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# FOSTERING EQUITIES IN COLLECTIVE BARGAINING POWERS: A PANACEA TO INDUSTRIAL HARMONY IN NIGERIA

**By**

**Blessing B. Timothy***

## Abstract

*Industrial relations according to the Marxist theory are denoted by class struggles based on competing and often conflicting class interests, which gives rise to inevitable industrial conflicts. The need to effectively manage this dispute has remained a legal dilemma hence recourse to collective bargaining to minimize these conflicts. Ironically, collective bargaining is not without some reservation, part of which is the issue of bargaining inequities between the parties. This paper aimed to analyze the problem of bargaining inequities within the legal framework for collective bargaining in Nigeria and demonstrate how bargaining inequities contribute to the problem of industrial conflicts. The paper found that although collective bargaining is deeply entrenched in the Nigerian industrial legal framework, the process is undermined by inherent bargaining inequities. The paper argued that existing bargaining inequities are responsible for the ineffectiveness of collective bargaining in addressing industrial conflicts. It thus appears that industrial conflicts will persist if the problem of inequities in collective bargaining is not properly addressed. The paper advocate for an amendment to the Trade Disputes Act to address the inequities in the bargaining processes.*

**Keywords:** *Collective Bargaining, Trade Disputes, Bargaining Inequity, Industrial Harmony, Industrial Conflicts.*

## 1.0 Introduction

The Federal Republic of Nigeria is hinged on the twin principles of social justice and democracy. Under these socio-political ideals, the welfare of the people and their security is stated to be the fundamental purpose of government.[1] Within this democratic and social justice framework, freedom of association including freedom to form and belong to trade unions is a protected right of the citizens.[2] For the orderly and civilized exercise of this right to freely associate, Nigeria further has statutory frameworks that regulate trade unions.[3] This is relevant as trade unions are the machineries of representation of the workers in collective bargaining. By extension, trade unions also play a pivotal role in the achievement of industrial harmony. Moreover, democracy which is a foundational ideal of Nigeria provides the political firmament under which trade unions and collective bargaining thrives or ought to thrive.[4]

Despite the growth of trade unionism and collective bargaining in Nigeria, industrial conflicts have remained a perennial legal problem dating back to the colonial era.[5] Several approaches and strategies

*Blessing Timothy, LLB, BL, LLM, is a PhD Research Candidate and a Lecturer at the Faculty of Law, Rivers State University, Port Harcourt. She can be reached at blessing.timothy@ust.edu.ng.

[1] Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) s 14.
[2] *Ibid*, s 40.
[3] Trade Unions Act, 1996 (as amended).
[4] O I Eme and S C Ugwu, 'Governors and the New Minimum Wage Act: Implications for State-Labour Relations in Nigeria' [2011] (1)(3) *Arabian Journal of Business and Management Review* 1.
[5] A K Essack, 'Nigeria at the Crossroads' [1971] (6)(11) *Economic and Political Weekly* 612, 613.

have been employed to address industrial conflict and to engineer industrial harmony for optimal productivity and national development. The most basic is the statutory adoption of collective bargaining to provide a forum for negotiation of industrial conflicts. Nevertheless, the legal strategies have not been able to conclusively and effectively address the recurring decimal of industrial conflicts.[6] Against this background, this paper investigates how the legal framework for collective bargaining contributes to the problem of industrial conflicts. In particular, it examines how the absence of bargaining equity within the framework undermines the collective bargaining process and contributes to industrial conflicts.

## 2.0 Conceptual Clarifications

### 2.1 Collective Bargaining

Collective bargaining is the means through which employees and employers freely negotiate the terms and conditions of their work. Collective bargaining is an institutional system of negotiation in which the making, interpretation, and administration of rules, and the application of statutory controls affecting the employment relationship, are decided within union-management negotiation frameworks.[7] It is a process of arriving or attempting to arrive at a collective agreement.[8] It can be divided into two constituent parts: 'collective' and 'bargaining'. The first refers to the collectivity of the bargaining as opposed to individualism. This does not however suppose that all employers and employees are directly involved. The collective nature is satisfied through representatives of the employers and employees. Furthermore, 'collective' also refers to the nature of issues being bargained which must be of collective benefits/interests.[9] Collective bargaining is done at three different levels: national, industry, and enterprise levels.[10]

### 2.2 Bargaining Inequity

The understanding of bargaining inequity necessarily involves an appreciation of equity and bargaining equity since bargaining inequity is the opposite of the latter. The concept of equity is amenable to different interpretations. Etymologically, 'equity' is derived from the latin word '*aequit*'. This translates literally to denote such ideals as impartiality, moderation, justice, and suitability.[11] In the context of industrial relations, equity is used to refer to a fair or just relationship between employers and employees.[12]

On the contrary, bargaining inequity refers to unfairness, injustice, and inequality in the entire bargaining process from initiation to completion of the bargaining and subsequent implementation of the collective agreement reached. It incorporates unfairness in the entire bargaining process including

[6] E P Oseyomon, 'Conflict Management and Industrial Harmony: The Nexus' [2015] (9)(2) *Journal of Policy and Development Studies* 134.
[7] P K Edward, 'Industrial Conflict: Themes and Issues in Recent Research' [1992] (30)(3) *British Journal of Industrial Relations* 361.
[8] Labour Act 1974, s 91.
[9] O V C Okene, *Labour Law and Industrial Relations in Nigeria* (Zubic Infinity Concepts 2009) 215.
[10] J A Adebayo and A T Toyosi, 'Collective Bargaining and Collective Agreement in Nigeria: Bindingness and Enforceability' [2021] (8)(3) *NAU.JCPL* 68, 71-72.
[11] S Damian and Others, 'Ethical Dimensions of Supervision in Community Assistance of Chronic Patients' [2012] (3)(3) *Postmodern Openings* 45.
[12] C Ignătescu, 'Equity- the Essential Value of Law' [2013] (4)(4) *Postmodern Openings Journal* 25, 28-29.

bargaining power structure.[13] The bargaining power in industrial relations is often a function of the ownership of the factors of production and distribution. This creates economic influence which naturally undermines bargaining equity in favour of the employers. In this regard, bargaining power is the ability of a party to control or influence the decision of the other party to the collective bargaining to reach a desired collective agreement.[14]

### 2.3 Industrial Conflict

Conflict occurs whenever incompatible activities or interests clash. It could mean strife, controversy, discord, and antagonism.[15] According to Chand,[16] in common parlance, conflict means difference or disagreement or strife over some issues between the parties. Conflict is the perceived incompatibility of goals, actions, and outcomes between two or more persons.[17] Industrial conflict is used interchangeably with industrial or trade disputes. Trade dispute is defined in section 47 (1) of the Trade Disputes Act 1976 (as amended), as "any dispute between employer and workers or between workers and workers which is connected with the employment or non-employment or the form of employment and physical condition of work of any person".

This definition was adopted in *Udoh & Ors v Orthopaedic Hospitals Management Board v Anor*.[18] Furthermore, section 54 (1) of the National Industrial Court Act (NICA) defines trade dispute to mean "any dispute between employer and employees including the dispute between their respective organisations and federations, which is connected with: the employment or non-employment of any person, terms of employment and physical conditions of work of any person, or the conclusion or variation of a collective agreement, and an alleged dispute".

## 3.0 Legal Analysis of Inequities in the Collective Bargaining Processes in Nigeria

This section examines the legal framework for collective bargaining under the Trade Disputes Act 1976 and identifies the inherent bargaining inequities which contribute to the perennial problem of industrial conflicts in Nigeria.

### 3.1 Inequity in the Prohibition of Litigation

The Trade Disputes Act 1976 (as amended) (TDA) provides the primary legal framework for collective bargaining process in Nigeria. The TDA begins by prohibiting the institution of an action court where the subject matter is trade dispute including intra and inter trade union disputes. It equally abates or voids all actions commenced contrary to the provision and backs the prohibition by criminal liability of Ten Thousand Naira fine and or one year term of imprisonment.[19]

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[13] L Briskin, *Equity Bargaining/Bargaining Equity* (York University 2006) 12.
[14] O Ogunbamero, *Organizational Dynamics* (Spectrum Books Ltd 2011) 1-6.
[15] O O Pitan and S T Akindele, 'University Management Perception of Academic Staff Union of Universities [Asuu] Struggles in Nigeria: Implication for Counseling And Productivity' [2016] (5)(2) *International Journal of Humanities and Social Science Invention* 33, 35.
[16] S Chand, 'Industrial Disputes: Definition, Forms and Types' [2016] < www.yourarticlelibrary.com/industries/industrial-disputes-definition-forms-andtypes/35453 > Access 26 October 2023.
[17] V A Evuarherhe and O Olatunde, 'Conflict Resolution Strategies and Staff Effectiveness in Selected Federal Universities in Nigeria' [2022] (23)(3) *Education Planning* 29, 32.
[18] (1990) 4 NWLR (Pt 142) 52.
[19] Trade Disputes Act 1976 (as amended), s 2.

The limitation of the right of access to court over trade dispute has a crucial impact on bargaining equity as it robs the parties of the benefit of direct judicial process, which offers a binding and final determination of the rights and obligations of the parties. Moreover, in the determination of disputes, the judiciary is generally accepted as the most independent avenue for ventilation of grievances since the court is an unbiased and uninterested umpire.[20] While the abrogation of the right of access to court compels the parties to submit to collective bargaining against their will, it equally encourages the violation of rights and disrespect of obligations. This is because the limitation of access to ventilate grievances in court encourages overreaching actions by the other party.

Moreover, compelling parties to submit to collective bargaining in itself, evidences the absence of an effective and equitable collective bargaining process in Nigeria. That is, parties to a trade dispute have no incentive to voluntarily submit to collective bargaining and must therefore be compelled against their will. Besides, such compelled collective bargaining process does not make for equitable and healthy bargaining. It will ultimately crumble into a Marxist battle of interests devoid of good faith. This explains the ineffectiveness of collective bargaining in Nigeria, which Fajana and Tunde alluded to.[21] Bargaining equity is not to be reasonably expected within a framework of compulsion where other options such as the court system are closed. This is because the right of access to court is in itself a bargaining weapon, especially for the aggrieved party. The stultification of the right therefore confers undue bargaining advantage on the allegedly offending party. The aggrieved party becomes handicapped without options – a first legal step in the negative tilting of the pendulum of equity in the bargaining process, which in turn provides bargaining inequity. Moreover, the TDA despite a hasty stultification of the right of access to court over trade disputes failed to provide a detailed, independent, and impartial system for the resolution of trade disputes. It merely provides alternatives that are neither comprehensive nor inspiring.

### 3.2 Inequity in the Party-Agreed Means of Settlement of Trade Dispute

Under the TDA, where parties have already agreed on a means for settling any trade dispute, they must "first attempt to settle" the dispute by that agreed means.[22] The primacy of the agreement of the parties with regards to settlement of disputes must be commended, for being consistent with the right of parties to freedom of contract. This legal position has been re-iterated in a long line of judicial authorities including *AG Rivers State v AG Akwa Ibom State*,[23] where the court stated that where parties have agreed voluntarily and there is nothing to show that such agreement was obtained by fraud, mistake, deception or misrepresentation, they are bound by the terms of the agreement. Therefore, by respecting the agreement of the parties, the TDA commendably upheld a fundamental character of the contract.

Nevertheless, ensuring equity in the collective bargaining process goes behind respecting the agreement of the parties on the dispute settlement mechanism especially where there is the possibility that such agreement does not allow for equitable settlement of the dispute. The TDA seems uninterested in the equity of the dispute system agreed by the parties. This is rather disappointing considering that in the

[20] *Osolu v Osolu* (2003) All NWLR (Pt 832) 608, 631.
[21] S Fajana and E Tunder, 'A Critique of Collective Bargaining Policy in Nigeria from Colonial Era till date' [2021] (2)(3) *International Journal of Business and Management Studies* 27, 32.
[22] TDA (n 19), s 4(1).
[23] (2011) NWLR (Pt 1248) 31, 81.

face of inherently unequal labour relation such agreement will favour one party particularly the employer against the employees. Yet, the TDA fails to require settlement procedures agreed by the parties to be fair and equitable but provides wholesale importation of the agreed dispute settlement means.

Interestingly, in respecting the dispute settlement means agreed by the parties, the TDA merely requires the parties to "first attempt to settle" the dispute by the agreed means.[24] That is, parties are not obligated to settle the dispute using that means; they are merely to "attempt" to settle. Once the attempt has been made, a party seems to have acquired the liberty to jettison the agreed dispute settlement means. Since what amounts to attempt is not defined, the term must be understood as meaning nothing less than "attempt". Parties can therefore easily circumvent or disregard the agreed trade dispute settlement means without incurring any liability. The TDA therefore weakens the effectiveness of agreed dispute settlement means by the parties, which equally undermines equity in the collective bargaining process.

### 3.3 Inequity in the Mediation of Trade Disputes

Furthermore, where the parties are unable to settle the dispute through the agreed means or where there is no such agreement, the parties are to meet together either directly or through representatives within seven days for the purpose of settlement of the dispute. The meeting is presided by a mediator appointed on the mutual agreement and appointment of the parties.[25] The mutuality of the appointment of the mediator and the fact that the mediator will preside over the meeting is crucial to enhancing bargaining equity. It introduces a neutral party enjoying the mutual confidence of the parties to mediate in respect of the dispute.

Where upon the appointment of a mediator, the dispute remains unsettled within seven days, the parties are to report the fact of the inability to settle to the Minister within three days after the end of the seven days period. The report must be in writing, stating the outstanding unresolved issues between the parties and also describe the steps that the parties have already taken.[26] Where the Minister is not satisfied that the parties have complied with the obligation to attempt to settle as agreed or with mediation, the Minister may mandate the parties to so comply within specified period. Where the parties still fail to resolve the dispute within the period, the Minister may appoint a conciliator, and refer the dispute to the Industrial Arbitration Panel (IAP) or Board of Inquiry.[27]

As already observed, the TDA is notorious for its lack of comprehensiveness in all approaches to collective bargaining, as it prefers to leave a large chiasm which makes equitable collective bargaining difficult. Beyond requiring the mutual appointment of a mediator, it fails to provide any qualification for the mediator and does not even require the mediator to be impartial and independent. The TDA also fails to address the possibility of the parties failing to mutually agree on the appointment of the mediator and also fails to provide procedural safeguards that will ensure equity in the bargaining process presided

[24] TDA (n 19), s 4(1).
[25] *Ibid*, s 4(2).
[26] *Ibid*, s 6.
[27] TDA (n 19), s 7.

over the mediator. The TDA therefore leaves too many lacunas that undermine equity in the collective bargaining process and in fact promotes bargaining inequity.

### 3.4 Inequity in the Ministerial Interventions

Without sufficiently addressing the substantive and procedural aspects of mediation for the purpose of ensuring equity in the collective bargaining process, the TDA jumps to a third approach where trade dispute is apprehended by the Minister in charge of labour notwithstanding the provisions regarding agreed settlement means by the parties and mediation. Upon the apprehension of the trade dispute, the Minister has the discretion to inform the parties in writing of his apprehension of trade dispute and the steps he is proposing to resolve the dispute. The steps may include the appointment of conciliator by the Minister or a reference of the trade dispute to the Industrial arbitration panel or board of inquiry.[28]

The apprehension of a trade dispute is precautionary or interventionist procedure to prevent the dispute from crystallising by addressing it before such crystallisation. Here, wide discretion is granted the minister since he enjoys unfettered liberty to apprehend trade disputes at will. Although under the TDA, the Minister is to propose to the parties the steps to take in order to resolve the apprehended dispute, it seems that such proposal is binding on the parties since it may involve appointment of a conciliator or reference of the dispute to the IAP. The proposal is therefore and effectively an imposition on the parties by the Minister in disregard to their agreed dispute settlement means and mediation. Two of the options available to the Minister which are appointment of conciliator, reference to IAP will now be examined in the context of whether they provide equitable collective bargaining framework. The board of inquiry is omitted because it does nothing more than inquire into the cause of the dispute and report to the Minister.

### 3.5 Inequity in the Conciliation Process

The first alternative available to the Minister where the parties are unable to settle the dispute pursuant to their own agreed means or mediation or where the Minister apprehends a trade dispute is the appointment of a conciliator by the Minister to effect settlement of the dispute. The only qualification is that the conciliator should be a fit and proper person.[29] Fit and proper is a fundamentally subjective term with any measurable requirements.[30] By such vague qualification, the sky is the starting point for the Minister to appoint any person according to his whims and caprices. There is no requirement for consultation of the parties on who should be the conciliator nor is there any requirement for the conciliator to be fair and impartial.

The conciliator is to inquire into the factors responsible for the disputes and then endeavour to settle the dispute by negotiating with the parties.[31] It is not clear how the appointment of a conciliator by the Minister is an improvement on the mutually appointed mediator by the parties. Based on this, it is not clear how conciliation hopes to address a dispute which mediation has equally failed to address. Besides, mediation is more equitable when compared with conciliation since the parties agree on who to appoint.

[28] *Ibid*, s 5.
[29] TDA (n 19), s 8(1).
[30] M Slabbert, 'The Requirement of Being "Fit and Proper" person for the Legal Profession' [2011] (14)(4) *Per/PELJ* 209, 212.
[31] TDA (n 19), s 8(2).

There is therefore a level of mutual trust in mediation compared to conciliation where the Minister simply imposes a conciliator on the parties.

Like mediation, conciliation under the TDA is equally weak and does not enhance bargaining equity. Beyond the undue influence of the Minister, the conciliator is merely to "endeavour" to settle to the dispute by negotiation. The parties are not even obligated to cooperate with the conciliator or to negotiate in good faith. The conciliator does not exercise any coercive power or influence over the parties but only endeavours to settle the dispute.[32] Herein lies the fundamental importance of the judiciary which is not merely an endeavour to settle the dispute but a binding process on the parties with outcomes that are equally binding on the parties.

Since the intervention of the conciliator does not go beyond an endeavour, it is hardly expected to result in a final settlement of the dispute. However, in the event that it does settle the dispute within seven days, the conciliator is to report to the Minister and accompany the report with the memorandum of the terms of settlement as signed by the parties. Upon signing of the memorandum, it becomes binding on the parties.[33]

Where on the contrary, the conciliator is unable to settle the dispute within seven days after his appointment, or the conciliator is satisfied of his inability to settle the dispute, he is to report same to the Minister.[34] One curious thing worthy of mention is that both a mediator and conciliator have seven days after their appointment to attempt or endeavor to settle the dispute. The TDA seems to be so much in a hurry in a manner that is largely improbable. While it is admitted that time is of the essence in industrial relations, seven days for a mediator or conciliator to attempt/endeavour to settle a trade dispute is rather short with regard to complex disputes. It does not afford the parties reasonable time for equitable collective bargaining. Even in circumstances wherein agreements are hurriedly concluded within the period, implementation will most likely become an issue since the parties have not been given reasonable time to holistically consider the issues and draw an equitable agreement. Conciliation therefore suffers the same limitations as mediation and as constituted under the TDA does not promote equity in the collective bargaining process.

### 3.6 Inequity in the Arbitration Process

Where the conciliation fails like mediation, the Minister is bound to refer the trade dispute to the Industrial Arbitration Panel (IAP) within fourteen days of receipt of the report of the conciliator.[35] The IAP consists of a chairman, a vice-chairman, and not less than ten other members all of whom shall be appointed by the Minister so however that of the ten other members-

a) two shall be persons nominated by organisations appearing to the Minister as representing the interests of employers, and

[32] S Ujwala, 'Conciliation as an Effective Mode of Alternative Dispute Resolution' [2012] (4)(3) *Journal of Humanities and Social Science* 1.
[33] TDA (n 9), s 8(3).
[34] *Ibid*, s 8(5).
[35] *Ibid*, s 9(1).

b) two shall be persons nominated by organisations appearing to the Minister as representing the interests of workers.[36]

The constitution and composition of the IAP is very fundamental for enhancing the independence and impartiality of the arbitrators which are twin requirements for equity in the collective bargaining process using arbitration. The closest the TDA comes to enhancing impartiality and independence is the provision that two members each must be nominated by organisations appearing to the Minister to represent the workers and employers respectively.

A fundamental flaw in the law is that the persons only need to appear to the Minister to be representing the workers or employers as the case may be. They are not required to in fact be representing the interests which they so purport. As long as it appears to the Minister, the TDA is satisfied. This fundamental loophole allows the Minister to appoint anybody as he desires as purporting to represent the workers or employers. This defeats the aim of ensuring equitable representation in the IAP which will be necessary to ensure equity in the collective bargaining process.

Another flaw is that members of the IAP are not required to have any relevant academic qualifications and years of experience in trade dispute resolution. They are also not required to exercise independent judgment. The TDA creates the impression that members of the IAP are appointed to represent the interests that nominated or appointed them.

The chairman of the IAP enjoys the prerogative to appoint arbitrators from the panel to hear and determine particular disputes. He enjoys the discretion to choose from three different options to *wit:*

a) a sole arbitrator selected from among the members of the Panel by the chairman; or
b) a single arbitrator selected from among the members of the Panel by the chairman and assisted by assessors; or
c) one or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workers concerned, all nominations being made from among the members of the Panel, and presided over by the chairman or vice-chairman.[37]

This paper takes the considered view that the option of a sole arbitrator does not meet the ends of equity. Moreover, since the Chairman is only limited to appointing the sole arbitrator from the IAP, there is the risk of appointing an interested person in the dispute and without any other arbitrator representing the interests of the adverse party to check and balance the sole arbitrator, the is a real risk of bias. The same deficiency applies to a single arbitrator assisted by assessors. This is hardly different from the sole arbitrator since others are mere assessors without any real influence.

The better and equitable option is the last which allows for equal number of arbitrators nominated by or on behalf of the disputing parties with the chairman or vice-chairman of the IAP presiding. This option better addresses the fears and interests of the parties since both parties enjoy equal voice in the

[36] *Ibid*, s 9(2).
[37] TDA (n 19), s 9(3) and (4).

constituted arbitral panel. However, the chairman enjoys absolute discretion to decide which option to take. Thus, once the chairman has interest, the arbitral panel can always be constituted in a manner that serves that interest. The TDA therefore lacks inherent mechanisms to ensure the independence and impartiality of the arbitral panel. This in return undermines equity in the collective bargaining process.

**4.0 Bargaining Inequities as a Recipe for Perennial Industrial Conflicts**

Existing empirical and doctrinal researches focus on the relationship between collective bargaining and industrial harmony. Although the issues have not been narrowed down to bargaining equity and industrial harmony, logical deductions can be made. For instance, Ngonyama and Ruggunan,[38] hold the view that improving of participation of workers in organisational decision-making process will result in a consequential improvement of job satisfaction will enhance industrial harmony. Similarly, Parks,[39] posits that employee involvement in decision making is part of a transformation of workplace from the traditional hierarchical roles to an idealized industrial democracy in which employees, management and owners benefit from the new work structure.

While the existence of a mutual relationship between collective bargaining and industrial harmony seems to be natural and obvious, it is nonetheless misleading to assume that collective bargaining necessarily addresses industrial conflicts. This can be inferred from the situation in Nigeria where the legal recognition and practice of collective bargaining has not resulted in sustainable industrial harmony as evidenced in the recurring decimal of industrial actions.[40] The legal challenge addressing industrial conflicts is therefore not a consequence of lack of collective bargaining but a consequence of lack of equity among the bargaining parties. This is because where there is no bargaining equity; there can be no equitable collective agreement, which the parties will commit to respecting and implementing in good faith. Put differently, collective bargaining cannot result in industrial harmony without equity woven into the entire fabric of the collective bargaining process.

The above is further supported by the Marxist economic theory, which this paper strongly leans towards. As the theory holds, society is a hierarchy of classes which is characterised by perennial class struggle.[41] The class struggle based on class interests is not addressed simply by collective bargaining. On the contrary, is more logical to assume that collective bargaining is another avenue for the furtherance of class interests. This is consistent with the pluralist theory which recognises class interests as unavoidable and legitimate in industrial relations.[42] However, the holding of the pluralists that collective bargaining is useful for balancing and integrating the plural interest,[43] must need be taken as incorporating a situation where there is equity in the bargaining process.

[38] T Ngonyama and S Ruggunan, 'Workers' Participation and Job Satisfaction Amongst Academic and Administrative Staff at a South African University' [2015] (4)(1) *Journal of Governance and Regulations* 47, 50.
[39] S Parks, *Improving Workplace Performance: Historical and Theoretical Context* (Monthly Labour Review 1995) 78.
[40] M O Y Habeeb and A Y Kazeem, 'Organization Conflict and Industrial Harmony: A Synthesis of Literature' [2018] (10)(11) *European Journal of Business and Management* 1, 2.
[41] F Parkin, *Marx's Theory of History: A Bourgeois Critique* (Columbia University Press 1979) 9-16.
[42] N Blain and J Gennard, Industrial Relations Theory: A Critical Review' [1970] (8)(3) *British Journal of Industrial Relations* 389-392.
[43] *Ibid.*

Another perspective to appreciating the inadequacies of collective bargaining to address industrial conflicts where there is no bargaining equity is the inherent inequality of bargaining powers between the parties. Consequently, collective agreement easily becomes an imposition of terms and conditions by the superior parties. This inequality is promoted by the lopsided approach to collective bargaining under the TDA which arrogates totalitarian powers to the Minister in charge of labour while abrogating the right of access to court. In conflicts between labour unions and the government, there is therefore a statutorily flavoured power imbalance which allows government to impose terms on labour. This gives the government the controlling edge throughout the collective bargaining process and it cannot be reasonably expected that the outcome of such compromised process will resolve the industrial conflict in a sustainable manner.

Here, the argument of Saini,[44] that participation of labour in organisational decision making process is not to be accepted as necessary evidence of industrial democracy becomes relevant. This is because the workers may participate without exercising any influence on control. Participation does not therefore mean cooperative deliberation and decision making. This is true of collective bargaining where the bargaining powers are grossly unequal.

The point which is deducible from the above is that participation alone in the form of collective bargaining without equity in the participation framework does not guarantee and is not relevant to addressing industrial conflicts. The concept of bargaining equity here relates to a securing collective bargaining based on equality of the parties and fairness. This will require substantive and procedural legal guarantees that diminish existing power inequalities and set a platform for just bargaining in good faith. This paper submits strongly that it is only such equitable bargaining process that is related to addressing industrial conflicts and not the mere existence of a system of collective bargaining.

Fajana and Shadare,[45]in their argument that collective bargaining provides promising framework for addressing industrial conflicts as a "social dialogue process" which promotes industrial harmony, fail to question the effectiveness of each said process and the peculiar circumstances under which each social dialogue is conducted. The assumption or conclusion that "social dialogue process" will naturally enhance social harmony by addressing conflicts is fundamentally deficient where the equity or inequity of the social dialogue process is not considered. One logical and rational explanation of the legal problem of addressing industrial conflicts in Nigeria is the focus on collective bargaining while disregarding the importance of equity in the collective bargaining process. Yet, as demonstrated above, it is bargaining equity and not necessarily collective bargaining that is positively correlational to addressing industrial conflicts.

Surprisingly, the entire legal framework for collective bargaining in Nigeria appears radically uninterested in bargaining equity. In fact, collective bargaining process in Nigeria is more committed to ensuring absolute governmental control rather than providing an avenue for equitable bargaining based on equality of the parties and good faith. This underlines the promotion of the positive relationship

[44] D Saini 'Industrial Democracy: Law and Challenges in India' [1983] (19)(2) *Indian Journal of Industrial Relations* 191, 193.
[45] S Fajana and O A Shadare, 'Workplace Relations, Social Dialogue, and Political Milieu in Nigeria' [2012] (3)(1) *International Journal of Business Administration* 75-76.

between bargaining equity and industrial harmony and thereby deprives Nigeria of the sustainable gains that should ordinarily be derived from a fair and equitable collective bargaining process.

**5.0 Conclusion**

The totality of the framework for collective bargaining in Nigeria is a radical nationalisation of collective bargaining under the whims and caprices of the Minister in charge of labour. The Minister enjoys wide and unfettered powers in the management of trade disputes in a totalitarian manner that does not admit of any character of equity especially in matters where the government is a party or interested party. The prohibition of access to court is the constitution of the Minister into a court with regards to labour disputes. The Minister appoints mediators, conciliators, IAP, and a board of inquiry and the power is without any limitation or recourse to fairness. The Nigerian legal framework therefore further entrenches the inequality between workers and employers where the government is the employer.

The legal implication is that bargaining equity is undermined. The direct consequence is the inability of Nigeria to address industrial conflicts sustainably. Whatever harmony hoped to be secured is also volatile and short-lived giving rise to a vicious circle of industrial crisis. Collective bargaining alone does not and cannot therefore address industrial conflicts. There must be bargaining equity for collective bargaining to yield industrial harmony. Consequently, without effective legal strategies to guarantee bargaining equity, the search for industrial harmony in Nigeria will remain a legal effort in futility.

**6.0 Recommendations**

Against the foregoing, this paper recommends as follows:

1) Nigeria National Assembly should amend the TDA to clip the overbearing and totalitarian powers currently enjoyed by the Minister. The TDA should rather favour voluntariness in place of the imposition of the Minister. In particular, the powers of the Minister to constitute the IAP under section 9 of the TDA should be removed. Parties should be given the liberty to appoint arbitrators of their choice. For instance, in the constitution of the arbitral panel, each party should nominate one arbitrator while the two nominated arbitrators should nominate an arbitrator who shall preside over the proceedings. This will remove undue government influence and thereby promote independence and impartiality of the arbitral process. It will create confidence in the procedure particularly where the government is a party or an interested person in the dispute.

   The amendment of section 9 of the TDA should include a statutory statement of qualifications of mediators, conciliators, and arbitrators including the requirement of impartiality and independence. The amendment to section 9 of the TDA should add that arbitrator shall be persons with at least ten years of qualification and practice experience in the fields of labour and industrial relations and should be independent persons without any relationship with the parties that may create reasonable doubt of their impartiality. The vague “fit and proper” threshold which can be easily abused by the Minister should be jettisoned and is grossly inadequate to ensure that arbitrators have the requisite qualifications and experience. This is necessary because the qualification of arbitrators will directly impact their performances.

2) The National Assembly should amend the Trade Unions Act and the Trade Disputes Act to focus on bargaining equity and not just collective bargaining. This is because, without equity in the collective bargaining process, the process will not be able to engineer sustainable industrial harmony.
3) Several strategies should be adopted including strengthening internal democracy within trade unions and insulating trade unions from political intimidation and control.