Legal Provisions of Collective Bargaining: Contrasting India with Canada, China & Finland

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This paper examines the legal provisions of collective bargaining in India, Canada, China and Finland. The legal provisions and protocol related to collective bargaining in India are discussed with certain rulings of the court. The dearth of central level legislation on the subject has been highlighted along with the criteria of recognizing a trade union. An analysis of characteristics of Canadian, Chinese and Finnish collective bargaining is presented in comparison to India. The conclusion emphasizes on strengthening of collective bargaining mechanism in India in the light of collective bargaining systems of these nations.

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Technical Framework

Collective bargaining is one of the most important aspects of employer employee relation. It is a process of negotiation between employers and a group of employees aimed to achieve industrial democracy. The fundamental objective of collective bargaining is to regulate wages and salaries, working conditions, benefits and other aspects of workers' welfare and rights (Hayter, 2010). It is the most practicable and constructive approach to avoid disputes and achieve peace at workplace. ILO has defined collective bargaining as "the negotiations about working conditions and terms of employment between an employer, a group of employers or one or more employers' organization on the one hand, and one or more representative workers organizations on the other hand, with a view to reaching an agreement"

The term "collective bargaining" was coined in 1891 by Beatrice Webb, a founder of the field of industrial relations in Britain. Webb describes collective bargaining as an economic institution, with trade unionism acting as a labor cartel by controlling entry into the trade. There

are other labor economists who claim that the collective bargaining is a political process rather than economic. Although the major actors in collective bargaining process are workers and management, it certainly depends upon several external forces including the political, social and economic environment of the country. Even the internal factors including organizational leadership, size and technological advances in the organizations contribute to the success or failure of collective bargaining.

Collective Bargaining in India

In India, the right to collective bargaining is not provided to all trade unions that exist, but is confined to those trade unions which are recognized. Registration of trade union is one thing and the recognition of trade union as a sole bargaining agent for the purpose of collective bargaining is quite another. Many industrial strikes took place on the question of recognition of unions including the Maruti Suzuki unrest in 2011 (Prasad, 2012). In majority of the industries, management allows only the recognized trade union for negotiations and collective bargaining. As such, recognition of trade union serves as a backbone of collective bargaining. It has been debated time and again whether a trade union should be recognized or not. This is because there is, till-date, no central legislation on this subject, i.e., recognition of trade union.

In Kalindi and Others v. Tata Locomotive and Engineering Co. Ltd Case (1960) the Supreme Court held that there is no right to representation as such unless the company, by its standing orders, recognizes such a right. The decision was reiterated in Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union & Others Case (1998).

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Labor being a concurrent subject, certain states of India including Maharastra, Gujarat, Uttar Pradesh and Madhya Pradesh, for example, have separate legislations relating to recognition and certain voluntary codes. All these are buried in practical aspects though. These legislations are named as:

- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Practices Act, 1971
- West Bengal Trade Unions Rules, 1998
- Kerala Recognition of Trade Unions Act, 2010
- Orissa Verification of Membership and Recognition of Trade Union Rules, 1994

Generally, these rules provide that a union shall be recognized by the employer as the sole bargaining agent of a group of workers if it receives a specified minimum percentage (usually a majority) of these workers' votes via secret ballot, organized by the Registrar. However, every trade union receiving a smaller

minimum percentage of votes (fifteen or ten percent, depending on the type of industry) shall also be recognized as constituents of a joint bargaining council as in the case of Kerala trade unions.

There are two major problems in trade union recognition in India:

1. All registered unions in India seem to have been enjoying industrial relations rights though they happen to be craft, caste or category based unions.
2. Politicization of trade unions is one of the basic reasons why one political party supports secret ballot system whereas others support check off system due to which there is the problem of following a uniform standard so far as recognition of trade union is concerned.

Several states have refused to recognize a trade union mainly on the following five grounds:

(a) Most of the office bearers of the union were outsiders,

(b) Sometimes, those disapproved by management, particularly politicians and ex-employees.

(c) The union consisted of only minimum number of employees.

(d) There were many rival unions in existence.

(e) The trade union was not registered under the Trade Unions Act, 1926

In India, there are no laws about recognition of trade unions and no laws have been made by the parliament to regulate collective bargaining process in different industries between employers and employees. Trade Unions Act, 1926 talks only about registration of trade unions and rights and responsibilities of registered trade unions (though registration is not compulsory). Industrial Disputes Act, 1947 explains various provisions of settling the industrial disputes including conciliation, voluntary arbitration and adjudication between employers and employees. Some state governments (Maharashtra, West Bengal, Madhya Pradesh, Bihar, Kerala and Odisha) have tried to pass laws to guide the process of recognition of trade unions. But no uniform mandatory central legislation exists in India to regulate collective bargaining and its process. Hence it totally depends on the sweet will of the employers to recognize a trade union as a sole bargaining agent.

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Recognition of trade unions functioning in factories is regulated under the provisions of the voluntary 'Code of Discipline' and the 'Criteria for Recognition of Unions' appended to the Code adopted by the Standing Labor Committee in its 16th Session in 1957 and subsequently ratified by the representatives of employers and employees at the 16th Session of the Indian Labor Conference, held in 1958. Main provisions of this code are given below.

To maintain discipline in the industry (both in public and private sectors) both employers and employees will recognize the rights and responsibilities of either party. Both the parties will willingly discharge their obligations consequent on such recognition. The central and state governments will arrange to examine and set right any shortcomings in the machinery they constitute for the administration of labor laws. Further, as per Code of Discipline, the management and unions should agree that they will not take any unilateral decision with respect to any company matter and existing machinery for settlement would be utilized. They should not go on lockout and strike respectively without notice .They should bind themselves to all future disputes by negotiations, conciliations and voluntary arbitrations. Further, they should promote constructive cooperation and they will educate the management and workers regarding their obligations to each other. As per the Code, management should agree not to increase the workload of employees unless they agree upon it and not to interfere in trade union related matters. It should take prompt action for settlement of grievances. Besides, the management should ensure a proper policy regarding discharge process of employees and to recognize the union in accordance with the criteria. The trade union should not engage in any form of violent act or physical duress. The union should discourage unfair labor practices such as negligence of duty, careless operation, damage to property and insubordination. Further, they will take prompt action to implement awards, agreements and settlements.

Criteria for Recognition

According to clause III (sub-clause vii) of the Code of Discipline, where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply. The provisions in case of single trade union are as:

i. The membership of the union should cover at least 15% of the workers in the establishment concerned. Membership would be counted only of those who had paid their subscription for at least three months during the period of six months immediately preceding the reckoning.

ii. A union may claim to be recognized as a representative union for an industry in a local area if it has a membership of at least 25% of the workers of that industry in that area.

iii. When a union is recognized, there should be no change in its position for a period of two years.

iv. Where there are several unions in an industry or establishment, the one with the largest membership should be recognized.

v. A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has a membership of 50% or more of the workers of that establishment, it should have the right to deal

with matters of purely local interest such as, for instance, the handling of grievances pertaining to its own members. All workers who are not members of that union might either operate through representative union for the industry or seek redress directly.

vi. In the case of trade union federations, which are not affiliated to any of the four central organizations of labor, the question of recognition would have to be dealt with separately.

vii. Only unions which observe the Code of Discipline would be entitled for recognition.

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The following two features are important in the Indian context:

a. Recognition of trade unions which do not have any legal support except in case of few states.

b. Enforcement of code of discipline which makes provisions for the same but it has no legal force as of now.

The Canadian State of Affairs

In Canada collective bargaining is shaped by a tight statutory structure used to regulate almost every aspect of the union-management relationship. Such legislation closely regulates the formation of the collective bargaining relationship, governs the conduct and timing of the bargaining process, places restrictions on economic conflict and may, in some cases, mandate certain terms of the collective agreement. The legislation confers broad administrative powers on labor relations boards or tribunals, which play a major role in the application of the legislation (Carter, 1995).

Canadian labor law governs collective bargaining and industrial relations among employers, their unionized employees and trade unions.

As opposed to the Indian situation, Canadian labor law governs collective bargaining and industrial relations among employers, their unionized employees and trade unions. In Canada, a distinction is commonly made between labor law narrowly defined in this way and employment law, the law of individual employment relationships, comprising the common law of master and servant and supervening statutory enactments governing the workplace. In most provinces, these matters are covered in separate statutes, but the Canada Labor Code is parliament's major enactment governing the workplace for industries within federal jurisdiction, and regulates labor standards and occupational health and safety. The jurisdiction of parliament to enact labor law is limited to certain discrete, major industries (for example, banking,

telecommunications and transportation). On other industries, provincial governments make the laws. In 1944, the province of Saskatchewan was the first government in Canada to recognize the right to collective bargaining, granting collective bargaining rights to both public and private-sectors workers. Labor codes, labor or industrial-relations acts or trade-union acts, are all rooted in PC 1003 and are based on the idea, expressed in the preamble to Part V of the Canada Labor Code, that "the common well-being" is promoted "through the encouragement of free collective bargaining and the constructive settlement of disputes." At the heart of labor law remains the ideological issue of how completely the state should regulate the use of economic power by both labor and management in bargaining over wages and other terms or conditions of employment. The Canada Labor Code and cognate provincial statutes protect the right of employees to join the union of their choice by making it an unfair labor practice for an employer to discriminate against employees for joining a trade union or participating in any of its lawful activities. Moreover, the employer is required by law to bargain in good faith with the union chosen as the bargaining agent by a majority of his employees. To protect these rights each statute provides for the appointment of a labor relations board, to which complaints of unfair labor practices may be taken and which, upon application filed by a trade union to be certified as a bargaining agent, decides whether a majority of the employees in question wish to be represented by that union. In deciding whether to certify a union, the board must determine the "appropriate bargaining unit," - ie, the group of employees by whom and for whom the selection of the bargaining agent is to be made. Once the appropriate bargaining unit is determined, the labor relations board must ascertain the wishes of the majority by examining dues, receipts and other evidence of membership in the union or by administering a secret-ballot vote, or both. In addition to the legislation there are regulations, practices, countless decisions by labor boards and many court judgments that make up the labor law governing unfair labor practices, union certification and the duty to bargain in good faith.

Once a union has been certified it is entitled to require the employer to meet with its representatives and bargain over the terms and conditions of employment that will form the collective agreement for the employees in the bargaining unit. Either the union or the employer may apply to the minister of labor for the province (or for Canada if the industry is under federal jurisdiction) for conciliation and must do so before either party can engage in economic sanctions. If no collective agreement is reached by that process and in some provinces after a strike vote, the employees can lawfully strike. In some jurisdictions an employer is entitled to have its final offer presented directly to the employees and voted upon, whether before or after strike action has been taken. Legally, a strike is a concerted withdrawal of labor; at that same point in the process the employer can legally lock the employees out. Usually in a strike or lockout everybody loses something: the employer his profits and con-

tinuing costs, the employees their wages and the union its strike funds.

It is generally believed that the fear of this mutual loss is the driving force behind collective bargaining. In most cases the union and the employer sign a collective agreement without a strike. The agreements must be of at least one year's duration, and depending on the economic climate, may extend for up to 3 or more years. During that time any strike or lockout is illegal and no other trade union may seek to represent employees in the bargaining unit, nor may employees seek to terminate the trade union's bargaining rights. When the agreement expires the process of collective bargaining, conciliation and strike or lockout starts again. It is only in the interim or "open" period between collective agreements that provision is made for employees to seek to terminate a trade union's bargaining rights, or for another trade union to apply to be certified as a bargaining agent of the employees in the bargaining unit, displacing the existing certified bargaining agent.

Canadian Collective Bargaining Legislation

In Canada there is a wide variety of statutes governing workers in the public, para public and private sectors. In the private sector, eleven statutes regulate the process of collective bargaining. In Quebec, Saskatchewan and possibly British Columbia, one statute governs all employers and all workers; the Quebec Labor Code, The Saskatchewan Trade Union Act, and perhaps the British Columbia Industrial Relations Act, all apply equally to the public, para public and private sectors. In every other jurisdiction there are at least two separate statutes, one for private sector workers and one for public-sector workers and in some cases another statute for the para public sector.

Collective bargaining legislation in Canada provides a relatively simple certification procedure whereby a trade union can acquire collective bargaining rights.

While the Canadian statutes maintain much of the structural components of the Wagner Act, each possesses its own distinguishing characteristics which have evolved in response to differing local situations and circumstances with regard to the fundamental components of the collective bargaining process (i.e. the acquisition of collective bargaining rights, the use of economic sanctions, compulsory grievance arbitration, union security legislation, and the protection of striking workers). Collective bargaining legislation in Canada provides a relatively simple certification procedure whereby a trade union can acquire collective bargaining rights. A union applies to a labor board, if it establishes that it represents a majority of a particular group of employees, it receives a certificate giving it exclusive bargaining rights for all employees in that bargaining unit. The usual method used to establish the representative character for union certification is through evidence of membership such as the signing of membership cards. Nova

Scotia and Alberta require an employee vote. Elsewhere, this is a secondary procedure used by labor boards to establish representativeness if there is some doubt about the reliability of the membership evidence submitted by the union. Canadian collective bargaining legislation severely curtails the use of economic sanctions, such as strikes, during the life of the collective agreement. Strikes for the purpose of gaining recognition are expressly prohibited. In most Canadian jurisdictions the right to strike or the right to lockout is postponed, even if parties are bargaining for a collective agreement, until the various specified dispute settlement procedures (usually conciliation, but sometimes a strike vote as well) have been exhausted. Since these procedures have been established as a precondition to the use of economic sanctions, they are sometimes regarded as indirect restrictions on the right to strike and lockout, and may thus impair their usefulness in resolving conflict. The complete restriction on strikes and lockouts over the life of the collective agreement has necessitated the establishment of a procedure for a final and binding alternative method for resolving disputes related to the interpretation and administration of the collective agreement. Unlike the legislation in the United States, where such procedures are a matter of negotiation between the parties, Canadian legislation assigns a public element to the process of grievance resolution, whereby the legislature may intervene to alter the basic legislative framework underlying the process. Unlike some "right to work" jurisdictions in the United States where legislation has restricted union security arrangements, Canadian labor legislation permits unions to negotiate operational arrangements such as (i) the closed shop (the requirement that a person be a member of the union before being hired); (ii) the union shop (which requires that a person join the union upon becoming employed); and (iii) the dues shop or Rand formula (which requires that a person pay union dues, but not necessarily join the union, as a condition of employment). Some jurisdictions have made the Rand formula mandatory; others require the employer to collect dues on behalf of the union when so authorized by the employee. Canadian labor laws include "anti-scab" legislation as well as legislated procedures to permit striking workers to be reinstated in their former jobs once they decide to return to work. Legislation in Quebec (1977), Ontario (1993), and British Columbia (1993), restricts the ability of employers to replace striking workers during a labor dispute. Legislation in Quebec and Ontario prohibits workers from both inside and outside the bargaining unit from working during a strike; British Columbia only prohibits the use of workers from outside the bargaining unit, although the effectiveness of picket lines in that jurisdiction makes it unlikely that members of the same bargaining unit would attempt to work during a strike. In Manitoba the hiring of replacement workers is prohibited by law. In other jurisdictions, even in the absence of such legislative provisions, some Canadian labor boards have regarded the refusal by an employer to displace replacement workers and reinstate striking workers as an unfair labor practice (Farrell & Marcil, 2008).

Collective Bargaining in People's Republic of China

The industrial relations norms and practices in China provide still a different picture as compared to other developing and developed countries. By the end of the first decade of the 21st century, the new labor regime in China exhibits high standards of individual labor rights (the OECD rates China's labor laws as being very protective), weak, uneven, and selective labor law enforcement, a general encouragement of state corporatist industrial relations regime that provides spaces for unions and collective bargaining, but in a context of "appropriated representation" (the state-sanctioned exclusive representation of an entire class by an organization without formalistic delegation from membership). A variety of experiments towards more authentic collective bargaining continue to operate, although both this and the legislation have not successfully prevented the rise of labor conflict. And since October 2015, the communist party has embarked on a highly repressive strategy against labor activists that arguably creates a chilling effect on the more genuine collective bargaining that could potentially solve labor conflict (consistent with the state's interest) (Liu & Kuruvilla, 2016).

Chan & Hui (2014) argue that, driven by growing labor protests, the collective negotiation process in China is undergoing a transition, from "collective consultation as a formality," through a stage of "collective bargaining by riot," and towards "party state-led collective bargaining." This transition, however, is unlikely to reach the stage of "worker-led collective bargaining" in the near future.

As a country in transition, China's capacity to harness employment relations is a key element in improving enterprise competitiveness and performance. In order to maintain workers' support and influence at the enterprise level, it will be necessary to build and maintain an active workplace union organization. However, the ACFTU has a monopoly on trade unionizing in China, and the creation of competing unions is illegal. Contemporary labor law in China is forcing most companies – including most foreign owned ones – to create an ACFTU chaptered trade union within them. Consequently, it is the sole national trade union federation of the PRC. As a tool of the government, ACFTU has been seen as not acting in the best interest of its members (workers), bowing to the government pressure on industry growth and not defending workers' rights. Hence, many analysts/observers join Professor Qi (including the International Confederation of Free Trade Unions, among others) and maintain the position that the ACFTU is not an independent trade union organization (Foster, 2017)

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It can be concluded that in china legal provisions of collective bargaining

does not ensure democratic rights to workers to form trade unions or to enjoy democratic rights. This is due to reflections of Chinese political system of governance in the area of labor law administration. Hence there remains much scope of improvement.

The Finnish System

In Finland, the unionization of workers began in the late 19th century. The Civil War in 1918 interrupted such nascent negotiation practices right after Finland had gained independence in 1917. The strained relations between workers and employers did not relax before the Second World War, with the labor market organizations only acknowledging each other as the negotiating parties in 1940.The number of labor market organization members started to grow and the systems developed towards the end of the 1940s. Since the end of 1960s, labor market relations have been shaped through tripartite cooperation, and the labor market system has become an important national institution. Today, cooperation between the government and labor market organizations is characteristic of Finnish labor market relations. This means that the drafting of almost all labor and social policy legislations related to working life is prepared in a tripartite process in collaboration between the government and labor market organizations representing employers and employees. There are approximately 2.2 million wage and salary earners in Finland (86.6 per cent of those who are working). The share of women of those employed is only slightly lower than that of men. The rate of unionization is about 75 per cent, which is one of the highest in Europe. The key acts representing collective labor legislation are the Collective Agreements Act and the Act on Cooperation within Undertakings. The starting point for labor legislation is the principle of employee protection. Because of this, labor legislation includes mandatory provisions, which cannot be deviated from by agreement to the disadvantage of the employee. These include provisions created for the employee´ protection against unlawful dismissals, the preconditions of concluding a fixed-term contract, and the duty to apply the provisions of a generally applicable collective agreement. Labor legislation also includes provisions that can be altered by collective agreement, such as the provision on sick leave compensation, and certain provisions concerning working hours. In addition, these laws contain provisions that become applicable only when no other arrangements have been agreed upon. Collective agreements play a pivotal role in the system by which the terms of Finnish employment relationships are determined. The Collective Agreements Act governs the rights of employers and their employer organizations on one side and employee organizations on the other to agree on the terms applied to employment relationships in a way that binds employers and employees. The collective agreements cover quite comprehensively, among other things, compensation paid for work carried out and working hours. The central principles on collective bargaining have been recorded in the Collective Agreements Act. Collective agreements have two important functions: they guarantee

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the employees minimum-level terms of employment and, on the other hand, they contain a duty to maintain industrial peace. The Collective Agreements Act includes provisions regarding the conclusion, applicability and observance of collective agreements, as well as a duty to maintain industrial peace. The duty to maintain industrial peace concerns the term of validity of the collective agreement and requires refraining from industrial action against the collective agreement. The employer party may be one or more employers or a registered association of employers. On the employee's side, only a registered employee union is eligible as a party to the collective agreement. One of the main purposes of these associations must be to look after the interests of either employers or employees in employment relationships. In collective agreements, the bargaining parties agree on the stipulations to be applied to employment contracts and relationships. A collective agreement must be drawn up in writing and it may be either of a fixed duration or agreement for an indefinite period subject to notice of termination. A collective agreement binds the employers and organizations which concluded the agreement as parties, and is solely binding on the affiliated associations of the parties and their individual members (this is known as normal applicability). It also binds those that endorse it at a later date by the consent of those involved.

Disagreements deriving from the interpretation of the collective agreement and breaches thereof are tried and settled in the labor court. If any part of an employment contract is in conflict with the provisions of the collective agreement applicable to the employment relationship, such part of the employment contract shall be null and void and the relevant provisions of the applicable collective agreement shall be observed instead. In cases where this is more advantageous to the provisions on the rights of employees and employers to take collective industrial action are laid down in the Act on Mediation in Labor Disputes (420/1962). A national conciliator, assisted by other conciliators, has been appointed for the purpose of mediation of labor disputes between employers and employees and the promotion of relations between labor market parties. Hence in Finland there is an elaborate and detailed legal mechanism to ensure collective agreements based on collective bargaining.

Discussions & Conclusion

The study utilized various secondary resources to examine the parameters of collective bargaining for India while contrasting it with three large nations. The comparison is made on four aspects including technical framework, legal provisions, scope & coverage and current status of collective bargaining (Table 1).

Table 1 Comparative Framework

Parameter	India	Canada	China	Finland
Technical Framework	Lacks specific framework	Specific frame work exists	Disguised framework	Specific framework exists
Legal Provisions	No legal provisions; Code of Discipline exists which is advisory in nature	Legal Provisions exists for private public sector undertakings	Selective and uneven legal provisions and enforcement	Detailed legal mechanism exists
Coverage and Scope	Government play a role of facilitator and observer	Covers all aspects of employment for all entities and provinces (except British Columbia)	No uniformity in coverage and scope	Comprehensive coverage and integrates government with industries
Current Status	Needs substantive improvement in devising legal provisions for recognition of trade unions and collective bargaining	Parity needs to be maintained in private and public enterprises	Lacks uniformity and transparency in application	System well in place

In India, collective bargaining is not enforced by any central legislation rather by a Code of Discipline which is a voluntary measure initiated by Indian Labor Conference that has tried to persuade employees as well as employers to abide by certain norms and conventions so that collective bargaining can be promoted. Recognition of trade union is also not controlled and regulated by any central legislation. This situation has encouraged both the parties to go for adjudication under the provisions of Industrial Disputes Act, 1947 which is a very time consuming process.

In Canada there is a detailed and elaborate central legislation to regulate and encourage collective bargaining. The Labor Code mandates various provisions to be followed by employers and employees so far as recognition of trade union and collective bargaining is concerned. Various provincial governments have also made detailed provisions for collective bargaining in their respective domains.

In the case of China it can be concluded that legal provisions of collective bargaining do not ensure democratic rights to workers to form trade unions or to enjoy democratic rights. This is due to reflections of Chinese political system of governance in the area of labor law administration. Hence there remains much scope of improvement.

So far as Finland is concerned the legal mechanism has supported and reinforced the collective bargaining process and has also ensured that collective agreements do not deprive the workforce of any statutory benefits.

In the light of aforementioned discussion certain suggestions are made regarding collective bargaining in India as follows:

a) Whenever there is any industrial dispute the first recourse must be to collective bargaining. This provision should be inserted in Industrial Disputes Act 1947 itself.

b) There must be a mandatory provision of recognition of trade union by inserting suitable provisions in Trade Unions Act 1926. The recognition should be based on representative strength of respective trade unions.

c) Only registered trade unions should be eligible for recognition.

d) Verification of membership of all trade unions should be made compulsory by making suitable legal provisions. Registrars of trade unions should be given more authority in these matters.

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