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Vardhaman Mahaveer Open University, Kota

Collective Bargaining and Negotiation Skills

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Collective Bargaining and Negotiation Skills

Unit 1 – Collective Bargaining

Structure of Unit

1.0 Objectives

After completing this unit, you would be able to:

- Understand the meaning of collective bargaining
- Know how the concept of collective bargaining emerged
- Understand the objectives, features and importance of collective bargaining
- Know the different types of collective agreements in India
- Know the problems of collective bargaining
- Understand the factors ensuring success of collective bargaining

1.1 Introduction

Industrial relations has one of the most delicate and complex problems of industrial society. Industrial progress is impossible without cooperation of labours and harmonious relationships. Since the emergence of an industrial society there has also been inherence of the conflict between employer-employee or the management and the employee The employer argues for more investment and profits while the employee argues for better working conditions and standard of living. These two conflicting interests can be adjusted temporarily through the principle of collective bargaining.

1.2 Meaning

The term “collective bargaining” in general terms means negotiation. It is a voluntary process under which the representatives of both employers and labour enter into an agreement. Collective bargaining involves discussions and negotiations between two groups as to the terms and conditions of employment. It is called ‘collective’ because

both the employer and the employee act as a group rather than as individuals. It is known as 'bargaining' because the method of reaching an agreement involves proposals and counter proposals, offers and counter offers and other negotiations. Collective bargaining involves preparation for negotiation, negotiation and contract administration.

Dale Yoder defines collective bargaining as "The term used to describe a situation in which the essential conditions of employment are determined by bargaining process undertaken by representatives of a group of workers on the one hand and of one or more employers on the other."**Hoffer** says collective bargaining is not simply an instrument for pursuing external ends rather it is intrinsically valuable as an experience in self-government"

According to **Flippo**, "Collective bargaining is a process in which the representatives of a labour organisation and the representatives of business organisation meet and attempt to negotiate a contract or agreement, which specifies the nature of employee-employer-union relationship."
The **I.L.O**. (International Labour Organisation) defines collective bargaining as "the negotiations about working conditions and terms of employment between an employer, or a group of employers, or one or more employers' organisations, on the one hand, and one or more representative workers' organisation on the other with a view to reaching agreement. Similarly, **Ludwing and Teller** defines collective bargaining as "an agreement between a single employer or an association of employers on the one hand and labour union on the other hand which regulates terms and conditions of employment.

Collective bargaining has been recognised internationally as a basic human right. Collective Bargaining in India has been the subject matter of industrial adjudication since long. Besides, the relevant provisions of Industrial Disputes Act, Trade Union Act, Standing Order and the Constitution, collective bargaining has been defined by our Law Courts.

In Karol Leather Karamchari Sangathan v. Liberty Footwear Company the Supreme Court observed that, "Collective bargaining is a technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion." In the case of Amalgamated Coffee Estates Ltd. vs. Workmen, the Apex Court held that the process of negotiated settlements is at the heart of the solution of the collective disputes. Unlike a settlement in the course of conciliation proceedings, a bipartite settlement with a majority union is equally binding if it is held to be fair and reasonable. In Ram Prasad Viswakarma v. Industrial Tribunal the Court observed that, "It is well known how before the days of 'collective bargaining', labour was at a great disadvantage in obtaining reasonable terms for contracts of service from its employer. As trade unions developed in the country and Collective bargaining became the rule, the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workmen, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards of other disputes."According to the Court, the Industrial Disputes Act, 1947 seeks to achieve social justice on the basis of collective bargaining.

1.2.1 Features of Collective Bargaining

The features of collective bargaining are as under:

Collective

It is a collective process. Workers collectively bargain for their common interests and benefits. It is a continuous process. It establishes regular and stable relationship between the parties involved. It involves not only the negotiation of the contract, but also the administration of the contract. It is a flexible and dynamic process. The parties have to adopt a flexible attitude through the process of bargaining. It is a method of partnership of workers in management and helps in arriving at consensus.

Voluntary:

Both the parties negotiate voluntarily in order to have a meaningful dialogue. Through negotiations, they try to probe each other's views thoroughly before arriving at an acceptable solution. The implementation of the agreement resulting from such a bargaining process is also voluntary.

Continuous:

This process begins with negotiations but does not end with an agreement. Implementation of such an agreement, which is an on-going process, is also a part of CB.

Dynamic:

The whole process of CB is influenced by the mental make-up of the parties involved. As a result, the concept of CB changes, grows, and expands over time.

Power Relationship:

Each party wants to extract the maximum from the other. To reach a consensus, both have to retreat from their original positions and accept less than what is asked for and give more than what is on offer. While doing so, the management tries to retain its control on workplace matters and unions attempt to strengthen their hold over workers without any serious dilution of their powers.

1.2.2 Subject-matter of Collective Bargaining

Collective bargaining has two primary concerns:

(1) Developing a broad contract of employment relationship between employers and workers,and

(2) The administration of the contract. In fact, it has been recognised as a tool of determining the wage rates, working conditions, compensations and other terms and conditions of employment and of regulating the relations between the management and organised labour.

The Indian Institute of Personnel Management (IIPM) has laid down the following subject matter of collective bargaining:

- Purpose of agreement, its scope, and the definition of important terms;
- Rights and responsibilities of the management and of the trade union;
- Wages, bonus, production norms, leave, retirement benefits, and terms and conditions of service;
- Grievance redressal procedure;
- Methods and machinery for the settlement of possible future disputes;
- Termination clause.

1.3 History

Collective negotiations and agreements had existed since the rise of trade unions during the 18th century. But the term collective bargaining was first coined by a British labour historian named Mrs. Beatrice Webb, a founder of the field of industrial relations in Britain in 1891.

The origin and development of collective bargaining is credited to Trade Union activity. In Indian industry, the process of collective bargaining started in the second half of the 19th century and got legislative recognition in the first half of the 20th century.

Labour movement in India was a result of organized efforts of N.M. Lokhande, a factory worker. In 1884, he organised an agitation in Bombay demanding limitation of working hours, a weekly rest day, compensation for injuries etc. and in response of these demands a weekly holidays were granted by the mill owners of Bombay.

Later, in 1890, the Bombay Mill hands' Association was organised under chairmanship of Lokhande and workers newspaper "Deenabandhu" was started. The trade union movement got its momentum at the close of the World War I and the period of 1918-21 was an epoch-making period in the history of Indian labour movement. In 1918 P.P. Wadia founded India's first Trade Union - Madras Labour Union. By the year 1920 this Trade Union had emerged at the national level to protect the legitimate interests of the working classes irrespective of any sector. the concept of arbitration was then introduced by Mahatma Gandhi. As a result of the failure of arbitration, collective bargaining formally started in 1920s in the textile industry in Ahmedabad. Since then , many collective bargaining agreements have been executed particularly after Independence. But this practice remained in its nascent stage, since neither British India nor Independent India made legal provisions for collective bargaining.

1.3.1 Validity of Collective Bargaining

Collective bargaining in India got some impetus from various statutory provisions same as many other nations. Employment Laws provide a machinery for consultation and pave the way for Collective bargaining thereby validating it.

1. Industrial Disputes Act, 1947 – The Act is basically enacted for providing the mechanism for the settlement of disputes. According to Section 18 of the Act, "A settlement arrived at by agreement between the employer and workman otherwise

than in the course of conciliation proceeding shall be binding on the parties to the agreement ….” Thus, settlement other than conciliation which may take place by a binding agreement between the employer and the employee is nothing but an implication of the collective bargaining agreement. In other words, Section 18 recognises collective bargaining. In fact, the definition of settlement under the Act itself contains the element of collective bargaining.

2. Trade Union Act, 1926 – The Act provides for the registration of trade union and determines the rights, liabilities and immunities of the union. The primary purpose for the formation of the trade union is to regulate the relations between the employer and employee or among themselves48 and it is well established that collective bargaining is one of the means of regulating such a relation.

   In the case of *D.N. Banerjee Vs. P.R. Mukherjee*, the court recognises collective bargaining. Justice Chandra Shekhar Aiyer observed that “having regard to the modern condition of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that Union is Strength, collective bargaining has come to stay”.

3. The Industrial Employment (Standing Orders) Act, 1946 – Standing Order is drafted by the employer which contains the conditions of employment. As per Section 3 of the Act, initially, the employer needs to submit the draft standing order to the Certifying Officer which should be in conformity to the model standing order as far as possible. Thereafter, the said Officer forward the copy of the draft to the trade union or to the workmen, if there is no trade union for seeking objections (if any) and after giving both the parties an opportunity of being heard, the Officer shall certify the standing order with necessary modifications (if required) and shall send it copies to both the parties.

4. The Constitution of India, 1950 – The Constitution of India in the Chapters on Fundamental Rights and Directive Principles of State Policy justify the legality of collective bargaining. In this context, Article 19 permits to form association which implicates the validity of trade union and as mentioned above that one of the main purposes of trade union is collective bargaining.

Further, several Directives Principles also justifies the provisions for improving the conditions of the labour in general and Article 43-A in particular provides that State shall ensure the participation of workers in the management. Although the said Directives are not directly enforceable in the court of law, still its binding nature can by established with the help of some decisions of the Apex Court of India. In Re Kerala Education Bill case, the Supreme Court observed that though the directives principles cannot override the fundamental rights, nevertheless, in determining the scope and ambit of fundamental rights the court may not entirely ignore the directive principles but should adopt “the principles of harmonious construction and should attempt to give effect to both as much as possible”.

1.4 Objectives of Collective Bargaining

Objectives of collective bargaining are as follows:

1. **To Balance the Legitimate Expectations** – Management can legitimately expect that most qualified labour will be available at a price which permits a reasonable margin for investment. On the other hand, labours can claim job for each worker and steady increment in the wages. In other words, management's interest in planning production and in being protected against its interruption is the exact equivalent to the worker's interest in planning his and his family's life and in being protected against an interruption in his mode of existence, either through a fall of his real income or through the loss of his job. Collective Bargaining balances this conflicting interest through the process of negotiation.

2. **To Maintain Equality** – Collective Bargaining is a means to maintain equality between the worker and the workmen as the latter is at least advantageous position from the outset. The bargaining power of an individual worker is, more often quite weak because of factors like illiteracy, indebtedness and socio-economic backwardness. Therefore, there is no match for the economically and consequently, political, superior employer. These expose the worker to exploitation, discrimination and indignities. As Lord Wedderburn rightly argues, "the Common Law assumes that it is dealing with a contract made between equals, but in reality, save in exceptional circumstances, the individual worker brings no equality of bargaining power to the labour market".

3. **To Promote Industrial Democracy** – Trade Union seeks to promote industrial democracy. They have now come to symbolize: workers' right to organize, to put forth their demands collectively16 and to resort to industrial action, i.e; strike, when their demands are not conceded by their employers. They seek to impress upon their employers that their collective voice be heard when decisions affecting their working lives are made. Thus, union assures that individual interest should be subordinated to the collective well being of its members. Given that joint regulation takes place of authoritarian decision making, collective bargaining can be a vehicle for the democratization of industrial life. The International Confederation of Free Trade Union stated that the objects of the collective bargaining is to express in practical terms the workers' desire to be treated with due respect and to achieve democratic participation in decision affecting their working conditions.

4. **To Perform Rule-making Function** – Collective bargaining performs rule-making function. Collective Agreements govern employment relationships in the bargaining unit and thereby create generally applied standards. This indicates the power of groups to provide for their own internal regulation (e.g; by custom and practice) and that there are limits to the sovereign power of an employer. Collective bargaining can thus be regarded as an expression of pluralism. Thus, collective bargaining is not just a means for raising wages and improving conditions of employment. Nor is it merely democratic government in industry. It is above all a technique whereby an inferior social class or group exerts a never-

slackening pressure for a bigger share in social sovereignty, as well as for more welfare and greater security and liberty. In short, collective bargaining helps in establishment and maintenance of the mutual relations of the workers and the management. Consequently, it strengthens the union as an organization. Further, it makes enterprise more responsive to human needs.

1.5 Importance and Functions

Collective bargaining is an important method of regulating relations between employers and employees. It involves negotiation, administration and enforcement of the written contracts between the employees and the employers. It also includes the process of resolving labour-management conflicts. There is a strong view that parties should be left to themselves to settle their disputes and the State should not intervene in these matters.

Importance for Workers

It provides uniformity and equality in conditions of labour for all laborers.

1. It ensures progress of workers and increases their importance and respect.
2. It prevents arbitrariness by owners regarding working conditions.
3. It preserves personal interest of workers.
4. It promotes welfare of workers.
5. A worker does not feel alone and helpless, on the contrary, he feels powerful.
6. It provides a check on employers and inspectors.

Importance for Employers

1. It is cheaper, easier, and safer option for negotiation.
2. It time saving and it benefits all the parties equally.
3. Compromises reached by this process are not only applicable to the parties but also to those who are indirectly concerned with the bargain.
4. Upon success of collective bargaining, industrial peace prevails and mutual understanding develops and production increases.
5. Compromises done through collective bargaining are binding on all the parties.

Importance in General

1. Helps in satisfactory solution of problems and allows old customs and traditions.
2. It reduces tension in parties and establishes a tradition of industrial peace.
3. It has been proved helpful in bringing social change.
4. Upon failure of the process, no party is insulted or hurt.

1.5.1 Functions of Collective Bargaining

According to **Arthur D. Butler**, Collective bargaining performs three important functions:

a) Long Run Social Change -

In a broader sense, collective bargaining is not confined only to the economic relations between employers and employees; Collective bargaining is a technique of long run social change, bringing about rearrangements in the power hierarchy of competing groups. According to Selig Perlman, “It is a technique wherby an

inferior social class or group exerts a never slackening pressure for a bigger share in the social sovereignty as well as more welfare, security and liberty for individual members. Collective bargaining manifests itself equally in politics, legislation, court litigation, government administration, religion, education and propaganda."

The contribution of collective bargaining towards the process of social change brings to light two important implications:

1. Collective bargaining is not an abstract class struggle but is rather pragmatic and concrete. The inferior class does not attempt to abolish the old ruling class but merely to become equal with it. It aims to acquire a large measure of economic and political control over crucial decision in the areas of its most immediate interest and to be recognisted in other areas of decision making.
2. The process of change initiated bargaining is a source or stability in the changing environment. Wage earns have enhanced their social and economic position and at the time management has retained a large measure of power dignity. These gains were not registered in one great revolutionary change, but rather step, with each class between opposing parties settled with a new compromise somewhat different from previous settlement. Thus, collective bargaining accomplishes long run stability on the basis of day to day adjustments in relations between management and labour.

b) Peace Treaty –

Collective bargaining is a sort of peace treaty between two parties in continual conflict. This conflict is smoothened by the compromises. Compromise represents a state to which each side is prepared to descend from the original stand (with neither party fully satisfied). This receding from original position may come about in two major ways:

1. **Compromise with Combative Aspects.** When combative aspects of parties are in operation the outcome of struggle depends on the parties relative strength. The extent to which each side is willing to accept less than its original bargaining demand depends, in part, on how strong it feels relative to its opponent. The compromise then is a temporary truce with neither side being completely satisfied with the results. Since the contract is always of limited duration each begins immediately to prepare a new list of demands, including previously unsatisfied demands and to build up its bargaining strength in anticipation of next power skirmish.
2. **Compromise without Combative Aspects.** The compromise reached between the two parties is not always the culmination of continuous struggle and antagonistic attitudes. A tranquil stability is achieved in the process of controlling economic changes. The union stars first of all to make change and improvements in its relations with the employers. Once a truce has been signed union stabilises working conditions by presenting the status defined in the contract. It generally adheres to this contract and might bring sanction against any attempt to abrogate the contract.

c) Industrial Jurisprudence –

Collective bargaining creates a system of Industrial Jurisprudence. It is a method of introducing civil rights into industry, that is, of requiring that management be conducted by rules rather than arbitrary decisions. It establishers rules which define and restrict the traditional authority exercised by employers over their employees placing a part of authority under the joint control of union and management.

1. It is rule making or legislative process, in the sense that it formulates the terms and conditions under which labour and management will cooperate and work together over a certain stated period.
2. It is an executive process, for both management will cooperate and work together over a certain stated period.
3. It is a judicial process for in every collective agreement there is a clause/provision regarding the interpretation of the agreement.

1.6 Theories of Collective Bargaining

1.6.1 Approaches to Collective Bargaining

1. **Traditional or Positional or Adversarial or Distributional or Win-Lose Bargaining** - In this type of bargaining both the parties, i.e. the union and the management, come out with their own agenda with little or no understanding of each other's problems. The process mostly involves a give and take type of negotiation. This is the most common type of collective bargaining and is used all over the world.

2. **Principled or Mutual Gains or Integrative or Win-Win Bargaining** - In this type of bargaining both the parties understand the issues involved and they approach it to solve the problems jointly. Thus, an equitable solution without any acrimony can be found. This process works when there is not much disparity between the education level of both the parties, such as in IT industry.

1.6.2 Theories of Collective Bargaining

Walton and Mckersie Theories

Walton and Mckesie view collective bargaining as four sub-process distributive bargaining, integrative bargaining, attitudinal structuring, and intra organizational bargaining.

Distributive bargaining applies to situation in which the management and union are in conflict.

Integrative bargaining are refers to bargaining issues that are not necessarily in conflict with other party.

Attitudinal structuring is the mean by which bargaining parties friendliness with, rust, respect, and cooperation

Intra organizational bargaining focuses interaction between management and union.

These four processes help to shape the final outcomes of collective bargain negotiations as well as the long term relationship between union and management.

Bargaining Range Theory

Bargaining range theory has its root with the late Prof. A C Pigu's Theory. Pigu's bargaining range theory explains the process by which the labour and management establish upper and lower wage limits within which a final settlement is made. The union upper limit represents the union's ideal wages. Then management will offer a wages that is well below the at acceptable to union.. From these two extremes, the union and management term will proceed through a series of proposal and counter proposals. The union will gradually reduce is wage demands while employer will raise the offer. Both sides have established limits as how far they are willing to concede, and in the process establish a sticking to point. This method gives exact settlement point which depends on he skills and bargaining of management and union.

Chamberlain Model

This model focus on determinants of bargaining power and the ways in which changes in these determinant lead to settlement in the majority of collective bargain power as the ability to secure your opponents agreement to your terms thus union bargaining is defined as.

$$\text{Union Bargaining power (UBP)} = \frac{\text{Management perceived cost of disagring with union terms (MCD)}}{\text{Management perceived cost of agreeing with union terms (MCA)}}$$

If the management estimates that it is or costly to agree than disagree, management will choose to disagree and there by reject the union terms and vice versa.

$$\text{Bargaining power (MBP)} = \frac{\text{Management with management terms}}{\text{Union perceived cost of agreeing with the management's terms}}$$

Once again if union believes that it is more costly to agree than disagree with managements offer whenever denominator greater than numerator in eq. 2 the union will reject the offer.

- Collective bargaining involves discussion and negotiations between two groups as to the terms and conditions of employment.
- It is called 'collective' because both the employer and the employee act as a group rather than as individuals.
- It is known as 'bargaining' because the method of reaching an agreement involves proposals and counters proposals, offer and counter offers and other negotiations.

Hicks Bargaining Model

Hicks bargaining model focuses on the length and costs of work stoppages Hicks proposed that union and management negotiators balance the costs and benefits of work stoppage when making concessions at the bargaining table. Each side makes concessions to avoid a work stoppage. The central idea is that there is a functional relation between the wages that one or the other party will accept and the length of the stricken that necessary to establish that wages. Management will fix the wage if union does not exist. The main difference between hicks' model and bargaining range model is that the Hicks model pinpoints a precise wage settlement while the range theory does not.

1.7 Process of Collective Bargaining

1.7.1 Pre-requisites for Collective Bargaining

Effective negotiations and enforcement requires a systematic preparation of the base or ground for bargaining which involves the following three steps:

Recognition of the Bargaining Agent - The management should recognise the trade union for participating in the collective bargaining process. If there is more than one union, selection could be made by verifying the membership by a government agency and giving representation to all the major unions through joint consultations.

1. **Identifying the Level of Bargaining** - The contents, scope of the dealings should be decided at the enterprise level, industry level, regional or national level as enforcement agencies differ in each case.
2. **Determining the Scope and Coverage of Bargaining** – There should be a clarity regarding the issues to be covered under bargaining. The bargaining is often restricted to wages, bonuses, working conditions etc but in order to prevent further conflicts and disputes both the management and union should cover as many issues as possible.

Collective bargaining generally includes negotiations between the two parties (employees' representatives and employer's representatives). It is a popular dispute redressal mechanism used to fix terms and conditions of employment. The workers and employers engage in a series of negotiations, and diplomatic and political maneuvers, to effect a collective agreement to resolve the dispute. The scope of the agreement usually relates to terms and conditions of employment, and clarification on rights and responsibilities of workers. Often employees are represented in the bargaining by a union or other labour organization. The result of collective bargaining procedure is called the collective bargaining agreement (CBA).

The **International Labor Organization** lists eight recommended stages of the collective bargaining process: preparing, arguing, signaling, proposing, packaging, bargaining, closing, and agreeing.

Stage 1: Preparing

The basis of collective bargaining is management engaging in dialogue with the workers collectively, and as such, the first stage of collective bargaining is organizing a group to represent the workers. If a trade union exists, then such unions usually take up the role of representing the workers. Otherwise the group is elected.

The group representing workers prepares a list of proposals relating to the issues under dispute, usually related to compensation and working conditions. A pattern of benefits, conditions, rules, and regulations usually exists, and the worker's proposal aims at highlighting the need for improvements and changes to such work conditions. Such a proposal becomes the basis for the negotiations that follow.

The process of the group of workers framing such a proposal by reconciling the viewpoints of each individual worker is very often tedious and difficult, and takes place through discussions. The meeting ends in consensus, the group leaders taking the majority opinion, or the group leaders adhering to the dominant viewpoint.

The best proposals are ones prepared considering various factors such as internal conditions of the company, the company's financials, the external environment, and other factors, for the management would invariably counter-argue on such factors.

Stage 2: Arguing

The second stage of collective bargaining is the group representing the workers arguing and substantiating their proposals, and the management counter-arguing, trying to refute the worker's claims and contentions. The negotiators of both sides use relevant data such as financial figures, precedents, benchmarks, analogies, and other methods, and various methods such as use of logic, appealing to emotions, pleadings, and other techniques to substantiate their point of view.

This stage of collective bargaining starts with both parties stating their case in strong terms, without the two parties discussing or consulting one another. The subsequent arguments and counter arguments can become heated and even acrimonious. Negotiations can break down and resume and the matter remains inconclusive without any progress for many days.

Stage 3: Signaling

This collective bargaining model rests on the worker's representatives submitting proposals that they consider ideal, but willing to settle for less, and the management willing to concede more than they publicly acknowledge. Sending signals across to the other party, through subtle messages, change of tone, body language, and other cues reveal to the other side that the proposal under discussion will meet with little resistance, can be accepted with modifications, or have a low chance of acceptance. Signaling thereby, reveals the resistance point to the other party without making it explicit. Failure to send signals leads to both sides sticking to their positions, causing impasse and a breakdown of negotiation and the dispute escalating to the next level of industrial action.

Stage 4: Proposal

One of the important stages of collective bargaining negotiations is one side making a proposal in a bid to end the argument and reach a settlement. Such proposals are reconciliation of arguments made by either side, based on the signals received.

Stage 5: Packaging

Good negotiators package proposals. Packaging involves making concessions, but placing items that remain too tempting to resist along with some compromises required from the other side, with the condition that the proposal comes as a whole and is not breakable. The other side makes counter-packages.

Stage 6: Bargaining

The packages put forth by either side identify a common ground, or a core that facilitates settlement between the two parties to the dispute. The collective bargaining process, however, continues with each side trying to dilute the other's package by a counter package, each time saying that this is "last and final" concession they will make.

This session usually involves off the record conversations, some joint exercises to resolve a deadlock, and very often culminate in a marathon round of lengthy and hectic discussions to resolve last minute glitches before both sides finally reach a settlement.

Stage 7: Closing

Closing is the final step in the collective bargaining process. Closing denotes settlement time, or the time negotiation ends. The negotiators walk back over the negotiations and summarize all positions, noting down agreements reached, issues withdrawn, and issued deferred, and clear ambiguities. Selecting the right time to close depends on the skill of the negotiator. Closing too early may lead to the negotiator's side losing out on further concessions that the other party may be willing to make, and closing too late may lead to some strategic advantage or position of mutual ground being lost. The prevailing mood of the workers and the economic climate greatly influences the closing time as well.

Stage 8: Agreeing

The final stage of the collective bargaining process is agreeing, or vetting the draft collective bargaining agreement. Discussions in this stage center on date for implementation of the settlement, such as date of payment for revised wages and introduction of new benefits, and other considerations. The process, however, does not end until the principals that is the owner or stakeholder of the company and the rank and file workforce accept and ratify the agreement struck by the negotiators. Adhering to the recommended stages of collective bargaining facilitate smooth negotiations and go a long way in effecting a win-win settlement. There are certain requirements for effective collective bargaining:

1. Identification of the Problem

The nature of the problem influences whole process. Whether the problem is very important that is to be discussed immediately or it can be postponed for some other convenient time, whether the problem is a minor one so that it can be solved with the other party's acceptance on its presentation and does not need to involve long process of

collective bargaining process, etc. It also influences selection of representatives, their size, period of negotiations and period of agreement that is reached ultimately. As such it is important for both the parties to be clear about the problem before entering into the negotiations.

2. Collection of Data

Both labour and management initially spend considerable time collecting relevant data relating to grievances, disciplinary actions, transfers and promotions, lay-offs, overtime, former agreements covering wages, benefits, working conditions (internal sources) and current economic forecasts, cost of living trends, wage rates in a region across various occupations, competitive terms offered by rivals in the field etc.

3. Selection of Negotiators

The success of collective bargaining depends on the skills and knowledge of the negotiators. Considerable time should, therefore, be devoted to the selection of negotiators with requisite qualifications. Generally speaking, effective negotiators should have a working knowledge of trade unions principles, operations, economics, psychology, and labour laws. They should be good judges of human nature and be able to get along with people easily. They must know when to listen, when to speak, when to stand their ground, when to concede, when to horse-trade, and when to make counter proposals. Timing is important. Effective speaking and debating skills are essential.

4. Climate of Negotiations

Both parties must decide an appropriate time and set a proper climate for initial negotiations. At this stage the parties must determine whether the tone of the negotiations is going to be one of mutual trust with 'nothing up our sleeves', one of suspicion with lot of distortion and misrepresentation, or one of hostility with a lot of name calling and accusations.

5. Bargaining Strategy and Tactics

The strategy is the plan and the policies that will be pursued at the bargaining table. Tactics are the specific action plans taken in the bargaining sessions. It is important to spell out the strategy and tactics in black and white, broadly covering the following aspects:

- Likely union proposals and management responses to them.
- A listing of management demands, limits of concessions and anticipated union responses.
- Development of a database to support proposals advanced by management and to counteract union demands.
- A contingency operating plan if things do not move on track.

6. Follow-up Action

The collective bargaining should be printed and circulated among the employees they can know the reality about it. What has been agreed upon between management and represent of union meetings of supervisors should be called with effectively.

1.8 Problems of Collective Bargaining

The major emphasis of both union and employers is to settle the disputes through adjudication rather than sorting out the issues among themselves. Whatever bargaining takes place, it is limited to large plants only. Smaller organisations generally do not prefer this form of handling the issues. Several factors are responsible for problems related to collective bargaining. These are listed below:

1. Due to the influence of external entities etc in trade unionism, there are multiple unions which are weak and unstable, and do not represent majority of the employees. Moreover, there are inter-union conflicts, rivalries and competition for supremacy, which further deteriorates the essence collective bargaining and process of negotiation between the labour and the management.
2. Most of the trade unions have political affiliations, they are often influenced by political ideologies. Political parties use these unions and their members to meet their political ends.
3. There is absence of definite procedure to recognize any trade union that may serve as a bargaining agent on behalf of the workers
4. In India, the law provides an easy access to adjudication. Under the Industrial Disputes Act, the parties to the dispute may request the Government to refer the matter to adjudication and the Government will constitute the adjudication machinery, i.e., labour court or industrial tribunal. This discourages the faith in collective bargaining process.
5. The trade unions and political parties are closely associated. As a result, trade union movement has leaned towards political orientations rather than collective bargaining.

1.8.1 Factors Ensuring Success of Collective Bargaining

The following steps should be taken for the success of collective bargaining:

Strong Trade Union: A strong and stable representative trade union is essential for effective collective bargaining. For having such a trade union, workers should have freedom to unionise so that they can exercise their right of unionisation and form a trade union for the purpose of electing their representatives for collective bargaining. A weak union not enjoying the support of majority of workers is not likely to be effective. The management will not negotiate with such a union; because mutual agreements are not likely to be honoured by a large section of the labour-force. Moreover, there is always a danger that non-union members may sabotage it.

Compulsory Recognition of Trade Unions: There must be an acceptable and recognised bargaining agent. That means that there must be recognised union or unions to negotiate the terms and conditions of the agreement with the management. Please understand that the process of collective bargaining cannot begin until unions are recognised by the employers. Employers will give such recognition only if they believe it to be in their interest or if it is a legal requirement. A strong, stable and the most

representative union should be recognised by the employers for the purpose because any agreement with that union will be acceptable to majority of workers and it will help in establishing sound industrial relations in the organization.

Mutual Accommodation: There has to be a greater emphasis on mutual accommodation rather than conflict or uncompromising attitude. Conflicting attitude does not lead to amicable labour relations; it may foster union militancy as the union reacts by engaging in pressure tactics. The approach must be of mutual give and take rather than take or leave. The take or leave philosophy is followed in America where there is contractual labour. As of now this is not the case in India. So if the union and the management have to look for a long-term relationship they have to respect each other's rights.

Mutual Trust and Confidence: Trade unions and management must accept each other as responsible parties in the collective bargaining process. There should be mutual trust and confidence. In fact in any relationship trust is the most important factor. Management must accept the union as the official representative. The union must accept the management as the primary planners and controllers of the company's operations. The union must not feel that management is working and seeking the opportunity to undermine and eliminate the labour organisation. The company management must not feel that the union is seeking to control every facet of the company's operations. **Efficient Bargaining Mechanism**: No ad-hoc arrangements are satisfactory for the reason that bargaining is a continuing process. An agreement is merely a framework for every day working relationships, the main bargain is carried on daily and for this there is a need to have permanent machinery. As for machinery being efficient, it has three aspects:

(a) Availability of full information
(b) Selection of proper representatives
(c) Recognition of natural temperament of each other.

Emphasis on Problem-solving Attitude: I am sure you will agree that there should be an emphasis upon problem-solving approach with a de-emphasis upon excessive legalism. Litigation leads to loss of time and energy and it does not benefit anyone. Therefore the emphasis is to look for mutually acceptable solutions rather than creating problems for each other. Lastly, the overall political environment should be congenial. The political environment should support collective bargaining.

Political Climate: For effective collective bargaining in a country, it is important to have sound political climate. The Government must be convinced that the method of arriving at the agreements through mutual voluntary negotiations is the best for regulating certain conditions of employment. Therefore, positive attitude of the political parties is a must for the promotion of collective bargaining. Such an approach would help and encourage the development of strong, stable and representative trade unions, growth of mechanism for the resolution of industrial conflict, recognition of unions, etc.

1.9 Collective Bargaining in India

Collective bargaining operates at three levels:

Economy-wide (national) Bargaining – It is a bipartite or tripartite form of negotiation between union confederations, central employer associations and government agencies. It aims at providing a floor for lower-level bargaining on the terms of employment, often taking into account macroeconomic goals.

Sectoral Bargaining - It aims at the standardization of the terms of employment in one industry, includes a range of bargaining patterns. Bargaining may be either broadly or narrowly defined in terms of the industrial activities covered and may be either split up according to territorial subunits or conducted nationally.

Company and/or Establishment Bargaining - As a supplementary type of bargaining, it emphasizes the point that bargaining levels need not be mutually exclusive.

Collective bargaining as it is practiced in India can be divided into three types.

1. Bipartite Agreements: These are most important types of collective agreements because they represent a dynamic relationship that is evolving in establishment concerned without any pressure from outside. The bipartite agreements are drawn up in voluntary negotiation between management and union. Usually the agreement reached by the bipartite voluntarily has the same binding force as settlement reached in conciliation proceedings. The implementations of these types of agreements are also not a problem because both the parties feel confident of their ability to reach the agreement.

2. Settlements: It is tripartite in nature because usually it is reached by conciliation, i.e. it arises out of dispute referred to the appropriate labour department and the conciliation officer plays an important role in bringing about conciliation of the differing viewpoints of the parties. And if during the process of conciliation, the conciliation officer feels that there is possibility of reaching a settlement, he withdraws himself from the scene. Then the parties are to finalise the terms of the agreement and should report back to conciliation officer within a specified time. But the forms of settlement are more limited in nature than bipartite voluntary agreements, because they strictly relate to the issues referred to the conciliation officer.

3. Consent Award: Here the negotiation takes place between the parties when the dispute is actually pending before one of the compulsory ad judicatory authorities and the agreement is incorporated to the authorities, award. Thus though the agreement is reached voluntarily between the parties, it becomes part of the binding award pronounced by an authority constituted for the purpose. The idea of national or industry-wide agreements and that to on a particular pattern may appear to be a more ideal system to active industrial relation through collective bargaining, but the experience of various countries shows that it is not possible to be dogmatic about the ideal type of collective bargaining, because it largely depends upon the background, traditions and local factors of a particular region or country.

Good Faith Bargaining a term that means both parties are communicating and negotiating and those proposals are being matched with counterproposals with both parties making every reasonable effort to arrive at agreements. It does not mean that either party is compelled to agree to proposal. Bargaining in good faith is the cornerstone of effective labour management relations. It means that both parties communicate and negotiate. It means that proposals are matched with counterproposals and that both parties make every reasonable effort to arrive at agreement. It does not mean that either party is compelled to agree to a proposal. Nor does it require that either party make any specific concessions. As interpreted by the courts, a violation of the requirement for good faith bargaining may include the following:

1. Surface bargaining - This involves merely going through the motions of bargaining without any real intention of completing a formal agreement.

2. Concession - Although no one is required to make a concession, the courts' definitions of good faith suggest that willingness to compromise is an essential ingredient in good faith bargaining.

3. Proposals and demands - This is considered as a positive factor in determining overall good faith.

4. Dilatory tactics - The law requires that the parties meet and 'confer at reasonable times and intervals.' Obviously, refusal to meet at tall with the union does not satisfy the positive duty imposed on the employer.

5. Imposing conditions - Attempts to impose conditions that are as onerous or unreasonable as to indicate bad faith will be scrutinized by the board.

6. Unilateral changes in conditions - This is viewed as a strong indication that the employer is not bargaining with the required intent of reaching an agreement.

7. By passing the representative - An employer violates its duty to bargain when it refuses to negotiate with the union representative. The duty of management to bargain in good faith involves, at a minimum, recognition that this statutory representative is the one with whom the employer must deal in conducting bargaining negotiations.

8. Commission of unfair labour practices during negotiations - Such practices may reflect poorly upon the good faith of the guilty party.

9. Providing information - Information must be supplied to the union, upon request, to enable it to understand and intelligently discuss the issues raised in bargaining.

10. Bargaining items - Refusal to bargain on a mandatory item (one must bargain over these) or insistence on a permissive item (one may bargain over these) is usually viewed as bad faith bargaining.

1.10 Summary

Collective bargaining can help bring industrial peace in our country by promoting mutual understanding and cooperation between workers and managements. It provides a framework for deciding the terms and conditions of employment without resorting to strikes and lockouts and without the intervention of outsiders. The management and the union can develop a cordial relationship.

1.11 Self Assessment Questions

1. Discuss the meaning of collective bargaining. Trace the history of collective bargaining.
2. Explain the different types of collective agreements.
3. Discuss the features and importance of collective bargaining.
4. What are the pre-requisites of collective bargaining.
5. Write short notes on:
   a. Problems of collective bargaining
   b. Factors ensuring success of collective bargaining
6. Discuss different theories of collective bargaining?
7. What are the various functions of collective bargaining?

1.12 Reference Books

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- http://www.ilo.org/public/english/dialogue/actemp/downloads/publications/srscbarg.pdf
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Unit-2 : Fundamentals of Negotiation

Structure of Unit

2.0 Objectives

After completing this unit, you would be able to:

- Understand the Negotiation Process in detail
- Know how to develop advanced negotiation skills
- Understand various elements to be taken care of in negotiations
- Learn about key concepts required in negotiation
- Understand about foundations of successful negotiation process
- Know how to improve negotiation skills

2.1 Introduction

The word "negotiation" originated from the Latin word, "negotiatus", which means "to carry on business". Negotiation is a discussion between two or more parties at dispute who are trying to work out a solution to their problem. This interpersonal or inter-group process can occur at a personal level, as well as at a corporate or international (diplomatic) level. Difference in needs, wants, desires, aims, belief and opinion of people creates conflict and disagreement. Without negotiation, such conflicts may lead to argument and resentment resulting in one or all of the parties feeling dissatisfied. Negotiation is a process whereby two persons or groups strive to reach agreement on issues or courses of action where there is some degree of difference in interest, goals, values or beliefs. The point of negotiation is to try to reach agreements without causing future barriers to effective communications. Negotiation helps in sharing expectations among individuals or group that reduces conflict, evolve cultural norms and facilitate collective effort. Thus, the process that may be used to arrive at these norms is a bargaining process- negotiation.

Negotiations typically take place because the parties want to create something new that neither could do on his or her own, or to resolve a problem or dispute between them. The parties acknowledge that there is some conflict of interest between them and think that they can use some form of influence to get a better deal, rather than simply taking what

the other side will voluntarily give them. They prefer to search for agreement rather than fight openly, give in, or break off contact. Negotiation is different from arbitration and other forms of decision making. Unlike an arbitrator, a mediator or an adjudicator, the power to determine the facts, define the process and to make the decision in negotiations rests with the participants, not with a third party. In adjudication processes the objective is to create doubt in a third party's mind (judge, arbitrator) about the "facts" presented by the opposite side, with the goal of winning. In negotiations there is no third party; the party you must convince is your opponent.

2.2 Nature of Negotiation

Negotiation is a dialogue between two or more people or parties, intended to reach an understanding, resolve point of difference, or gain advantage in outcome of dialogue, to produce an agreement upon courses of action, to bargain for individual or collective benefit, to design outcomes to satisfy various interests of two people/parties involved in negotiation process. Negotiation occurs in business, non-profit organizations, government branches, legal proceedings, among nations and in personal situations such as marriage, parenting, and in everyday walk of life. The study of the subject is called negotiation theory.

It involves 5 key activities:

1. Obtaining substantial results
2. Influencing balance of power between parties.
3. Influencing the atmosphere.
4. Influencing the constituency.
5. Influencing the procedures.

When parties negotiate, they usually expect give and take. While they have interlocking goals that they cannot accomplish independently, they usually do not want or need exactly the same thing. This interdependence can be either win-lose or win-win in nature, and the type of negotiation that is appropriate will vary accordingly. The disputants will either attempt to force the other side to comply with their demands, to modify the opposing position and move toward compromise, or to invent a solution that meets the objectives of all sides. The nature of their interdependence will have a major impact on the nature of their relationship, the way negotiations are conducted, and the outcomes of these negotiations. The parties must work toward a solution that takes into account each person's requirements and hopefully optimizes the outcomes for both. As they try to find their way toward agreement, the parties focus on *interests*, *issues*, and *positions*, and use cooperative and/or competitive processes to come to an agreement.

2.2.1 Elements of Negotiation

In any negotiation, the following four elements are important and likely to affect the ultimate outcome of the negotiation:

Knowledge: Knowledge statement refers to an organized body of information usually of a factual or procedural nature which, if applied, makes adequate performance on the negotiation. A body of information applied directly to the performance of a negotiation.

Attitude : Attitudes strongly influences all negotiations. These are underlying ideas about issues and personalities involved in particular case. They may also be attitudes linked to personal needs for recognition.

Skill: Skill statement refers to the proficient manual, verbal or mental manipulation of data or things. Skills can be readily measured by a performance test where quantity and quality of negotiation are tested, usually within an established time limit. Skills have been dealt in detail in unit 5.

Habit: Habit is what we repeatedly do and is what truly defines our capability to perform.

These elements are together known as KASH. Most organizations and people spend their time and money developing the left half of the KASH Box in negotiation. Most terminations and negotiation failure are due to weakness in the right half of the KASH box.

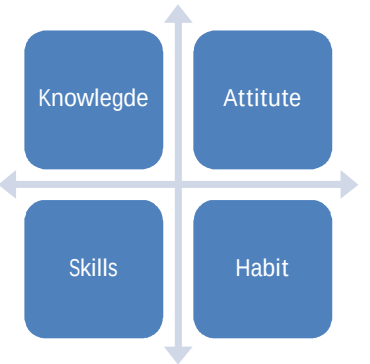

Figure 2.1 – KASH Box

This is because -

Knowledge: How to do negotiation?

Attitude: How the individual or personnel manager comes across to others while carrying out negotiation?

Skills: How well to do negotiation?

Habit: How individual or personnel manager normally does things, repeatedly and consistently without any effort?

2.2.2 Reasons for Growing Importance of Negotiation

The ability to negotiate effectively is becoming increasingly important, especially for those who work or volunteer in business, government, healthcare, or any other type of organization. There are many reasons for this development and they are illustrated in the following examples.

Technology

- The rise of e-commerce, especially online auctions and trading, has created a new realm for buying, selling, and otherwise doing business.
- Technology brings customers much closer to organizations, employees closer to their employers thus increasing the incidence of negotiating to secure and maintain productive and cordial relationships with them.

The Workplace

- Organizations have become less bureaucratic and flatter with fewer layers of managers and employees in their hierarchies. Job responsibilities and reporting lines have become less formalized and command-and-control management styles have been displaced.
- These changes, coupled with the wide array of other organizational structures that have been adopted, have left employees with fewer and fewer definitive rules to follow about how work should be done. They are now expected to negotiate many aspects of their work.
- People change jobs, and even careers, more often than ever before. This increases the number of employment packages they must negotiate. The growth of customized employment contracts designed to meet employees' unique needs for flexibility also make more elements of an employee's work life negotiable (Babcock & Laschever, 2007).
- Domestically and internationally, organizations are increasingly using team-based work processes, and many of these teams are devoid of formal leaders. Decisions, therefore, must be negotiated by team members.
- The workforces in the U.S. and other countries are becoming more diverse, and demographic trends suggest this will continue. Working with diverse coworkers often requires employees to negotiate their differences. Done well, this produces beneficial outcomes. It appears, however, that this is frequently done poorly or not done at all.
- The decline of union membership in the U.S. (Budd, 2010) means that unions are now negotiating employment packages for far fewer employees. This means that individual employees must now negotiate the terms of their employment for themselves.
- Managers spend a substantial amount of their time at work dealing with employee conflict or helping other managers deal with conflict (Brotheridge & Long, 2007). The ability to negotiate well, and to intervene effectively when necessary, should make them better conflict managers and enhance their work performance.

- Like conflict, organizational change is ubiquitous and must be managed to be successful. Addressing the concerns of those individuals who are affected by the change is one very important component of this process, notably overcoming resistance. Negotiating the change and reaching a mutually acceptable outcome with these people is often far more effective than simply imposing the change on them.
- When businesses expand their operations overseas, they sometimes do so by forming joint ventures or strategic alliances with a company in the host country. This obviously requires the dealmakers to negotiate the terms of the joint venture or alliance and how they will be implemented.
- Generally speaking, we negotiate with others if we need their cooperation and we cannot command them to do something. In organizations, this might include peers or superiors, or coworkers in other departments. Managers might even negotiate with their subordinates because they have their own interests, understandings, sources of support, and areas of discretion (Lax & Sebenius, 1986).

2.2.3 The Pros and Cons of Negotiation

Negotiation holds great promise for realizing net benefits when you are trying to close deals, settle disputes, make team decisions, solve problems, or capitalize on new opportunities. It provides one party with a useful tool for satisfying its need if both the parties are interdependent, one party can persuade other to give previous more than it had planned or more than it can get on its own, and both the parties are willing to adjust their differences to reach an agreement

Despite its promise, it is not always appropriate to negotiate.

- If one loses everything by negotiating, it probably should find another way to address the situation.
- If one is inadequately prepared, or have no stake in the outcome, it is
- wiser to find another way to address the situation.
- If waiting will improve one's ability to satisfy its needs, it should wait.
- Some also argue that it is inappropriate to negotiate if the other party's demands are unethical or illegal (Levinson, Smith, & Wilson, 1999).

2.3 Types of Negotiation

Depending upon the situation and time, the way the negotiations are to be conducted differs. The skills of negotiations depend and differ widely from one situation to the other. Basically the types can be divided into three broad categories.

Types	Parties	Examples
Day- to-day/ managerial negotiation	Different levels of management	Negotiation for pay, terms and working conditions.
	In between colleagues	Description of the job and fixation of responsibility
	Trade union	Increasing productivity.
	Legal advisers	
Commercial negotiations	Management	Stringing a contract with the customer
	Supplier	Negotiation for the price and quality of goods to be purchased.
	Government	Negotiation with finance institutions as regarding the availability of capital.
	Customer	
	Trade unions	
	Legal advisors	
	Public	
Legal negotiations	Government	Adhering to the laws of the local and national government
	Management	
	Customer	

Table 2.1 – Types of Negotiation

1. Day-to-day / Managerial Negotiations

Such types of negotiations are done within the organization and are related to the internal problems in the organization. It is in regards to the working relationship between the groups of employees. Usually, the manager needs to interact with the members at different levels in the organization structure. For conducting the day-to-day business, internally, the superior needs to allot job responsibilities, maintain a flow of information, direct the record keeping and many more activities for smooth functioning. All this requires entering into negotiations with the parties internal to the organization.

2. Commercial Negotiations

Such types of negotiations are conducted with external parties. The driving forces behind such negotiations are usually financial gains. They are based on a give-and-take relationship. Commercial negotiations successfully end up into contracts. It relates to foregoing of one resource to get the other.

3. Legal Negotiations

These negotiations are usually formal and legally binding. Disputes over precedents can become as significant as the main issue. They are also contractual in nature and relate to gaining legal ground.

4. Informal Negotiation

Apart from situations when it is appropriate to employ this more formal process of negotiation, there are times when there is a need to negotiate more informally. At such times, when a difference of opinion arises, it might not be possible or appropriate to go through the stages set out above in a formal manner. Nevertheless, remembering the key points in the stages of formal negotiation may be very helpful in a variety of informal situations.

5. Bad Faith Negotiation

When a party pretends to negotiate, but secretly has no intention of compromising, the party is considered to be negotiating in bad faith. Bad faith is a concept in negotiation theory whereby parties pretend to reason to reach settlement, but have no intention to do so, for example, one political party may pretend to negotiate, with no intention to compromise, for political effect.

6. Team Negotiations

Due to globalization and growing business trends, negotiation in the form of teams is becoming widely adopted. Teams can effectively collaborate to break down a complex negotiation. There is more knowledge and wisdom dispersed in a team than in a single mind. Writing, listening, and talking, are specific roles team members must satisfy. The capacity base of a team reduces the amount of blunder, and increases familiarity in a negotiation.

2.4 Negotiation Styles

R.G. Shell identified five styles/responses to negotiation. According to him there are five long-recognized styles of negotiating which characterize both approaches to resolving disputes or making deals and the default approach taken by each individual to negotiating. These styles can be thought of as means for achieving negotiated outcomes as well as a categorization of individuals negotiating.

2.4.1 Avoiding

- Primarily concerned with avoiding intra-personal conflict
- Is useful when the the stakes of a negotiated outcome are not worth the investment of time or the potential for igniting conflict
- Characterized by sidestepping, postponing, and ignoring the issue or situation
- Effective when avoidance of the situation or issue does not greatly affect the relationship and short term task is not important to either party

2.4.2 Accommodating

- Primarily concerned with the relationship between the parties
- Easily gives the other side concessions in hopes of strengthening the relationship, but often gives away too much too soon

- Tend to neglect their own needs in favor of helping the other side get what they want
- Effective when long term relationship is important and short term task is not important

2.4.3 Compromising

- The style falling between accommodating and competing
- Useful when time is a concern or there is a strong relationship between the parties
- Requires concessions from both sides to find agreement
- Does not focus on legitimate or fair standards for settlement and instead utilizes "Meet in the middle," or "Split the difference" solutions

2.4.4 Collaborating

- Focuses on using problem solving methods to create value and discover mutually satisfactory agreements
- Utilizes the creativity of both parties to find solutions to both sides' interests
- Tend to be assertive about their needs and cooperative with the other side
- Effective when long term relationship is important and short term task is important

2.4.5 Competing

- Primarily concerned with achieving their own goals regardless of the impact on others
- Views negotiation as a win/lose rather than a problem solving activity
- Often utilize manipulative tactics such as attacks, threats, and other aggressive behavior to achieve their objectives
- Effective when long term relationship is not important and short term task is important

2.5 Pre-requisites for Successful Negotiation

Depending on the degree of the disagreement, some preparation should be made for conducting a successful negotiation. For small disagreements, excessive preparation can be counter-productive because it takes time that can be better used elsewhere. It can also be seen as manipulative because, just as it strengthens ones position, it can weaken the other person's.

However, if major disagreement is to be resolved, then in order to prepare thoroughly following points should be considered before starting to negotiate:

- **Goals**: What one gets out of the negotiation? What other person wants?

- **Trades**: What one party and the other people have that makes trade possible, what the other wants? If both parties are comfortable in giving it away?
- **Alternatives**: If one does not reach agreement with the other person, what alternatives does one have? Are these good or bad? How much does it matter if one is unable to reach agreement? Does failure to reach an agreement cuts out future opportunities for the party? And what alternatives might the other person have?
- **Relationships**: What is the history of the relationship between the negotiation parties? Can this history impact the negotiation? Will there be any hidden issues that may influence the negotiation? How will one handle them?
- **Expected outcomes**: What outcome people will be expecting from this negotiation? What has been the outcome in the past, and what precedents have been set?
- **The consequences**: What are the consequences for the party of winning or losing this negotiation? What are the consequences for the other person?
- **Power**: Who has got power in the relationship? Who controls resources? Who tends to lose more if agreement isn't reached?
- **Possible solutions**: Based on all of the considerations, what possible compromises might occur?

2.6 Negotiation Framework

It is seen that when people don't have the power to force a certain outcome or behaviour, they generally negotiate, but only when they believe that it is to their advantage to do so. A negotiated solution is only advantageous as long as a better option is not available.

Therefore, any successful negotiation must have a fundamental framework based on knowing:

- The best alternative to a negotiation
- The minimum threshold for a negotiated deal
- How flexible a party is willing to be and what trade-offs are possible

Four concepts are especially important for establishing this framework:

- The first is **BATNA** or ***b*est *alternative to a negotiated agreement***. BATNA is what one will do if he does not reach an agreement during a negotiation.
- The second is **Reservation Price** or "walk away." Ones reservation price is the least favourable point at which one accepts a negotiated deal.
- The third is **ZOPA** or ***zone of possible agreement***. Ones ZOPA is the range in which a potential deal can take place, defined by the overlap between the parties' reservation prices.
- And the fourth is ***value creation through trades*.** This occurs when goods or services are traded that have only modest value to their holders, but exceptional value to the other **party.**

2.6.1 Best Alternative to a Negotiated Agreement (BATNA)

In the absence of any deal one's BATNA is one's preferred course of action. Knowing your BATNA means knowing what to do or what will happen, if he does not reach agreement. For example, a consultant is negotiating with a potential client about a month-long assignment. It's not clear what fee arrangement she'll be able to negotiate, or even if she'll reach an agreement. Before she meets with the potential client, she determines her best alternative to a negotiated agreement—her BATNA. In this case, her BATNA is to spend that month developing marketing materials for *other* clients—work she estimates she can bill at Rupees 15,000. When she meets with the potential client, her goal is to reach an agreement that will yield her at least Rs 15,000, preferably more.

Ones BATNA determines the point at which one can say no to an unfavourable proposal; thus it is critical to know ones BATNA before entering into any negotiation. If one does not determine BATNA he would not know whether a deal makes sense or when to walk away. A good offer may get rejected which may be much better than other alternative

2.6.2 Reservation Price

The reservation price, also known as your "walk-away," is the least favourable point at which one would accept a deal. Reservation price should be derived from the BATNA, but is not necessarily the same thing. Reservation price and BATNA will be similar if the deal is only about money. For example, when preparing to negotiate with a commercial landlord over a lease for office space, one considers that current pay is Rs 2000 per square foot. This number is BATNA. One also take into account the fact that the new location would be closer to clients and provide a more attractive workspace, thus one may be willing to pay Rs 3000 per square foot. It is the reservation price. If more than Rs 3000 per square foot is required, one may walk away and attempt to lease space in a different building. During the negotiation the landlord insists on Rs 3500 per square foot and won't accept anything lower, thereby indicating that his reservation price is Rs 3500 per square foot.

2.6.3 Zone of Possible Agreement (ZOPA)

The ZOPA is the range in which a deal can take place. Each party's reservation price determines one end of the ZOPA. The ZOPA itself exists, if at all, in the overlap between these high and low limits, that is, between the parties' reservation prices.

Consider this example of a ZOPA: A buyer has set a reservation price of Rs 275,000 for the purchase of a second hand luxury car and would like to pay as little as possible. The seller has set a reservation price of Rs 250,000 and would like to obtain as much as possible. The ZOPA, therefore, is the range between Rs 250,000 and Rs 275,000. If the numbers were reversed, and the buyer had set a reservation price of Rs 250,000 while the seller had set a reservation price of Rs 275,000, there would be no ZOPA—no overlap in the ranges in which they would agree. No agreement would be possible, no matter how skilled the negotiators, unless there were other elements of value to be considered—or one or both sides' reservation prices changed.

2.6.4 Value Creation Through Trades

Another key concept of negotiation is value creation through trades, the idea that negotiating parties can improve their **positions** by trading the values at their disposal. Value creation through trades occurs in the context of integrated negotiations. Each party usually gets something it wants in return for something it values much less. For example, two collectors of rare books, Raghu and Naveen, are entering a negotiation. Raghu is interested in purchasing a first-edition Chetan Bhagat novel from Naveen to complete his collection. During their negotiation, Naveen mentions that he is looking for a specific Jhumpa Lahiri book, which Raghu happens to own and is willing to part with. In the end, Naveen sells Raghu the Chetan Bhagat book, completing his collection, for Rs 1000 plus his copy of the Jhumpa Lahiri book. Both parties are satisfied. The goods exchanged had only modest value to their original holders, but exceptional value to their new owners.

2.7 Summary

The negotiation itself is a careful exploration of one's position and the other person's position, with the goal of finding a mutually acceptable compromise that gives both as much of what they want as possible. People's positions are rarely as fundamentally opposed as they may initially appear – the other person may have very different goals from the ones you expect! Both sides should feel comfortable with the final solution if the agreement is to be considered win-win. One may consider win-lose negotiation if he doesn't need to have an ongoing relationship with the other party as, having lost, they are unlikely to want to work with that party again. Equally, one party should expect that if they need to fulfil some part of a deal in which they have "won," they may be uncooperative and legalistic about the way they do this. Negotiation styles have been classified into five types viz. Accommodating, Avoiding, Collaborating, Competing and Compromising.

2.8 Self Assessment Questions

1. What is negotiation? Explain the concept with examples.
2. Discuss the preparations to be made for successful negotiation.
3. Discuss the different elements of negotiation.
4. Discuss the Negotiation framework in detail with examples.
5. What do you mean by KASH? What is its role in negotiation.
6. Discuss different types and styles of negotiations.

2.9 Reference Books

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- sagepub.com/upm.../42926_1.pdf
- viaconflict.com/2012/12/16/five-negotiation-styles/

Unit – 3 Negotiation Process

Structure of Unit

3.0 Objectives

After completing this unit, you would be able to:

- Understand the process of Negotiation
- Learn various elements influencing negotiation process
- Learn and appreciate the role of emotions in Negotiation
- Understand different ways to make negotiation successful
- Understand how some negotiation fail in present times
- Identify ways to resume negotiation after failure
- Point out various Barriers to Negotiations and ways to overcome those

3.1 Introduction

Negotiation is a process by which people settle their differences. It is a process to avoid argument by compromise or agreement. Negotiation skills can be of great benefit in resolving any differences that arise between two or more people. In any disagreement, individuals understandably aim to achieve the best possible outcome for their position. However, the principles of fairness, seeking mutual benefit and maintaining a relationship are the keys to a successful outcome.

3.2 Negotiation Process

Negotiation Process is by which people resolve disagreements. Structured negotiation follows a number of stages from Preparation through to Implementation. If possible, a WIN-WIN approach is more desirable than a bargaining (WIN-LOSE) approach. This involves seeking resolutions that allow both sides to gain, while at the same time maintaining good working relationships with the other parties involved.

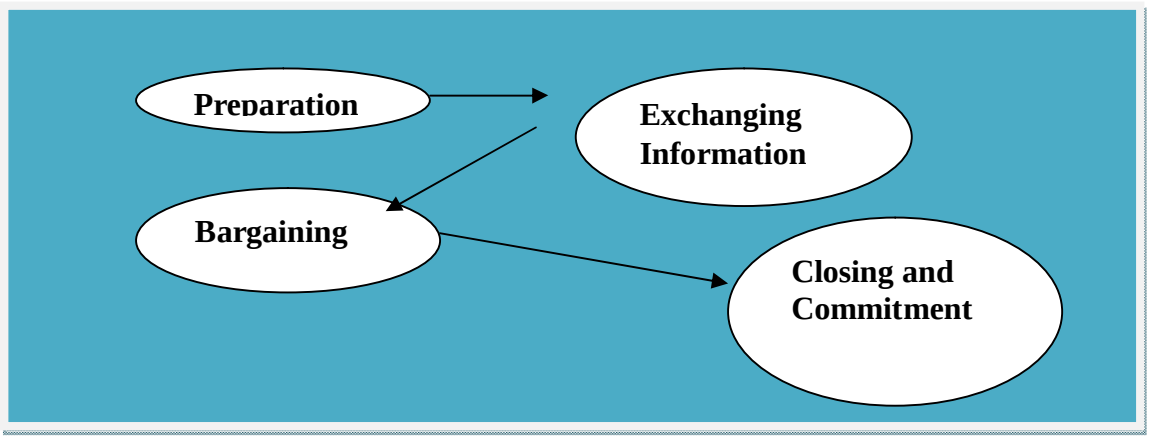

Figure 3.1: Negotiation Process

Negotiation Process has four stages. In all steps of negotiation process the involved parties bargain at a systematic way to decide how to allocate scarce resources and maintain each other's interest.

The four steps in the negotiation process are as follows:

1. **Preparation and Planning:** Before we start the negotiations process we must be aware of the conflict, the history leading to the negotiation, the people involved and their perception of the conflict expectations from the negotiations etc. Before any negotiation takes place, a decision needs to be taken as to when and where a meeting will take place to discuss the problem and who all will attend. It is important to set a limited time-scale which can be helpful in preventing the disagreement from continuing.

   This stage involves ensuring that all the relevant facts of the situation are known in order to clarify ones own position. This would include knowing the 'rules' of your organisation, to whom help is given, when help is not felt appropriate and the grounds for such refusals. Your organisation may well have policies to which you can refer in preparation for the negotiation. Undertaking preparation before discussing the disagreement will help to avoid further conflict and unnecessary wasting time during the meeting.

2. **Exchanging Information :** The information one provides must always be well researched and must be communicated effectively. One should not be afraid to ask questions in plenty. That is the best way to understand the negotiator and look at the deal from his/her point of view. If one has any doubts, always clarify them.

   - **Definition of Ground Rules**
     Once the planning and strategy is developed one has to begin defining the ground rules and procedures with the other party over the negotiation itself that will do the negotiation.

a) Where will it take place?
b) What time constrains, if any will apply?
c) To what issues will negotiations be limited?
d) Will there be a specific procedure to follow if a deadlock is reached?

During this phase the parties will also exchange their initial proposals or demands.
Individuals or members of each side put forward the case as they see it, that is their understanding of the situation.
Key skills required during this stage are:

a) **Questioning**,
b) **Listening** and
c) **Clarifying**.

Sometimes it is helpful to take notes during the discussion stage to record all points put forward in case there is need for further clarification. It is extremely important to listen, as when disagreement takes place it is easy to make the mistake of saying too much and listening too little. Each side should have an equal opportunity to present their case

- **Clarification and Justification**
  When initial positions have been exchanged both the parties will explain amplify, clarify, bolster and justify their original demands. This need not be confrontational. Rather it is an opportunity for educating and informing each other on the issues why they are important and how each arrived at their initial demands. This is the point where one party might want to provide the other party with any documentation that helps support its position. From the discussion, the goals, interests and viewpoints of both sides of the disagreement need to be clarified. It is helpful to list these in order of priority. Through this clarification it is often possible to identify or establish common ground.

3. **Bargaining and Problem Solving**
   The essence of the negotiation process is the actual give and take in trying to hash out an agreement. It is here where concessions will undoubtedly need to be made by both parties. This stage focuses on what is termed a **WIN-WIN outcome** where both sides feel they have gained something positive through the process of negotiation and both sides feel their point of view has been taken into consideration. A **WIN-WIN outcome** is usually the best outcome, however it may not always be possible but through negotiation it should be the ultimate goal. Suggestions of alternative strategies and compromises need to be considered at this point. Compromises are often positive alternatives which can often achieve greater benefit for all concerned rather than holding to the original positions. Agreement can be achieved once understanding of both sides' viewpoints and interests have been considered. It is essential to keep an open mind in order to achieve a solution. Any agreement needs to be made perfectly clear so that both sides know what has been decided.

4. Closure and Implementation

The final step in the negotiation process is formalization of the agreement that has been worked out and developing the procedures that are necessary for implementation and monitoring. For major negotiations – this will require hammering out the specifics in a formal contract. From the agreement, a course of action is implemented to carry the decision taken during the negotiation process.

3.3 Failures in Negotiation

Sometimes negotiation fails and the process breaks down, and agreement cannot be achieved. In this situation re-scheduling a further meeting is called for. This process avoids all parties becoming embroiled in heated discussion or argument, and prevents waste of time but can also protect damaging future relationships.

At the succeeding meeting, all the stages of negotiation should be repeated with new ideas, opinions. New interests should be taken into account and the situation should looked at afresh and healthy to reach into new agreement. At this stage it may also be helpful to look at other alternative solutions and/or bring in another party to mediate.

3.3.1 Elements Influencing Negotiation Process

Following three elements influence the negotiation process to a great extent and thereforeshould always be taken into account in the negotiation process:

1. Attitudes

All negotiation is strongly influenced by underlying attitudes of negotiator to the process itself, for example attitudes to the issues and personalities involved in the particular case or attitudes linked to personal needs for recognition.

One should always be aware that:

- Negotiation is not an arena for the realisation of individual achievements.
- There can be resentment of the need to negotiate by those in authority.
- Certain features of negotiation may influence a person's behaviour, for example some people may become defensive.

2. Interpersonal Skills

There are many interpersonal skills required in the process of negotiation which are useful in both formal settings and in less formal one-to-one situations. These skills include:

1.Effective verbal communication
2. Effective listening
3. Reducing misunderstandings
4. Building Rapport
5. Problem Solving
6. Decision Making
7. Assertiveness
8. Dealing with Difficult Situations

3. Knowledge

The more knowledge you possess of the issues in question, the greater your participation in the process of negotiation. Or in other words, good preparation is essential.

Negotiation is a means of resolving differences between people. In the process of negotiation, not only are different opinions taken into account, but also individual needs, aims, interests and differences in background and culture.

3.4 Role of Emotions in Negotiation

Emotions play a vital role in the negotiation process. Emotions have the potential to play either a positive or negative role in negotiation. During negotiations, the decision as to whether or not to settle rests in part on emotional factors. Negative emotions can cause intense and even irrational behaviour, and can cause conflicts to rise and negotiations to break down, but may be instrumental in attaining concessions. On the other hand, positive emotions often facilitate reaching an agreement and help to maximize joint gains, but can also be instrumental in attaining concessions.

1. Affect Effect

Dispositional effects, affect the various stages of the negotiation process: which strategies are planned to be used, which strategies are actually chosen, the way the other party and his or her intentions are perceived, their willingness to reach an agreement and the final negotiated outcomes. Positive affectivity and negative affectivity of one or more of the negotiating sides can lead to very different outcomes.

2. Positive Affect in Negotiation

Even before the negotiation process starts, people in a positive mood have more confidence and higher tendencies to plan to use a cooperative strategy. During the negotiation, negotiators who are in a positive mood tend to enjoy the interaction more, show less contentious behaviour, use less aggressive tactics and more cooperative strategies. This in turn increases the likelihood that parties will reach their instrumental goals, and enhance the ability to find integrative gains. Indeed, compared with negotiators with negative or natural affectivity, negotiators with positive affectivity reached more agreements and tended to honour those agreements more. Those favourable outcomes are due to better decision making processes, such as flexible thinking, creative problem solving, respect for others' perspectives, willingness to take risks and higher confidence. Post negotiation positive affect has beneficial consequences as well. It increases satisfaction with achieved outcome and influences one's desire for future interactions. The Positive Affectivity aroused by reaching an agreement facilitates the dyadic relationship, which result in affective commitment that sets the stage for subsequent interactions.

Positive Affectivity also has its drawbacks: It distorts perception of self performance, such that performance is judged to be relatively better than it actually is. Thus, studies involving self reports on achieved outcomes might be biased.

3. Negative Affect in Negotiation

Negative affect has detrimental effects on various stages in the negotiation process. Although various negative emotions affect negotiation outcomes, by far the most researched is anger. Angry negotiators plan to use more competitive strategies and to cooperate less, even before the negotiation starts. These competitive strategies are related to reduced joint outcomes. During negotiations, anger disrupts the process by reducing the level of trust, clouding parties' judgment, narrowing parties' focus of attention and changing their central goal from reaching agreement to retaliating against the other side. Angry negotiators pay less attention to opponent's interests and are less accurate in judging their interests, thus achieve lower joint gains. Moreover, because anger makes negotiators more self-centred in their preferences, it increases the likelihood that they will reject profitable offers. Opponents who really get angry (or cry, or otherwise lose control) are more likely to make errors: make sure they are in your favour. Anger does not help in achieving negotiation goals either: it reduces joint gains and does not help to boost personal gains, as angry negotiators do not succeed in claiming more for themselves. Moreover, negative emotions lead to acceptance of settlements that are not in the positive utility function but rather have a negative utility.

However, expression of negative emotions during negotiation can sometimes be beneficial: legitimately expressed anger can be an effective way to show one's commitment, sincerity, and needs. Moreover, although Negative Affect reduces gains in integrative tasks, it is a better strategy than Positive Affect in distributive tasks such as zero-sum.

4. The Effect of the Partner's Emotions

Mostly in negotiations, the focus is on the effect of the negotiator's own emotions on the negotiation process. However, what the other party feels might be just as important, as group emotions are known to affect processes both at the group and the personal levels. When it comes to negotiations, trust in the other party is a necessary condition for its emotion to affect, and visibility enhances the effect. Emotions contribute to negotiation processes by signalling what one feels and thinks and can thus prevent the other party from engaging in destructive behaviours and to indicate what steps should be taken next: Positive Affectivity signals to keep in the same way, while Negative Affectivity points that mental or behavioural adjustments are needed.Partner's emotions can have two basic effects on negotiator's emotions and behaviour: mimetic/ reciprocal or complementary. For example, disappointment or sadness might lead to compassion and more cooperation.

Following are the emotions which were found to have different effects on the opponent's feelings and strategies chosen:

- Anger caused the opponents to place lower demands and to concede more in a zero-sum negotiation, but also to evaluate the negotiation less favourably. It provoked both dominating and yielding behaviours of the opponent.
- Pride led to more integrative and compromise strategies by the partner.

- Guilt or **regret** expressed by the negotiator led to better impression of him by the opponent, however it also led the opponent to place higher demands. On the other hand, personal guilt was related to more satisfaction with what one achieved.

Worry or disappointment left bad impression on the opponent, but led to relatively lower demands by the opponent.

3.5 Misunderstanding in Negotiations

Misunderstanding is a common cause of negotiations breaking down. Such breakdowns may occur due to differences of viewpoint, background, cultures and many other factors. In negotiation especially it is possible not to 'hear' what others intend to say - due to lack of assertiveness on the part of the other person or ineffective listening. Misunderstandings in negotiation affect successful process and since they can easily occur, it is important to keep following points in mind:

Clarify the Goals

It is essential to have a clear understanding of what the other side is trying to achieve since that is not always what they initially state as their aims. Looking at interests allows for an understanding of the real goals. Similarly, it is worthwhile clearly stating what your own goals are so that both parties can work together to achieve mutual benefit.

State the Issues Clearly

It is important to identify the real issues involved and discard those that are not important. This enables the focus of the negotiation to remain firmly fixed on the interests and differences of the individuals involved, without argument spreading to other areas of work.

Consider all Viewpoints

During negotiation, a great deal of time can be spent in establishing the facts. However, it should be realised that 'facts' tend to provide another area over which disagreement can occur. It is important to consider another person's worries, even if totally unfounded, since they are still real worries and need to be taken into consideration. Differences in personal viewpoints leads to conflict. One needs to remember that to accept and understand someone else's viewpoint does not mean agreement with that point of view. Instead, it shows respect for the person and the wish to work together to find a mutually satisfactory solution. Similarly, it is better to encourage the other person to understand your viewpoint. An open, honest and accepting discussion of the differences in perspective will often help to clarify the issues and provide the way forward to a resolution.

Clarify Meaning

Good communication skills are necessary for negotiation. Developing communication skills, in turn minimises the problems associated with misunderstandings in negotiation. Such skills include:

- Active Listening
- Questioning
- Reflecting and Clarification
- Verbal Communication and Non-Verbal Communication

By developing a good understanding of communication one increases the possibility of successful negotiation and, most importantly, maintain the relationship for the future. Spending time to clarify and agree what all individuals have said (rather than assuming what they intended to say), will ensure that misunderstanding of meaning is kept to a minimum. Good negotiation also involves offering one's viewpoint in an assertive manner, rather than taking an aggressive stand, or passively listening to different views.Being assertive helps to ensure that the needs of all concerned are met.

Finally

Negotiation is a process by which people resolve disagreements. Structured negotiation follows a number of stages from preparation through to implementation. If possible, a WIN-WIN approach is more desirable than a bargaining WIN-LOSE approach. This involves seeking resolutions that allow both sides to gain, while at the same time maintaining good working relationships with the other parties involved.

3.6 Barriers in Negotiations

There are various barriers that impede successful negotiation process but there are ways to deal with such negotiators. Following are the barriers to negotiation process and tips to manage them:

1) **Die hard bargainers**
   They are the ones for whom every deal is a battle. Suggestions to deal effectively with them are as follows:

   a) **Know their game**. Other party should not be allowed to frighten first party. Unreasonable offers, grudging concessions, and posturing should be anticipated in advance. Analyse and improve BATNA. Reservation price should be set and assessment of others' should be made.
   b) **Be guarded in the information disclosure**. Only the information that cannot exploit ones interest should be disclosed.
   c) **Suggest alternative packages or options when they are unwilling to share information**. When options and packages are suggested, the other side tends to ask questions to clarify and compare the offers. In doing so, it often unknowingly reveals information that can help to better understand its interests and concerns.
   d) **Be willing to walk away**. If the other party sees that its difficult behaviour may result in walking away of the party, it will be more willing to back down.

2) **Lack of trust**

This happens when it is suspected that the other side is lying or bluffing. At best, these negotiators are just telling the negotiators what they think is needed for an agreement, and have no intention of following through on their promises. In such a situation the way to respond is by:

a) Emphasize the need for integrity. Stress that the deal is predicated on their accurate and truthful representation of the situation.

b) Request documentation. Require that they provide back-up documentation, and that the terms of the deal be explicitly contingent on its accuracy.

c) Insist on enforcement mechanisms. Add contingencies, such as a security deposit, and/or penalties for noncompliance (or perhaps positive incentives for early performance), into the deal.

3) **Spoilers or Potential Saboteurs of a good deal**

Anytime people perceive themselves as losers in the outcome of a negotiation, expect resistance and possible sabotage. Stakeholders, employees, and customers can all be potential **saboteurs** if they have the power to block your negotiations. Resistance may be passive, in the form of non-commitment to the goals and the process for reaching them, or active, in the form of direct opposition or subversion. Particularly in multiparty negotiations, certain stakeholders may prefer "no deal" to the outcome. Anticipate and prepare for this possibility.

a) **Identify potential saboteurs**. Map out the stakeholders, their respective interests, and their power to affect the agreement and its implementation.
b) **Consider enhancing the deal**. Include something in the deal to benefit stakeholders who would otherwise have the incentive to sabotage.

4) **Cultural and gender differences**

People often attribute a breakdown in negotiation to gender or cultural differences, when these may not be the cause of the problem. For example, party might think, "The problem is that she's a woman and can't deal with problems" Or, "He's late because that's how Italians are with time." When one attributes these problems to gender or culture, one may miss the true issue—the female negotiator is signalling her company's resistance point, or there are efficiency and production problems at the Italian company.

Following tips should be kept in mind when there is difficulty understanding or working with someone from another culture or the opposite gender:

a) Look for a pattern to diagnose the problem - Identify kinds of issues which create difficulties, and types of misunderstandings you have had.

b) Consider what assumptions each party has brought to the table - Whether they are valid or not, are any related specifically to the

negotiation at hand or to the particular company, and not to differences in culture?

c) Research possible areas of difference - Review any available literature about the other party's culture and how it compares with yours.

d) Use what has been learnt to establish more comfortable communication - Adjust one's own communication style or articulate the differing norms or assumptions that are believed to have been the source of the problem.

5). Communication problems

Communication is the medium of negotiation. One cannot make progress without it. When a negotiation is disintegrating because of communication problems, following steps may be taken:

a) **Ask for a break** - Take some time to refocus. This helps to regain objectivity.

b) **Look for a pattern** - What has been communicated should be replayed in mind- how, and by whom. Confusion or misunderstanding arisen from a single issue should be identified.

c) **After the break, raise the issue in a non-accusatory way** - Offer to listen while the other side explains its perspective on the issue. Listen actively, acknowledging their point of view. Explain one's own perspective. Then, try to pinpoint the problem.

d) **Switch spokespeople** - If the spokesperson of one's negotiating team seems to frustrate the other side, have someone else act as a spokesperson. Ask the other team to do the same if its spokesperson irritates the party.

e) **Jointly document progress as it is made** - This is particularly important in multiphase negotiations. It will solve the problem of someone saying, "I don't remember agreeing to that."

3.7 Making Negotiation Successful

Six important points that may be used for negotiations in business or life in general, but pertain especially to the negotiating process:

1. Realising that negotiating process is continuous and not an individual event - Good negotiating outcomes are a result of good relationships and relationships must be developed over time. Because of that, good negotiators are constantly looking for opportunities to enhance the relationship and strengthen their position. In some cases, the result of the negotiation is determined even before the individuals meet for discussion.

2. Thinking positively - Many negotiators underestimate themselves because they don't perceive the power they have inside of themselves accurately. One must believe that the other party needs what the first party bring to the table as much as it wants the negotiation to be a success. It should be taken care of that positivity is visible during the negotiation. Tone of the voice and non-verbal body language while interacting with the other party should be taken care of.

3. Being Prepared - Information is crucial for negotiation. Research the history, past problems or any sensitive points of the other party. The more knowledge about the situation of the other party, the better position one will be in, to negotiate. The most important part of preparation is Practice. Hence one should practice to execute well.

4. Presuming the best & worst outcome - One should not be depressed if things do not go desired way. In these instances, it's a good time to reevaluate all positions and return to the table. If one knows the highest and lowest expectations of each party a middle ground can usually be reached in the overlapping areas.

5. Being expressive and building value - This is key, and it's what separates the good negotiators from the masters. When one has a strong belief in what he is negotiating for, he prepares thoughts and ideas so that others see the value.

A tip on how to do that well:

- Be direct when presenting a situation. Be clear about what is expected. Discuss ways to apply how it can happen.
- Don't simply talk about what needs to happen. Discuss the consequences – how ones solution will be beneficial to the other party.

Giving and Taking - When a person gives something up or concedes on part of a negotiation, it should always be made sure to get something in return. Otherwise, other party is being conditioned to ask for more while reducing ones position and value. Maintaining a balance will establish that both parties are equal

3.8 Summary

Negotiation is a dialogue between two or more people or parties, intended to reach an understanding, resolve point of difference, or gain advantage in outcome of dialogue, to produce an agreement upon courses of action, to bargain for individual or collective benefit, to design outcomes to satisfy various interests of two people/parties involved in negotiation process. Emotions play a vital role in the negotiation process. Emotions have the potential to play either a positive or negative role in negotiation. During negotiations, the decision as to whether or not to settle rests in part on emotional factors. Negative emotions can cause intense and even irrational behaviour, and can cause conflicts to rise and negotiations to break down, but may be instrumental in attaining concessions. On the other hand, positive emotions often facilitate reaching an agreement and help to maximize joint gains, but can also be instrumental in attaining concessions. Three elements should always be taken into account in the negotiation process: Attitudes, Interpersonal Skills and Knowledge. Many failures in negotiations result from misunderstanding the basic fact that right and wrong are defined by the parties themselves, not by a third party; and decisions can be implemented and perpetuated in direct proportion to the relationship and reasoning of the participants.. It can be overcome if we take care of certain things while doing Negotiations. There are various barriers to negotiation and one has to overcome those for successful negotiations. There are various things to be kept in mind to enhance one's negotiation skills.

3.9 Self Assessment Questions

1. Describe the various steps involved in negotiation process.
2. Discuss the elements to be taken into account in the negotiation process.
3. Explain what makes a negotiation successful.
4. Explain how emotions play a vital role in the negotiation process.
5. Explain the various barriers to negotiation.
6. Discuss ways to handle different barriers to negotiation.

3.10 Reference Books

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- Richard Walton, Joel Cutcher- Gerchenfeld and Robert , Strategic Negotiations: A Theory of Change in Labour management Relations, McKersey,1994
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Unit - 4 : Negotiation Strategies

Structure of Unit

4.0 Objectives

After going through this unit you will be able to:

- Understand the different negotiation strategies
- Understand the different negotiation tactics
- Know the issues involved in negotiation

4.1 Introduction

One view of negotiation involves three basic elements: *process, behaviour* and *substance*. The process refers to how the parties negotiate: the context of the negotiations, the parties to the negotiations, the tactics used by the parties, and the sequence and stages in which all of these play out. Behaviour refers to the relationships among these parties, the communication between them and the styles they adopt. The ***substance*** refers to what the parties negotiate over: the agenda, the issues (positions and - more helpfully - interests), the options, and the agreement(s) reached at the end. Another view of negotiation consists of four elements: *strategy, process, tools,* and *tactics*. ***Strategy*** comprises the top level goals - typically including relationship and the final outcome. ***Processes and tools*** include the steps that will be followed and the roles taken in both preparing for and negotiating with the other parties. **Tactics** include more detailed statements and actions and responses to others' statements and actions. The primary objective of any negotiation is to maximize the value of current deal. Through negotiation strategies the negotiator attempts to influence the perception and resistance points of other party with exchange of information and persuasion. Negotiation strategies play vital role in sequencing the actions and accomplishing goals in a negotiation.

4.2 Pre-Negotiation Strategy Check List

1) Assess the situation

Each negotiation is different, no matter how often similar situations are addressed. Negotiations are made with people who have different styles, goals and objectives, and

who are coming from different circumstances and have different standards. So, always take stock and gauge each negotiation as something unique.

2) What kind of negotiation?

As discussed in earlier units there are basically 3 circumstances to consider.

- Is it a onetime negotiation, where it is unlikely interact with the person or company again?
- Is it a negotiation that is going to be repeated again?
- Is it a negotiation where some kind of long term relationship is going to be formed?

Most of the business negotiations are likely going to fall in the last two categories. A lot of repeat negotiations are to be handled, where one negotiate with regular suppliers, or engage in labour negotiations with the same union reps for example. Or, we will be seeking a long term negotiated agreement such as a joint venture, where we will be mutually entwined over a long period of time.

3) What type of conflict will be faced?

There are basically two types of conflict situations we may encounter in a negotiation. Conflicts can present themselves singularly, or may be a mixture of the two. It is vital that the negotiator carefully analyze the conflict issues, both individually and collectively, to fully appreciate the unique challenges they present.

The *first* form of conflict might simply be called **agreement conflict,** where one persons views or position are in conflict with another individual, or members of a group. This is a situation that takes into account their conflicting views relating to opinions, beliefs, values and ideology. For example, two executives may have different views about whether a policy should be implemented. Another example may consist of a trade dispute between two countries, and entail ideological or religious based differences. Or, the conservative viewpoints of management might conflict with the more left wing approach of union leaders.

The *second* form of conflict entails the **allocation of resources** like money, quantity, production or simply put - things. Any physical commodity will fall into this category of conflict. Other issues might entail the allocation of resources, as a separate segment of the trade dispute. Resource issues though, are more tangible as they comprise knowable items, or particular products. One blaring example occurs when subsidized farmers of one country, '*dump*' cheaper products onto the market of another country, at the expense of the indigenous farmers of that country. By analyzing the types of conflict into categories, negotiators can have a better understanding of the real measure of the disputes, and frame or focus their strategies more effectively.

4) What does negotiation means to parties?

There are only two reasons why one enters into a negotiation.The *first* reason occurs when out of necessity, one has. This could be due to either some immediate need, such as urgency to find a particular supplier, or it could be severe cutbacks in personnel.The *second* reason occurs when one is seeking out an opportunity. This situation may arise

simply because an opportunity has sprung up, where one can increase our overall business at an opportune time. The reason for entering into a negotiation will affect both approach and strategy, and also our relative negotiating power in comparison to our counterpart.

5) The Ripple Effect

It is needed to be asked whether the results of the negotiation we are conducting, will affect other negotiations or agreements later. Many companies today have international interests. An agreement with a company in one country, may affect how talks will impact or be influenced, with negotiations that will transpire later. with other countries. It's vital that negotiators, consider the impact or consequences of an agreement in developing our strategy.

6) Need to make an agreement?

Part of the strategy involves a careful analysis of our BATNA (Best Alternative to a Negotiated Agreement). If an agreement is absolutely essential, and there are few alternative options, in the event of talks collapsing, this will affect the strategy. Or, if the negotiated agreement is not essential because we have a strong option, and can walk away with confidence, this also influences the approach to the strategy.

7) Do other parties need to formally approve the agreement?

Many agreements made during the negotiated process require formal approval, or ratification before an agreement is official. Union members may vote before they accept a tentative labour agreement, that was previously negotiated between management and the union. A Board of Directors, CEO, stakeholders, or other outside constituents, may need to review and ratify an agreement, before it comes into effect.

8) Is the clock ticking?

Time has an impact on the course of negotiations from two perspectives. First there are deadlines that might be imposed, to either make or break an agreement. Offers with expiry dates may be tendered. Secondly, we all know that '*Time is money*'. Negotiations use up time, and if a plant is shut down while the clock is ticking because of a strike, then this is costing money. Or, it could be due to some other resource issue, such as waiting for badly needed components, in order to resume production. The point to remember is that the longer the negotiations drag out, time will negatively affect the bottom line.

4.3 Negotiation Strategies

Negotiation can take a variety of forms. It can be in a formal setting from trained negotiator acting on behalf of a particular organization or position, to an informal negotiation between friends.

Within a commercial context, the following negotiation strategy options are available:

1. Avoiding negotiation altogether.
2. Engaging in a competitive negotiation where we seek to achieve our goals aggressively.

3. Engaging in an accommodating negotiation where we seek to satisfy only the needs of our counterparty to the exclusion of our own needs.
4. Using a compromising approach where we seek to satisfy some of our needs and interests and some of the needs and interests of our counterparty.
5. Deploying a collaborative negotiation approach where we seek to satisfy all our needs and interests in addition to satisfying all the needs and interests of our counterparty.

These strategies could be better understood with the help of Dual Concerns Model.

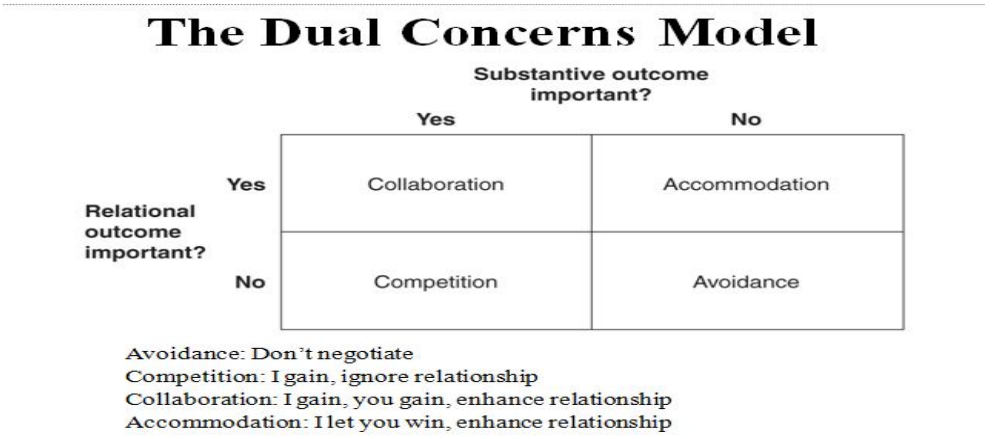

Figure 4.1 Negotiation Strategies- Dual Concerns Model

Savage, Blair and Sorenson (1989) proposed a model for the choice of strategy answering two simple questions – (1) how much concern the negotiator gives for achieving the substantive outcomes at stake in the negotiation (2) How much concern does the negotiator have for current and future quality of the relationship with the other party. The answers to these two dimensions suggest at least four types of initial strategies of negotiations: competition, collaboration, accommodation and avoidance.

4.3.1 Alternative Situational Strategies

Of these four strategies there are two dominant strategies. Negotiation theorists generally distinguish between two strategies of negotiation and call them *alternative situational strategies*. Different theorists use different labels for the two general types and distinguish them in different ways.

1 Distributive Negotiation

Distributive negotiation or a *competitive approach* is also sometimes called positional, hard-bargaining negotiation or win-lose negotiating. It assumes that the negotiation is a zero-sum exercise—if one party gains something the other must lose. This strategy is about claiming value and is most appropriately used when the parties' goals arein fundamental conflict, resources are fixed or limited, they attach greater importance to the substantive terms of the outcome than the relationship, trust and cooperation that are lacking.In a distributive negotiation, each side often adopts an extreme position, knowing that it will not be accepted, and then employs a combination of cleverness, bluffing, and

brinksmanship in order to let go as little as possible before reaching a deal. Distributive bargainers conceive of negotiation as a process of distributing a fixed amount of value.

The term distributive implies that there is a finite amount of the thing being distributed or divided among the people involved. Sometimes this type of negotiation is referred to as the distribution of a "fixed sized cake." There is only so much to go around, but the proportion to be distributed is variable. Distributive negotiation is also called WIN-LOSE because of the assumption that one person's gain results in another person's loss. A distributive negotiation often involves people who have never had a previous interactive relationship, nor are they likely to do so again in the near future. Simple everyday examples would be buying a car or a house.

The Win-Lose Approach to Negotiation

Negotiation is sometimes seen in terms of '***getting your own way***', '***driving a hard bargain***' or '***beating off the opposition***'. While in the short term bargaining may well achieve the aims for one side, it is also a WIN-LOSE approach. This means that while one side wins, the other loses and this outcome may well damage future relationships between the parties. It also increases the likelihood of relationships breaking down, of people walking out or refusing to deal with the 'winners' again, and the process ending in a bitter dispute.

Win-Loose bargaining is probably the most familiar form of negotiating that is undertaken. Individuals decide what they want, then each side takes up an extreme position, such as asking the other side for much more than they expect to get. Through **haggling** – the giving and making of concessions – a compromise is reached, and each side hopes that this compromise will be in their favour. A typical example is haggling over the price of a car. Both parties need good assertiveness skills to be able to barter or haggle effectively.

This form of negotiation has serious drawback in social situations like:

- It may serve to turn the negotiation into a conflict situation, and can serve to damage any possible long-term relationship.
- It is essentially dishonest – both sides try to hide their real views and mislead the other.
- The compromise solution may not have been the best possible outcome – there may have been some other agreement that was not thought of at the time - an outcome that was both possible and would have better served both parties.
- Agreement is less likely to be reached as each side has made a public commitment to a particular position and feel they must defend it, even though they know it to be an extreme position originally.

While there are times when bargaining is an appropriate means of reaching an agreement, such as when buying a used car, generally a more sensitive approach is preferable. Negotiation concerning other people's lives is perhaps best dealt with by using an approach which takes into account the effect of the outcome on thoughts, emotions and subsequent relationships.

2 Integrative Negotiation

Integrative negotiation or *collaborative approach* is also sometimes called interest-based or principled negotiation. It is a set of techniques that attempts to improve the quality and likelihood of negotiated agreement by providing an alternative to traditional distributive negotiation techniques. The word integrative implies some cooperation. Integrative negotiation often involves a higher degree of trust and the forming of a relationship.

While distributive negotiation assumes there is a fixed amount of value or a "fixed cake" to be divided between the parties, integrative negotiation often attempts to create value in the course of the negotiation or "expand the size of the cake". It focuses on the underlying interests of the parties rather than their arbitrary starting positions, approaches negotiation as a shared problem rather than a personalized battle, and insists upon sticking to an objective, principled criterion as the basis for agreement. It can also involve creative problem-solving that aims to achieve mutual gains. It is also sometimes called WIN-WIN negotiation.

The Win-Win Approach to Negotiation

Many professional negotiators prefer to aim towards what is known as a WIN-WIN solution. This involves looking for resolutions that allow both sides to gain. Negotiators aim to work together towards finding solution to their differences that result in both sides being satisfied.

Key points when aiming for a WIN-WIN outcome include:

- **Focus on Maintaining the Relationship**

This means not allowing the disagreement to damage the interpersonal relationship, not blaming the others for the problem and aiming to confront the problem **not** the people. This can involve actively supporting the other individuals while confronting the problem. One thing that is to be remembered is to separate the people from the problem.Disagreements and negotiations are rarely 'one-offs'. At times of disagreement, it is important to remember that you may well have to communicate with the same people in the future also. For this reason, it is always worth considering whether **'winning'** the particular issue is more important than maintaining a good relationship.

Most of the time disagreement is treated as a personal affront. Rejecting what an individual says or does is seen as rejection of the person. Because of this, many attempts to resolve differences degenerate into personal battles or power struggles with those involved getting angry, hurt or upset. Negotiation is about finding an agreeable solution to a problem, not an excuse to undermine others**,** therefore, to avoid negotiation breaking down into argument, it is helpful to consciously separate the issues under dispute from the people involved. For example, it is quite possible to hold people in deep regard, to like them, to respect their worth, their feelings, values and beliefs, and yet to disagree with the particular point they are making. One valuable approach is to continue to express positive regard for an individual, even when disagreeing with what he is saying.

Another way of avoiding personal confrontation is to avoid blaming the other party for creating the problem. It is better to talk in terms of the impact the problem is having personally, or on the organisation or situation, rather than pointing out any errors. By not

allowing ‘disagreements over issues’ to become ‘disagreements between people’, a good relationship can be maintained, regardless of the outcome of the negotiation.

- **Focus on Interests Not Positions**

It is always better to consider the underlying interests the parties might have rather than focusing on the other side’s stated position. Consider their needs, desires and fears. These might not always be obvious from what they say. When negotiating, individuals often appear to be holding on to one or two points from which they will not move. For example, in a work situation an employee might say “I am not getting enough support” while the employer believes that person is getting as much support as they can offer and more than others in the same position. However, the employee's underlying interest might be that he or she would like more friends or someone to talk to more often. By focusing on the interests rather than the positions, a solution might be that the employer refers the employee to befriending organisations so that his or her needs can be met.

Focusing on interests is helpful because:

- It takes into account individual needs, wants, worries and emotions.
- There are often a number of ways of satisfying interests, whereas positions tend to focus on only one solution.
- While positions are often opposed, individuals may still have common interests on which they can build.

Most people have an underlying need to feel good about themselves and will strongly resist any attempt at negotiation that might damage their self-esteem. Often their need to maintain feelings of self-worth is more important than the particular point of disagreement. Therefore, in many cases, the aim will be to find some way of enabling both sides to feel good about themselves, while at the same time not losing sight of the goals. If individuals fear their self-esteem is at risk, or that others will think less highly of them following negotiation, they are likely to become stubborn and refuse to move from their stated position, or become hostile and offended and leave the discussion.

To understand the emotional needs of others is an essential part of understanding their overall perspective and underlying interests. In addition to understanding others’ emotional needs, understanding of your own emotional needs are equally important. It can be helpful to discuss how everyone involved feels during negotiation. Another important point in negotiation is that decisions should not be forced upon others. Both sides will feel much more committed to a decision if they feel it is something they have helped to create and that their ideas and suggestions have been taken into account**.** It is important to clearly express one’s own needs, desires, wants and fears so that others can also focus on their interests.

- **Generate a Variety of Options that Offer Gains to Both Sides**

Rather than looking for just one single way to resolve differences, it is important to consider a number of options that could provide a resolution and then to work together to decide which is most suitable solution for both sides. For this techniques such as brainstorming could be used to generate different potential solutions. In many ways, negotiation can be seen as a problem solving exercise, although it is important to focus on

all individuals' underlying interests and not merely the basic difference in positions. Good negotiators spend time finding a number of ways of meeting the interests of both sides rather than just meeting self-interest and then discussing the possible solutions.

- **Aim for the Result to be Based on an Objective Standard**

Having identified and worked towards meeting shared interests, it is often inevitable that some differences will remain. Rather than resorting to a confrontational bargaining approach, which may leave individuals feeling let-down or angry, it can be helpful to seek some fair, objective and independent means of resolving the differences. It is important that such a basis for deciding is:

- Acceptable to both the parties.
- Independent to both the parties.
- Can be seen to be fair by both the parties

If no resolution can be reached, it may be possible to find some other, independent party whom both sides will trust to make a fair decision.

4.3.2 The Nonengagement Strategy

Avoidance as nonengagement strategy of negotiation serves number of strategic negotiation purposes:

- If one wants meet one's needs without negotiating at all , is may make sense to use avoidance strategy.
- If time and effort to negotiate may not be worth.
- If desired outcomes can be achieved when negotiations don't work.

4.3.3 Active Engagement Strategies

Competition, collaboration and accommodation are active engagement strategies. Of these competition and collaboration are distributive or win-lose negotiation and integrative or win-win negotiation respectively. These have been discussed as active situational strategies in detail. Accommodation is as much a win-lose strategy as competition, but has decisively different image-it involves imbalance of outcomes but in opposite direction ("I lose, you win" as opposed to "I win, you lose"). An accommodative strategy is appropriate when the negotiator considers the relationship outcome more important than the substantive outcome. In other words, the negotiator wants to let the other win, keep other happy and not endanger relationship.

4.4 Negotiation Tactics

The negotiator often employs tactics to win the bargaining. In doing so it is important from the outset to establish how serious the opponent is For instance, 'studying the frequency of communication can reveal the situation and thus emphasise the effects that tactics have on outcomes – negotiation sequences capture the social dynamics of the negotiation and reveal the cue and response pattern embedded in the negotiators' communications'. It is also necessary to establish why the opposing party acts the way they do. Accordingly the tactics that may be adopted are as follows:

4.4.1 Negotiation Tactics

These may be grouped as follows:

1. Adversary or Partner

The two basically different approaches to negotiation require different tactics. In the distributive approach each negotiator is fighting for the largest possible piece of the cake, so it may be quite appropriate - within certain limits - to regard the other side more as an adversary rather than a partner and to take a harder line. This would however be less appropriate if the idea were to lead to an arrangement that is in the best interest of both the parties. A good agreement is not one with maximum gain, but one that has optimum gain. This does not mean or suggest that we should give up our own advantage for nothing. Instead a cooperative attitude is one which will always be beneficial. What one is gaining is not at other's expense, but along with him.

2. Employing an Advocate

A skilled negotiator may serve as an advocate for one party to the negotiation. The advocate tries to obtain the most favourable outcomes possible for that party. In this process the negotiator attempts to determine the minimum outcomes the other party is or parties are willing to accept, then adjusts their demands accordingly. A "successful" negotiation in the advocacy approach is said to have reached when the negotiator is able to obtain all or most of the outcomes their party wishes, but without driving the other party to permanently break off negotiations, unless the best alternative to a negotiated agreement (BATNA) is acceptable.

3. Bad guy/good guy

Bad guy/good guy is when one negotiator acts as a bad guy by using anger and threats and intimidation .The other negotiator acts as a good guy by being considerate and understanding. The good guy blames the bad guy for all the difficulties while trying to get concessions and agreement from the opponent.

4.4.2 Other Tactics

Sometimes bargaining may employ acts and tactics which are calculated by the negotiator to mislead the other party. This requires shrewd study of the other party and awareness of impact of one's behaviour on all concerned parties. According to Fells, Individuals who employ a distributive approach may use one of these following tactics in their negotiation: misrepresentation, threats/deceptions, withholding information, and using power.

Misrepresentations are identified as expressing a higher reservation point than the actual position. This can give the opponent a different perception of the party than is the reality. However, this does not necessarily cause significant consequences during the latter phases of the negotiation process since the opponent is not tricked into something of which he or she is not aware. However, if these misrepresentations are outright falsehoods, for example in relation to imperatives such as property rights or union rules, they are clearly unethical. This creates a clear distinction between strategy and ethics .

Threats and deceptions often happen in a manner that yields short-term gain. Even though deceptive behaviour can seem to allow a party to gain the upper hand at the outset of the bargaining process, an adverse effect is that one can lose the respect of the other party, which will hinder any future cooperation. Utilising threats may also result in loss of respect, especially if the party is not stringent in its actions. Hence, if threats are used explicitly, the party must follow up the momentum created if the opponent does not adapt to the situation.

Information is the element that traditionally generates most ethical dilemmas. An example is hiding information from the other party. Since honesty is an imperative factor in negotiation the parties involved in negotiation should not project falsehoods orwithhold information, even if their opponents have not specifically requested it. It is simpler to communicate the truth, since there is no risk of confusing it with falsehood or of making unplanned revelations.

Manipulation is an aspect that encompasses the notion of getting the counterpart to react according to one's own parameters, without their awareness. With this approach, one party will have a good perspective of the negotiation as a whole, while the opposing party is unable to determine the overall direction the bargaining is taking. 'Divide and conquer' is a manipulative effect that can be paramount when taking advantage of internal disagreements.

Power is another central issue in ethical dilemmas. Power is the ability to influence the other party and shape their positions to fit your own parameters. Power often serves as an underlying factor in the relationship between the negotiating parties, either through concrete advantages before negotiations commence – for example if one party owes the other a favour – or through one party having higher social authority than the other. However, power is first and foremost associated with winning concessions, and not necessarily integrative measures.

Conflict can occur when using these unethical tactics, which is imperative to resolve. According to Rout, there are several principles available to guide the conflict resolution process, such as: power, rights, interests, dissolution and avoidance. Athough many of these are identified as principles of bargaining, but they also serve as imperatives in conflict resolution. With the use of power, rights or interests one can confront the actual conflict as well. When using dissolution or avoidance, however, one circumvents the conflict. Further, there are several healthy ways to confront a conflict. For example, with the use of power one can authorise strikes, manipulation, and distributive bargaining; while with the use of rights, one can use the law, rules, or norms. Therefore, such tactics can provoke standstills or deadlocks, a healthy approach towards theopposing party must be established. As in contrast counterparts can make unreasonable demands or threats, it can become difficult for negotiators to convey their points effectively and counterparts may not be interested in bargaining at all.

Shadow Negotiation entails the subtle games people play, often before they even get to the table. It is not about the what of the negotiation but the how. The shadow negotiation involves jockeying for position. This includes using strategic moves to ensure that the

other party comes to the table and gives due interests and proposals, a fair hearing, using strategic turns to reframe the negotiation in ones favour. If it turns in an unproductive direction, it uses appreciative moves to build a stronger connection with the other party to develop a shared and complete understanding of the situation and a more productive negotiation.

4.5 Issues in Negotiation

1. Decision-Making Biases that hinder effective negotiation.
    a) Irrational growth of commitment- People tend to continue a previously selected course of action beyond what rational analysis would recommend.
    b) The imaginary fixed pie - Bargainers assume that their gain must come at the expense of the other party.
    c) Anchoring and adjustments - People often have a tendency to anchor their judgments on irrelevant information, such as an initial offer. Many factors influence the initial positions people take when entering a negotiation.
    d) Framing negotiations - People tend to be overly affected by the way information is presented to them.
    e) Availability of information - Negotiators often rely too much on readily available information while ignoring more relevant data.
    f) The winner's curse - The regret one feels after closing a negotiation. Because the opponent had accepted the offer, the first party becomes concerned that too much was offered. This post negotiation reaction is not unusual.
    g) Overconfidence - Many of the previous biases can combine to inflate a person's confidence in his or her judgment and choices. When people hold certain beliefs and expectations, they tend to ignore information that contradicts them.
2. The Role of Personality Traits in Negotiation
    a) One may try but can't predict an opponent's negotiating tactics even if the party knows something about his or her personality.
    b) Personality traits have no significant direct effect on either the bargaining process or negotiation outcomes.
        (1) One should concentrate on the issues and the situational factors in each bargaining episode and not on your opponent and his or her characteristics.

3. Gender Differences in Negotiations
    a) Evidence does not support the commonly held notion that women are more cooperative and pleasant in negotiations than men.
    b) Men and women's attitudes toward negotiation are quite different.
    c) Women may penalize themselves by failing to engage in negotiations when they should.
4. Cultural Differences in Negotiations
    a) Negotiating styles clearly vary among national cultures.
    b) The French like conflict. They frequently gain recognition and develop their reputations by thinking and acting against others. As a result, the French tend to take a long time in negotiating agreements, and they aren't overly concerned about whether their opponents like or dislike them.
    c) The Chinese also draw out negotiations but for a different reason. They believe that negotiations never end. Like the Japanese, the Chinese negotiate to develop a relationship and a commitment to work together rather than to tie up every loose end.
    d) Americans are known around the world for their impatience and their desire to be liked. Clever negotiators from other countries often turn these characteristics to their advantage by dragging out negotiations and making friendship conditional on the final settlement.
    e) The cultural context of the negotiation significantly influences the amount and type of preparation for bargaining the relative emphasis on task versus interpersonal relationships; the tactics used, and even where the negotiation should be conducted.
    f) The first study compared North Americans, Arabs, and Russians.
        (1) North Americans tried to persuade by relying on facts and appealing to logic. They countered opponents' arguments with objective facts. They made small concessions early in the negotiation to establish a relationship and usually reciprocated opponents' concessions.
        (2) North Americans treated deadlines as very important.
        (3) Arabs tried to persuade by appealing to emotion. They countered opponents' arguments with subjective feelings. They made concessions throughout the bargaining process and almost always reciprocated opponents' concessions. Arabs approached deadlines very casually.
        (4) Russians based their arguments on asserted ideals. They made few, if any, concessions. Any concession offered by an opponent was viewed as a weakness and was almost never reciprocated. Finally, Russians tended to ignore deadlines.

g) The second study looked at verbal and nonverbal negotiation tactics exhibited by North Americans, Japanese, and Brazilians during half-hour bargaining sessions.
   (1) Brazilians on average said "No" eighty-three times compared with five times for the Japanese and nine times for the North Americans.
   (2) The Japanese displayed more than five periods of silence lasting longer than ten seconds during each thirty-minute session.
   (3) North Americans averaged three and a half such periods; the Brazilians had none.
   (4) The Japanese and North Americans interrupted their opponent about the same number of times, but the Brazilians interrupted two-and-a-half to three times more often than the North Americans and the Japanese.
   (5) While the Japanese and the North Americans had no physical contact with their opponents during negotiations except for hand-shaking, the Brazilians touched each other almost five times every half hour.

5. The Ethics of Lying and Deceiving in Negotiations
   a) The common perception is that one must deceive to succeed.
   b) Debate continues about whether "little lies" or omissions are ethical in a negotiating context.

4.6 Summary

Negotiation theorists generally suggest two types of negotiation strategies. Different theorists use different labels for the two general types and distinguish them in different ways. They are Distributive/Win-Lose Approach to Negotiation and Integrative/Win-Win Approach to Negotiation. There are different tactics to be adopted for two different approaches to negotiation.

4.7 Self Assessment Questions

1. What are the terms or issues which will require negotiation in order to resolve the dispute?
2. What do you mean by negotiation tactics? Discuss in detail.
3. Discuss the essentials of a successful negotiation model.
4. Give the pre-negotiation strategy check list for negotiators.

4.8 Reference Books

- **Negotiated Change**: Collective Bargaining, liberalization, Restructuring in India C.S Venkata Ratana SAGE publications Pvt. Ltd ,2004.
- Ralph A. Johnson, "Negotiation Basics: Concepts, Skills, and Exercises", Sage Publication,1993.
- Lewicki, Saunders, Barry, Essentials of Negotiation, Fifth Edition, 2010, McGraw Hill.

Unit - 5 : Negotiation Skills

Structure of unit

5.0 Objectives

After completing this unit, you would be able to:

- Get an insight into meaning of negotiation skills
- Understand the role of negotiator
- Know the different types of negotiators
- Understand the different ways of improving negotiation styles
- Understand the negotiator's dilemma

5.1 Introduction

The job of the negotiator is to build credibility with the "other side," find some *common ground* (shared interests), learn the opposing position, and share information that will persuade the "other side" to agree to an outcome. Professional negotiators are often specialized, such as *union negotiators, leverage buyout negotiators, peace negotiators*, or may work under other titles, such as diplomats, legislators or brokers. The importance of negotiation skills of the negotiator have been recognised since ages. Negotiation skills if used appropriately are a powerful tool in the hands of a successful manager or negotiator. Time invested in mastering these skills has "Return on Investment" which cannot be compared to any other form of investment.

5.2 Role of Negotiator

A solution to negotiation process involves achievement of two things

(a) An individual attainment of goal for each negotiator

(b) A collective agreement goal where a solution is admissible only when both the parties agree in total or attainment of goal for each party is satisfied.

Thus the performance in negotiation largely depends on the task and task specific knowledge an individual can apply to a problem.

Negotiators knowledge is critical to performance in negotiation. A large part of performance should be based on the ability of the negotiator to use his/her knowledge to define and determine critical aspects of the task to generate an appropriate problem representation to define relevant goals in terms of that representation and to bring knowledge in service of those goals. The effective negotiator attempts to understand how people will adjust and readjust their positions during negotiations, based on what the other party does and is expected to do.

5.2.1 Types of Negotiators

There are three basic kinds of negotiators, which include:

Soft Bargainers: These people see negotiation as too close to competition, so they choose a gentle style of bargaining. The offers they make are not in their best interests, and they yield to others' demands, avoid confrontation, and they maintain good relations with fellow negotiators. Their perception of others is one of friendship, and their goal is agreement. They do not separate the people from the problem, but are soft on both. They avoid contests of wills and will insist on agreement, offering solutions and easily trusting others and changing their opinions.

Hard Bargainers: These people use contentious strategies to influence, using phrases like "that is my final offer" and "take it or leave it." They make threats, are distrustful of others, insist on their position, and apply pressure to negotiate. They see others as enemies and their ultimate goal is victory. Additionally, they will search for one single answer, and insist you agree on it. They do not separate the people from the problem (as with soft bargainers), but they are hard on both the people involved and the problem.

Principled Bargainers: Individuals who bargain this way seek integrative solutions, and do so by sidestepping commitment to specific positions. They focus on the problem rather than the intentions, motives, and needs of the people involved. They separate the people from the problem, explore interests, avoid bottom lines, and reach results based on standards (which are independent of personal will). They base their choices on objective criteria rather than power, pressure, self-interest, or an arbitrary decisional procedure. These criteria may be drawn from moral standards, principles of fairness, professional standards, tradition, and so on.

5.2.2 Levels of Negotiation Skills

There are three levels of negotiation skill: basic, intermediate and advanced.

a) At the ***basic level***, the negotiator has learned and developed an organized or systemic framework for preparing for and conducting negotiations. Generally, basic level negotiators have limited experience and skill in applying a limited set of tools.

b) At the ***intermediate level***, the negotiator has mastered basic negotiating tools and has added additional tools and a great deal of experience in applying these tools.

c) The ***advanced negotiation skill*** level is reached when the negotiator has accumulated in his or her toolbox a wide range of negotiation tools and processes and

through practice and experience has developed wise discretionary judgment about when to use which tools and processes to execute the selected tools with skill.

To move to the advanced negotiation skill level, one must do three things,

1) Become aware of one's strengths and areas for development in negotiation. Such awareness allows one to choose rather than simply be reactive.

2) Attend workshops and seminars to increase the number and range of tools in one's negotiation toolbox and

3) Consciously practice the tools of negotiation in multiple settings and situations.

Awareness, gives choices in negotiation. Without awareness, one is in the act-react loop, the least powerful place for a negotiator to be. There are several self administered instruments that will begin the process of raising one's awareness about one's negotiation skill level. Successful negotiators also seek feedback from peers, bosses and customers or vendors with whom they negotiate.

However, there is nothing like negotiating in real time to become aware of your strengths and weaknesses. Negotiation classes, seminars and workshops provide a safe environment in which to test this out.

5.3 Improving Negotiation Skills

It is seen that most people go into negotiations looking after their own interests, only to find that the other party, is doing exactly the same thing. The unfortunate result of this situation is mutual escalation of conflict. The solution, however, is not to approach negotiation as a purely co-operative enterprise and give up everything to the other side. The solution is to recognize negotiation for what it is – a mixed-motive enterprise that simultaneously tests a negotiator's ability to cooperate and compete.

First, we describe three ways of evaluating success in negotiated outcomes. Second, we give analysis of the most common traps that prevent negotiators from achieving successful negotiated outcomes. Finally, and probably most important, we provide a three-step strategic plan that negotiators can use to achieve successful negotiated outcomes.

5.3.1 Evaluating Negotiation Outcomes: The Pyramid of Success

We conceive negotiator success at three levels of the negotiation. At its simplest, success refers to identifying when negotiators *should* reach an agreement. Negotiators succeed by agreeing to outcomes that are better than their alternatives and walking away from outcomes that are worse than these alternatives.

The first level of success, negotiators are capable of identifying when "mutual settlement" is possible. Second, most negotiators know about "win-win" which means that both parties are not making equal concessions, nor does it mean that they fully compromise. Far from it, the expression actually derives from John Nash's bargaining theory, which states that the final outcome of a negotiation should be one in which no negotiator can improve his or her outcome without hurting that of the other party.

The second level identifies "win-win" agreements, which are described as outcomes that improve upon mutual settlement by identifying ways that both parties receive better outcomes than by simply compromising on the issues at hand.

The third level identifies "Pareto-optimal" outcomes, which refer to outcomes where the best possible negotiated outcome for both parties has been achieved. That is, it refers to the best win-win outcome possible; once achieved, any additional gain for one party will hurt the other party. The typical negotiator sees success at the third level as an idealistic rather than realistic goal, one worth striving for, but difficult to attain. Rather, success is best attained through levels one and two, by identifying whether a mutual settlement is possible and by identifying win-win agreements that meet the interests of both parties better than compromising.

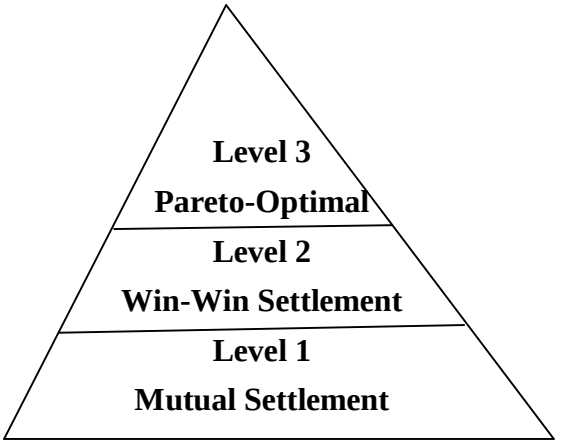

Figure 5.1: Pyramid of Success.

5.3.2 Most Common Negotiator Pitfalls: The Table of Traps

There are four traps or shortcomings that can befall even the most seasoned and confident of negotiators thus preventing success at these levels. These traps occur at the first two levels of success. As in Table 5.1 negotiators have been grouped into those who are too soft and those who are too tough. Soft and hard negotiators are both at risk for traps at the first level of success, where they risk failing to identify whether a mutual settlement is possible. The likely consequence of a soft negotiator is to reach an agreement *at any cost*. "Agreement Bias" is defined as the tendency for negotiators to reach agreements no matter what the circumstances might be. In this sense, negotiators take the "Getting to Yes" advice too far and settle for nearly anything, in the name of reaching settlement. By contrast, the too-tough negotiator often fails to reach an agreement when it would be much wiser to reach a deal. This situation results in a phenomenon we call "bargaining hubris," or walking away from the table when it would be far better to reach agreement. As a case in point, Lemuel Boulware, the former CEO of General Electric, believed strongly in making one's first offer one's final offer. However, the strategy – which came to be known as "Boulwarism" – backfired terribly.

	Probability of Agreement: Agreement Decision	**Value of Agreement: Quality of Outcome**
Soft Bargaining Style	Agreement Bias(i.e. agreeing to deals that are worse than their alternatives)	Winner's curse(i.e. failing to claim outcomes for themselves)
Hard Bargaining Style	Hubris(i.e. walking away from deals that are better than their alternatives)	Lose-lose outcomes(i.e. failing to create outcomes that benefit both the parties)

Table5.1: Soft and Hard Bargaining Style

Traps may happen for soft and hard negotiators at the second level of success too, affecting the quality of the agreement and win-win outcomes. The "Winner's Curse" refers to the regrettable outcome when negotiators make an offer that is immediately accepted by the other party. MBA students encounter situations when their demands regarding a job offer were immediately accepted, leaving them to wonder whether they could have asked for more. Thus, while the soft negotiator in this sense achieves settlement, he thinks he must have offered way too much to the other party (or asked for way too little). What about the too-tough negotiator? The too-tough negotiator often lands upon "lose-lose" outcomes. Lose-lose outcomes are outcomes in which both parties are worse off than they otherwise might have been. We've found that upwards of 20% of negotiators reach lose-lose outcomes. The reason why lose-lose agreements are such a problem is that negotiators are usually unaware that they have left money on the table

5.3.3 Three Steps for Negotiating Optimally: The Path to Improvement

Each of these threats to optimal negotiation behaviour has been taken care of and a set of key principles have emerged. These key principles nicely apply to nearly any negotiation. The three key steps on the road to win-win outcomes include Preparation, Value-Claiming strategies and Value-Creating strategies.

1. Preparation

The 80-20 rule applies to preparation and negotiation. About 80% of negotiators' efforts should be effective preparation; about 20% is actual execution. When it comes to preparation, mostnegotiators focus on the wrong aspects of negotiation.

- They commit one or more of three mistakes:**Issues not Personalities -** Negotiators believe that role-playing will provide a perfect simulation of the "real thing." They are only partly correct. Role-playing can work very well if negotiators prepare by focusing on the issues and interests of the other side. They usually don't do this. Rather, they focus on the personality of the other side and assume that the issues that they themselves bring to the table are those that the other side is interested in. By considering potential additional issues that the other party may bring to the table, the negotiator identifies a larger landscape over which to negotiate.

- **Other-focus not self-focus -** Most negotiators are too self-absorbed. This self-focus, to the exclusion of thinking in an open-minded fashion about the other side, can trigger the fixed-pie perception, which is the pervasive belief that the other party's interests are completely opposed to one's own interests. In another sense, too much self-absorption can block a negotiator's attention to data and cues from the other party. It is better for negotiators to "think about the other party's alternatives, "the result of which is dramatic. These negotiators achieved better outcomes than a group of their peers who did not consider the other party's alternatives. Greater "other-focus" during preparation can give the negotiator leverage during the negotiation.
- **Support Flexibility not Commitment -** Negotiators often build themselves up for negotiation by committing their resolve. A far better strategy for negotiators is not to simply identify one set of acceptable terms, but rather five or six different sets of outcomes that could all equally satisfy their goals. By creating these multiple equivalent offers, the negotiator considers different ways an agreement can be reached and also signals to the other party that they have some say over the process.

2. Value-claiming Strategies

The too-soft negotiator usually is aware of the fact that he or she is too soft and wants to increase his or her ability to garner valued resources–in our words, to claim value. These strategies are optimally suited for the too-soft negotiator, and will help him or her avoid the agreement bias and winner's curse, and thus achieve successful negotiated outcomes.

- **Identifying and Improving one's own BATNA -** Many negotiators walk into negotiation without having identified their BATNA, or their Best Alternative to a Negotiated Agreement. This single failure can result in a negotiator falling prey to the agreement bias and/or being "anchored" by the other party. A negotiator who identifies his or her BATNA should then take the next step of attempting to improve upon it. The power of a great BATNA is the power to walk away.
- **Researching the other Party's BATNA-** The most useful information a negotiator can have about the other party is to know what *their* BATNA is. Once their best alternative is known, a negotiator can estimate the direction and size of the bargaining zone. For example, if a toy manufacturer wants to purchase a plant for production and storage, she wants to identify what the seller's best alternative bid is. With the knowledge that the alternative bid is Rupees10 lakhs, she can bid marginally higher (thereby reducing her costs) and also successfully identify a mutually beneficial settlement.

  Set high aspirations. Even if the other party's BATNA is unknown, negotiators will achieve better outcomes by setting high aspirations. Our toy manufacturer will be more likely to achieve a better outcome when she sets her aspiration at Rs10 lakhs rather than at Rs12 lakhs, for she is therefore more motivated to strive for the better agreement.

- **Making the First Offer, if one is Prepared -** Making the first offer anchors the negotiated outcome: negotiators typically agree to outcomes that are relatively close to the first offer's value. To make this technique useful in claiming value, however, negotiators must identify the offer that best represents their aspirations. Making favourable first offers is one way that aspirations produce better outcomes, by anchoring the negotiation around that aspiration.

  Immediately re-anchor if the other party makes an extreme offer. First offers anchor the negotiation, and if negotiators are unable to make the first offer, they must immediately re-anchor with their aspirations in mind. Doing so will help to counteract the effect of the first offer's anchor.

- **Make Bilateral, not Unilateral Concessions -** An even-handed exchange of concessions creates more equitable outcomes. Every time negotiators give in, they should wait for the other party to do so too. Otherwise, the midpoint that the negotiators reach will be biased in favour of the other party'sposition.

- **Watch the Magnitude of one's own Concessions -** It is not just enough that concessions be bilateral; each party must also be willing to give in the same amount. If the toy manufacturer gave a Rs 1-lakh concession (say, increasing her bid from Rs 13 to Rs 14 lakhs), but the plant's seller gave a Rs 50,000 concession, the midpoint they ultimately reach will favour the seller rather than the buyer. As a result, watch the other party's concessions for fairness in negotiations.

3. Value-creating Strategies

Of all the aspects of negotiation, value-creating strategies are the most unclear yet the most wanted. As we noted before, most negotiators – even those with several years of experience – leave money on the table. It is not enough to simply desire to reach win-win agreements. Negotiators must work for them in a systematic fashion. These strategies are optimally suited for the too-hard negotiator, and will help him or her avoid hubris and lose-lose negotiations to achieve successful negotiated outcomes. We cover six strategies that have all been proven to lead to joint gain in negotiations (see Table 5.2).

- **Asking Diagnostic Questions -** Diagnostic questions are questions that serve two key purposes: first, they elicit information about where the pie can be expanded. A negotiator who asks the other party about his or her preferences is much more likely to reach a level 3 integrative agreement than if the negotiator simply argues the merits of her position. However, only about 7% of negotiators ask "diagnostic" questions.

- **Expanding the Issues on the Table -** Most negotiations pretend to be as fixed-pie situations because people are bargaining about a single issue – usually price. Negotiators who are committed to level 3 integrative agreements brainstorm as many issues as possible so that they can think up tradeoffs, where they concede on a less important issue to gain ground on a more important one.

- **Revealing Information about Interests and Priorities -** Inexperienced negotiators make the mistake of withholding all information indiscriminately. In contrast, expert negotiators know what to reveal and what to conceal. Revealing

information about interests and priorities does more than expand the pie; it does not put the negotiator at risk for pie-slicing.

- **Making Multiple offers of Equivalent Value Simultaneously -** This one is the most effective for expanding the pie and holding bargaining ground. The negotiator provides two or more packages of offers, where each offer is of equal value to the negotiator proposing them. In this way, the negotiator appears flexible but does not have to make a concession.
- **Search for Post-settlement Settlements** - Here, negotiators head back to the bargaining table to see if they can improve upon the existing agreement. It does not mean renegotiating the existing contract; quite the opposite. It means that negotiators should attempt to mutually improve upon a given settlement after committing to it. Two key principles that guide this process: (1) the new settlement must be one that improves both parties' outcomes or improves one party's outcome but does not hurt that of the other party; (2) both parties must agree to it.
- **Leveraging Differences via Contingency Contracts.** This pie-expanding strategy turns the idea of common ground completely on its head. The idea is simple: often, people cannot agree about something and so, rather than try to convince the other party, they wager a bet. For example, consider a book author negotiating with a publisher about royalty rate. The author is bargaining for a higher royalty rate, convinced that sales will be high; the publisher is less optimistic. A contingency contract would resolve these differences, where the royalty rate would be determined by future sales of the book. For example, if sales are high as the author expects, the royalty rate will increase; if sales remain low, however, the royalty rate will remain low.

5.4 Negotiation Styles

Individuals can often have strong dispositions towards numerous styles; the style used during a negotiation depends on the context and the interests of the other party. In addition, styles can change over time.

- **Accommodating:** In this style, individual solves the problem by preserving personal relationships. Accommodators are sensitive to the emotional states, body language, and verbal signals of the other parties.
- **Avoiding:** This is a style where individuals who do not like to negotiate and don't do it unless warranted. When negotiating, avoiders tend to defer and dodge the confrontational aspects of negotiating; however, they may be perceived as tactful and diplomatic.
- **Collaborating:** In this style, individual solves the tough problems in creative ways. Collaborators are good at using negotiations to understand the concerns and interests of the other parties. They can, however, create problems by transforming simple situations into more complex ones.

- **Competing:** In this style individuals enjoy negotiations because they present an opportunity to win something. Competitive negotiators have strong instincts for all aspects of negotiating and are often strategic. Because their style can dominate the bargaining process, competitive negotiators often neglect the importance of relationships.
- **Compromising:** Such individuals are eager to close the deal by doing what is fair and equal for all parties involved in the negotiation. Compromisers can be useful when there is limited time to complete the deal; however, compromisers often unnecessarily rush the negotiation process and make concessions too quickly.

Steps in Selecting Negotiation Style

First, considering one's own negotiating style- whether lean towards Competing, accommodating, Avoiding, Compromising, or Collaborating?

Second, considering the other side's negotiating style - Are they competitive or do they Accommodate, Avoid, Compromise, or Collaborate?

Third, considering the importance of the stake of the negotiation to self and to the organization - How important is settling the matter at hand?

Last, considering the importance of one's own relationship with the other side - Are they strangers that will remain as such after the negotiation? Are they a new client? Are they long standing partner with strategic importance to the organization?

Having taken inventory of one's own style, their style, the importance of the stakes, and the importance of the relationship, one becomes better prepared to consider the best manner in which to proceed.

5.5 Negotiator's Dilemma

Although many theorists argue that almost any dispute can be resolved with interest-based bargaining (i.e., a cooperative approach), other theorists believe the two approaches should be used along with each other. It is seen that negotiations typically involve "creating" and "claiming" value. First, the negotiators work cooperatively to create value (that is, "enlarge the pie,") but then they must use competitive processes to claim value (that is, "divide up the pie").

However, a tension exists between creating and claiming value. This is because the competitive strategies used to claim value tend to undermine cooperation, while a cooperative approach makes one vulnerable to competitive bargaining tactics. The tension that exists between cooperation and competition in negotiation is known as The Negotiator's Dilemma.

If both sides cooperate, they will both have good outcomes. If one cooperates and the other competes, the co-operator will get a terrible outcome and the competitor will get a great outcome. If both compete, they will both have mediocre outcomes. In the face of uncertainty about what strategy the other side will adopt, each side's best choice is to compete. However, if they both compete, both sides end up worse off.

In real life, parties can communicate and commit themselves to a cooperative approach. They can also adopt norms of fair and cooperative behaviour and focus on their future relationship. This promotes a cooperative approach between both parties and helps them to find joint gains.

When to Bring in an External Facilitator?

If the relationships between the parties seems irreparably damaged - lacking respect or trust between them, and honest communication seems impossible - and there are few if any master negotiators on either side, the last tool in the tool box is the option of jointly hiring a skilled, third party neutral negotiation facilitator**.** The key here is to allow all the negotiation parties to interview several candidates who each present the process they use, their references and their experience. Then the parties can decide on the mutually acceptable facilitator.

5.6 Summary

Negotiation is a conscious, explicit practice that insures that one reaches the advanced negotiation skill level. Negotiation skill involves applying the frameworks one has learned to analyze the negotiation situation. It means judging which tool or process is best used in this context and then using the selected tools to systematically prepare and execute a negotiation strategy. It means, assessing after each negotiation session, what was effective. Negotiators have been categorised into Soft, Hard and Principled Bargainers. Negotiation skill means making the process and preparation so explicit that over time it becomes a part of us, so that we don't need to use a preparation sheet or tool reminder, they are imbedded in our natural negotiation behaviour. Reaching the advanced level of negotiating skill requires openness to learning, no matter how much skill and experience we have. It requires an investment in oneself.

5.7 Self Assessment Questions

1. Define negotiation skill. Explain different types of negotiation skill.
2. What are the different levels of Negotiation Skills?
3. Discuss various ways to improve Negotiation Skills.
4. What are the common Negotiator Pitfalls? Discuss?
5. What do you mean by negotiators dilemma?

5.8 Reference Books

- Lisa J Downs(2008), “Negotiation Skills Training”, American Society Of Training And Development, Alexandria Virginia.
- Prof Dr Ahmed Fahmy Gala(2005) , “Negotiation Skill” Cairo University
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Unit - 6 : Trust Building in Negotiation

Structure of Unit

6.0 Objectives

After completing this unit, you would be able to:

- Understand meaning of relationship, reputation, justice and trust
- Evaluate the importance of employment relationship
- Recommend strategies that can facilitate the development of trust in enterprises.
- Define the process of trust building in enterprises.
- Understand foundation of negotiator's trustworthiness

6.1 Introduction

Like other interdependent relationships, negotiations are characterized by dependency, vulnerability and involves risk. Because of this factor it is crucial that organization employer-employee relationships are improved in a conscious and sustainable way in order for our businesses to remain competitive in the face of global competition. In workplace relationships this can be indicated by the parties keeping to the spirit and wording of collective agreements, honouring intentions, respecting confidential information and accepting each other's role and objectives Therefore, trust is generally acknowledged as a necessary requirement for effective negotiation and successful workplace relationships. Establishing trust at the bargaining table is crucial. Trust is generally perceived as a state of mind or understanding that the people in the relationship will behave or respond in an honest, predictable, consistent and cooperative way. Hence negotiation theory need elaboration and refinement to take into account the importance of ongoing relationships.

6.2 Fundamentals of Relationship

Shepard and Tuckinsky defines relationship as a "pairing of entities that has meaning to the parties, in which the understood form of present and future interactions influences their behavior today."

Two key assumptions underlying this definition are

(1) The parties have a history and an expected future with each other that shapes the present interaction
(2) The link between the parties themselves has meaning (i.e. the relationship contains more than simply what each individual brings to it).

Fiske argues the four fundamental relationship forms:

(1) Command sharing is a relation of unity, community, collective identity and kindness, typically enacted among close kin." People are bound to one another by feelings of strong group membership; common identity; and feelings of unity, solidarity and belonging. Collective identity takes precedence over individual identity. Such relationships are found in families, clubs, fraternal organizations and neighbourhoods.

(2) Authority ranking is relationship of asymmetric differences, commonly exhibited in a hierarchical ordering of status and precedence. It is often accompanied by the excersise of command and complementary displays of deference and respect. This relationship is one of having inequality since high ranked people control people and are often thought to have more knowledge.

(3) Equality matching is a one-to-one correspondence relationship in which people are distinct but equal, as manifeated in balanced reciprocity(or tit for tat revenge), equal share distributions or identical contributions, in-kind replacement compensation and turn taking. People in such relationships see each other as equal and as separate but often interchangeable, each is expected to contribute equally to others and receive equally from others or "distributive equality". Such relationships occur within certain teams or groups whose members have to work together to coordinate their actions.

(4) Market pricing is based on an metric of value by which people compare different commodities and calculate exchange and cost/benefit ratios. The values that govern this kind of relationship are determined by market system. Examples can be drawn from all kind of buyer-seller transactions.

6.3 Key Elements in Negotiations

The three elements that become more critical and pronounced when they occur within a negotiation are reputation, trust and justice. The effects of these elements in negotiations within relationships are as follows:

6.3.1 Reputation

Reputataion is a perpetual identity, reflective of the combination of salient personal characteristics and accomplishments, demonstrated behaviour and intended images preserved overtime, as observed directly and/or reported from secondary sources.

Importance of reputation is due to following reasons:

- Reputations are perceptual and highly subjective in nature. It is how we come to known by others and they actually think about us.
- An individual can have a number of different, even conflicting, reputations, because an individual acts differently in different situations.
- Reputation is influenced by an individual's personal characteristics and accomplishments. These may include qualities such as age, race, gender, education and past experiences, personality traits, skills and behaviours. The early experiences with one another shapes our views for someone. These views may be confirmed or disconfirmed by next set of experiences and form the expectations. These expectations are shaped but they become hard to change.
- Reputations develop over time; once developed, they are hard to change.
- Negative reputation is difficult to "repair". The more long standing the negotiative reputation the harder it is to change that reputation to a more positive one.

6.3.2 Trust

Trust is a lubricant that allows social groups to cooperate and operate efficiently. It is the mechanism that allows for the development of social capital in complex social groups. Building trust is an investment in the human capital of enterprises. Trust is culturally determined and manifested in behaviors and attitudes. It is defined as an expectation between social groups based on shared values, beliefs and expectations. According to Nooteboom (2002) trust is "a state of mind, an expectation held by one trading partner about another, that the other behaves or responds in a predictable and mutually expected manner."

Reina and Reina (2006) agree and view it as a mutual understanding that the people in the relationship will do what they say they will do in keeping to agreements, honoring intentions and behaving consistently.

Salamon (2000) further argues that trust between collective bargaining agents does not imply that they need to be open and frank with each other about everything as their relationship recognizes that the other may be seeking maximum gain. However, trust is about parties not aiming at subverting each other's relationship with third parties, to keep to the spirit and wording of collective agreements, to keep confidential information and accept the legitimacy of words each other's role and objectives. Mc Allister defined trust as "an individual's belief in and willingness to act on the words, actions and decisions of another". Trust can be viewed, therefore, as an understanding between partners or groups that they will;

- Behave consistently in a mutually expected manner,
- Keep to the spirit and letter of joint agreements,
- Honor all collective agreements,
- Keep confidential information confidential,
- Refrain from destroying each other's relationships with third parties,
- Accept each other's legitimate roles, and
- Be as open and frank with each other as can is expect

There are three things that contribute to the *level of trust* one negotiator may have for another.

- The individual's chronic disposition towards trust(i.e. individual differences in personality that make some people more trusting than others)
- Situation factors(e.g. the opportunity for the parties to communicate with each other adequately)
- The history of the relationship between the parties.

Two different types of trust:

Calculus-based Trust – It is concerned with assuring consistent behavior. It holds that

individual will do what they say because (i) they are rewarded for keeping their word or (ii) they fear the consequences of not doing what they say. Trust is sustained to the degree that the punishment is likely to be more significant motivator than tha promise of reward.

Identification-based Trust - Identification with the other's desires and intentions. Trust exists because the parties effectively understand and appreciate each other's wants; mutual understanding is developed to the point that each can effectively act for the other. Parties affirm strong identification based trust by developing a collective identity.

- Trust is different from distrust
  - Trust is considered to be confident positive expectations of another's conduct
  - Distrust is defined as confident negative expectations of another's conduct i.e., we can confidently predict that some other people will act to take advantage of us
  - Trust and distrust can co-exist in a relationship

6.3.3 Justice

Justice issues are raised when individuals negotiate inside their organization, such as to create a unique or specialized set of job duties and responsibilities. This situation is to be managed effectively in order to make sure that sense of fairness and equal treatment exists.

Different forms of justice are:

- Distributive Justice: about the distribution of outcomes i. e. outcomes should be distributed equally or that outcomes should be distributed based on needs.
- Procedural Justice: about the process of determining outcomes i.e. parties are satisfied that they are treated fairly during the negotiation and are treated with respect
- Interactional Justice: about how parties treat each other in one-to-one relationship i.e the other party's practices are candid and do not deceive, no prejudicial or discriminatory statements are made and fairness of standards is not violated.
- Systemic Justice: about how organizations appear to treat groups of individuals and the norms that develop for how they should be treated. i.e. no discrimination, no biasness.

6.4 Trust Building and Negotiation

If a negotiator begins a relationship with another party and wants it to be more than a market transaction, then the negotiator develops and maintains calculus based trust. However if the negotiator wants to develop communal relationship then identification trust would be more common.

Trust building is a process that can be facilitated by individuals and enterprises to facilitate organizational change and institutional capacity building. Different trust building actions are as follows:

1. Increasing Calculus based Trust

- Creating and building the other party's expectations.
- Stressing the benefits of creating mutual trust.
- Establishing credibility.
- Keeping promises.
- Developing a good reputation.

2. Increasing Identification based Trust

- Developing similar interests
- Developing similar goals and objectives.
- Acting and responding like other party.
- Standing for the same principles, values and ideals.
- Actively discussing commanalities and developing plans to enhance and strengthen them.

3. Managing Calculus based Distrust

- Monitoring the other party's actions.
- Preparing formal agreements (contracts, memoranda of understanding etc.) that specify what party has committed to do and specify the consequences that will occur if each party does not fulfill their obligations.
- Building plans for 'inspecting' and verifying the other's commitments.
- Developing ways to make sure that the other party cannot take advantage of one's trust and goodwill by invading other parts of party's personal space.
- Using formal legal mechanisms if there are concerns that the other party might take advantage of the first party.

4. Managing Identification based Distrust

- Expecting that the parties will regularly disagree , see things differently, take opposing views and stand for different ideals and principles.
- Assuming that the other party will exploit and will take advantage if got an opportunity to so. Closely monitoring the boundaries.
- Verifying information, commitment and promises that the other party makes.
- Minimising interdependence one has with the other party.

- Minimising personal self-disclosure to the other party so as to avoid being vulnerable because of undue disclosure of information.
- Assuming that 'the best offense is a good defense.'

The nature of the negotiation task can shape how parties judge the trust.

- Greater expectations of trust between negotiators leads to greater information sharing and trust building
- Greater information sharing enhances effectiveness in achieving a good negotiation outcome.
- Distributive processes lead negotiators to see the negotiation dialogue, and critical events in the dialogue, as largely about the nature of the negotiation task.
- Trust increases the likelihood that negotiation will proceed on a favorable course over the life of a negotiation.
- Face-to-face negotiation encourages greater trust development than negotiation online.
- Negotiators who are representing other's interests, rather than their own interests, tend to behave in a less trusting way.
-

6.5 The Dynamics of Trust

Trust can contribute considerably to savings on transaction costs, speed up business processes and produce a work atmosphere which can be conducive to the innovativeness and creativeness of the organization's management and workforce. Trust is as important for organizational success.

There characteristics of trust are as follows:

- Trust-building in the organizational context is a reciprocal process;
- It takes two to tango; Trust requires action and opens one to vulnerability,
- Trust needs constant nurturing and tending.
- Trust is complex and involves several asymmetries in which trust and distrust both are contagious and depends on positive feedbacks reinforcing the initial behavior;
- Trust builds gradually and incrementally, reinforced by previous trusting behaviour and positive previous experiences.
- There is no absolute certainty that when you trust that will be honored; whilst it is difficult to prove trustworthiness, it is relatively easier to find evidence of untrustworthy behavior.
- Trust is, to an extent, based on predictability and perceived consistency of behavior yet the business world is inherently unpredictable. Rules are important in the organizational context to develop trust needed for effective cooperation and to prevent chaos, yet too many rules might stifle creativity and value creation.

Robbins and Decenzo have advanced a theory of trust as comprising of five dimensions:

- Integrity - Honesty and truthfulness,
- Competence – Technical and professional know how and skills,
- Consistency – Reliability, predictability and good judgment,
- Loyalty – Willingness to save face for a person, and
- Openness – Willingness to share ideas and information freely.

This theory focuses on the nature and type of traits or trust dimensions that are ideal for organizational leadership and create certain particular conditions that favour the possibility of trust to thrive. These traits are also characteristics of a specific leadership style that tends to earn trustworthiness and, simultaneously, the converse characteristics are antecedents of distrust.

6.6 Foundations of Negotiator's Trustworthiness

Studies have suggested that negotiators judge another's trustworthiness on three different and somewhat independent foundations: perceived ability, perceived benevolence and perceived integrity.

6.6.1 Perceived Ability

This first foundation can be demonstrated through three different aspects of competence or ability:

(i) Being competent by knowing about the core issues under consideration in the negotiation - Negotiators need to be well prepared, know what they want, and be able to command the supporting facts, arguments, logic, data and so on to support their case. This knowledge is gained through preparation before the negotiation begins so that the negotiator has mastered the essential facts and figures and developed the compelling arguments that will support their case. For example, debaters build an elaborate database of information and construct arguments to be used to either support their basic proposition, or to effectively argue against and defuse the other's arguments.

(ii) Having broader knowledge of context in which the negotiation is occurring - Negotiators must also demonstrate knowledge of the context in which they negotiate. For example, an attorney who might be hired by an automobile labour union to negotiate on its behalf needs to demonstrate a complex understanding of the salary issues for which they are attempting to argue, but they must also understand the prevailing salary and benefits issues, packages and precedents within the automotive industry.

(iii) Possessing the skills to negotiate effectively - A negotiator's trustworthiness is grounded in their demonstrated knowledge about 'how to negotiate'. This knowledge might be demonstrated in a variety of skills: how to structure an argument, present critical information, ask appropriate questions of the other side, make appropriate concessions and create a viable agreement that can be implemented and that will benefit both parties. Perhaps surprisingly, if negotiators have a choice, they should choose to negotiate with an experienced negotiator as opposed to an inexperienced one.

Inexperienced negotiators often behave erratically, do not understand the issues well, and either make concessions too quickly or irrationally hold out for unachievable goals, both of which may contribute to further declines in trust. Experienced negotiators, in contrast, are much more likely to be more efficient in the negotiating process, arrive at a mutually beneficial agreement quicker and understand the importance of being able to implement that agreement more effectively. Trust is created in the other by exhibiting rational, transparent and predictable behavior – both in understanding the issues to be addressed, the context in which they occur and the broad dynamics of the negotiation process.

6.6.2 Perceived Benevolence

Demonstrating benevolence in negotiation relates to treating the other well in the process of negotiation. Benevolence relates more directly to actions that maintain or enhance the relationship dimension of trust between the parties. Treating the other with courtesy, respecting the other as a person and respecting the legitimacy of the others' views, actively listening to the other and refraining from using tactics that anger, upset or trick the other would be consistent with benevolent behavior. Finally, benevolence would be most clearly demonstrated by showing that one cares about.

The role of trust in negotiation processes other negotiator's interests and is willing to help the other party meet those interests. While we expect a negotiator to primarily worry about achieving their own interests, a benevolent negotiator who recognizes the opportunity to create value and achieve a mutually beneficial agreement will understand how treating the other well benefits both the nature of the agreement as well as their own reputation and the parties' ability to work together in the future.

6.6.3 Perceived Integrity

As studied earlier integrity may be the most important element/dimension of trustworthiness. Integrity refers to behaviours such as telling the truth, keeping promises and following through with commitments, and embracing a set of professional or ethical principles that leave little doubt of the negotiator's honest motivations and intentions. Again, these may be signaled to the other side by modeling integrity behaviours and by creating and cultivating a reputation for being committed to standards of professionalism. Receiving feedback from the other or from observers as to whether one is actually conveying these intended messages in these behaviours is critical. People are often ignorant to the subtle verbal and not- so- subtle nonverbal messages they may be communicating to the other, particularly when words and actions are inconsistent. A skilled negotiator asks for feedback and learns how they are being perceived, and as a result, can be much more successful in signaling and communicating the trust messages they want to send.

Repairing Trust

The more severe the breach of trust, the more difficult it is to repair trust and reconcile the relationship. If the parties had a good past relationship, it becomes easier to repair trust. The ways to repair trust are as follows:

- The party who breach the trust must apologize as soon as better.
- The apology must be sincere enough.
- The one who makes the apology must take personal responsibility for having created the breach.
- Apologies were more effective when the trust breach appeared to be an isolated event rather than habitual and repetitive for the other party.
- What might be causing any present misunderstanding, and what can I do to understand it better?
- What might be causing a lack of trust, and what can I do to begin to repair trust that might have been broken?
- What might be causing one or both of us to feel coerced, and what can I do to put the focus on persuasion rather than coercion?
- What might be causing one or both of us to feel disrespected, and what can I do to demonstrate acceptance and respect?
- What might be causing one or both of us to get upset, and what can I do to balance emotion ?

6.7 Summary

Relationship shapes negotiations. Trust is generally acknowledged as a necessary requirement for effective and successful workplace relationships. Because of this factor it is crucial that organization employer-employee relationships are improved in a conscious and sustainable way in order for our businesses to remain competitive in the face of global competition. Businesses and organizations rest on a foundation of social and informal agreements that people will be trusting. There are, of course, a few aspects of business which require caution, competition, even complete distrust, and negotiation often deals with these uncomfortable/exciting (depending on your perspective) aspects. But without trust between agent and client, effective negotiation isn't possible. This doesn't mean being immature, it means moving carefully, gradually increasing the degree of trust/authority you give, and being trustworthy yourself. The relationships between trust and negotiation behavior can be summarized as follows: Many people approach a new relationship with an unknown other party with remarkably high levels of trust. Trust tends to cue cooperative behavior. Individual motives also shape trust and expectations of the other’s behavior. Trustors, and those trusted, may focus on different things as trust is being built. Effective negotiation is a key skill used in the workplace and between businesses. This will equip with essential knowledge, abilities and tactics that will increase competency in negotiation situations.

6.8 Self Assessment Questions

1. What do you mwean by relationship in negotiation? Explain.
2. Discuss the different key elements of relationship.
3. What do you mean by fundamentals of negotiator's trustworthiness? Discuss in detail.
4. Discuss the different trust building actions.

6.9 Reference Books

- Lisa J Downs(2008), "Negotiation Skills Training", American Society Of Training And Development, Alexandria Virginia.
- Prof Dr Ahmed Fahmy Gala(2005) , "Negotiation Skill" Cairo University
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Unit – 7 : Coverage of Agreements

Structure of unit

7.0 Objectives

After completing this unit, you would be able to:

- Understand the meaning of agreement
- Know about the enforceability of agreements
- Process of forming collective agreement

7.1 Introduction

A contract of employment is a bilateral agreement for the exchange of service and remuneration over a period of time. Employment contract is that form of contract for personal service which the courts recognize as expressing the social relationship of employer and employee, as opposed to the other relationships. Ludwig Teller has broadly defined collective bargaining agreement as "an agreement between a single employer or an association of employers on the one hand and a labour union upon the other, which regulates the terms and conditions of employment." The term 'collective' as applied to collective bargaining agreement will be seen to reflect the plurality not of the employers who may be parties thereto, but of the employees therein involved.

7.2 Agreement

An agreement is defined in Section 2 (e) of Industrial Disputes Act, 1947 as 'every promise and every set of promises, forming consideration for each other. When a proposal is accepted it becomes a promise. Thus an agreement is an accepted proposal. Therefore, in order to form an agreement there must be a proposal or an offer by one party and its acceptance by other party.

Section 2(b) defines Promise in these words: "When the person, to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a Promise."

A negotiated and usually legally enforceable understanding between two or more legally competent parties is an agreement. Although a binding contract can (and often does) result from an agreement. An agreement typically documents the give-and-take of a negotiated settlement and a contract specifies the minimum acceptable standard of performance.

Agreement is:

- the act of agreeing or of coming to a mutual arrangement.
- the state of being in accord.
- an arrangement that is accepted by all parties to a transaction.
- a contract or other document delineating such an arrangement.

7.2.1 Essentials of Agreement

1. An offer or proposal by one party and acceptance of that is offer by another party resulting in an agreement-consensus-ad-idem.
2. An intention to create a legal relations or intent to have legal consequences.
3. The agreement is supported by lawful consideration.
4. Genuine consent between the parties
5. The parties to contract are legally capable of contracting.
6. To be mutually communicated

7.2.2 Classification of Agreements

i. Agreements on the Basis of Validity

Valid Agreement: An agreement, which has all the essential elements of a contract, is called a valid agreement. A valid agreement can be enforced by law. Example: According to Kamlesh Sons (1997) the subsidry, the electronics manufacturing giant entered into its first collective bargaining agreement on the 26th of December 1997, which ensured that all employees would receive a 3% wage raise if they meet certain performance requirement. Employees unite together to form a union and select a representative who negotiate with a representative from the employers and discuss about rules, wages, hours, benefits and working conditions of the workplace. The terms on which both parties agreed is put on a contract and signed.

Illegal Agreement*:* An illegal agreement, under the common law of contract, is one that the courts will not enforce because the purpose of the agreement is to achieve an illegal end. The illegal end must result from performance of the agreement itself.

Void Agreement: According to Section 2(g) of the Indian Contract Act, 1872, a void agreement is an agreement which is not enforceable by law. The agreements which are not enforceable by law right from the time when they are made are void-ab-inito. Example: In the case between Brooke Bond India Ltd. Vs its Workmen, it was held that if the office- bearers of the Union of Workmen had signed the agreement, without their having any authority to sign the agreement, such a settlement was not a settlement within the meaning of Section 2(p) of the Act. Unless the office-bearers who signed the agreement were authorized by the Executive Committee of the union to enter into a

settlement or the constitution of the union contained a provision that one or more of its members would be competent to settle the dispute with the management, no agreement between any office-bearer of the union and the management can be called a settlement.

The following types of agreements have expressly been declared void under various sections of the Indian Contract Act.

1. Agreements by or with persons incompetent to contract (section 10 & 11)
2. Voidability of agreements without free consent (Section 19)
3. Power to set aside contract induced by undue influence (Section 19A)
4. Agreements entered into through a mutual mistake of fact between the parties (Section 20)
5. Agreement, the object or consideration of which is unlawful (Section 23)
6. Agreement, the consideration or object of which is partly unlawful (Section 24)
7. Agreement made without consideration (section 25)
8. Agreements in restraint of marriage (Section 26)
9. Agreement in restraint of trade (section 27)
10. Agreements in restraint of legal proceedings (Section 28 & 29)
11. Wagering agreement (section 30)
12. Agreement contingent on impossible events (Section 36)
13. Impossible agreement (Section 56)

Agreements by or with persons incompetent to contract (Indian Contract Act 1872 Section 10 & 11): All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents. (Section 10, Indian Contract Act 1872).

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. (Section 11, Indian Contract Act 1872). Example: The workers of Sirpur Paper Mills, Ltd., raised a dispute with regard to contract labour employed by the company for certain purposes. The workmen demanded that the contract system of labour should be abolished and that these labourers should be absorbed on permanent basis. When the matter was taken up by the tribunal, the tribunal ruled that notwithstanding the fact that contract workers were not the employees of the Sirpur Mills, Ltd., the union of the employees of the Sirpur Paper Mills, Ltd., was not entitled to represent them provided that they are shown to have a direct and substantial interest in the matter by evidence.

Voidability of agreements without free consent (Section 19): When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract whose consent was caused by fraud or misrepresentation, may if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true. (Section 19, Indian Contract Act

1872). Example: Philips India Limited ("Philips") entered into an agreement for the sale of its Consumer Electronics Factory to Kitchen Appliances India Limited ("KAIL"), a subsidiary of Videocon International Limited. Both the Company and KAIL issued a notice informing the employees, that consequent upon transfer of ownership of the Consumer Electronics Factory, the employment of all the workmen has been taken over by KAIL with immediate effect. The Workers' Union strongly protested against the transfer and filed two title suits. The Supreme Court in its Judgment held that: "It is settled law that without consent, workmen cannot be forced to work under different management. The workmen are entitled to the benefit of such direction and it is the obligation on the part of the Management- Philips India Limited, to comply with the same."

Power to set aside contract induced by undue influence (Section 19A): When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there under. (Section 19 A, Indian Contract Act 1872). Example: A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.]

Agreements entered into through a mutual mistake of fact between the parties (Section 20): Agreement void where both parties are under mistake as to matter of fact. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. (Section 20, Indian Contract Act 1872). Example: "Workmen Of M/S Dharampal vs. M/S. Dharampal Premchand". The dispute among employee groups had arisen and management has dismissed the employees at guilt to maintain industrial peace. Union took up the cause and ultimately the dispute was referred to the Tribunal, where the respondent raised the preliminary objection that the reference was invalid in as much is the dispute referred to the Tribunal was not an industrial dispute but was merely an individual dispute, and besides these dismissed employees no other employees of the respondent was a member of the Union, and so the Union could not raise the dispute

Agreement, the object or consideration of which is unlawful (Section 23): The consideration or object of an agreement is lawful, unless- it is forbidden by law 1[; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another or; the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. (Section 23, Indian Contract Act 1872). Example: A promises to superintend, on behalf of B, a legal manufacturer of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Agreement, the consideration or object of which is partly unlawful (Section 24): If any part of a single consideration for one or more objects, or any one or any part of any

one of several considerations for a single object, is unlawful, the agreement is void. (Section 24, Indian Contract Act 1872). Example: Bhavanagar Mun.Corp. vs Salimbhai Umarbhai Mansuri 201. We are concerned in this case with the question whether termination of services of the respondent on the expiry of the contract period would amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1948. The Labour Court passed an award holding that the Corporation had violated Section 25G and H of the ID Act by not calling the respondent for work before appointing new workmen. The Labour Court then directed the Corporation to reinstate the respondent with continuity in service.

Agreement made without consideration (section 25): Agreement without consideration is void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.- An agreement made without consideration is void, unless-

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a, near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract. (Section 25, Indian Contract Act 1872).

Agreement in restraint of trade (section 27): Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. (Section 27, Indian Contract Act 1872). Example: The Punjab National Bank, Ltd vs Its Workmen 1960. The case of the employees was that the Bank wanted to penalize the active trade union workers by the said dismissals while the Bank maintained that the employees were guilty of participation in illegal strikes intended to paralyse its business and scare away its customers**.** The Industrial Tribunal did not hear evidence and, by its final award, held that, the strikes being illegal, the Bank was, on that ground alone, justified in dismissing the employees.

Agreements in restraint of legal proceedings (Section 28 & 29): Every agreement-

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) Which extinguishes the rights of any party thereto, or discharges any party thereto from a liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent. (Section 28, Indian Contract Act 1872).

Agreements void for uncertainty.- Agreements, the meaning of which is not certain, or capable of being made certain, are void. (Section 29, Indian Contract Act 1872). Example: Bharat Petroleum Corporation vs. Petroleum Employees Union & Orissa. The Plaintiffs, a Company under the control of Government of India says 'YES'. If no injunction is granted, it is contended apart from production losses it will be the public who will have to suffer. Not long ago another Government at another point of time had pleaded before the Apex Court that emergency was declared in public interest and in view of that the fundamental rights of citizen as enshrined in Part III of the Constitution of India Stood suspended.

Wagering agreement (Section 30): Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. (Section 30, Indian Contract Act 1872).

Agreement contingent on impossible events: Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not, to the parties to the agreement at the time when it is made. (Section 36, Indian Contract Act 1872). Example: Hindustan Lever Employees Union vs. State of Maharashtra. The complaint alleged unfair labour practice under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

1. Wages, including period and mode of payment
2. Rationalization, standardization or improvement of plant and technique which is likely to lead to retrenchment of workmen.
3. Any increase or reduction (other than casual) in number of persons employed.

The petitioner filed its written statement on November 16, 1989 denying the averments made in the complaint in respect of each of the three items viz. items 1, 10 and 11 of the fourth Schedule to the I.D. Act and it was contended that in view of the change in economic and business scenario, the petitioner was required to take certain decisions which it was entitled to do in its discretion.

Impossible Agreement (Section 56): An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. (Section 56, Indian Contract Act 1872). Example: Ram Hari De vs Official Liquidator, High Court 1965. The Bank of China carried on business in India. Sometime in May, 1962 the Reserve Bank of India revoked the license given to it for doing foreign exchange business in India, thereby making it impossible for it to act as an exchange bank. On the 14th June, 1962 the Bank of China issued a notice under paragraph 522(6) of the All India Industrial Tribunal (Bank Disputes) Award, intimating its intention to effect retrenchment of staff with regard to certain employees on the ground that consequent upon revocation by the Reserve Bank of India of its license to do foreign exchange business in India, the volume of its business as an exchange bank has

been basically reduced. The Bank of China's employed Union, representing the workmen, raised an industrial dispute over the said retrenchment. Conciliation proceedings were held and ultimately certain terms of settlement were arrived at. The terms are set out in the order of the learned Judge and briefly speaking, provide for the grant of retrenchment compensation, gratuity, allowances and other payments.

ii. Agreements on the Basis of Performance

Executed Agreement: An executed agreement is essentially a legal document that has been signed by the people necessary for it to be made effective. If there is a contract between two people, for example, that indicates a service that needs to be provided by one party to the other, and then it usually needs to be signed by both people. Once that contract is signed by both of them and any witnesses or additional parties necessary, then it is considered an executed agreement.

Executory Agreement: An executory agreement is one where one or both the parties to the agreement have still to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory agreement.

a) Unilateral contract: A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.
b) Bilateral contract: A bilateral contract is one in which the obligation on both the parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration

iii. Agreements on the basis of Method of Formation

Express Agreement: Where the terms of the agreement are expressly agreed upon in words (written or spoken) at the time of formation, the agreement is said to be express agreement.

Implied Agreement: An implied agreement is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases. Where a proposal or acceptance is made otherwise than in words, promise is said to be implied.

iv. Agreements on the Basis of Completeness

Enforceable Agreement: All valid agreements enforceable by law are called enforceable agreements.

Unenforceable Agreement: Where a agreement is good in substance but because of some technical defect cannot be enforced by law is called unenforceable contract. These contracts are neither void nor voidable.

7.2.3 All contracts are Agreements but all Agreements are not Contracts

The Contract Act, 1872, provides the definition of contract. According to section 2 (h) of the Contract Act, 1872, “An agreement enforceable by law is a contract.”

If we analyze the definition of the contract mentioned above, we get two fundamental characteristics or features, viz.-

1. Agreement between the parties and
2. This agreement must be enforced by law.

So agreement is the first step of contract. But after making agreement, it may be enforceable by law or may not be enforceable at law. If that agreement is enforced by law then it will be treated or turned into contract, But if the agreement is not enforced by law that will not be treated as a contract but merely an agreement. So all contracts are agreement, but all agreements are not contract.

7.3 Enforceability of Agreements

Under Section 2(p) of the Industrial Disputes Act, 1947 collective agreements to settle disputes can be reached with or without the involvement of the conciliation machinery established by legislation. A settlement (written agreement between the employer and the workmen) arrived at in the course of conciliation proceedings is binding, under Section 18(3) of the Act, not only on the actual parties to the industrial dispute but also on the heirs, successors or assignees of the employer on one hand and all the workmen in the establishment, present or future, on the other. The conciliation officer is duty-bound to promote a right settlement and to do everything he can to induce the parties to act towards a fair and amicable settlement of the dispute.

A settlement with one trade union is not binding on members of another or other unions unless arrived at during conciliation proceedings; the other union(s) - including a minority union - can, therefore, raise an industrial dispute. Section 36(1) of the Industrial Disputes Act deals with representation of workmen. Any collective agreement would be binding on the workmen who negotiated and individually signed the settlement. It would not, however, bind a workman who did not sign the settlement or authorize any other workman to sign on his behalf.

A collective agreement presupposes the participation and consent of all the interested parties. When workmen are members of different unions, every union, without regard to whether or not it represents a majority, cannot but are considered an interested party. Also, a few workmen may not choose to be members of any union, and one or more unions may, for reasons of their own, not like to reach a settlement. Sections 2(p), 4 and 18(3) of the Industrial Disputes Act, 1947 deal with such practical difficulties by making collective agreements binding even on indifferent or unwilling workmen as the conciliation officer's presence is supposed to ensure that the agreement is bonafide.

7.4 Process of Forming Agreements

The process of collective bargaining, though in a vague and limited form, has been introduced in the year 1956, by amending the definition of ‘settlement’ in Section 2(p) of the Industrial Disputes Act 1947. The pertinent purpose of collective bargaining is that the workers must be involved in it. There cannot be a collective bargaining without involving the workers. The union only helps the workers in resolving their dispute with the management, but ultimately, it would be for the workers to take the decision and suggest remedies.

In the present definition of a 'settlement', a written agreement 'between the employer and the workmen, arrived at otherwise than in the course of conciliation proceedings' has been included. Rule 58 of the Industrial Disputes (Central) Rules 1957, prescribes the memorandum of settlement in Form H and also lays down the procedure for signing the settlement. Section 18(I) makes such a settlement binding on the parties to the agreement of settlement. Section 19 prescribes the periods of operation, inter alia, of such a settlement, while section 29 prescribes the penalty for the breach of such a settlement. It would thus appear that the process of collective bargaining, yet, rests on statutory limits.

7.4.1 Memorandum of Settlement (Rule 58)

1. A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form 'H'.

2. The settlement shall be signed by -

   (a) in the case of an employer, by the employer himself, or by his authorized agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation;

   (b) in the case of the workmen, by any officer of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose;

   (c) in the case of the workman in an industrial dispute under section 2A of the Act, by the workman concerned.

   Explanation: In this rule, "officer" means any of the following officers, namely:

   - the President;
   - the Vice-President;
   - the Secretary (including the General Secretary);
   - a Joint-Secretary;
   - any other officer of the trade union authorised in this behalf by the President and Secretary of the union.

3. Where a settlement is arrived at in the course of conciliation proceeding the Conciliation Officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

4. Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central), New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned.

7.4.2 Persons on whom Settlements and Awards are Binding (Section 18 (I))

1. A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
2. Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.
3. A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on
    a. all parties to the industrial dispute;
    b. all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
    c. where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
    d. where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

7.4.3 Period of Operation of Settlements and Awards (Section 19)

1. A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.
2. Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.
3. An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A:
    a. provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:
    b. Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it
    c. thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

4. Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal, for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be on such reference shall, be final.
5. Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.
6. Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.
7. No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.

7.4.4 Penalty for Breach of Settlement or Award (Section 29)

Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion has been injured by such breach.

7.5 Conditions of the Agreement

Section 27 of Indian Contract Act, 1872 declares in plain terms- “Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, to that extent, is void.” The above does not mean an absolute restriction and are intended to apply to a partial restriction. During the period of employment the employer has the exclusive right to the service of the employee. But a restraint operating after the termination or retirement is for freedom from competition from a person who no longer works within the contract. And holding the same is declared void by a court of law. The reason for upholding restraint of trade against employee is to protect the proprietary rights of the employer i.e. the trade secrets or trade connections but it is not available if directed to prevent exercise of extra skill or knowledge acquired by the employer during the course of employment.

7.5.1 Duration and Termination of Agreements

The term or duration forms an important provision of the collective agreement. The agreement may also specify the means of its renewal. Whether provided in specific terms or not, it remains applicable until it is replaced by the new modified terms. There is no hard and fast rule regarding duration of the collective agreement. It may vary from one year to five years. Usually, a term of four years is considered to be neither too long nor too short.

Any question as to duration and termination of employment depends upon the intention of the parties. It is open to the employer and the employee at any time to terminate the contract by mutual agreement. An employee is entitled, on the wrongful dismissal, to the damages for loss of earning and other benefit he would be entitled to, had this employment been terminated according to contract and if no period is fixed for termination he is entitled to reasonable, and for loss of earning for such a period. In any other case, damages are to be measured by the amount of remuneration which the employee has been prevented from earning by reason of wrongful dismissal including the value of any other benefit he is entitled by virtue of his contract. An employer is also entitled to interest or reasonable compensation on the event he is not paid due salary. Moreover, if an employee fails to discharge his duties properly, he is obliged to indemnify his employer for loss. And where the employee is guilty of grave misconduct in his capacity as an employee, he may be dismissed without notice. Thus it can be concluded that employment contract is a contract of service between the employee and the employer to serve the latter fulfilling all terms and conditions provided in the contract. There are certain conditions, which become statutory responsibility of the employer and thus protect the employee in certain circumstances even without having been covered by the terms of an employment contract.

7.6 Summary

A collective agreement comes into effect on the date stated in the agreement. The agreement may, however, state that different parts of the agreement come into effect on different dates. If there is no date stated, it comes into effect on the date the last party signs it. The collective agreement expires on the earlier of either its stated expiry date or three years after it takes effect. If, however, the union initiates bargaining before it expires, the agreement continues in force. The agreement continues in force for up to 12 months, or until it is replaced within the 12-month period with a new collective agreement. Additional unions and employers may join an existing collective agreement where the collective agreement specifically allows this to occur. When a collective agreement expires or is no longer in force. Each existing employee will automatically have an individual employment agreement based on the expired collective agreement (plus any additional terms and conditions agreed previously). However, employer and employee can agree to change this individual employment agreement. New employees are hired on the basis of an individual employment agreement negotiated with the employer.

7.7 Self Assessment Questions

1. Define agreement.
2. What do you mean by enforceability of agreements?
3. Explain the process of forming collective agreements.
4. The law of contact is not the whole law of agreement nor is it the whole law of obligations.
5. Enumerate the essentials of valid contract.

7.8 Reference Books

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Unit - 8 : Administration of Collective Bargaining Agreements

Structure of Unit

8.0 Objectives

After completing this unit you will be able to:

- Understand the procedure and principles of drafting the collective bargaining agreement.
- Know the implementation and administration of agreement
- Get an insight into meaning and sources of grievance
- Focus on the importance and procedure of grievance handling

8.1 Introduction

Collective Bargaining Agreements (CBA) play an integral and significant role in day-to-day administration of the labour/management relations and the broad collective bargaining process. A collective agreement is an agreement reached between a union and an employer, typically as a result of collective bargaining. The majority of collective agreements are reached on a voluntary basis with the employer agreeing to recognize either one or more trade unions for collective bargaining purposes.

8.2 Types of Collective Bargaining Agreements

Collective bargaining agreements in India can be divided into three types:

1. **Bipartite Agreements**: These are most important types of collective agreements because they represent a dynamic relationship that is evolving in establishment concerned without any pressure from outside. The bipartite agreements are drawn up in voluntary negotiation between management and union. Usually the agreement reached by the bipartite voluntarily has the same binding force as settlement reached in conciliation proceedings. The implementations of these

types of agreements are also not a problem because both the parties feel confident of their ability to reach the agreement.

2. **Settlements**: It is tripartite in nature because usually it is reached by conciliation, i.e. it arises out of dispute referred to the appropriate labour department and the conciliation officer plays an important role in bringing about conciliation of the differing viewpoints of the parties. And if during the process of conciliation, the conciliation officer feels that there is possibility of reaching a settlement, he withdraws himself from the scene. Then the parties are to finalise the terms of the agreement and should report back to conciliation officer within a specified time. But the forms of settlement are more limited in nature than bipartite voluntary agreements, because they strictly relate to the issues referred to the conciliation officer.

3. **Consent Award**: Here the negotiation takes place between the parties when the dispute is actually pending before one of the compulsory ad judicatory authorities and the agreement is incorporated to the authorities, award. Thus though the agreement is reached voluntarily between the parties, it becomes part of the binding award pronounced by an authority constituted for the purpose. The idea of national or industry-wide agreements and that to on a particular pattern may appear to be a more ideal system to active industrial relation through collective bargaining, but the experience of various countries shows that it is not possible to be dogmatic about the ideal type of collective bargaining, because it largely depends upon the background, traditions and local factors of a particular region or country.

8.3 Drafting the Collective Bargaining Agreements

After completion of negotiations between the parties, the next step in the process is drafting of an agreement. More often than not, drafting of the agreement presents many problems. The importance of drafting of agreement cannot be underestimated as it involves integrating by means of written words the agreement that has been reached during the course of negotiations. The negotiations can be frustrated by perfunctory drafting of the agreement either by not expressing the intent and understanding of the parties or by omissions, which may give rise to disputes and litigation. Regardless of which party drafts the agreement, the problem remains the same. It is, therefore, desirable that after conclusion of the negotiation, the task of drafting the agreement is done mutually so that any possible legal pitfalls may be avoided.

Awareness of common grievances in agreement: experience has proved that a collective bargaining agreement cannot be constructed in such a precise language as to obviate the possibility of more than one interpretation of many of its provisions. Moreover, there are many problems that arise or changes occur which cannot be anticipated or adequately covered in a written agreement. Thus, the causes for grievances arise out of dynamic nature of industrial life, misunderstandings, alleged violation of agreement terms, clash of personalities and circumstances that surround the intricate working of employer-

employee relationship. The grievances that arise vis- a- vis the collective bargaining agreement can be broadly classified under two heads:

(a) Those arising under the agreement

(i) Over interpretation

(ii) Over conflict between clauses

(iii) Over application to specific cases.

(b) Those arising outside the agreement

(i) Because the agreement is silent on the issue

(ii) Because the issue is too unusual to be covered by an agreement

(iii) Because of defective supervision and agreement administration.

8.3.1 Principles of Drafting the Agreement

While drafting of the agreement, the following general principles are to be kept in mind:

(1) The agreements opening clause defines the formal relationship between the employer and the trade unions.

(2) Having negotiated a formal agreement, the first clause comprises a 'statement of intent' from both parties. The employer recognizes the right of the trade unions to represent its employees and negotiate on their behalf, while the union in turn acknowledges certain rights to the company, to be exercised by its management.

(3) It is usual for some form of general statement to be made which formally stresses the interdependence and the common interest which exists between the parties. Such clauses outline that the parties have some common long term objectives, the most important being to ensure the continuing efficiency and prosperity of the company for the benefit of the employees, shareholders and customers. Such clauses might read: the parties to this agreement attach the greatest importance to the need for mutual co-operation in bringing about improvements in efficiency in order to ensure the future prosperity of 'the company's factories and its employees therein'.

(4) Status quo – provisions anticipate changes which must continually affect an organization, whether they arise directly from management action, financial necessity or government intervention. Although management is generally responsible for the ultimate policymaking decisions, it is recognized that unilateral decisions are more likely to induce conflict, while consultation and meaningful discussions with employees may reduce the risk of disruption and ease the implementation of change. Many procedure agreements include a statement that existing arrangements (status quo), which regulate the relationship between management and unions, will continue until a new agreement is reached.

(5) The provisions embodied in the agreement should be clear and definite and should explicitly cover the subject matter in accordance with the intent of the agreement. In other words, there should be no vagueness or ambiguity – latent or patent – in the wordings of the agreement.

(6) The language of the agreement should be simple and comprehensible by the workmen covered by it. Verbosity and artistry in language should be avoided.

(7) The various provisions contained in the agreement should be so constructed as to cover clearly the complete intentions of the parties so that the third party should be able to comprehend their meaning without any difficulty.

(8) Irrespective of whether the agreement is drafted by the management or the union, it is necessary that the draft agreement and, in particular, the language of all the clauses proposed to be incorporated therein should be clear from legal ambiguity before it is finalized for signature by the parties.

8.3.2 Relationships of the Clauses of the Agreement

In considering the meaning to be given to the various provisions of the collective bargaining agreement, it must be remembered that each provision is a definite part of the whole pattern of the employer – employee relationship thereby established. The meaning of each provision may be coloured or affected by other provisions of the agreement and no clause thereof can be considered as standing alone.

8.4 Implementation of the Agreements

Methods of Implementation

In some countries the implementation and supervision of collective agreements depend on the good faith of the parties, and their provisions cannot be enforced by action at law. This is the position, for example in the United Kingdom, it is assumed that the working condition agreed upon collectively by the employers and trade unions will be observed by the individual employees and the workers, who will conclude individual contracts in accordance with the terms of the process.

It should be remembered that when a trade union and an employer's organization agree, for example, that a certain wage shall be paid for a certain job, neither the unions nor the employer's organization is actually employing workers on that job. The actual contract of employment is concluded between individual employers and individual workers.

Under the British system, there is usually no legal impediment to their concluding contracts providing for lower standards of remuneration than those fixed in the collective bargaining; an action cannot be considered by the courts merely because its terms are less favorable than the terms of such an agreement. Only if the individual contract is violated can it be enforced by the legal process.

The essential remedy for failure to observe the terms of a collective agreement by an employer belonging to an organization which is a party to the agreement is pressure by this organization and trade union concerned. In the last resort the union could use its economic power by calling a strike at the plant to secure enforcement.

In a great many other countries where the effects of collective agreements are regulated by special legislation, the provisions of collective agreements are automatically applicable to the employment relationships of all individuals covered by them. In these cases observance of a collective agreement may therefore be secured through action for

damages in the courts wherever there has been a breach of the contract. Such actions can be brought either by an organization in the event of violation by another organization which is a party to the agreement, or by one of its members, to secure damages either for itself or for a member. Where this system exist the law often prohibits, during the validity of an agreement, strikes or lockouts intended either to enforce or to modify its terms.

Interpretation of Agreements

Once collective bargaining has resulted in an agreement, the provisions of the latter are regarded as part of each contract of employment, whether written or implied, between an employer who is a party to the agreement and each worker in his employ in the occupations represented by the trade union or unions.

Many agreements contain clauses specifying the procedure to be adopted if disputes arise over the interpretation. These may provide that the dispute shall be submitted to a joint meeting of the representatives of the parties. Often, too, there are clauses providing that there shall be no strike or lockout over the question of interpretation until the procedure established for reaching agreement on interpretation has been followed without success.

In other countries disputes over the interpretation of the collective agreements are settled by special labour courts. Such disputes are as a rule more easily settled than those which occur in the negotiations of new agreements, when much more important issues are at stake; and they are of a different character.

8.5 Administration of the Agreements

In the administration of the agreement, both parties, viz, the management and the union, have to play their respective roles. It would be a mistake to assume that the sole responsibility of the agreement administration rests with the employer. There can be denial of the fact, however, that agreement administration requires a major and more active role on the part of the management than on the part of the union. The agreement embodies a number of issues which are of complex nature. Such complex issues cannot be left for self administration.

Experience has shown that during negotiations many problems escape attention of the parties inadvertently; the reason being that collective bargaining cannot be as perfect as mathematical calculations. Moreover, many novel situations arise or develop which could not possibly have been conceived at the time of entering into the agreement. These problems within the framework of the agreement and without letting its balance tilt too much in favor of either party. This is definitely not an easy task.

With a view to making administration of the agreement smooth and easy, it should be the duties of both the parties to educate the line managers and the rank and file of workers on the meaning and interpretation of each clause of the agreement. There is a need for extensive and effective communication in this behalf. Various methods such as, house – magazines, bulletins, meetings and conferences are considered to be important media to interpret the agreement. Since detailed commentaries are usually avoided in the text of the agreement, the administration thereof is the proper time when detailed commentaries tend to serve a useful purpose. Proper care need, however, be exercised to ensure that no

conflict arises while giving interpretations and making commentaries on agreement clauses by the parties concerned.

The process of negotiations does not end with the fruition of the agreement but is continued thereafter. The administration of negotiated agreement is a vital link in the chain of this process. A number of day to day problems crop up which have no direct bearing on the agreement. Such problems may require even longer time to negotiate than did the collective bargaining agreement itself. Generally speaking, the management is not inclined to enter into negotiations on these problems. The employer considers that conclusion of the agreement is the be-all-and-end-all of labor problems during its tenure. This attitude is not correct in the situation of collective bargaining. It must be borne in mind that the agreement is negotiated with the basic objective of providing satisfactory cooperation of both the parties as a continuous process at all stages of negotiations and the same objective should pervade the administration of the agreement. The handling of grievances is a part of agreement administration. The administration of the agreement enjoins upon the parties that the grievances are handled promptly and satisfactorily so that these are not allowed to accumulate and later emerge in the shape of a major dispute.

If the grievances defy satisfactory solution or settlement the deficiency lies in the agreement administration rather than in the agreement itself. Except minor grievances of transitory character, it is necessary to put all grievances on record so that their examination is conducted in a proper and systematic manner. Such recording also helps in the preparation of further negotiations between the parties.

Due to dynamic character of labor management relationship, occasions may arise necessitating adjustments and modifications in the agreement by mutual consent. While such actions form an integral part of agreement administration, the authorities on the subject have strongly advocated that such adjustments and modifications should not be effected without prior consultation with shop stewards and line managers in whose area the problem originated. Their participation is deemed absolutely necessary as they are not only directly involved but also have to carry out the compromises to workable implementation. Any attempt to ignore this important link is fraught with difficulties, is tantamount to give rise to avoidable resentment and violates an important principle of agreement administration. A collective agreement is an agreement reached between a union and an employer, typically as a result of collective bargaining. The majority of collective agreements are reached on a voluntary basis with the employer agreeing to recognise either one or more trade unions for collective bargaining purposes. A collective agreement is not usually enforceable as a matter of law and is usually concluded in a climate of co-operation between the parties.

A collective bargaining agreement may be incorporated into individual contracts of employment of the workers covered and thus assume contractual force indirectly. It is not usually enforceable as a matter of law and is usually concluded in a climate of co-operation between the parties and may be incorporated into individual contracts of employment of the workers covered and thus assume contractual force indirectly.

8.6 Grievance

Grievance may be any genuine or imaginary feeling of dissatisfaction or injustice which an employee experiences about his job and its nature, about the management policies and procedures. It must be expressed by the employee and brought to the notice of the management and the organization. Grievances take the form of collective disputes when they are not resolved. Also they will then lower the morale and efficiency of the employees. Unattended grievances result in frustration, dissatisfaction, low productivity, lack of interest in work, absenteeism, etc. In short, grievance arises when employees' expectations are not fulfilled from the organization as a result of which a feeling of discontentment and dissatisfaction arises. This dissatisfaction must crop up from employment issues and not from personal issues.

A complaint is a spoken or written dissatisfaction, which is brought to the notice of the management or trade union representatives. A grievance, on the other hand, is simply a complaint which has been ignored, over-ridden or, in the employee's opinion, dismissed without consideration; and the employees feel that an injustice has been done, particularly when the complaint was presented in written to a management representative or to a trade union official.

The **International Labour Organisation (ILO)** defines a grievance as "A complaint of one or more workers in respect of wages, allowances, conditions of work and interpretation of service stipulations, covering such areas as overtime, leave, transfer, promotion, seniority, job assignment and termination of service".

In the opinion of the **National Commission on Labour**, "Complaint affecting one or more individual workers in respect of wage payments, overtime, leave, transfer, promotion, seniority, work assignment and discharges constitute grievances."

Dale Yoder, defines it as "a written complaint, written by an employee and claming unfair treatment."

Keith Davis, defines it as "any real or imagined feeling of personal injustice which an employee has concerning his employment relationship".

According to **Jucius,** "A grievance is any discontent or dissatisfaction, whether expressed or not, whether valid or not, arising out of anything connected with the company which an employee thinks believes or even feels to be unfair, unjust or inequitable.

Pigors or Myers observe that the three terms – dissatisfaction, compliant and grievance – indicate clearly the nature of dissatisfaction. According to them, dissatisfaction is anything that disturbs and employee, whether he expresses it in words or not.

Beach has defined a grievance as, "anything which an employee thinks or feel is wrong, and is generally accompanied by an actively disturbed feeling."

Flippo says: - " It (the grievance) is usually more formal in character than a complaint. It can be valid or ridiculous, and must grow out of something connected with company operations or policy. It must involve an interpretation or application of the provisions of the labour contract."

8.6.1 Sources of Grievances

An employee is dissatisfied and harbours a grievance when he feels that there has been an infringement of his rights, that his interests have been jeopardized. This sense of grievance generally arises out of misinterpretation or misapplication of company policies and practices.

Calhoon observes: "Grievances exist in the mind of individuals, are produced and dissipated by situations, are fostered or healed by group pressures, are adjusted or made worse by supervisors, and are nourished or dissolved by the climate in the organization which is affected by all the above factors and by the management."

Bethel and others have given typical examples of workers grievances. These are:

(i) Concerning wages

- Demand for individual adjustment; the worker feels that he is underpaid;
- Complaints above incentives; piece rate are too low or too complicated;
- Mistakes in calculating the wages of a worker;

(ii) Concerning Supervision

- Complaints against discipline; the foreman picks on him; inadequate instructions given for job performance;
- Objection to having a particular foreman; the foreman playing favorite; the foreman ignores complaints;
- Objection to the manner in which the general methods of supervision are used: there are too many rules; regulations are not clearly posted; supervisors indulge in a great deal of snooping.

(iii) Concerning Individual Advancement

- Complaint that the employee's record of continuous service has been unfairly broken;
- Complaint that the claims of senior person have been ignored; that seriously has been wrongly determined; that younger workers have been promoted ahead of older and more experiences employees;
- Charges are made that disciplinary discharge or lay-off has been unfair; that the penalty is too severe for the offence that is supposed to have been committed that the company wanted to get rid of the employee; hence the charges against him.

(iv) General Working Conditions

- Complaint about toilet facilities been adequate; about inadequate and/or dirty lunch rooms;
- Complaint about working conditions; dampness, noise, fumes and other unpleasant or unsafe conditions, which can be easily corrected; overtime is unnecessary; an employee loses too much time because materials are not supplied to him in time.

(v) Collective Bargaining

- The management is attempting to undermine the trade union and the workers who belong to that union; the contract with labour has been violated; the company does not deal effectively or expeditiously with union grievances;
- The management does not allow the supervisors to deal with, and settle the grievances of the employees;
- The management disregards the precedents and agreements already arrived at with the workers and/or their trade union.

It should be noted here that there is no single factor which causes a grievance; many factors combine to generate a grievance; and both employers and employee have grievances – the one against the other.

The management, too, have grievances against it employees. These concern:

1. Indiscipline;
2. Go slow tactics;
3. Non-fulfillment of the terms of the contract signed between the management and the workers of their trade union;
4. Failure of the trade union to live up to its promises to its management;

If good morale and a code of discipline are to be maintained, it is essential that the grievance procedure is worked honestly and without prejudice, failing which there is likely to be an explosion, and production schedule would be shattered and the morale of the employees would be irretrievably impaired. According to Mangrulkar, the grievance, procedure is essential because it brings uniformity in the handling of grievances." It gives confidence to the worker, for if he does not get a fair deal, he knows what to do and whom to approach to ensure that he does get justice. It also gives him confidence that "his complaint will be investigated and a decision given in a reasonable period of time."

8.6.2 Importance of Grievance Handling Procedure

The adoption of the grievance handling procedure is essential for a variety of reasons. For example, most grievances seriously disturb the employees. This may affect their morale, productivity and their willingness to be co-operative with the organization. If an explosive situation develops, this can be promptly attended to if a grievance handling procedure is already in existence.

1. It is not possible that all the complaint of the employees would be settled by first line supervisor, for these supervisors may not have had a proper training for the purpose, and they may lack authority. Moreover, there may be personality conflict and other causes as well.
2. It *serves as a check on the arbitrary action* of the management because supervisors know that employees are likely to see to it that their protest does reach the higher management.

3. It *serves as an outlet for employee gripes, discontent and frustrations*. It acts like a pressure valve on a steam boiler. The employees are entitled to legislative, executive and judicial protection and they get this protection from the grievance redressal procedure, which also acts as a means of upward communications. The top management becomes increasingly aware of employee problems, expectations and frustration. It becomes sensitive to their needs, and cares their well being. This is why the management, while formulating plans that might affect the employees – for example, plant expansion or modification the installation of labour saving devices and so on, should take into consideration the impact that such plans might have on the employees.
4. The management has complete authority to operate the business as it sees first-subject, of course, to its legal and moral obligation and the contracts it has entered into with its workers or their or their representative trade unions. But if the trade union or the employees do not like the way the management functions, they can submit their grievances in accordance with the procedure laid down far that purpose.

A well designed and a proper grievance procedure provides:

1. A channel or avenue by which any aggrieved employee may present his grievance.
2. A procedure which ensures that there will be a systematic handling of every grievance.
3. A method by which an aggrieved employee can relieve his feelings of dissatisfaction with his job, working conditions or with the management and

A means of ensuring that there is some measure of promptness in the handling of the grievances.

The manager should immediately identify all grievances and must take appropriate steps to eliminate the causes of such grievances so that the employees remain loyal and committed to their work. Effective grievance management is an essential part of personnel management. The managers should adopt the following approach to manage grievance effectively-

1. **Quick Action-** As soon as the grievance arises, it should be identified and resolved. Training must be given to the managers to effectively and timely manage a grievance. This will lower the detrimental effects of grievance on the employees and their performance.
2. **Acknowledging Grievance-** The manager must acknowledge the grievance put forward by the employee as manifestation of true and real feelings of the employees. Acknowledgement by the manager implies that the manager is eager to look into the complaint impartially and without any bias. This will create a conducive work environment with instances of grievance reduced.
3. **Gathering Facts-** The managers should gather appropriate and sufficient facts explaining the grievance's nature. A record of such facts must be maintained so that these can be used in later stage of grievance redressal.

4. **Examining the Causes of Grievance-** The actual cause of grievance should be identified. Accordingly remedial actions should be taken to prevent repetition of the grievance.
5. **Decision Making-** After identifying the causes of grievance, alternative course of actions should be thought of to manage the grievance. The effect of each course of action on the existing and future management policies and procedure should be analyzed and accordingly decision should be taken by the manager.
6. **Execution and Review-** The manager should execute the decision quickly, ignoring the fact, that it may or may not hurt the employees concerned. After implementing the decision, a follow-up must be there to ensure that the grievance has been resolved completely and adequately.

8.6.3 Benefits of Grievance Handling Procedure

Benefits of grievance handling procedure are as follows :

The grievance handling procedure provides a means for identifying practices, procedures, and administrative policies that are causing employee complaints so that changes can be considered.

- They reduce costly employment suits.
- A grievance procedure allows managers to establish a uniform labour policy.
- A grievance system can be a reliable mechanism to learn of, and resolve employee dissatisfaction. It can produce early settlements to disputes or provide for correction of contested employment issues.

8.7 Grievance Management System

The grievance management system facilitates the management and the union with an institutional mechanism for disposal of complaints and charges of contract violation in an orderly and equitable manner. It provides a peaceful mechanism of resolving misunderstandings, permits enforcement of the contract, and minimizes the use of strikes and lock outs. Grievance procedure is crucial in vitalizing the agreement through the daily process of contract administration.

The main features of the effective grievance management system are as follows :

- Involvement Factor - The purpose of grievance management is to provide workers with a nonthreatening environment for filing complaints within the organization. To be truly effective, the program must provide a way for workers to share their grievances with an unbiased individual who is capable of maintaining objectivity throughout the grievance process. The system also must include a dispute resolution component consisting of a variety of alternatives including mediation, peer review panels and various other dispute resolution techniques.
- Controls the need for Arbitration - Additionally, "any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration." An effective grievance management system will keep complaints from rising to a level where legal action is necessary.

- Clearly Defined - An effective grievance management system is one that is clearly defined, with policies written in plain terms that are easily understandable by workers at all levels. The system must set specific time lines for reporting and addressing grievances. It also must outline a specific appeals procedure for workers who are unsatisfied with the outcome of disciplinary action taken by the employer.

Just because an action is legal, that doesn't necessarily make it ethical. It is not enough to simply ensure work policies are legal. Even though a particular instance of perceived unfair treatment might not stem from an illegal action, it will still have a negative impact on the employee. For example, a manager who consistently bullies a particular employee might not be breaking any laws, but her actions will have a negative effect on that person as well as the individual's coworkers. Perhaps the best way to prevent grievances from becoming an issue in the first place is to address employee perceptions of what is or is not fair and ethical treatment.

8.7.1 Grievance Handling Procedure in Indian Industry

The 15th session of Indian Labor Conference held in 1957 emphasized the need of an established grievance procedure for the country which would be acceptable to unions as well as to management. In the 16th session of Indian Labor Conference, a model for grievance procedure was drawn up. This model helps in creation of grievance machinery. According to it, workers' representatives are to be elected for a department or their union is to nominate them. Management has to specify the persons in each department who are to be approached first and the departmental heads who are supposed to be approached in the second step.

The Model Grievance Procedure in the figure 8.1 specifies the details of all the steps that are to be followed while redressing grievances. These steps are:

- **STEP 1:** In the first step the grievance is to be submitted to departmental representative, who is a representative of management. He has to give his answer within 48 hours.
- **STEP 2:** If the departmental representative fails to provide a solution, the aggrieved employee can take his grievance to head of the department, who has to give his decision within 3 days.
- **STEP 3:** If the aggrieved employee is not satisfied with the decision of departmental head, he can take the grievance to Grievance Committee. The Grievance Committee makes its recommendations to the manager within 7 days in the form of a report. The final decision of the management on the report of Grievance Committee must be communicated to the aggrieved employee within three days of the receipt of report. An appeal for revision of final decision can be made by the worker if he is not satisfied with it. The management must communicate its decision to the worker within 7 days.
- **STEP 4:** If the grievance still remains unsettled, the case may be referred to voluntary arbitration.

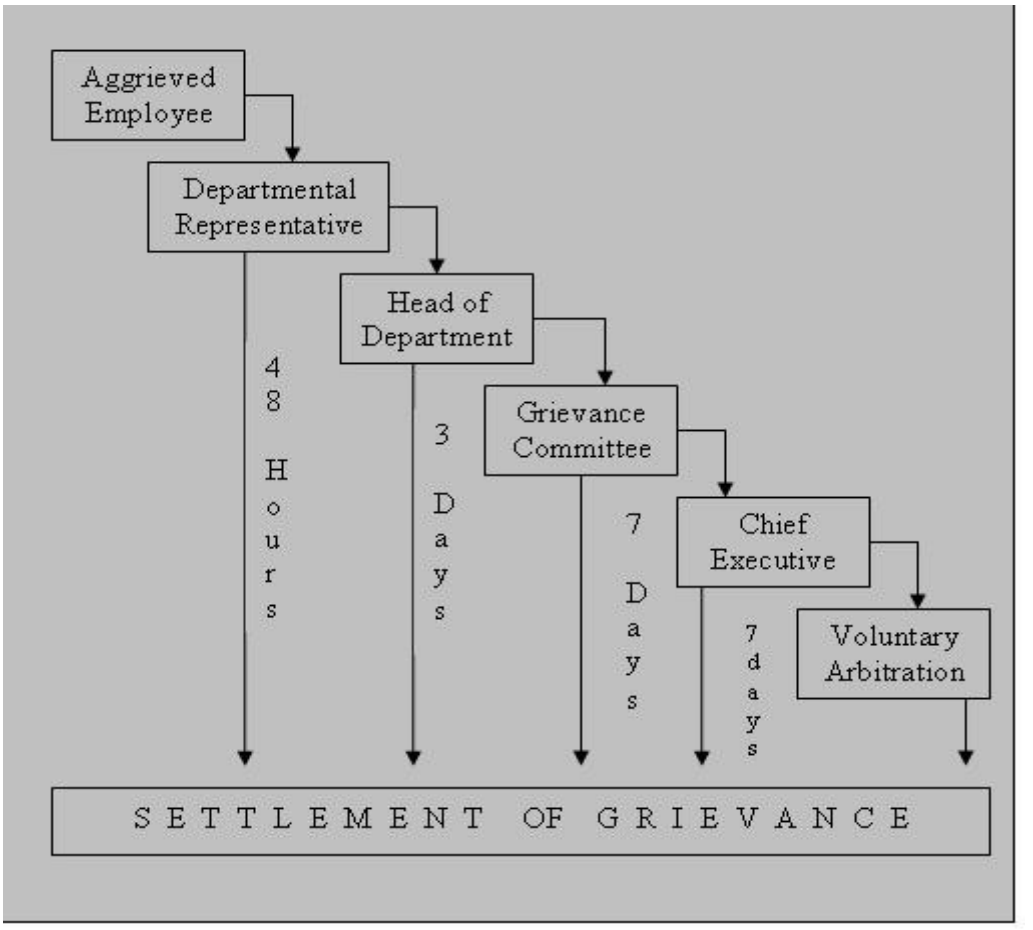

Figure 8.1 – Grievance Handling Procedure

8.8 Case Study

RAM AVATAR works as a helper in the Machine shop of a large engineering company. His work involves loading machines, arranging materials and also cleaning the machines. Recently Ram Avatar has noticed that he is required to spend much more time cleaning machines than the other helpers. Since this is the least pleasant and lowest -status of all his tasks, he thinks it is unfair that he should have to do so much of it. When Ram Avatar discusses his problems with the supervisor, Sharma, he is told that job assignments are arranged in order to use the workforce more efficiently. All helpers are hired with the understanding that they will be doing one or all of the tasks noted above. Sharma feels that some of the other men are more skilled in handling the material and feeding machines. So it seems a better use of manpower to have Ram Avatar spend more of his time cleaning machines.

Dissatisfied by Sharma's answer, Ram Avatar considers calling in the union for help. He hesitates for a while; for fear that such a step may annoy his supervisor and win him the reputation of troublemaker. Then he decides that, after all, help is what he pays dues for. So Ram Avatar talks to the union representative for the machine shop, who happens to work in an adjacent building. The representative discusses the problem with Sharma and

reports back to Ram Avatar the next day. Sharma refuses to do anything. He says it's his job to make decisions like this one, and he is not trying to discriminate against you. I'm not satisfied with his answer; I'll see the General Secretary tonight at the union meeting and see what he says."The representative goes to the General Secretary and describes the case.

Here is the General Secretary's reaction: "This is not a simple case; we have to be careful. In the first place we have to consider the reaction of the other men in the department. Ram Avatar is the newest employee; they may get pretty sore if more of this cleaning work is thrown at them. Secondly, the whole thing may back fire. Our present agreement is weak on this point. Here is actually nothing to prevent the company from changing a man's work, and if they start giving him a lot of the dirty jobs if they want to be meaning about it, they might be able to justify paying him less money since his work may now be less skilled than before.

But only chance to win would be if we could show that the supervisor was doing this to Ram Avatar because he didn't like him. That would be covered by clause 14. Discuss it with Ram Avatar, and if he has some evidence on this, get him to sign a grievance."Ram Avatar agrees to sign the formal grievance papers charging Sharma with discrimination .He notes on the printed form that his assignment to excessive clearing duties followed an argument with Sharma over new uniforms. "When I complained that my uniform (supplied by the company) was too torn, Sharma said I was always complaining and ought to have something to really complain about for a change". The grievance is also signed by the representative the supervisor himself signs it, but only after adding this note: Grievance refused- employee has not been discriminated against."

Then in the General Secretary sends the grievance to the plant manager, asking for an appointment to talk over the matter. After the manager receives the grievance, he calls in the supervisor, Sharma to get his version of the case. He also checks with the GM – Personnel to see whether similar cases have established precedents in this area that would affect the settlement. The manager is at first concerned that this might be a cause for discrimination. The company has a firm policy that no supervisor is to allow personal feelings to enter into personnel decisions. Having satisfied himself that Sharma was right, the manager feels that he cannot grant the grievance. To do so would be to open the door to a stream of union challenges of work assignments. The manager tells the General Secretary that even though a man may feel he is getting more than his share of unpleasant jobs, it is up to the supervisor to make such decisions in accordance with his own work requirements and the available manpower. So while he will concern Sharma to make sure such assignments are dictated by work needs and not by his personal feelings towards particular employees, the grievance will have to be refused. The manager's answer to the grievance is, "No agreement violation, supervisor was acting within normal management prerogative."

Q1. Does Ram Avatar have a grievance?

Q2. Why does the union think that it is a weak case?

Q3. Explain the way the supervisor has handled the case?

Q4. If you were the supervisor, how would you have handled the case ?

8.9 Summary

A collective agreement is not usually enforceable as a matter of law and is usually concluded in a climate of co-operation between the parties.A collective agreement may be incorporated into individual contracts of employment of the workers covered and thus assume contractual force indirectly. The day-to-day administration of the labour/management agreements plays an integral and significant part in the broad collective bargaining process. The grievance process in particular, along with any joint problem-solving committees, is the focal point for union-management relationships during the period between the signing of a contract and the time for its renegotiation. The principle of extension of collective agreements to cover employers and employees not parties to, or covered by, such agreements, is embodied in some labour law systems. The issue can arise only where negotiations are above the level of the enterprise, but can nevertheless be undesirable from several points of view. In a trade union, a grievance is a complaint filed by an employee which may be resolved by procedures provided for in a collective agreement or by mechanisms established by an employer. Such a grievance may arise from a violation of the collective bargaining agreement or violations of the law, such as workplace safety regulations. All employees have the contractual right to raise a grievance.

8.10 Self Assessment Questions

1. What management rights are usually included in collective agreements?
2. The management takes efforts to dispose off all grievances procedurally with a view to ensure justice and satisfaction to the employees. Do you agree with this statement?
3. Define grievance. Explain the grievance procedure.
4. Explain the main sources of grievance.
5. Is it possible for an employer to voluntarily apply a collective agreement that does not apply to his/her business? Then, how to prove this voluntary enforcement?

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ANNEXURE

Collective Bargaining Agreements

Coverage

Most Cos. specify the type of employees covered in each agreement which is specified as coverage.

1. Hoechst India Ltd. signed 2 separate agreements at same time – (a) for permanent workmen of its HO, Bombay Branch & factory at Mulund, (b) for its permanent Medical Representatives at its different centers all over country
2. Philips signed separate agreements for its different regions – in 1997, there was demands in Calcutta region for parity with other regions, esp. Bombay & Pune where wages were higher – to a great extent, State Govt. pressure on the unions helped Phillips to reach an agreement
3. Atlas Copco (India) Ltd. covered all its permanent staff & permanent workmen at all locations but belonging to employees' federation

Location

Most Cos. specify the location covered in each agreement.

1. Some Cos. specify a particular location / specially exclude certain groups from coverage – like Chemicals & Fibres (CAFI) agreement of 1983 covered all permanent workmen but excluded casuals, temp. parttimers, trainees.
2. Siemens signed separate agreements with its service staff, specified as cleaners, sweepers, vendors, peons, watchmen, cooks, drivers.
3. Some Cos. separate agreements for each of their estts. – Dunlop Tyre had separate agreements for its Sahaganj Unit in Hooghly distt. of West Bengal & its other units.
4. Many PSUs include all employees in coverage of their agreements – name of unions rep empls. at Bombay to Baroda to Ankleshwar to Dehra Dun to Calcutta to Sibsagar, appeared in the agreement signed by the ONGC & similarly NALCO.

Duration

Most Cos. specify the duration in each agreement. For eg.1970s & 80s – signed for 2 to 3 yrs – gave mgmt. less elbow room (gap too short), whereas, Late 80s & 90s – stretched out to 4 to 5 yrs. – assured longer pd. of certainty to mgmt.

Other Instances

- Tamil Nadu Electricity Board (TNEB) signed 5 yrs. agreement in 1979 – departure from the usual, but the advantages of the longer duration were nullified by the signing of several supplementary agreements on billing systems ultimately TNEB ended up with 50 agreements in 28 yrs.
- Garden Reach Shipbuilders Engineers (GRSE) signed 6 yrs. agreement with 4 unions in Jan 2000, agreement was long-pending & became effective from 1996 up to 2002.
- Bata India concluded an agreement for 3 yrs. It gained 2 yrs. since the negotiations during earlier attempts broke off midway agreements concluded in 2002 (Jan) with current effect & provided only lump sum arrears payment.
- For several Cos. – stretch out the negotiation itself to 2 yrs., thereby gaining at least a yr. at the old rates of pay (agreement expired in 2006 & bargaining began only in mid of 2007 & was signed in early 2008 w.e.f Jan 2008; here mgmt. paid old wage rates for 2007). NALCO, BALCO & Bayer (Pharma) made actual duration vague by making the negotiations began with IR consultant rather than Co. officials.

Some Collective Bargaining Cases

- **Collective Bargaining Agent – Power Grid Corporation**

  PGC has signed an agreement with multiple unions to constitute a single bargaining council. Several other PSUs are known to follow a similar course of action to deal with multiplicity of unions & provide for proportional representation to diff. unions

- **Modernization – Danon (French Food Co.)**

  Textbook type model agreement which many considers a showpiece document – Discusses the scope & method of tech. change & modernization in the co. & how the interests of affected employees could be taken care of through consultation, retraining, etc., • Modernization & Ancillarization – Mico – Agreement provides for modernization & ancillarization which spells out which products will be ancillarized & how the interests of affected employees will be taken care of – there were hardly any problems in implementing the agreement

- **Computerization in Banks - Indian Banks Association**

  Agreements provide for a phased intro. of computerization in 56 banks. Subsequently there have been agreements at the individual bank level also providing for additional benefits. Irony of this agreement – while it allows the banks to introduce computerization, including automatic teller machines & networking & reconciliation of A/cs, the actual implementation has been tardier due to the bank mgmts.' own shortcomings rather than union resistance per se.

- **Agreement for revival of sick PSU – Indian Drugs & Pharmaceuticals Ltd. (IDPL)**

  IDPL set up in PS with collaboration of erstwhile USSR – contributed significantly to production & supply of bulk drugs at affordable prices. Over the yrs., Co. became sick & unviable for variety of reasons & in the wake of govt. policy to gradually withdraw subsidies to PSEs & divest its shareholding in them, IDPL was declared sick. IDPL case came up for discussion before the Special Tripartite Committee set up by the Govt. in 1991 – need to revive Co. was underlined in view of the importance of supplying life-saving drugs at affordable prices. 30/12/1993 – TUs & Mgmt. came to an agreement to revive the unit in Gurgaon & Madras – Revival Agreement provides for upward revision of work norms, wage revision & postponement of certain facilities & allowance till units becomes viable. But, Revival Scheme got stuck at the implementation stage for want of funds to modernize unit & meet operational expenses – with each passing day, IDPL's sickness became more acute & revival even more costly & difficult. Problem with negotiated settlements for revival, particularly in PSU is the lack of perspective about the implementation of the plant.

Unit - 9 : Adjudication

Structure of Unit

9.0 Objectives

After completing this unit, you will be able to:

- Understand the meaning of adjudication
- Differentiate between arbitration and adjudication
- Know the types of adjudication
- Understand the system of adjudication

9.1 Introduction

The industrial disputes prevention machinery helps in averting situations of conflict between the management and the workers that might lead to a strike or a lock-out. The government also has a key role to play situations of conflict, but steps in only when the major players fail to maintain harmonious industrial relations. It provides the basic framework for industrial relations through its legislation. The industrial disputes prevention machinery helps in averting situations of conflict between the management and the workers that might lead to a strike or a lock-out. If collective bargaining fails, the other stages in conflict settlement are conciliation, arbitration and adjudication, in that order.

9.2 Conciliation

Conciliation is a process by which representatives of the workers and employers are brought together before a third party with a view to persuading them to arrive at an agreement by mutual discussion between them. The third party may be one individual or a group of people. The alternative name for the third party is mediators.

The Industrial Disputes Act, 1947 provides for the appointment of conciliators. Section 4 of the act states that the appropriate government shall appoint such number of personsas it thinks fit as concialiationofficers. The main duty of a concialiation officer shall be to mediate in and promote the settlement of industrial disputes. The other duties are:

1. To hold conciliatory proceedings;
2. To investigate the dispute;
3. To send a report and memorandum of settlement to the appropriate government
4. To send a full report to the appropriate government setting forth the steps taken, in case no settlement is arrived at.

The conciliation officer shall submit his or her report within 14 days from the date of commencement of the conciliation proceedings. The act prohibits a strike or lockout when the conciliation proceedings are in progress.

It may be stated that the conciliator has no power to force a settlement, but can work with the parties separately to determine their respective positions, explains a position more fully to the opposition, points out bases for agreement that may not have been apparent previously, helps in the search for solutions and generally facilitates the reach of an agreement. In effect , mediators act as communications catalyst, and their effectiveness depends on their impartiality and on their capacity to win the trust of both parties.

9.3 Arbitration

Arbitration has been used for many years to resolve employment disputes between an employer and a union. It is a procedure in which a neutral third party studies the bargaining situation, listens to both the parties and gathers information, and then make recommendations that are binding on the parties. Arbitration is effective as a means of resolving the disputes because it is :

1. Established by the parties themselves and the decision is acceptable to them
2. Relatively expeditions when compared to courts or tribunals. Delays the cut down and settlements are speeded up.
3. Arbitration has achieved a certain degree of success in resolving disputes between the labour and the management.

The labour generally takes initiative to go for arbitration. When the union so decides, it notifies the management. At this point, the union and the company must select an arbitrator.

Arbitrator: An arbitrator is a neutral person who is selected by the parties to resolve the dispute. The arbitrator typically has a background in the legal area surrounding the dispute.

Arbitration Hearing: An arbitration hearing is conducted by an arbitrator. The hearing is informal and the parties to the dispute (employer and employee) are allowed to state their case and present witnesses and evidence at the hearing. The arbitrator makes a decision (award) based on the testimony and evidence presented at the hearing.

Arbitrator's Award: An arbitrator's award is the written decision the arbitrator gives to the parties in dispute after conducting the arbitration hearing. The arbitrator must take all of the evidence into consideration that was presented at the hearing before writing the award. The award is to be decided in accordance with the law and the facts of the case. The award is final and binding on the parties in dispute.

9.4 Adjudication

Adjudication utilizes a neutral third party to hear a dispute between parties. The hearing is informal and the parties mutually select the arbitrator. The arbitrator is retained to decide how to settle the dispute and the decision is final and binding on the parties. Arbitration is more cost efficient and quicker than litigation but it is the arbitrator, not the parties, who renders the terms and conditions of the dispute resolution.

Adjudication is the legal process by which mandatory settlement of an industrial dispute by a labour court. Generally, the government refers a dispute for adjudication depending on the failure of the conciliation proceedings. Section 10 of the Industrial Disputes Act, 1947 provides for reference of a dispute to labour court or tribunal.

Disputes are generally referred adjudication on the recommendation of the conciliation officer who had dealt with them earlier. However, the government has discretionary powers to accept or reject recommendations of the conciliation officer.

By and large, the ultimate remedy of unsettled dispute is by way of reference by the appropriate government to the adjudicatory machinery for adjudication. The adjudicatory authority resolves the Industrial Dispute referred to it by passing an award, which is binding on the parties to such reference. There is no provision for appeal against such awards and the same can only be challenged by way of writ under Articles 226 and 227 of the Constitution of India before the concerned High Court or before the Supreme Court by way of appeal under special leave under Article 136 of the Constitution of India. The parties are obliged to comply with the decision of the adjudicator, even if they intend to pursue court or arbitration proceedings

The adjudication process begins when the party referring the dispute to adjudication gives written notice of its intention to do so. Notice of Adjudication should briefly set out the following:

- a description of the nature of the dispute and the parties involved;
- details of where and when the dispute arose;
- the nature of the remedy being sought;
- names and addresses of the parties to the contract, including addresses where documents may be served.

The Notice of Adjudication is the first formal step in the adjudication procedure. The process is very similar to a fast track arbitral hearing with strict time limits imposed on submissions and cross questioning.

The adjudicator is given the authority by the parties to a dispute (or by Statute if applicable) to make a determination which is immediately enforceable, subject to the terms of the award. Typically the losing party is ordered to pay the winning party a sum of money within a specific period of time. The settlement of the dispute at an early stage enables the parties to get on with business.

9.4.1 Types of Adjudication

When the government gets a report of the failure of conciliation proceedings, it has to decide whether it would be appropriate to refer the dispute to arbitration. The reference of dispute to adjudication is at the discretion of the government. Further on this basis there are two types of adjudication (Section 10a of Industrial Dispute Act, 1947) -

- Voluntary adjudication
- Compulsory adjudication

Voluntary adjudication: When both parties, of their own accord, agree to refer the dispute to adjudication, it is obligatory on the part of the government to make a reference. When a reference to adjudication is made by the parties, it is called Voluntary Adjudication

Compulsory adjudication: On the other hand, when reference is made to adjudication by the government without the consent of either or both the parties to the dispute, it is known as Compulsory Adjudication.

9.4.2 Advantages of Adjudication

1. **Statutory right** – Adjudication will apply even if the contract does not provide for it
2. **Reputation** – As the proceedings are conducted in private the dispute can be resolved without being heard in open court thus protecting the reputation of the parties;
3. **Costs** – Obtaining a judgment by way of adjudication will, in the majority of cases, be a fraction of the cost of pursing a judgment through the courts;
4. **Speed** – An impartial decision can normally be obtained with a number of weeks whereas a case commenced in the courts can take months or, in some cases, years to conclude
5. **Flexible procedure** – The parties may, on agreement, extend the time limits for response depending on the complexity or volume of material to be considered.
6. **Written reasoning** – The adjudicator may provide written reasoning for his decision.
7. **Final decision** – The decision of an adjudicator is normally binding unless appealed to Arbitration or Litigation.

9.4.3 Disadvantages of Adjudiacation

1. **Rough justice** – Given the tight time constraints adjudication can sometimes be seen be rough justice as the responding party may only have a matter of 2-3 weeks to prepare a defence to the claim brought against them

2. **Legal costs** – Unlike the court, the adjudicator may not have the power to order the losing party to pay the winner's legal costs**.**

9.5 Three Tier system of Adjudication

If despite efforts of the conciliation officer, no settlement is arrived at between employer and the workman, the Industrial Dispute provides for a three tier system of adjudication viz…

- Labour Courts ,
- Industrial Tribunals and
- National Tribunals under section, 7, 7A and under section 7B respectively.
  The Labour Courts adjudicate upon disputes listed in Schedule II of the Act.
  The Industrial Tribunals adjudicate upon disputes listed in Schedule II or III of the Act.
- The National Tribunals adjudicate upon disputes which are of national importance, or when the dispute is of such a nature as to affect industrial establishments situated in more than one state.

9.5.1 Labour Courts

Labour Courts Constitution : A labour court shall consist of one person only, who: (a) Is or has been a judge of a High Court; or (b) Has been, for a period of not less than 3 years, a District Judge; or (c) Has held any judicial office in India for not less than 7 years. No person shall be appointed or continue in the office of the labour court if he is not an independent person, or if he has attained the age of 65.

The **duties** of the labour court are:

(i) To hold adjudication proceedings expeditiously; and
(ii) Submit its award to the appropriate government as soon as practicable on the conclusion of the proceedings.

Jurisdiction: The jurisdiction of labour courts extends to the adjudication of the following disputes relating to matters specified in the Second Schedule:

Discharge or dismissal of workers, including reinstatement of, or grant of relief to, workers wrongfully dismissed. Withdrawal of any customary concession or privilege. Illegality or otherwise of a strike or lockout. All matters other than those specified in the Third Schedule of the Act (i.e., those matters which are within the jurisdiction of industrial tribunals).

Powers: The labour court has no power whatever except those powers which can be traced to a Statute, to a statutory rule or a statutory instrument. It has no supervisory jurisdiction, i.e., it cannot act as a guardian of an industrial establishment'.

Courts have been empowered to decide disputes relating to matters specified in the Second Schedule. These matters are concerned with the rights of workers, such as propriety of legality of an order passed by an employer under the standing orders, application and interpretation of standing orders, discharge or dismissal of workman including reinstatement of grant of relief to workman wrongfully discharged or dismissed, withdrawal of any customary concession or privilege and illegality or otherwise of a strike or lockout.

9.5.2 Industrial Tribunal

The industrial tribunal are empowered to adjudicate on matters specified in both the Second and Third schedule i.e. both rights and interest disputes. The jurisdiction of the Industrial Tribunal is wider that the labour courts. The matters which are in the form of new demands and give rise to industrial disputes which affect the working of a company or industry are usually referred to an industrial tribunal. The industrial tribunal may be appointed for a limited period on an ad hoc basis or permanently.

Constitution: A tribunal shall consist of one or more persons, such as a) Are or have been judge(s) of a High Court; (b) Are or have been District Judge(s) for a period of not less than 3 years; (c) Hold or have held the office of the chairman or any other member of the Labour Appellate Tribunal or any tribunal for a period of not less than 2 years.

Although it is not a court, it has all the necessary attributes of a court of justice. It may create new obligations or modify contracts in the interest of industrial peace; protect legitimate trade union activities and prevent unfair practices and victimization. The tribunals are required to give awards based on circumstances peculiar to each dispute; and they are, to a large extent, free from restrictions of technical consideration or rules of evidence imposed on courts.

Jurisdiction: An industrial tribunal has a wider jurisdiction than labour courts. It has jurisdiction over any matter specified in the Second Schedule or Third Schedule. The jurisdiction covers the promotion of social justice, that is, fairness in the adjudication proceedings to all concerned parties.

Industrial disputes raised in regard to individual cases, that is, cases of dismissal, discharge or any other action of management on disciplinary grounds, may be referred for adjudication when the legality or correctness of such action is questioned, and in particular:

(a) If there is a case of victimization or unfair labour practice;

(b) If the Standing Orders in force or the principles of natural justice have not been followed; (c) If the conciliation machinery reports that injustice has been done to the worker.

Whenever an industrial dispute exists, or even where there is a mere apprehension that it will arise, the government may make a reference of the dispute for adjudication.

9.5.3 National Tribunal

In case of disputes which in the opinion of the Central Government involve question of national importance or is of such nature that workers in more than one State are likely to be affected. The Act provides for constitution of National Tribunals. Industrial adjudication has undoubtedly played a conclusive role in the settlement of industrial disputes and in improving the working and living conditions of labour class. In this context the National Commission of Labour observed :

(i) the adjudicating machinery has exercised considerable influence on several aspects of conditions of work and labour management relations.

(ii) Adjudication has been on of the instruments for the improvement of wages and working conditions and for securing allowances for maintaining real wages, bonus and introducing uniformity in benefits and amenities.

(iii) It has also helped to prevent many work stoppages.

9.6 Model Principles for Adjudication

All disputes ordinarily be referred to adjudication on request. Disputes may not, however, be ordinarily referred to adjudication:

(a) Unless efforts at conciliation have failed and there is no further scope for conciliation and the parties are not agreeable to arbitration;

(b) If there is a strike or lockout declared illegal by a court, or a strike or lockout resorted to without seeking settlement by means provided by law and without proper notice or in breach of the Code of Discipline as determined by the machinery set up for the purpose, unless such a strike or lockout, as the case may be, is called off;

(c) If the issues involved are such as have been the subject matter of recent judicial decisions or in respect of which an unduly long time has elapsed since the origin of the cause of action; and

(d) If in respect of demands, other legal remedies are available, that is, matters covered by the Factories Act, Workmen's Compensation Act, Minimum Wages Act, Payment of Wages Act, etc.

The Adjudicator is likely to be an expert first and foremost but may also be a qualified lawyer. This helps the process because the adjudicator will not need to hear or read large quantities of expert evidence to help him understand how the industry operates. This keeps time down to a minimum and avoids much unnecessary expense.

Hence arbitrators, judges, tribunal panels are all adjudicators. However, the Housing Grants, Construction and Regeneration Act 1996 introduced a specific form of adjudication, for the settlement of disputes between commercial parties to construction contracts. Adjudication has now started to become a term of art.

9.7 Summary

The system of adjudication is the most significant instrument of resolving disputes. It is the legal process by which an arbiter or judge reviews evidence and argumentation including legal reasoning set forth by opposing parties or litigants to come to a decision which determines rights and obligations between the parties involved. The great value of adjudication is that the parties quickly get a decision which enables them to get on with business and put the dispute behind them. Even if one of the parties decides to proceed further the parties have a firm basis upon which to proceed in the interim period. Prior to the introduction of construction adjudication it was common for building sites to grind to a halt until a dispute was settled. This is no longer the case. Projects are completed quickly and the industry has saved a great deal of money by avoiding unnecessary disruption.

9.8 Self Assessment Questions

1. Answer in 'Yes' or 'No'
   a) Adjudication favours the party who issues the notice and starts the procedure?
   b) Adjudication favours the respondent to the notice?
   c) Adjudication requires little staff involvement when putting the case together?
   d) Adjudication requires a lot of resources i.e. staff time to put a case together?
   e) Adjudication helps the subcontractor in terms of legal power over other dispute resolution systems?
2. Is Adjudication a good choice for Dispute Resolution?
3. Explain the three Tier system of adjudication
4. Define adjudication. Explain the types of adjudication.
5. Differentiate between arbitration and adjudication.

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Unit-10 : Cross-cultural Negotiation

Structure of unit

10.0 Objectives

After completing this unit you will be able to:

- Understand the concept of culture in context of negotiations
- Understand what makes international negotiations different
- Establish the relationship between culture and negotiation
- Understand the impact of culture on negotiation

10.1 Introduction

Culture profoundly influences how people think, communicate, and behave. It also affects the kinds of transactions they make and the way they negotiate them. All the negotiators have interests, priorities and strategies. These are affected by culture. Culture is the unique character of a social group, including the values and norms shared by members of the group and the group's social, economic, political and other institutions. Cultural values direct the attention of the negotiator to the issues that are more important and influence the negotiators' interests and priorities. Cultural norms define the behaviors that are appropriate and inappropriate in negotiation and influence the negotiators' strategies.

10.2 International Negotiations

Phatak and Habib Model suggests two overall contexts have an influence on international negotiations: the environmental context and the immediate context.

Environmental Context:

Salacuse identified six factors in the environment context that make international negotiations more challenging than domestic negotiations. However the seventh factor external stakeholders was defined by Phatak and Habib. These environmental factors can

constrain the operations of organizations that operate internationally but these factors that influence the negotiation are beyond the control of negotiators controls:

1. **Political and Legal Pluralism**

   Firms conducting business in different countries are working with different legal and political systems. Political considerations may enhance or detract from business negotiations in various countries at different times.

2. **International Economics**

   Exchange value of international currencies naturally fluctuates. The less stable the currency, the greater risk for both parties. Any change in the value of a currency can significantly affect the value of the agreement for both parties.

3. **Foreign Governments and Bureaucracies**

   Countries differ in the extent to which the government regulates industries and organisations.

4. **Instability**

   Instability may take many forms: lack of resources, shortages of other goods and services, and political instability. Challenge for international negotiators to anticipate changes accurately and with enough lead time to adjust for their consequences. Negotiators facing unstable circumstances should include clauses in their contracts that allow easy cancellation or neutral arbitration, and consider purchasing insurance policies to guarantee contract provisions.

5. **Ideology**

   Negotiators from other countries do not always share the same ideology. Clashes in ideology may lead to parties disagreeing at the most fundamental level about what is being negotiated.

6. **Culture**

   People from different cultures appear to negotiate differently. People from different cultures may also interpret the fundamental processes of negotiations differently.

7. **External Stakeholders**

   International negotiators can receive a great deal of promotion and guidance from their government via the trade section of their embassy, and from other business people via professional associations.

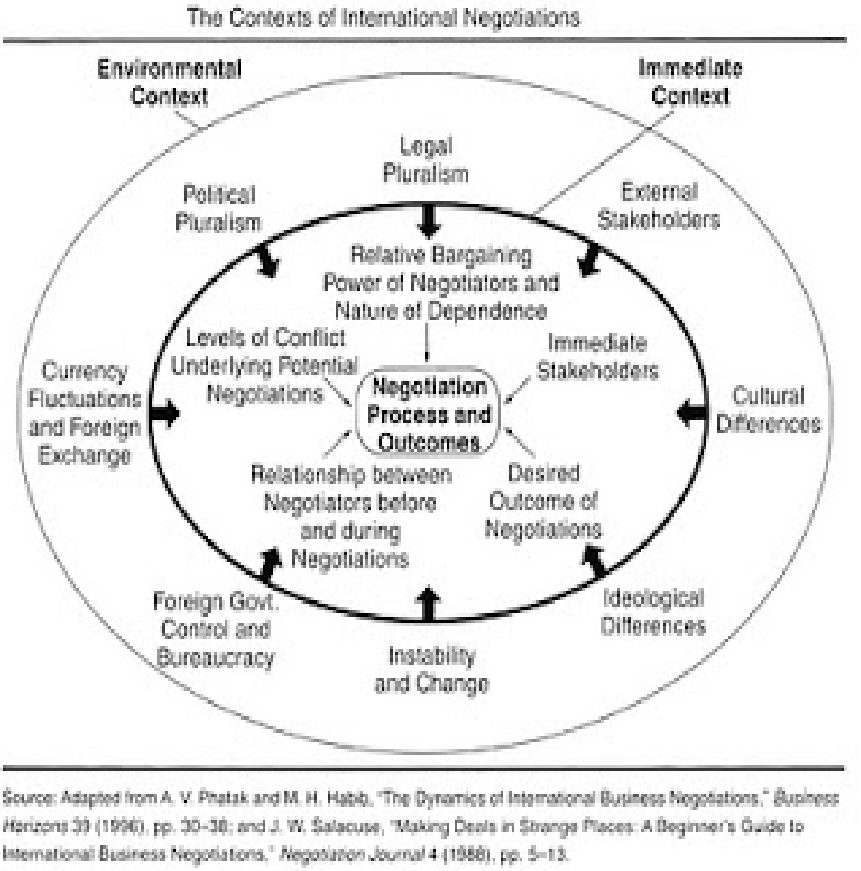

Figure 10.1 – The Contexts of International Negotiations

Immediate Context

It includes factors over which negotiators appear to have some control.

1. Relative Bargaining Power

Relative power has frequently been operationalized as the amount of equity that each side is willing to invest in the new venture. The presumption is that the party who invests more equity has more power in the negotiation and therefore will have more influence on the negotiation process and outcome.

2. Levels of Conflict

High conflict situations – those based on ethnicity, identity, or geography – are harder to resolve. Also important is the extent to which negotiators frame the negotiation differently or conceptualize what the negotiation concerns.

3. Relationship between Negotiators

Negotiations are part of a larger relationship between two parties. The history of relations between the parties will influence the current negotiation, just as the current negotiation will become part of any future negotiations between the parties.

4. Desired Outcomes

Tangible and intangible factors play a large role in determining the outcomes of international negotiations. Countries often use international negotiations to achieve both domestic and international political goals.

5. Immediate Stakeholders

Include the negotiators themselves as well as the people they directly represent. Skills, abilities, and international experience of the negotiator clearly can have a large impact on the process and outcome of international negotiations.

10.3 Dimensions of Cross-culture Differences

Cross cultural comparisons are made by finding the important norms and values that distinguish one culture from another and then understanding how these differences will influence international negotiation.

Four dimensions that describe the important differences among the cultures:

1. Individualism/Collectivism -

It is the extent to which the society is organized around individuals or the group.

Negotiators motivational orientations may also stem from their culture's values for individualism versus collectivism. This cultural value reflects a society's goal orientation. Individualist cultures emphasize self-interests.

2. Power Distance

Describes the "extent to which the less powerful members of organizations and institutions accept and expect that power is distributed unequally." Greater power distance will be more likely to concentrate decision making at the top. Negotiators from comparatively high power distance cultures may need to seek approval from their supervisors more frequently, and for more issues, leading to a slower negotiation process.

3. Career Success/Quality of Life

Cultures differed in the extent to which they held values that promoted career success or quality of life. Increases competitiveness when negotiators from career success cultures meet.

4. Uncertainty Avoidance

Indicates to what extent a culture programs its members to feel either uncomfortable or comfortable in unstructured situations.

10.4 Culture and Negotiation

When two parties negotiate, their actions are influenced by the culture they belong to Culture influences their:

(1) Interests and priorities

(2) Negotiation strategies

Interests are the needs or reasons underlying the negotiator's positions.

Priorities reflect the relative importance of various interests or positions.

A **negotiation strategy** is an integrated set of behaviours chosen because they are thought to be the means of accomplishing the goal of negotiating.

10.4.1 Effects of Culture on Interests and Priorities

Cultural values may reveal the interests of the negotiators. Negotiators from cultures that value tradition over change may be less enthusiastic about Economic Development. This was the situation in which Disney found itself after purchasing a large tract of land south of Paris to construct Euro Disney. Although Euro Disney promised jobs and economic development to an area that had high unemployment had few non-farm jobs for youth the local populace valued its traditional agricultural style. Euro Disney management with its American culture had difficulty reconciling the local population's preferences for tradition over development.

Negotiators from one culture expecting preferences to be compatible cannot understand the rationality of negotiators from another culture. It is generally unwise in negotiation to label the other party as irrational. Cultural differences in preferences may also act as cultural blinders.

10.4.2 Effect of Culture on Negotiation Strategies

When people negotiate, their behaviors are strategic and their strategies may be culturally based. Not only are there differences in strategic behavior between cultures, but also within cultures and overlap between the cultures. With the result, some members of a culture may negotiate less like their own cultural prototype and more like the prototype of the another culture.

Negotiation Strategies are linked with culture because cultures evolve norms to facilitate social interaction. Norms are functional because they reduce the number of choices a person has to make, about how to behave and how others in the culture will behave. Culture may also affect the strategies that the negotiators bring to the table – for example, the way they go about negotiating, whether they confront directly or indirectly, their motivations, and the way they use the information and influence.

Confrontation is a meeting between negotiators, either directly (face to face or electronically), or indirectly (via third party or non-verbal behavior). People from different cultures vary in their preferences for confrontation in negotiation. Western cultures are characterized by direct confrontation where as the Asian cultures by indirect confrontation.

Motivation is the factor or factors urging a person to act. It is all about negotiators' interests. Negotiators may be concerned about self-interests, about the interests of the other party at the table, or about the collective interests. The relative importance varies by culture. Western cultures prefer self-interests whereas the Asian cultures prefer collective interests.

Influence: Trying to produce a desired effects in another person, usually an attempt to obtain a concession. Power is the ability to influence the other party to accede to your wishes. Negotiators try to influence each other to make concessions by talking about their power.

Influence strategies may be direct or indirect. Direct influence strategies include persuasion, argument, substantiation and threats. Indirect influence strategies include appeals to sympathy, references to personal stakes in the negotiation and references to status. A direct influence strategy focuses on the other party's interests, whereas the indirect influence strategy focuses on you.

Information: It is the knowledge or intelligence that is communicated. Information is the currency of negotiation. Negotiated agreements are constructed from information. Negotiators want full information about the other party's interests and priorities and reservation price, but they do not want to reveal the same information about themselves.

Sharing information in negotiation makes a party vulnerable. When one shares information about one's own interests and priorities, the other party knows what one is willing to give up and what other must have. Negotiators can share information directly or indirectly. Direct information sharing could be a series of questions and answers, comments on mutual interests and differences, or feedback about the correctness of negotiator's influence. Indirect information sharing is a series of proposals and counter proposals, particularly multi-issue proposals.

Different Ways Culture can Influence Negotiations

1. Definition of Negotiation
2. Negotiation Opportunity
3. Selection of Negotiators
4. Protocol
5. Communication
6. Time Sensitivity
7. Risk Propensity
8. Groups versus Individuals
9. Nature of Agreements
10. Emotionalism

10.4.3 Impact of Culture on Negotiation

A conceptual model of where culture may influence negotiation has been developed by Jeanne Brett (2001) (see Figure 10.2). Brett's model identifies how the culture of both negotiators can influence the setting of priorities and strategies, the identification of the potential for integrative agreement, and the pattern of interaction between negotiators.

Brett suggests that cultural values should have a strong effect on negotiation interests and priorities, while cultural norms will influence negotiation strategies and the pattern of

interaction. Negotiation strategies and the pattern of interaction between negotiators will also be influenced by the psychological processes of negotiators, and culture has an influence on this process.

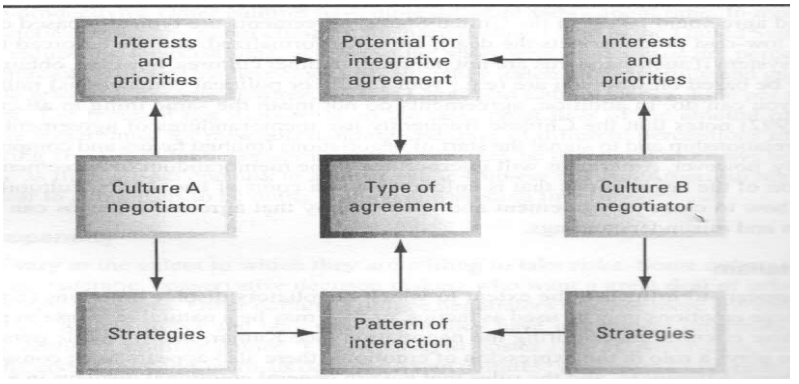

Fig 10.2 - How Culture Affects Negotiation

10.4.3 Culturally Responsive Negotiation Strategies

According to familiarity with the other party's culture different culturally responsive negotiation strategies are as follows:

Strategies in Low Familiarity Culture

- Employ Agents or Advisors (Unilateral Strategy)
- Bring in a Mediator (Joint Strategy)
- Induce the Other Negotiator to Use Your Approach (Joint Strategy)

Strategies in Moderate Familiarity Culture

- Adapt to the Other Negotiator's Approach (Unilateral Strategy)
- Coordinate Adjustment (Joint Strategy)

Strategies in High Familiarity Culture

- Embrace the Other Negotiator's Approach (Unilateral Strategy)
- Improvise an Approach (Joint Strategy)
- Effect Symphony (Joint Strategy)

10.5 Why Culture affects Negotiation Strategy?

The behaviours that negotiators from a culture characteristically use to enact a negotiation strategy are related to other features of that culture including its values and norms. The following features of culture are generally responsible for variability in negotiation strategy across cultures:

- **Individualism Vs Collectivism**

Individualism**:** It is a cultural value that promotes personal independence and gives self-interest a high priority among important life values. Negotiators from individualistic cultures may be more likely to swap negotiators, using whatever short-term criteria seem appropriate. Research has found, however, that negotiators in collectivist cultures are more likely to reach integrative outcomes than negotiators in individualist cultures.

Collectivism**:** It is a cultural value that promotes the interdependence of individuals with the social groups to which they belong and supports collective interests over self-interests as the predominant life value. Collectivist cultures emphasize collective interests. Negotiators from collectivist cultures will strongly depend on cultivating and sustaining a long-term relationship.

- **Egalitarianism Vs Hierarchy**

Egalitarian Culture: A culture that aspires to social equality, especially in political, social and economic affairs.

Hierarchical Culture: A culture that accepts social inequality in political, social and economic affairs. It emphasizes differentiated social status that implies social power.

People in hierarchical cultures may be reluctant to confront directly in negotiation because confrontation implies a lack of respect for social status and may threaten social structures. The norm in such a culture is not to challenge higher-status members.

- **Low-Context Vs High-Context Communications**

Low-context communication: In such culture of communication

* People prefer to communicate directly
* Meaning is on the surface of the message
* Information is explicit, without nuance, and relatively context free.

Most northern European languages including German, English, and the Scandinavian languages are low context.

High-context communication : In such culture of communication

* People prefer to communicate indirectly
* Meaning is embedded in the context of the message and must be inferred to be understood.

Asian and Arabic languages are among the most high context in the world

Characteristics of Western Cultures

* Low-Context Communications
* Self Interests
* Egalitarian Power Distributions

Characteristics of Asian Cultures

* High-Context Communications
* Collective Interests
* Hierarchical Power Distributions

10.6 Effects of Culture on Negotiation

The effect of culture on negotiation may be analysed with respect to:

10.6.1 Negotiator Ethics and Tactics

Researchers have recently turned their attention to examining ethics and negotiation tactics in cross-cultural negotiations by exploring the broad question of whether negotiators in different cultures have the same ethical evaluation of negotiation tactics.

For instance, Zarkada- Fraser and Fraser investigated perceptions of negotiators from six different cultures. They found significant differences in the tolerance of different negotiation tactics in different cultures, with Japanese negotiators more intolerant of the sense of misrepresentation tactics than negotiators from Australia, the United States, Britain, Russia, and Greece.

Volkema and Fleury (2002) examined the responses of Brazilians and Americans and found similar evaluations of the level of acceptability of the different negotiation tactics in Brazil and the United States, but American negotiators reported that they would be more likely to use the tactics, especially exaggerating their opening offers. than Brazilian negotiators.

Elabee, Kirby, and Nasif (2002) explored the influence of trust on American, Mexican, and Canadian negotiators. They found that negotiators who trusted the other party were less likely to use negotiation tactics. Elabee et al. also found that Mexican negotiators were least likely to trust foreign negotiators, and more likely to use tactics like bluffing and misrepresentation in cross-cultural than intracultural negotiations. Canadian and American negotiators reported no difference in the likelihood of using these tactics in cross-cultural and intracultural negotiations.

10.6.2 Conflict Resolution

Kim and Kitani (1998) demonstrated how individualism/collectivism influenced preference for conflict resolution styles in romantic relationships as partners from a more collectivist culture (Asian Americans) preferred obliging, avoiding, and integrating conflict manage- ment styles, while partners from a more individualistic culture (Caucasian Americans) preferred a dominating conflict management style.

Similarly, Pearson and Stephan (1998) found that negotiators from a more collectivist culture (Brazil) preferred accommodation, collaboration, and withdrawal compared to negotiators from a more individualist culture (the United States), who had a stronger preference for competition

Smith, Dugan, Peterson, and Leung (1998) found that within collectivistic countries disagreements are resolved based on rules whereas in individualistic countries conflicts tend to be resolved through personal experience and training. In addition, they also found that "out group" disagreements were less likely to occur in high-power distance cultures than lower power distance cultures.

A study by Mintu-Wimsatt and Gassenheimer (2000) provided further evidence of the effects of individualism/collectivism on conflict resolution styles. They found that exporters from the Philippines (a high-context culture that is more collectivist) preferred

less confrontational problem solving than did exporters from the United States (a low-context culture that is more individualistic). Gire (1997) found that while negotiators from both a more individualistic culture (Canada) and more collectivist culture (Nigeria) preferred negotiation to arbitration as a conflict management procedure, negotiators from the more collectivist culture had a stronger preference for negotiation than did negotiators from the more individualistic culture, who much preferred arbitration compared to negotiators from the more collectivist culture. In addition, Arunachalam, Wall, and Chan (1998) found that mediation had a stronger effect on negotiation outcomes with negotiators from a more individualistic culture (the United States) than those with negotiators from a more collectivist culture (Hong Kong).

10.7 Summary

There has been considerable research on the effects of culture on negotiation in the last decade. Findings suggest that culture has important effects on several aspects of negotiation, including planning, the negotiation process, information exchange, negotiator ition, negotiator perceptions of ethical behavior, and preferences for conflict resolution.

10.8 Self Assessment Questions

1. What is the relation between culture and negotiation?
2. What makes international negotiations different?
3. Discuss the impact of culture on negotiation.
3. What is the effect of culture on conflict resolution?
4. What do you mean by culturally responsive negotiation strategies? Why does culture effects negotiation strategies?

10.9 Reference Books

- David S Hames, “Negotiation, Closing Deals, Settling Disputes and Making Team Decisions”, Sage Publications.
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- Richard Walton, Joel Cutcher- Gerchenfeld and Robert , Strategic Negotiations: A Theory of Change in Labour management Relations, McKersey,1994
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