"RE-THINKING THE INDUSTRIAL DISPUTES ACT: LABOUR RELATIONS FOR A NEW INDIA"

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Industrial relations in India MUST respond to Government lead initiatives that aim at making India a manufacturing hub and an economic power.

In order to meaningfully respond to the need to ‘Make in India’ it is imperative to raise skill level of workers such that their aspirational levels advance in step with technological growth. For this to happen meaningfully we must recast labour-entrepreneur relationship from one of mutual hostility to that of mutual trust.

The recommendations that follow in this regard principally address the existing Industrial Disputes Act (IDA) 1947.

‘Citizenship’ is the guiding principle behind the suggested changes in the Industrial Disputes Act. As a consequence, public policy has to be premised, from the start, on the notion of ‘trust’. However, in industrial relations, disputes will often arise and the primary aim of this document is to resolve them before the breakdown occurs.

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The recommendations suggested to the existing IDA are mindful of the fact that enterprises need to be competitive in the global market. This is also a good reason why laws affecting industrial relations be stated in as limpid, and brief, as possible, allowing for exceptions to the rule as a rarity.
The "C-PACT" Working Group on Labour Relations has prepared a Draft paper suggesting amendments to the current Industrial Disputes Act. It is hoped that these would go a long way in addressing the interests of employers and workers within a consensual legal framework. In order to accomplish this, we strongly believe that issues of citizenship and that of investing in human resources be placed uppermost.

The "C-PACT" initiative broadly aims to diminish, over time, the presence of unorganized labor force, replace hostility with trust between workers and employers and obliterate unnecessary thresholds that curb labour entitlements, welfare and job security.

Unlike what some economic think-tanks have argued, labour flexibility, even in developed market economies, does not mean the untrammeled right to hire and fire. In this document, while we allow for labour flexibility, we also insist that Workers be entitled to benefits and compensations on a universal basis. In our view, this will significantly lessen the burden of informal labour in our economy, which by all standards, is inexcusable. The primary impetus behind this document is to protect labour across industries, at various levels, and not just those who are currently well-served by the existing Industrial Disputes Act.

Chapter 1
Introduction: Vision Statement

Industrial relations in India MUST respond to Government lead initiatives that aim at making India a manufacturing hub and an economic power.

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Threshold Averse

If there is one big change we believe must be effected in the IDA then that is to curb the prevalence of thresholds. In this regard, we propose the removal of all thresholds as a general rule, whether pertaining to the size of the enterprise, or number of days worked. This would go a long way in actualizing the rights and entitlements of both Workers and Management in the economy as a whole.

There are, however, two main exceptions to this rule and they concern units with less than twenty workers. Even here, the scope of exceptions is limited to only two issues:

(a) With regard to dispute resolution (see Chapter 3 of this document)
(b) With regard to the hiring of casual workers see Chapter 2, Section 3 of this document).

The suggestions that follow are in accordance with the government’s stated mission to abolish contract labour. Therefore, strict scrutiny must be exercised to determine industries in which fixed period employment is allowed (see Chapter 4 of this document).

Before we proceed we need to put on record that we are in agreement with the IDA’s definition of a worker IDA, Section 2 (s), except when it comes to placing a minimum numerical wage qualification that separates the supervisor from those in rungs below IDA, Section 2 (s) (iii). In our view, the remuneration level has to be changed and should be upgraded from time to time by the government.

As far as the terms, “industry” and “industrial dispute” are concerned, we accept the definitions provided in IDA, Section 2, State Amendment, Rajasthan (J), (K). We are also aware of the proceedings of the landmark Bangalore Water Supply Board case and Justice Krishna Iyer’s fear that a definitive understanding of “industry” is still far away. As a measure of abundant precaution, we would also like to add to the understanding of the workplace in IDA by referring to Section P of Sexual Harassment of Women in the Workplace Act, 2013 which explicitly includes as workplace “any place visited by the worker during the course of employment including transportation provided by the employer for undertaking such a journey.”
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Chapter 2
Status of Workers

It is in the understanding of the status of a worker that our major recommendation in amending the IDA rests. We make these suggestions primarily to counter the negative consequences our industries face on account of two major thresholds:

a) The size of the unit. If it is over a hundred workers then the government has to be notified before workers can be dismissed (see IDA, 25K)
b) Only after a worker has completed 240 days of continuous employment (IDA, 25FFF; see also 25B (2)(a)(i), 25B (2)(b) a worker is entitled to full compensation if dismissed.
c) Provident Fund and Bonus need not be paid to units employing less than 20 workers.

These have led to a plethora of undesirable practices where some entrepreneurs have formally kept their units small and also limited the number of days a worker is employed in them. Such practices lead to inefficiencies and also to tensions in the workplace.

As there is reluctance on part of the entrepreneurs to increase the size of their firms, their concerns are never really able to achieve economy of scale or aspire to high technology status.

Nor are workers able to feel a sense of commitment to their work for they feel that their status in the current position is all too temporary.

To resolve these negatives, we propose to do away with all the benefits or disabilities (depending on the angle of vision) that such thresholds enforce.
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To resolve these negatives, we propose to do away with all the benefits or disabilities (depending on the angle of vision) that such thresholds enforce.
Therefore:

1. Regardless of the size of the concern, ALL workers must be on the Muster Rolls with a clear Appointment Letter. All workers are deemed to be Permanent after they satisfy a probation period (to be determined by the enterprise, but not exceeding three months). As all workers are Permanent they are entitled to receive besides wages, Provident Fund, ESI benefits and Gratuity. All of these will be calculated from the day the worker is employed.

2. Should workers be dismissed on account of re-structuring or closing down of the enterprise, they will receive in addition a severance pay that will be equal to 45 days salary for every year of work. As all such calculations will be pro rata, it is not as if there is any special advantage to the employer to dismiss a worker before 240 days of employment.

3. On retirement, dismissal or resignation, the workers are entitled to Gratuity and PF for the period they have worked. In addition, they will be entitled to leave encashment subject to a maximum limit that needs to be laid down by law.

By taking such a step and removing the two all-important thresholds regarding size and period of employment, the management gets no benefit from employing workers for a short duration.

Nor will management get any advantage for keeping their units small as there is no requirement now to get government permission to restructure or close down an enterprise so long as workers get all the benefits mentioned above. At any rate, this caution is, over and above, the IDA understanding of what is “severable” and what is not when it comes to an undertaking (see IDA, Section 2, (ka) (a) (b). This will act as a disincentive against capricious management behaviour and will also allow for labour flexibility.

As there is now a price to be paid for re-structuring, or closing down, the unit, entrepreneurs will have to take a long term view before they start a business venture. Some capital, high hopes and favours from lending agencies, will no longer suffice unless accompanied by a full-fledged plan for the future. This should create the conditions for true enterprise and risk taking such that new skills are sought and a high technology route to growth finds fulfillment.

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**Exceptions to the Above**

Obviously, these rules do not include those in agriculture or in government departments with respect to space, defense, atomic energy (IDA, Section, 2, (j) (i) (b) (6)

**Contract Labourers**

Hiring of Contract Workers in all cases has to be done through a contractor’s firm, whose core competence is in the area that is required. Only in units below 20 such hires can be directly made without the mediation of a contractor.

The point in being cautious on the issue of Contract Labour issues is because:

(a) Contract Workers, as they stand, tend to be informal in character.

(b) Contract Workers must be hired from an agency where they are on the Muster and are entitled to all benefits as regular employees, as mentioned earlier.

(c) By making it incumbent to hire through a contractor whose company’s core competence is to supply labour in that particular area of expertise, the scope for informalisation is further curtailed.

(d) Today the Contract Labour (Regulation and Abolition) Act, inspite of its nomenclature, actually encourages informalisation of Labour at all levels. By insisting that Contract Labourers be hired from a Contractor's Firm, the scope of fudging payments and delivering on entitlements are eliminated.

(e) Finally, it is realistic to allow for Contract Workers as employers may have different labour requirements at different times.

(f) Nevertheless, it is acknowledged that many firms would have a permanent body of employees to build up its human resource and skill base.

All payments to workers should be cashless.
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All payments to workers should be cashless.
Child Labour

It goes without saying that Child Labour is not permitted. However, it is necessary to take some complications into account. We are proposing a change in the Child Labour Prohibition and Regulation Act, 1986.

In our view, till the age of 14, children cannot be allowed to work. What could be taken on board is that between 15-18 years of age, a child could be engaged provided adequate time is given for attending school and to complete classroom assignments. However, till the age of 18, children cannot be hired in any hazardous occupation. As the Parliament has not come up with a final decision on this matter, we hope these factors will be considered in due course.
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In this chapter we once again return to our principal concern that while management should be allowed to re-structure, even close down a concern, the workers should not be penalized unduly.

Second, in accordance with our position against thresholds, all enterprises, regardless of size, must follow an identical system regarding lay offs on account of restructuring or closing down.

The following suggested compensation for workers who are laid off abides by these two principles.

**Restructured or Closed Down**

When a company is re-structured or closed, all employees should be given a notice of six months. All employees are entitled to PF, Gratuity, bonus, leave-encashment and, in addition, severance pay (45 days wages for every year of employment, calculated pro rata).

**Force Majeure**

When a concern is hit by an act of Force Majeure, such as flood, fire, earthquake, or any other calamity and work is to be resumed once the repairs are done then employees have the option to leave (no severance pay, though), or stay on at reduced wages (half pay would be just).

Strictly speaking, IDA considers lay offs to be operative only when the enterprise is unable to give employment due to shortages, and so on. Retrenchment is more general in its application (see IDA Section 2, (a) (oo). However, for the sake of simplicity, it is suggested that the term “lay off” be omnibus in character so that the intent of the amendment is understood without getting into legal terminologies.

If a company is closing down then its balance sheet must be open to public scrutiny in order to protect against malfeasance. Further, in the event of closing down, the dismissal should begin first with the management and then the workers, the most recently employed will exit before those who have joined later.
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At the outset it must be mentioned that this document endorses what IDA consider as Unfair Labour Practices and Gender Harassment, along with the penalties attached (For unfair labour practices see IDA, 25T, 25U, 26, 27, 28, 29, 30, 31) and IDA, Fifth Schedule, 2 (aa); for Gender Harassment adopt Sexual Harassment of Women at Workplace Act).

In keeping with the aversion towards threshold markers, this document proposes that Workers’ Councils should be present in all enterprises regardless of size (IDA, Section 3(1) on Works Committee). A slight exception is made, as we shall see, in units that have below 20 workers, but the principle, of workers’ representation as a legitimate right, is in no way compromised even in that case.

This goes against the current IDA that only allows such dispute resolution mechanism in establishments with 100 workers or more. This threshold then forces, even tempts, management to keep their enterprises small, or resort to practices that artificially break up the establishment into smaller units just so that they can get around the threshold factor.

It is very often the case that there are frequent disputes regarding which of the many unions within an enterprise is to be considered as the recognized union. In fact, contestations over this often lead to fracturing the interests of the workers over the not-so-long term. Also, it has been noticed that on a number of occasions, Management looks down, often disallows, any representative body of workers, preferring instead ad hoc, personalized interventions on labour issues.

To be able to effectively counter such difficulties we propose that company/enterprise will have ONE elected Workers’ Council. Workers can have different unions within the organization, but there will be a single Workers’ Council that will represent their interests to the Management.

Chapter 4
Workers’ Council and Dispute Resolution

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To be able to effectively counter such difficulties we propose that company/enterprise will have ONE elected Workers’ Council. Workers can have different unions within the organization, but there will be a single Workers’ Council that will represent their interests to the Management.
Different unions are at liberty to field their candidates for positions in the Workers’ Council. The election of office bearers to the Workers’ Council shall be by secret universal ballot. The Workers’ Council will have office bearers at different levels, such as President, General Secretary, Treasurers, etc., and those who occupy these positions will be elected by the workers from within the enterprise.

Nobody who is not a worker in the organization is permitted to be an office bearer, or a member of the union’s unit within the enterprise. The Workers’ Council may have external advisers/motors, but they will neither be integral parts of the unions within the company or office bearers of the Workers’ Council.

This, however, does not preclude the Workers’ Council from being affiliated to a larger body, external to the enterprise, for purposes of advocacy. But all decisions regarding workers’ interests will be independently expressed by the Workers’ Council to the management.

In units of 20 workers, or less, there will be a single Workers’ Sabha to which all workers will be members. Such units are at liberty to follow the practice of larger enterprises, but it is perhaps better if that were not the case. At any rate, this provision should be kept such as to enable workers in units of this size who would prefer to take this route.

All workers are members of the Workers’ Council though they may not be members of any union. All members will pay an amount for the running costs of the Workers’ Council.

These proposals, as mentioned earlier, effectively deal with issues regarding the recognition of unions, as well as the interference of outsiders in internal matters. Please recall, at this point, what has been mentioned earlier regarding what the entitlements are for ALL workers. These entitlements cannot be negotiated away by any Workers’ Council.

**Dispute Resolution**

In order to increase the trust levels within an organization, workers will elect a representative to the Board of the Company. This Member of the Board will function like any of the others in the same position. This is necessary so that the Board is always kept abreast of Workers’ interests on a regular basis, at the highest level. This ties in with what was said about “Trust” in the Preamble of this document. Disputes, however, will arise, and the following mechanism is offered for resolving them.

Notices of all disputes and their resolutions must be in writing (see IDA, 10A; also see Section 15 on Form of report or award)

(i) **Workers’ Council**: At the first level, all disputes will be taken to the Workers’ Council.

(ii) **Conciliation Board**: If the dispute cannot be handled at that level then the matter will be taken up at the Conciliation Board. This body will have elected representatives from both management and workers with an external Chairperson. For workers’ representation in the Conciliation Board it is also possible that the Workers’ Council nominates members to this Conciliation Board. The numbers from management and workers should be identical in this board.

The Chairperson of the Conciliation Board will be an officer chosen along the lines mentioned in IDA (Section 3, 4(2). However, no external legal practitioner will be its Member. This Board has the authority to enforce attendance from those it calls upon to give evidence. (see IDA, 11 (4).

The Conciliation Board proposed here brings together the features of a Works Committee and that of a Conciliation Officer in IDA.

(iii) **Labour Tribunal**: If the dispute is still not resolved then it will go to the Labour Tribunal. Labour Tribunals may reinforce the decision of the Conciliatory Board, or may overturn it. The Labour Tribunals decision is final. In this regard we may note the provisions provided for in the National Company Law Constitutionality of Tribunals.

(see also IDA Section 7A which has been modified slightly here).

For Units with 20 Workers or less: A somewhat different process will be followed by units which have 20 workers or less.

(i) At the first level it will be the Workers’ Sabha, in place of a Workers’ Council

(ii) At the second level, it will be a Local Level Committee, set up by the District Magistrate on the lines of the Sexual Harassment Act 2013

In all cases, of course, the right to go to court to appeal against the decision of the Conciliation Board or the Local Level Committee exists. However, till the court decides, the decisions of the Tribunal and Local Level Committee stand.
Different unions are at liberty to field their candidates for positions in the Workers’ Council. The election of office bearers to the Workers’ Council shall be by secret universal ballot. The Workers’ Council will have office bearers at different levels, such as President, General Secretary, Treasurers, etc., and those who occupy these positions will be elected by the workers from within the enterprise.

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The Chairperson of the Conciliation Board will be an officer chosen along the lines mentioned in IDA (Section 3, 4(2). However, no external legal practitioner will be its Member. This Board has the authority to enforce attendance from those it calls upon to give evidence. (see IDA, 11 (4).

The Conciliation Board proposed here brings together the features of a Works Committee and that of a Conciliation Officer in IDA.

(iii) Labour Tribunal: If the dispute is still not resolved then it will go to the Labour Tribunal. Labour Tribunals may reinforce the decision of the Conciliatory Board, or may overturn it. The Labour Tribunals decision is final. In this regard we may note the provisions provided for in the National Company Law Constitutionality of Tribunals. (see also IDA Section 7A which has been modified slightly here).

For Units with 20 Workers or less: A somewhat different process will be followed by units which have 20 workers or less.

(i) At the first level it will be the Workers’ Sabha, in place of a Workers’ Council

(ii) At the second level, it will be a Local Level Committee, set up by the District Magistrate on the lines of the Sexual Harassment Act 2013

In all cases, of course, the right to go to court to appeal against the decision of the Conciliation Board or the Local Level Committee exists. However, till the court decides, the decisions of the Tribunal and Local Level Committees stand.
The Period of Deliberation

The IDA does mention a fixed time frame within which different levels of disputes must be resolved. However, there are also accompanying clauses within the IDA that provides rooms for exceptions to this rule (see Section 10 (2A); also see 17A(2).

We propose here that the period of deliberation at all levels be fixed and firm.

At the Workers’ Council Level, the period should be 10 days, or so.
At the Conciliation Board, the period should be no more than a Month
At the Tribunal/Local Committee Level, the period should not exceed Three Months.

IDA also sets down time limits but these also carry clauses that allow them to be relaxed (see Section 10, 2A; also see 17A, (2).

Workers’ Representation

It is recommended that listed companies have worker representation on their Boards. It is also recommended that worker representatives also be nominated on many of the Committees set up by the Boards of different enterprises – listed and unlisted. This would go a long way towards countering distrust between workers and management.

Strikes

While the matter is being deliberated upon in different bodies, strikes are not allowed. This is in accordance with IDA (Section 22 and Section 24).

Indiscipline:

(i) The first step in taking action in this matter is to issue a warning in writing to the worker and to the Workers’ Council.
(ii) If the matter lingers after the Workers’ Council has deliberated over it, then it goes to the Conciliation Board.
(iii) Once dismissed a Worker is entitled to all benefits, but will not receive severance pay.

Inefficiency

(i) Again the first step is the same as in the case of Indiscipline.
(ii) If the matter is not resolved, then counseling and further training is advised for at least One Month. (The Methods proposed by practices such as Kaizen may be considered to spot problems and address them on a continuous basis)
(iii) After this period is over, the relevant superior reassesses the issue.
(iv) If not satisfied, the worker is dismissed with all benefits, excluding severance pay.

In both cases, if the Workers’ Council is not satisfied, then it can take the dispute up to the Conciliation Board and then the Tribunal or the Local Level Committee.

It is, however, possible that management may dismiss workers in large numbers at short notice in order to beat the requirements that it must undertake in case of lay offs. This is why it is advised here that the numbers of those dismissed on grounds of inefficiency or indiscipline should not exceed 5% of the unit’s workers’ strength, averaged over the year.
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Chapter 5
Seasonal Employment and Time-Bound Employment

It is necessary to take into consideration industries that are, by their very nature, characterized by seasonal employment. Obviously, in these cases, the provisions we had mentioned earlier do not apply, as workers will routinely be dismissed at certain times of the year. As there might be pressure to declare a large number of industries ‘seasonal’, a strict and clear delimitation of which enterprises come under this category should be listed.

Nevertheless, while

1. In food and clothing/garment industries, period specific employment is allowed, the employee, however, will be on the Muster and entitled to PF, ESI and Bonus. The terms and conditions of dismissal on account of inefficiency and indiscipline will be at the level of management alone. The union members of such industries will comprise only those whose job is of a perennial nature. For such employees all the usual benefits and procedures as in other industries will apply. Term employment in food/garment industries must be for a minimum period of 180 days. If less than that then the enterprise should hire from a contracting agency. Employees who belong to this category are not members of the Worker’s Council, as mentioned earlier.

2. If the same worker is hired for a period beyond 180 days, it will be deemed as a single contract for the entire year; in which case, the employee will be entitled to Gratuity. (see Contract Labour [Regulation and Abolition] Central Rules 1970; also see appendix)

3. If these labourers are provided by a contractor, then the contractor is the principal employer and all the workers are on the Muster.
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Chapter 5
Seasonal Employment and Time-Bound Employment
4. Trade apprentices – A trade apprentice is valid up to a period of six months beyond which the person will be deemed as hired and placed on the Muster with all benefits. Trade apprentices will normally be absorbed by the enterprise. The ratio of trade apprentices to employees on the Muster should not exceed 10%. If this period of apprenticeship is necessary for a technical degree from a recognized institution, the maximum time can go up to one year but the numbers involved have to abide by the limits mentioned above (see appendix C Apprentice Act 1961).

Construction Industry
1. Large construction companies often engage employees for a fixed period, which will be specified at the time of signing a written contract. Those who are not on a fixed period contract, and are on the muster, are entitled to PF, ESI, bonus and Gratuity. Those who are, however, on a fixed period contract will, as mentioned earlier, not be entitled to either bonus or gratuity.
2. In this industry, the fixed period of employment may exceed 180 days. In every other respect, those in the Construction Industry and those in Industries such as Garments and Food Processing will be the same. If in a particular construction company there are those whose job is of a perennial nature, they will be on the Muster as full time employees.
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