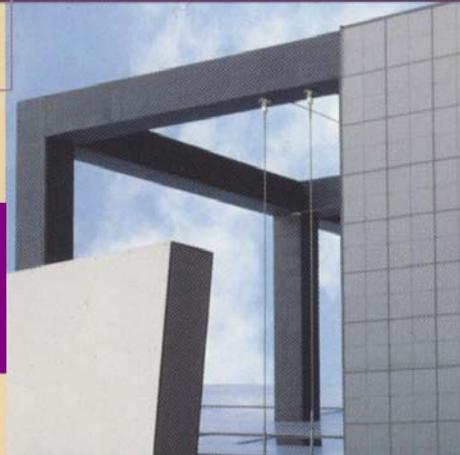


ANALYSIS AND EXAMINATION OF THE EMPLOYMENT RELATIONS IN INDIA

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Abstract

(Abstract on next page)

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Abstract

This article analyses the employment relations law in India and examines the application and suitability of these laws that are still valid after several decades of their enactment. Employment relations in India are governed by labour legislation passed as early as 1923. *The Workmen's Compensation Act 1923* was passed to deal with the growing complexity of industry, increasing use of machinery and consequent danger to the life and limbs of workmen. The very object of this Act is to provide adequate compensation to workmen who sustain personal injuries by accidents arising out of and in the course of employment.

The Industrial Disputes Act 1947 was passed just before the British left India. It was enacted largely to support the British effort to maintain supplies and essentials for its troops fighting the Second World War. The then government thought it necessary to refer all disputes to adjudication, that is settlement of disputes by tribunals, compulsorily and ban strikes simultaneously so that production could be maintained at all levels and at all times. During the period of Second World War, it was to serve the interest of the British Government that, the Defence of India Rules were amended and Rule 81A was introduced through which all powers of employment and dispute resolution came to be concentrated in the hands of government. This stunted the growth of the law and reduced the value and importance of trade unions. Rule 81A of the Defence of India Rules was introduced to ensure that peace on the industrial employment front was maintained at all costs. Unfortunately, the Industrial Disputes Act 1947 was a carbon copy of these very rules. What was done as a mere war front measure came to be the structure for employment relations for a new and independent India for all times to come.

The Industrial Employment Standing Orders Act 1946 was passed with the aim of making employers in industrial establishments formally to define conditions of employment. *The Trade Unions Act 1926* was passed to regulate the relations between workmen and employers or between workmen and workmen or between employers and employers.

ANALYSIS AND EXAMINATION OF THE EMPLOYMENT RELATIONS IN INDIA

INTRODUCTION

Globalisation has affected the employment relations all over the world. No longer are people geographically isolated, but interconnected for commercial gain. For example, a shirt may be designed in Australia, manufactured in India and sold in Japan. Globalisation by definition is the process of receding borders (Waters, 1995) and the progress of free market ideology formalised by trade agreements such as ASEAN and NAFTA (Chen, 1999). This paper attempts to make a study of employment relations in India, which affect one of the world's largest work forces.

Employment relations in India are governed by labour legislation passed as early as 1923 (Workmen, 1923). However, the Industrial Disputes Act 1947 is the most important and the most litigated of all labour legislation passed so far in India. It has a major impact on the employment relations and the Act has been applied for more than five decades. The provisions of the Act are still valid in the twenty first century, after several decades of its enactment. The paper also analyses and examines the impact of four major legislation affecting the employment relations in the world's largest democracy called India.

The new millennium and the new economy in the era of globalisation have not resolved some of the world's oldest problems. New opportunities have not materialised in the globalised virtual world, which is not in reality borderless (Ohmae, 1990). The achievement of strategic objectives through niche marketing to the west and out sourcing production to third world countries has permitted the exploitation of the jurisdiction of international employment relations' law. Multinational enterprises have yet to evolve to the role of global citizens, meeting the intellectual and ethical challenge of one global community (Dalai, 1992).

EMPLOYMENT RELATIONS IN INDIA

After decades of implementing a controlled system of economy and a strong legal regimentation, it has now dawned on the people of India to break a new path so as to help in the process of economic development and re-construction. The new economic policy adopted by India has significant directions and has a strong impact on the employment relations in the twenty first century.

A number of legislation effect employment relations. However, four important pieces of legislation have played a major role in shaping employment relations in the work place in India. They are as follows:

1. The Workmen's Compensation Act 1923,
2. The Industrial Disputes Act 1947
3. The Industrial Employment (Standing Orders) Act 1946 and
4. The Trade Unions Act, 1926.

These statutes are of great significance as they have produced distinct employment relations in India in the post and pre-independence period. India gained its independence in 1947. Incidentally, all four enactments were passed before independence.

1. THE WORKMEN'S COMPENSATION ACT, 1923

The Workmen's Compensation Act has been well received by the Indian work force in the employment relations. Due to the poverty of the workers and the complexity of industry, the workers aspire for protection from accidents at the work place. This piece of legislation has emphasised that the employer shall provide adequate safety devices to reduce the number of accidents. Further, the employer has to provide adequate medical treatment to the injured workmen.

This is an Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident. According to the general principle of the Act, compensation should ordinarily be paid to workmen who sustain personal injuries by accidents arising out of and in the course of their employment. Injuries by accident also include diseases contracted in the course of employment. Such diseases may also be termed as 'occupational diseases'.

The employer is liable to pay compensation at a fixed rate to the workmen affected by accidents arising out of and in the course of employment. The liability to pay such a compensation is independent of any neglect or wrongful act on the part of the employer or the employer's other servants. This liability arises from the relationship of master and servant, which exists, between the employer and the employee. The amount of compensation has been fixed by the Act and it is not dependent on the suffering caused to the workman or on the expenses incurred by the workman in curing the illness. It is dependent on the difference between wage earnings capacity before and after the accident and it also relates to the age and disability of the workman (A Manual, 1999).

Under this Act, the state government may appoint any person to be a Commissioner for Workmen's Compensation. Every such commissioner is deemed to be a public servant. An injured workman has to make an application to the Commissioner for workmen's compensation, who settles the claim. It is the Commissioner, who deals appropriately with the employer for valid claims. However, a claim has to be made within two years of the occurrence of the accident or in case of death, within two years of the occurrence of death (A Manual, 1999).

2. THE INDUSTRIAL DISPUTES ACT 1947

The Industrial Disputes Act, 1947, is an Act to make provision for the investigation and settlement of industrial disputes and for certain other purposes (Industrial, 1947). The law relating to industrial disputes in India is also known as the 'industrial law'. Industrial disputes are disputes, which are related to an industry. Industrial law has developed due to the awakening of workers of their rights and duties. Employment relations include a complex of relationships between the workers, employers, concerned authorities and the government. These relationships mostly deal with the determination of terms of employment, wages, conditions of workmen, conditions of labour and workplace.

The Industrial Disputes Act has seven chapters dealing with various matters connected with industrial disputes. Various authorities under the Act including the Board of Conciliation, Industrial Tribunal and Labour Courts take part in the settlement of disputes. The powers, constitution and duties of these authorities are discussed from chapter I to chapter V of the Act (Industrial, 1947).

The Supreme Court of India has on many occasions commented on the objects of the Industrial Disputes Act. According to Chief Justice Subba Rao, as discussed in *Hindustan Antibiotics Ltd v The Workmen*, the object of the Industrial Disputes Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in turn accelerate productive activity of the country, resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour.

The Act is not only intended to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. He further states that the object is to achieve co-operation between the capital and labour, which has been deemed to be essential for maintenance of increased production and industrial peace. He also recognises conciliation as the most important and desirable means to avoid industrial unrest (Hindustan, 1967).

In *Christian Medical College Hospital Employees Union v Christian Medical College, Vellore Association*, Justice E.S. Venkataramiah states thus, "The Act came to be passed in the year 1947 with the object of bringing into existence a machinery for investigation and settlement of industrial disputes... The Act provides for a machinery for collective bargaining. The object of industrial adjudication has, therefore, been to be a counter-veiling force to counteract the inequalities of bargaining power which is inherent in the employment

relationship." It is historically established that the Industrial Disputes Act was passed to set up machinery for settlement of disputes and this has its beginning during the Second World War, when no effort could be spared to save Great Britain from the verge of defeat. The then British Government had done this by amending the Defence of India Rules by adding Rule 81-A, which performed a two pronged function; one, to provide for reference of disputes for compulsory adjudication and the other, to ban strikes and lock-outs during the pendency of these disputes. From 1947 onwards, the industrial disputes have been settled through the machinery provided under the Act, but the Act has hardly been responsible for developing norms and infrastructure for achieving collective bargaining. Hence, it may not be quite appropriate to state that, the Act was passed for providing machinery for collective bargaining.

The British Government, as we have seen above, had introduced the legislation to ban strikes and lockouts and thus secure industrial peace. In *Calcutta Port Trust Shramik Union v The Calcutta River Transport Association*, Mr. Justice E.S.Venkataramiah is more on the point when he states, " The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace." This is an admission in the British tradition. Tribunals were created for settling disputes and no much thought was given for encouraging strong trade unions and collective bargaining.

Table 1: Trends of Strikes and Lockouts During 1965 to 1994

	1965-69	1970-74	1975-79	1980-84	1985-89	1990-94
*Average percentage of lock-outs per year	10.6	11.9	13.4	16.4	29.6	31.1
**Average percentage of man days lost per year due to lock-outs per year	29.3	25.9	36.3	36.4	58.8	59.0
Average number of man days lost per year per worker involved in:						
a) Strikes	7.8	9.2	10.6	21.4	9.9	12.3
b) lockouts	29.0	30.4	50.0	63.1	84.9	45.2

* As a percentage of average total number of industrial disputes per year.

** As a percentage of average total number of man days lost per year due to industrial disputes.

Source: *Pocket Book of Labour Statistics of relevant years*, published by the Labour Bureau, Government of India. As represented by Sen, Gupta, Anil K. and Sett, P.K.; (2000) "Industrial relations law, employment security and collective bargaining in India: myths, realities and hopes"; Industrial Relations Journal, volume 31, Number 2, June, Oxford: Blackwell Publishers, pp.150-151.

The Industrial Disputes Act caters to compulsory settlement of disputes through the intervention of the appropriate Government. But the Supreme Court of India is of the opinion, that this Act can achieve collective bargaining when the same Act provides for declaring strikes illegal and ban strikes so as to ensure settlement of disputes without any hindrance. This is quite contrary to the achievement of collective bargaining.

Since, the mid-eighties, the democratically elected government have tried their best to attract private investments. The economic crisis of this period has led the government to discourage strikes, strengthen the employer and stimulate growth. Thus, there has been unambiguity in the trends of strikes and lock-outs (Sen, 1993) as seen from Table 1. The percentage of unsuccessful strikes steadily increased during this period except between 1985 and 1989, when it decreased to some extent. 47.6 per cent of strikes were unsuccessful during 1990 to 1994. The average number of man days lost due to lock-outs have been more than the average number of man days lost due to strikes. It is clear from the industrial disputes indicated in Table 1, that the employers had more lock-outs, than the number of strikes by the employees.

Some of the major techniques of settlement of disputes provided in the Industrial Disputes Act are collective bargaining, mediation and conciliation, investigation, arbitration and adjudication. 'Collective bargaining' is a process of bargaining between the employers and their workers, by which they settle amongst themselves their disputes, relating to employment or non-employment or conditions of labour of the workmen. The

power to refer disputes to Boards, Courts or Tribunals is contained in section 10 of the Industrial Disputes Act, 1947. According to section 10 of the Act, where the appropriate government is of the opinion that, any industrial dispute exists or is apprehended, it may at any time refer the dispute to the Boards of Conciliation, Labour Court or a Tribunal. The use of this power has been the subject matter of intense litigation and that speaks volumes regarding the manner in which the section has been drafted. Even a number of amendments made have not had any significant effect on the law and the state of confusion (Industrial Disputes Amendment, 1952; 1956; 1982; 1984).

Justice S.K.Das , in *Workmen of Dimakuchi Tea Estate v Dimakuchi Tea Estate* summed up the principal objects of the Act as follows:

- (i) promotion of measures for securing and preserving amity and good relations between the employer and workmen;
- (ii) an investigation and settlement of industrial disputes between employers and employees, employers and workmen or workmen and workmen, with a right of representation by registered trade union or a federation of trade unions or an association of employers or a federation of associations or employees;
- (iii) prevention of illegal strikes and lock-outs;
- (iv) relief to workmen in the matter of lay-off and retrenchment, and
- (v) collective bargaining (*Workmen of Dimakuchi*, 1958).

In *Life Insurance Corporation of India v D.J.Bahadur*, Justice Krishna Iyer defines the objectives of the Industrial Disputes Act, 1947 as follows:

"The Industrial Disputes Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute-resolutions and set up the infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurances of industrial justice may create a climate of goodwill" (*Life Insurance*, 1980).

3. THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

The Industrial Employment (Standing Orders) Act 1946 was passed in order to make the employers in industrial establishments to formally define conditions of employment under their jurisdiction. This Act provides for preparation of draft standing orders and the certification of these standing orders by the certifying officer. The standing orders have to cover the following for the purpose of certification:

- i) Classification of workmen, for example: whether permanent, temporary, apprentices, probationers or badlis (casual).
- ii) Manner of intimating workmen – periods and hours of work, holidays, pay-days and wage rates.
- iii) Shift working.
- iv) Attendance and late coming.
- v) Conditions of and procedure in applying for and the authority which may grant leave and holidays.
- vi) Requirement to enter premises by certain gates and liability to search.
- vii) Closing and re-opening of sections of the industrial establishment and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
- viii) Termination of employment and the notice thereof to be given by employer and workmen.
- ix) Suspension or dismissal for misconduct and acts or omissions which constitute misconduct.
- x) Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
- xi) Any other matter which may be prescribed.

This legislation too, like the Industrial Disputes Act rests heavily on the shoulders of the government for purpose of implementation. In the absence of a strong system of collective bargaining, the employers hardly take this legislation seriously, leaving the employees to fend for themselves.

The burden is on the employer to draft standing orders and submit for certification. The employees. The employees mostly were not well educated and hence drafting of the standing orders was dependent largely on the employers. The contract of employment is given the least importance and in this respect the rights of the workmen are seriously effected as they hardly know, under what terms they are working. Given the situation, it is necessary to evolve a system, which will be participatory and build confidence in the workmen that their rights are well protected.

4. THE TRADE UNION ACT, 1926

Major changes in industrial relations in India have occurred due to industrialisation. The post-independence period, before 1947, witnessed a massive growth of industrial enterprises. Low standards of living, long working hours and adamant behaviour of employers resulted in the growth of militancy amongst trade unions.

According to section 2 (h) of the Trade Union Act, 1926, “Trade Union” means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more trade unions. However, the Act does not affect any agreement between partners in relation to their business; or agreement between an employer and employee in relation to employment in their own business or any agreement related to the sale of goodwill of business. The Act also provides for registration of the trade union under section 4 (Malik, 1996).

The conflicts between the union and the management and inter union rivalry witnessed high levels of strikes and lock-outs as indicated by Table 2 below.

Table 2: Strikes and Lock-outs in India, 1961-1992

Year of strike	Number of strikes
1961	1357
1965	1835
1970	2889
1974	2938
1978	3187
1981	2589
1985	1755
1990	1825
1991	1810
1992	1253

Source: Labour Bureau, *Government of India, Statistical Outline of India*; New Delhi: Tata Services Ltd. As represented by Mankidy, Jacob; (1995) “Changing Perspectives of Worker Participation in India with Particular Reference to the Banking Industry”; *British Journal of Industrial Relations*, volume 33, number 3, September, p.448.

However, there has been a gradual decline of trade union militancy since the early 1980’s. The workers faced undue hardship due to prolonged strikes in textile mills in Bombay in the early 1980. They realised the adamant stand taken by their union leaders, which contributed to the recognition of failures on the trade union front. Similar strikes in Dunlop Rubber Company, Bata India, Hindustan Lever and Birla Rayon Factory led to the realisation of trade union weaknesses and failures. Frustration of the members could be seen from the experiences of Victoria Mills and Kanoria Jute Mills of West Bengal. (Mankidy, 1993) Mankidy, J. (1993) “Emerging patterns of industrial Relations in India” *Management and Labour Studies*, 18(4); pp.200-207. Majority of the 5000 workers in the Victoria Mills were affiliated to four major trade unions namely: Centre for Indian Trade Unions (CITU), All India Trade Union Congress (AITUC), Indian National Trade Union Congress (INTUC) and the Bharatiya Mazdur Sangh (BMS). These four trade unions were in turn supported and led by four major political parties in India, which are the Marxist, the

Communist, the Congress and the Socialist party. Poverty and frustration due to prolonged strike resulted in an attack by the workers on the trade union leaders. The workers not only attacked some of the union leaders but also ransacked their homes. They not only disowned the trade unions but also destroyed the offices of the trade unions. Most of the trade union leaders fled from the scene. Similar incidents were seen in Kanoria Jute Mills. Present day workers are more educated and are fully aware of political and economic conditions of the country. Thus the trade unions are exhibiting more understanding, association and co-operation to improve employment relations. Employer-employee collaborations through participation and discussion between the trade union, workers and the management are encouraged and practised. (Special, 1994; Gupta , 1994; Mankidy, (1995)

Table 3: Work Goals of Employees

Importance in work life of The following:	Mean value assigned	Rank assigned in order of priority
Good Pay	7.89	1
Job security	7.55	2
Opportunity to learn	7.06	3
Opportunity for upgrading	6.81	4
Interesting work	6.49	5
Match between job and ability	6.18	6
Good interpersonal relations	5.84	7
Good physical working conditions	4.93	8
Lot of autonomy	4.93	9
Lot of variety	4.93	10
Convenient work hours	4.65	11

Source: Mankidy, A. and Mankidy, J. (1992) "Meaning of working: a study of bank employees", *Decision*, July-December, pp. 129-139.

Employment relations have not been peaceful in most of the industries. However, in recent years, militancy by trade unions has reduced and the trade unions opt to listen to the employers. They go to the management with an intention to bring about the best possible results in the interest of employment relations in an industry. A study of the present day employees in the banking industry indicate that the workers have certain defined goals. They believe in active participation of workers and management in bringing about good employment relations. The new value orientation of the employees is seen from Table 3 above. 79 percent of the respondents were below the age of 40 years. Though most employees highly ranked 'good pay' as a work goal, a majority of them also look to opportunity to learn, opportunity to upgrade and good interpersonal relations as an important work goal (Mankidy,1992).

CONCLUSION

Participation of workers in the settlement of disputes and maintenance of peace and harmony in the workplace is seen as an innovation in employment relations in India. Instead of discussing traditional industrial and employment relations, the trade unions are more interested in discussing business, which improves the conditions of employment and the condition of its employees. There is a cultural evolution from being internationally minded to becoming world minded. Thus a citizen is no more a citizen of a single country, the citizen may be considered as a corporate citizen of the global community.

The process of involving workers in the management to bring about effective employment relations has been experimented for a long time. The concept of participation of employees in maintaining better employment relations has gained momentum. It is not only recognised in India but also throughout the world.

The Industrial Disputes Act, 1947 remains the most important legislation in respect to the employment relations in India. The Industrial Disputes Act, 1947 provides mainly, for the investigation and settlement of industrial disputes. It is quite clear that the Act provides for a "conflict-management arrangement" as it comes into play only when there arises a dispute between an employer and the workers. The act becomes

active only when there is a dispute. In order to be effective, it is necessary to focus more on maintaining peace and harmony in industrial establishments and protect the legitimate interests of workers and employers.

The compulsory settlement of disputes is much in vogue in India even today. It has been so automatic that, the moment a dispute arises, it is referred to the process of adjudication and the concerned parties seem to be relieved that it has been so referred, whatever may be the outcome. Due to the presence of statutory provisions, the Government has retained ultimate control over the settlement of industrial disputes by referring the disputes to compulsory adjudication under the Industrial Disputes Act, 1947. The Workmen's compensation Act, 1923 has universal acceptance, making it easier for the workers to claim compensation from the Commissioner, who in turn deals with the employers for a valid claim.

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