization, Globalization, Privatization, Unit Bargaining, Labour Management

## I. Introduction

The 18<sup>th</sup> & 19<sup>th</sup> centuries witnessed a sharp rise in production of goods and services due to the phenomenon of industrial revolution in Europe and subsequently, all around the world. This was possible only due to large-scale procurement of capital, and mobilization of a tremendous workforce. However, in this process, the workers who were dependant on the wages, to make a living, were exploited by the factory owners and employers. The wages offered were very meagre for a heavy work load and the working conditions were abysmal and inhuman. In the era of *laissez faire*, employers have an unfettered right to hire & fire. This led to workers resorting to protests, strikes and lock-outs, thereby hampering production. Thus, there was an urgent need to establish a mechanism to reconcile the differences between the employers and employees. Collective bargaining was one such platform where both the workers and management could negotiate and resolve their differences.<sup>1</sup> The emergence of legal recognition of united power is based upon the strong bargaining power of management as against weak and unorganized workmen. The term had its genesis in the year 1991, in one of Beatrice Webb's (a journalist) publications relating to negotiations between labour and management in Britain. In that context, Black's Law dictionary defines collective bargaining as "Good-faith procedure of documented actions between an organization's management and a trade union representing its employees for negotiating wages,

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<sup>1</sup>H.A Mills, *How collective bargaining works*, 9(4) SOUTH ECON J, 359, 359-360 (1943). See also Vernon. H. Jansen, *Notes on the beginnings of collective bargaining*, 9(2) INDLABORRELAT REV, 225, 226 (1956).

working hours, working conditions, and other matters of mutual interest.”<sup>2</sup>

The Indian Supreme Court defines collective bargaining as “A technique by which disputes as to conditions of employment are resolved amicably, by agreement, rather than by coercion”.<sup>3</sup> The results of the negotiations between parties are referred to as collective bargaining agreement (CBA) or a collective employment agreement (CEA). The concept is rooted in the idea that a group of employees have a higher bargaining power compared to aggrieved individual employees who usually do not possess the level of influence required to make structural impacts. Collective bargaining is an epitome of democratic process as the employees decide on a majority basis, the subjects of negotiation.<sup>4</sup> It is slightly different from arbitration and conciliation, as the latter are used in more of a generic sense and collective bargaining includes both the elements in a specific context. Thus, to sum it up, it is a system where both the parties identify conflicting areas and work out solutions making it a win-win situation for both. The process of collective bargaining apart from compensations, has been extended to issues like fair performance rating system, whistle-blower protection, job flexibility, proper training and/or mentoring, career advancement opportunities, maintenance of quality control, and the overall ability to hold the employer accountable in contemporary times. Thus, it is the ultimate tool in the hands of the employees to demand justice, fairness and equity from any arbitrary action taken by the employer and it provides a legitimate forum for hearing the voices of the workers.

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<sup>2</sup>BRYAN GARNER, BLACK’S LAW DICTIONARY (Thomson Reuters 10th ed. 2014).

<sup>3</sup>Karnal Leather Karmachari Sangathan v. Liberty Footwear Co., AIR 1990 SC 247.

<sup>4</sup>Chris Langford, Why Collective Bargaining Rights Are Important, [http://www\\_professional\\_engineers.ifpte.org/news/details/Why-Collective-Bargaining-Rights-Are-Important](http://www_professional_engineers.ifpte.org/news/details/Why-Collective-Bargaining-Rights-Are-Important) (last visited on Sept. 12, 2016).

## II. Significance and Rationale

The Supreme Court of Canada, had aptly described the importance of collective bargaining in the case of Facilities Subsector Bargaining Association v. British Columbia:<sup>5</sup>

“The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work. Collective bargaining is not simply an instrument for pursuing external ends, rather it is intrinsically valuable as an experience in self-government. Collective bargaining permits workers to achieve a form of workplace democracy and to ensure the rule of law in the workplace. Workers gain a voice to influence the establishment of rules that control a major aspect of their lives.”

Reflecting over the judgment, one can infer principles like human rights, economic prosperity, democracy and vigilance. Also, the benefits of collective bargaining are not one-dimensional and not just restricted to the employees alone. The Madras High Court aptly mentioned the significance of collective bargaining in the light of individual freedoms enshrined in the Constitution: “The representative powers of organization of labour, with regard to enactments, such as the Industrial disputes Act, 1947, will have to be interpreted in the light of the individual freedoms guaranteed in the constitution and not as though such freedoms did not independently exist, as far as organized labour is concerned.”<sup>6</sup> Apart from benefitting the union alone, it offers a plethora of benefits to the employers as well. The management can now address the problems of the employees collectively rather than

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<sup>5</sup>Facilities Subsector Bargaining Association v. British Columbia, [2007] SCC 27 (The Supreme Court of Canada).

<sup>6</sup>Tamil Nadu State Electricity Workers Federation v. Madras Electricity Board, AIR 1965 Mad 111.

addressing every isolated individual complaint. It brings about a feeling of job security for employers thereby making sure the employers can save labour costs in hiring new ones.<sup>7</sup> And most importantly, it provides clarity on sides of both the parties and avoids industrial disputes, strikes, lock-outs, etc. which in turn affects production, leading to loss. Thus, it is very evident that the mechanism of collective bargaining is multi-faceted and involves benefits to more than one stakeholder. If there is proper co-ordination between the employers and employees, the consumers are satisfied. This in turn leads to production of more goods & services, thereby improving the economy.

### III. International Recognition

The international community felt the pressing need for a change in industrial relations due to gross human rights infringement by employers and to empower trade union movements across the globe. World institutions like International Labour Organization and the United Nations, mandated the enforcement of collective bargaining through its various agencies and conventions. The signatory countries to the convention are bound by its provisions, however, sanctions cannot be imposed on a country for non-compliance. The right to collectively bargain is protected under both universal human rights statutes and ILO conventions. Article 23 of the Universal Declaration of Human Rights, 1948 identifies the ability to organize trade unions as a fundamental human right. The Right to Organize and Collective Bargaining Convention (1949) No.98 was adopted by the ILO to make collective bargaining a fundamental tenet of labour relations.<sup>8</sup> Also, the convention emphasizes on member nations' domestic laws to promote the same. Convention no. 154 (C-154), collective

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<sup>7</sup>V.VijayDurga Prasad, *Collective Bargaining – Its Relationship to Stakeholders*, 45(2) INDIAN J INDRELAT, 195, 197 (2009).

<sup>8</sup>Article 4 states that “Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”

bargaining convention, 1981 was adopted in Geneva to further the principles laid down in the ILO constitution. It offers exhaustive scope on the same subject involving the elements covered under collective bargaining and methods of application and promotion of collective bargaining.

As of now, 145 member nations have ratified the ILO convention on collective bargaining and this displays the unity prevailing among the international community in acknowledging and working towards the welfare of employees. Owing to this, collective bargaining is a part of domestic legislation of almost all the countries. ILO convention no.98 mandates collective bargaining in public and private sectors for member nations. Only bodies excluded are police authorities, armed forces and other administrative bodies. The signatory countries have to abide by the norms and standards set in these conventions and incorporate relevant statutes in their domestic legislations. In the case of *NLRB v. Great Dane Trailers, Inc.*,<sup>9</sup> the US Supreme court held that denial by an employer to collectively bargain with their employees would amount to unfair trade practice. The South African courts made it mandatory for employers to collectively bargain with employees and trade unions.<sup>10</sup> In the case of *Royal Oak Mines Inc. v. Canada*,<sup>11</sup> the Canadian labour board allowed the union's right to indulge in peaceful bargaining methods. The European Court of Human Rights recognized the right to collectively bargain and form trade unions in the landmark judgment of *Wilson v. United Kingdom*.<sup>12</sup>

#### **IV. Collective Bargaining in India: Changing Scenarios**

Collective bargaining as a method of settling industrial disputes is comparatively new in India. However, it was being debated ever since the days of the royal commission of labour. The need for organized labour management relations arose after the First World

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<sup>9</sup> 388 U.S. 26, (1967).

<sup>10</sup> *Macsteel (Pty) Ltd v. NUMSA*, 1990 11 ILJ 995 (LAC).

<sup>11</sup> (1996) 1 SCR 369.

<sup>12</sup> [2002] ECHR 552.

War, due to co-ordination of activities of individualized unions<sup>13</sup> at that time. The evolution of collective bargaining can be better understood in the following timeline:

#### IV.1 Reforms Pre-1991

Collective bargaining was a significant breakthrough in the labour-management relations in India in the initial years. All the stakeholders benefitted and the Court accepted the concept to be a platform for rendering social justice. Some of the earlier judgments indicated this trend. In the case of *Amalgamated Coffee Estate. v. Their workmen*,<sup>14</sup> the court welcomed the mutual negotiation process between employers and employees and held the process was fair and reasonable. The Supreme Court even acknowledged that trade unions are symbolic of collective representation<sup>15</sup> and they imbibe democratic values. In the case of *Bharat Iron Works v. Bhagubhai Balubhai Patel*,<sup>16</sup> the Supreme Court highlighted the chaotic nature of labour management relations before the introduction of collective bargaining in India and the much needed change, it brought about in facilitating “civilized confrontation” between labour and management. The apex court confronted the realities of the pre-collective bargaining era and actively endorsed the concept.<sup>17</sup> The Industrial Disputes Act, 1947 had to include within its purview, all the collective industrial disputes and provide the framework for executing collective bargaining.<sup>18</sup> However, apart from the judiciary, structural economic changes also facilitated the proliferation of collective bargaining. The five year plan was

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<sup>13</sup> Nishith Desai Associates, India: trade unions and collective bargaining, [http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/India-Trade-Unions-and-Collective-Bargaining.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/India-Trade-Unions-and-Collective-Bargaining.pdf) (last visited Mar. 24, 2017).

<sup>14</sup>1965 II LLJ 110 SC.

<sup>15</sup>D.N. Banerji v. P.R. Mukherjee, AIR 1953 SC 58.

<sup>16</sup>AIR 1976 SC 98.

<sup>17</sup>Ram Prasad Viswakarma v. The Chairman, Industrial Tribunal, AIR 1961 SC 857.

<sup>18</sup> Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan, AIR 1957 SC 104. See also P. Virudhachalam and Ors. v. Management of Lotus Mills and Anr., AIR 1998 SC 554.

introduced by Jawaharlal Nehru to boost agricultural productivity and to usher in an industrial boom. In this process of industrialization, in order to prevent exploitation of the labour force, the first five-year plan established the groundwork for reforms that were subsequently ushered in through legislations.<sup>19</sup> It recognized certain intrinsic rights of the workers, like right of association, organization within the broad democratic framework, etc. It added that, 'collective bargaining can derive reality only from the organized strength of workers and a genuine desire on the part of the employer to co-operate with their representatives'.<sup>20</sup> The main objective behind encouraging mutual settlements was to reduce state intervention in labour management affairs. This ultimately was the rationale of the first five year plan which sought to incentivize trade unions by providing a bargaining platform and other privileges.

The second five year plan (1956-61) was equally instrumental in recognizing the need for collective bargaining as a tool for peaceful settlement of industrial disputes.<sup>21</sup> The third five-year plan actively promoted voluntary arbitration and called for its replacement of compulsory adjudication. The fourth five-year plan added further impetus to voluntary arbitration as an ideal means to resolve labour management conflicts signalling a shift from conventional compulsory adjudication mechanisms.<sup>22</sup> The first national commission on labour appointed by the Government of India in the year 1966 made a comprehensive investigation of all the problems relating to labour. The commission asserted the importance of

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<sup>19</sup>SC SRIVASTAVA, INDUSTRIAL RELATIONS AND LABOUR LAWS 152 (Vikas Publishing House 6<sup>th</sup>ed.).

<sup>20</sup>Government of India, First Five Year Plan (1951), <http://planningcommission.nic.in/reports/publications/index.php?repts=pub> (Last accessed: March 24, 2017).

<sup>21</sup>Government of India, Second Five Year Plan (1956), <http://planningcommission.nic.in/plans/planrel/fiveyr/2nd/2planch2.html> (last visited on Mar. 24, 2017).

<sup>22</sup>Government of India, Fourth Five Year Plan: a draft outline (1966), <http://planningcommission.nic.in/plans/planrel/fiveyr/4th/4planch8.html> (last visited on Mar. 24, 2017).



collective bargaining in a country like India,<sup>23</sup> where there is a planned economy and specified production targets are specified compared to western liberal countries.

The Indian public sector ventures experienced a heavy boost owing to the planned structure of the economy. By the end of 1970, India had a plethora of public sector undertakings which dominated the market, including some of the most prominent ones till date, like Hindustan Aeronautics Limited (HAL), Indian Oil Corporation (IOC), Bharat Heavy Electrical Ltd. (BHEL), etc. These public sectors preferred large-scale centralized bargaining to small scale decentralized units. Constructive joint effort by employers and unions at industry level made it possible to achieve wage uniformity, standardization of job titles and greater productivity. The unions and employers, for their own institutional security against the weak units, favour uniformity and industry level multi-employer bargaining. Besides these, there are other advantages of the multiemployer and bigger bargaining units. On wages being removed from competition, the employers concentrate on competition for managerial efficiency, quality of product and distributive efficiency which is beneficial for consumers. Mature and responsible bargaining by better informed, technically equipped and farsighted negotiators may not be available at the lower level. It is also claimed that contracts negotiated at industry level or national level may be technically superior to avoid chances of conflict in interpretation and application.

R. P. Verma in his article, identifies two types of bargaining units: craft and comprehensive units.<sup>24</sup> The craft unit consists of employees possessing a specialized skill or performing a particular function and comprehensive unit covers all the employees in a plant, a company or an industry, irrespective of their skills or functions.<sup>25</sup> He argues, that in India, an overwhelming majority of

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<sup>23</sup>Government of India, Report of the National Commission on Labour (1969), <http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf> (last visited on Mar. 24, 2017).

<sup>24</sup>R. P. Verma, *Centralization of Bargaining Structure in India and Its Problems*, 11(3) IND J INDRELAT, 363-379 (1976).

<sup>25</sup>*Id.* at 364.

the bargaining units are the comprehensive type. The predominance of comprehensive units is natural in India, because the unions threw open their membership to all workers without distinction of craft or occupation. Employers also preferred to deal with one composite union because it was more convenient for them to negotiate with one union, than with a large number of craft or occupational unions. This is also due to nationalization of industries, which catered to the needs of the general public in the country. The firms producing for national market, as is the case with most of the above firms, while formulating uniform policy regarding purchase, production and sale at the top level, finds advantageous to have uniformity in labour relations policy for all plants. Even in the pre-liberalization India, collective bargaining movement could not continue with the same momentum it had in the initial years that would insulate it from potential disintegration. A part of this is due to the labour legislations and judgments which have curtailed the rights of trade unions to a great extent. For example, collective bargaining took a severe blow when the Supreme Court in the case of *All India Bank Employees' Association v. National Industrial Tribunal and Ors.*<sup>26</sup> held that Article 19(1)(c) merely guaranteed the 'right to form associations' and in particular, did not guarantee strikes. This made the working of collective bargaining units in India unsustainable even before the era of liberalization.

#### **IV.2 Post- 1991**

Indian economy underwent a radical change in the year 1991 due to the process of 'LPG' also known as liberalization, privatization and globalization. India was suffering from a foreign exchange crisis and in order to secure mortgage for the debts received from the IMF and the World Bank, the then Finance Minister, Manmohan Singh opened up the economy in order to allow disinvestment from the public to the private sector and permit Foreign Direct Investment (FDI) in India for the first time. As a result, many global corporations set up franchisees in India and private sector began to flourish at the cost of withering away of the traditional Indian indigenous industries and their labour relations

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<sup>26</sup>AIR 1962 SC 171.

techniques. Pre-1991, India's major industries were owned by the government where employees, goods & services and production were uniform.

Post-1991, entry of private players distorted collectivization as a means of industrial relations and more emphasis was given to cutting labour costs. Also, more importantly, India's GDP (Gross Domestic Product) skyrocketed while its unemployment level increased. The growth in GDP was due to more money supply and investment. As a result, two parallel and yet interconnected phenomena occurred, there was deceleration in the level of employment accompanied with informalisation of workforce. Over the years, organized sector employment had grown more slowly than the rate of total employment. This paradox was called by economists as "jobless growth".<sup>27</sup> On a closer look, it was found that trade unions were active in the organized sector. Unemployment in the organized sector and the growth of unorganized sector after 1991 disincentivised the trade unions which began to wither away. Thus, India witnessed a new phase in labour relations, due to structural changes. Moreover, in the IT sector and Special Economic Zones (SEZ), there were hardly any trade unions. Thus, decentralization became inevitable after such huge market reforms. This ushered in a new era of industrial labour relations in India which was completely different from how it previously existed.

## V. Changes in Industrial Relations

Collective bargaining is on the decline despite its immense success, as the role it plays in transforming employer-employee relations is not understood properly. This is in fact attributed to the dynamic social, political and economic scenarios in the past century. The rise of a postmodernist culture in the 20<sup>th</sup> century has resulted in social mobility, more inclusiveness, thereby transforming the world into a global village. Though decline in trade union membership became a cause for worry, it is not the sole factor for the lack of prominence

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<sup>27</sup>Alakh N Sharma, *Flexibility, Employment and Labour Market Reforms in India*, 41(21) ECONOMIC AND POLITICAL WEEKLY, 2078, 2079-2080 (2006).

given to collective bargaining.<sup>28</sup> The role of private sector has primarily led to this situation. Opening up of economies due to phenomena like liberalization, privatization and globalization have resulted in a paradigm shift from centralized collective bargaining to other forms of decentralized bargaining structures like unit, individual, commercial and collaborative bargaining.

What exactly is decentralization and how does it affect collective bargaining? Decentralization implies the devolution of authority to the lower rungs in the organizational hierarchy. This has changed the way the employers interact with the employees in fixing terms and conditions of employment. In the conventional industrial type bargaining, bargaining happens usually between just two parties, the employers and employees. However, with decentralization, different organs of the industry have their own scope of work and reasonable autonomy. Since, a hierarchy is created in the workplace, each employee is answerable directly to his superior and not the top management. As hierarchy grows and communication gets delayed, the scope for systematic distortion of information increases, along with the probability of friction.<sup>29</sup> This has immensely affected the traditional manager- employee bargaining style and has led to its dilution. The scope of work is different for each and every unit and therefore, do not have similar demands. Thus, diverse departments cannot find a common ground to negotiate and sort things out. Decentralization has led to a paradigm shift from multi-employer to single employer bargaining arrangements, for determining pay scales. Also, market forces and heterogeneity in the workforce, due to immigration, part-time workers and impetus to gender equality have placed an immense burden on the part of trade unions. As a result, collective bargaining in the private sector has changed from multi-employer national agreements into local company or unit bargaining.<sup>30</sup>

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<sup>28</sup>Kathryn J. Ready, *Is Pattern Bargaining Dead?*, 43(2) INDLABORRELAT REV, 272, 273 (1990).

<sup>29</sup>Robert Hebdon, Douglas Hyatt & Maurice Mazzerolle, *Implications of Small Bargaining Units and Enterprise Unions on Bargaining Disputes A Look into the Future?*, 54(3) INDRELAT, 503, 519-520 (1999).

<sup>30</sup>Willy Brown & Alex Bryson & John Forth, *Competition and the Retreat from Collective Bargaining*, NIESR Discussion Paper No. 318 (The author deals

Introduction of single table bargaining and increasing number of small employers has narrowed down the scope of collective bargaining. As a result, collective class identity is replaced with orientation towards individual achievement, which ultimately results in the fragmentation of the interest groups and class dealignment.<sup>31</sup> There were considerable changes in the public sector too, through introduction of pay review bodies, contracting out of services, etc. Nevertheless, the changes were profound in the private sector.<sup>32</sup>

## VI. Reasons for Decline in Collective Bargaining

### VI.1 Rise of Postmodernism

The 20<sup>th</sup> century witnessed, what philosophers called 'postmodernism', which critiqued the prevailing notions of modernism, ideologies and other grand narratives. The movement advocated for a more pluralistic, inclusive society, with very high social mobility of the people. This resulted in a heterogeneous population. The integration of diverse elements in employment created multiplicity of demands, thereby affecting the previously existent uniformity of labour force and demands. This has increased the need for 'a typical employees'<sup>33</sup> who include non-permanent, peripheral and women workers. Collective bargaining could not meet the needs of all the labourers and therefore, they had to resort to individual bargaining modes.

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with the product market competition as a factor responsible for decline in collective bargaining along with the negative aspects of private sector on the same).

<sup>31</sup>Franz Traxler, *Collective Bargaining and Industrial Change: A Case of Disorganization? A Comparative analysis of Eighteen OECD Countries*, 12(3)EURSOCIOL REV., 271, 273 (1996).

<sup>32</sup>Trade Union Forum, Whatever happened to collective bargaining(March 31, 2015),<http://www.historyandpolicy.org/trade-union-forum/meeting/whatever-happened-to-collective-bargaining>.

<sup>33</sup>Chris F. Wright, What role for trade unions in future workplace relations, [http://www.acas.org.uk/media/pdf/g/m/What\\_role\\_for\\_trade\\_unions\\_in\\_future\\_workplace\\_relations.pdf](http://www.acas.org.uk/media/pdf/g/m/What_role_for_trade_unions_in_future_workplace_relations.pdf)(last visited on Sept. 20, 2016).

## **VI.2 Emergence of Private Sector**

Development and industrialization have become mutually related to each other in the recent times. Thus, for a country to add to the economy, apart from government controlled public sector units, there should be a strong private sector, which has its own autonomy and is free from government bureaucracy. Also, relaxations of norms for initiating a business venture and liberalization in developing economies, have proved to be a boon for private start-ups. This has adversely affected the public sector ventures, where collective bargaining was prevalent and reduced their profitability. As a result, mass production which was once standardized, is replaced by carefully customized goods which cater to the specific demands of the consumers. Partially, it also reflected a process of what has been called 'implicit derecognition' whereby individual employers gradually reduced the range of issues and the intensity with which they engaged with unions to the point at which recognition was nebulous. Private employees slowly started neglecting the issues which were addressed through bargaining mechanisms. Therefore, the emergence of a concrete private sector has disincentivized the public sector and nationalized industries, where collective bargaining was the only way out.

## **VI.3 Globalization and Increased Product Market Competition**

The opening up of markets with the advent of globalization has turned labour relations, from collectivized union representatives, to decentralized bargaining units. Allowing investments from other countries and opening of the franchisees by MNC's, have led to increased product competition in the market. Along with indigenous industries, global corporations have established franchisees all over the world, thereby leading to competition in the market. This positive competition has led to increased mechanization that has substantially increased the quality and quantity of the output, simultaneously diminishing the costs. Mainly, trade bargaining units are restricted to their national boundaries, while transnational organizations extend beyond national jurisdictions. In such cases, trade unions are posed with two main problems - volatility of currencies and organizational problems due to cultural differences. The constraints posed by

national markets diminish when firms compete globally to produce goods and services that transcend national frontiers.<sup>34</sup> The deregulation and globalization of markets has paralyzed the efficacy of unions to increase wages and ensure other improvements in the conditions of work - the two main components of collective bargaining. Options of strikes have also become redundant. Thus, changing national and international paradigms demand more dynamism, which is lacking in the system of collective bargaining, as it has evolved to be very rigid, providing very little scope for flexibility.

#### **VI.4 Mechanization and Unskilled Labour**

Mechanization is the process by which machines replace human effort in order to get the work done in a more efficient and faster way. With the advent of new technologies and innovations, mechanization has replaced human effort, which was the only source of work previously. This has led to the fall in demand for unskilled labourers. Unskilled work can now be done by automated machines, robots and computational systems. The market value for unskilled workers has decreased manifold and subsequently, the bargaining power of such labourers to demand higher wages, has also diminished. The excessive reliance on “contingent workers”, which includes part time, casual and temporary workers has sidelined conventional workforce. This has caused dilution in the conventional bargaining systems and thus has increased the need for individualized bargaining, owing to diversity of employees.

#### **VI.5 Individualization of Work**

This is an extension to the previously stated reasons. Due to increased competition in the market, employees have to keep up with the changing times by improving themselves and reiterating their efficiency. With increase in demand for skilled labour, there is

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<sup>34</sup>University of Pretoria - Vettori MS, Decentralization of collective bargaining (2005), <http://repository.up.ac.za/dspace/bitstream/handle/2263/29308/05chapter5.pdf?sequence=6&isAllowed=y> (last visited on Sept. 20, 2016).

need for companies to focus on individual development of the employees too. This makes it conducive for smaller enterprises focusing on multi-skilling, to deploy 'on the job training' for employees. The main criticism with industry-wide training is that it cannot always cater to the specific needs of small and medium sized enterprises. Industry-wide training is formalistic and theoretical, whereas on the enterprise level, on-the-job training, equips workers to deal with real time problems attributable to a particular subject. What industry-wide training does not acknowledge is the fact, that it confines employees' scope of function to a particular set of skills, while the ground reality expects him to multi-task. Therefore, with more specialization comes more nuances shattering uniformity. This led to a phenomenon of individualization where the needs of individual employees differ from each other and cannot be treated homogenous.

#### **VI.6 "Bad Image" of Trade Unions**

Bruce. E. Kaufman, an economics professor in the University of Georgia, argues that the adversary nature of collective bargaining portrays a very negative image, which alienates many modern-day workers. Allegations of corruption, lobbying, political influence and lack of membership control, continue to tarnish the image of trade unions. Unions are perceived as having a form of negative social status.<sup>35</sup> The more strident, left-wing, class-conscious tone that seems to be spreading in parts of the labour movement also works against mass appeal and approval. This has upset many bargaining units, owing to lack of popular support.

#### **VII. Emergence of Alternatives in Industrial Relations**

In order to fill the void left by collective bargaining and improve labour relations, many new trends have emerged in the industrial scenario. Some of them include:

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<sup>35</sup>Bruce E.Kaufman, *The Future of the Labor Movement: A Look at the Fundamentals*, 48 Lab. L.J. 474, 477 (Aug. 1997).



## VII.1 Unit bargaining

With increasing specialization and outsourcing, there is a hierarchy created within the industry which has resulted in non-uniformity in employment and negotiation patterns. There are multiple units which perform specific functions and are responsible for achieving targets. Such employees cannot be afforded a collectivized scheme of similar bargaining style. They tend to have different demands altogether from their counterparts in other units. This has often been referred to as enterprise- based bargaining, interest based bargaining, etc. This is typical in large scale industries which have different departments like manufacturing, marketing and sales, etc. Bargaining unit can be a small portion of a large company where no other employees are members of a union. In public sector industries, bargaining units comprise of legal professionals, white collar workers, etc. These people act as a link between the management and labourers. Unit bargaining has been applauded for its tremendous potential. A research was conducted in the province of Ontario to determine the efficiency of non-traditional smaller bargaining systems using empirical data,<sup>36</sup> which was obtained from the Ontario Ministry of Labour's collective bargaining agreement file, which contains information on 42,926 labour-management contracts settled in Ontario between 1984 and 1993. This data included both public and private companies. Some of the findings of the research prove that the smallest bargaining units are less likely to reach an impasse than the larger bargaining ones, holding a number of factors constant.<sup>37</sup> Also, smaller the bargaining units, lesser is the chance

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<sup>36</sup>Franz Traxler, *Collective Bargaining and Industrial Change: A Case of Disorganization? A Comparative analysis of Eighteen OECD Countries*, 12(3)EURSOCIOL REV., 271, 279-280 (1996).

<sup>37</sup>The two main parameters used for reaching a conclusion were: bargaining unit size and independence of the unions. The research after compiling empirical data suggests that Bargaining units of twenty and fewer workers are 8.8 percentage points less likely, and bargaining units of between 21 and 49 members are 7.3 percentage points less likely, to reach an impasse than the largest bargaining units. This implies that 21-49 member bargaining units are 1.5 percentage points more likely to reach an impasse than bargaining units of 20 and fewer (i.e.,  $-0.073 - (-0.088) = 1.5$ ).

for corruption, bribing and influence by political parties. More co-operative principles can be incorporated into bargaining style and reduced chances for a deadlock. This has led to internal conflict resolution systems rather than strikes, lock-outs, etc.<sup>38</sup> Also, they fit better with the insular communitarian cultures prevailing in the company. Thus, unit bargaining has plenty of potential and is very well suited for the modern day industries where there prevails a hierarchy.

## VII.2 Individual Bargaining

Before understanding the meaning of the term individual bargaining, it is imperative to understand its background and evolution. The phenomenon of westernization and growth of liberal democracies have allowed more scope for individuals to embrace their individuality without fear of being imposed sanctions upon. With this regard, employers could not arbitrarily fire employees at their whims and fancies just because of the fact that they belong to a trade union which is in clash with a particular employer. Individual bargaining can be simply defined as negotiations between an employer and an individual employee with respect to working conditions, wages, etc. In the United States, the doctrine of 'employment at will'<sup>39</sup> underwent a massive change in the latter part of the 20<sup>th</sup> century. This doctrine allowed the employer to terminate the contract of employees without providing adequate justification for the same. The development of freedom to contract and increased impetus to individual rights gave American

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This also implied that the increase in the size of bargaining units meant higher the chances of reaching a deadlock.

<sup>38</sup> The author provides a disclaimer saying that the less chance of reaching an impasse does not suggest that there has been a decrease in industrial disputes. But, there is lesser scope of strikes and more emphasis is on internal dispute resolution mechanisms like mediation, grievances arbitration and peer review panels.

<sup>39</sup>Kenneth G. Dau-Schmidt & Carmen L. Brun, Individual Bargaining, Collective Bargaining and Protective Legislation: Determining the Terms and Conditions of Employment in the Modern American Employment Relationship(2004),[http://www.jil.go.jp/english/events/documents/clls04\\_dauschmidt1.pdf](http://www.jil.go.jp/english/events/documents/clls04_dauschmidt1.pdf) (last visited on Sept. 20, 2016).

workers the freedom to work without a formal contract or without explicit job security clauses. Thus, there has been a shift from employment at will to 'employed at will'.<sup>40</sup> Following this, many countries have implemented statutes that protect the right of individual employees from being arbitrarily removed. The International Labour Organization has also supported the prohibition against unjust discharge. Article 4 of the ILO Convention and Recommendation on Termination of Employment of 1982 (No. 158) seeks to eliminate the employment-at-will doctrine and to require employers to specify a valid reason for the termination of their employees. In that context, how has individual bargaining been slowly replacing collective bargaining?

Collective bargaining was good enough for large-scale manufacturing firms with negligible specialization and for unskilled labour. But, with more specialization and more hierarchical divisions came the need for differential negotiation standards due to the quality of work done being unique for each co-worker. This led to the transition. Also, with the IT sector growing exponentially, scope of collective bargaining has disproportionately come down. The role of human resource department has expanded in order to address all the grievances of workers on an individual level. Just like every other form of negotiation, individual bargaining has its own merits and demerits. The scope of individual bargaining in large-scale standardized production units is negligible due to collectivization and uniformity. But, with the structural disintegration and delegation of powers to the grass root level, individual bargaining can be a professional way of solving disputes between the employer and the employee. It eventually provides more incentive to both the employer and employee where the employees can improve themselves and continue offering his best services to the company, thereby benefitting the employer too. Individual bargaining can certainly be a boon in the future to come.

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<sup>40</sup>Woolley v. Hoffmann-LaRoche Inc., 491 A.2d 1257, 1260 (N.J. 1985).

## VIII. Conclusion

From the above discussion, it is undisputedly clear that there has been a revolution in industrial relations, a subtle transition that occurred in the previous century, not from collective to smaller units bargaining, but from conservatism to westernization, from conventionalism to liberalism and more importantly, from isolated individual nations to a global fraternity. The shift from collective bargaining to other alternatives is only a side effect of such a change. On the one side of the spectrum, there exists a lobby which argues for welfare of employees through centralized uniform bargaining system, on the other end, there exists a lobby which advocates for employee autonomy and decentralization. In this context, it is to be stated that both forms of industrial relations have their own advantages and disadvantages catering to different objectives. Centralized bargaining has been very effective in promoting the public sector which forms the backbone of a country's economy and ensuring a sound welfare employee scheme thereby reducing income inequality and any form of disparity. Decentralization has led to higher growth rates in the economy promoting the growth of an individual employee thereby resulting in specialization and innovations. While the former is inefficient in cases of need for specialization and improvisation, the latter is unfit when it comes to ensuring social security for all the employees and ensure stability. There has undoubtedly been a change in the market structure and nature of industrial relations, but a balance between both is required for ensuring stability and sustainability. Welfare schemes for employees and specialization is the pressing need of the hour. Therefore, to find a common ground, a pragmatic approach is required and not an idealistic one as it tends to be too rigid. In the case of India, there has been great progress from independence with the legislature recognizing the need for employee protection from arbitrary and unjust decisions. Post-1991, due to the policies of liberalization, privatization and globalization, there has been an increased inclination towards decentralized bargaining units, owing to quicker redressal mechanisms and need for specialization and hierarchy. The employment levels in organized sector where scope of collective bargaining was maximum came down due to entry of private

players and need for skilled labour. However, in a country like India where there is perpetual poverty, trade unions continue to exist till date and are actively fighting for the rights of workers. Collective bargaining in India has declined, but has not yet fizzled out.