By Invitation

Quo Vadis, Industrial Relations Disputes Resolution…?

Jerome Joseph

Differences and disputes are intrinsic to employer-employee relationships thus necessitating fair disputes resolution mechanisms and processes. The increased demand for labor law reforms and the general trend underlying the target provisions for change point towards an assertion of the managerial prerogative of employers on grounds of competitive survival and growth through labor market flexibility. However, disputes resolution reforms need to bear in mind that in the pursuit of shareholder centric dividends, the democratic dividend of workplace democracy should not be sacrificed. The reforms related to fair and speedy disputes resolution deliverability therefore should be geared towards creating workplace "ombuds-committees" and strengthening conciliation services while leaving the democratic rights of labor untouched.

Jerome Joseph is Professor, Personnel & Industrial Relations, Indian Institute of Management Ahmedabad 380015. E- Mail: jerome@iimahd.ernet.in

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The clamor for labor law reforms is back to centre stage with the change of guard at the Centre in India and the first move has been initiated by a state government run by the same party now in charge of labor policy changes at the Centre. The targets again are three labor legislations which have been the focal points in the labor market flexibility debate – The Industrial Disputes Act (1947), Contract Labor (Regulation & Abolition) Act, 1970 and the Factories Act (1948)(indianexpress, rajasthan-shows-way-in-labour-reforms).Many of these moves are in response to demands from industry associations. For instance, according to FICCI, "The multiplicity of labor laws has created confusion and complexity." (economictimes. indiatimes, 2014dl-sachdev).With the clear objective of asserting the managerial prerogative of employers, according to FICCI the Industrial Disputes Act should be amended to facilitate 'hire and fire' to meet market demands and to give employers the power to change service conditions without the statutory 21day notice that needs to be given to employees before any such

change is implemented. Trade unions have their own stand on the reforms debate as reflected in statements by their leaders. According to the General Secretary of the Centre of Indian Trade Unions, "The labor force is the real contributor to the value-added society so they should be treated as human beings and not as a commodity. Proper enforcement and protection of laws should be there for the labor force. Labor standards are often ignored by employers and exploitation of workers takes place. These violations should be taken seriously by the government and the violators should be punished." (economictimes.indiatimes, 2014dl-sachdev).

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The stage is thus set with the players ranged on various sides of the reforms debates and demands with the inevitable differences and disputes which will be played out in the various theatres of representative forums on offer in a democratic setting made possible by the mosaic of the Indian Constitution. While there are many themes which will be the focus of the reforms drama and the diverse enactments of dramatis personae, this paper will focus on one area which will always remain significant in employer-employee relations whatever the denouement on other reform themes which are likely to be enacted in the near future.The area in question is that of disputes and disputes resolution in employer-employee relations and the question to be addressed here is related to the nature of reforms in this important sphere of stakeholder engagement.

Ecosystem of Industrial Relations Disputes

A consideration of the changes needed in disputes resolution will have to take into account the ecosystem of industrial relations disputes in today's context. The history of industrial relations shows that as long as there is an employer and an employee, and there are terms and employment contracts, there will be differences and disputes, conflicts over rights and conflicts over interests, standoffs between what the employee is expected to deliver and what the employee gets in return from the employer. Even if all the laws are amended in line with organizational-managerial and investor demands, the fundamental contradictions between employer and employee will remain on the workplace justice fronts. Disputes in industrial relations cannot be wished away through legal reforms in the thrust towards greater "labor market flexibility". The removal of prevailing fences and boundaries which may result from such changes will necessitate higher order disputes resolution agencies, strategies, methods, processes and competencies in order to create a fair workplace informed by human dignity and speedy disposal of industrial relations disputes.

Table 1 gives a glimpse of the causes of disputes in industrial relations during the period 1961-2011. Disputes over wages and allowances, bonus, personnel,

retrenchment, leave and working hours, indiscipline and violence and a whole host of causes under the category "others" which include layoffs, workload issues, union rivalries, have held constant over the past fifty years. Some evidence is available as to what happens when organized labor shrinks and the agencies of the state withdraw in playing their mediatory and statutory role in the data given in Table 1. As trade union numbers dwindle and "de facto" reforms through a tactical withdrawal of state labor department services, workplace indiscipline and violence seems to have escalated as is evident from the 1961-2011 data.

Table 1 Industrial Disputes by Causes: 1961-2011

	1961	1971	1981	1991	2001	2011
Wages and Allowances	30.44	34.30	28.70	28.90	24.63	24.90
Bonus	06.85	14.10	07.80	04.65	06.53	03.80
Personnel	29.30	23.00	21.40	17.90	10.98	09.20
Retrenchment	00.00	00.00	00.00	02.59	01.34	00.50
Leave and Working Hours	02.97	01.40	02.20	01.20	00.20	00.30
Indiscipline and Violence	00.00	03.60	10.20	22.26	23.20	30.80
Others (Lay-off, Union Rivalry, Work Load, Gherao, Not Known)	30.44	23.60	29.70	22.50	33.20	30.50
Total	100.00	100.00	100.00	100.00	100.00	100.00

Source:Indian Labour Year Book: 1961-2011

Besides the 50 year decadal data on workplace indiscipline and violence, there have been three major incidents of serious workplace violence leading to the tragic loss of life in the recent past between 2008 and 2012– a Greater Noida firm(timesofindia. indiatimes 2008 india-unit-graziano-trasmissioni-commercial-production), a Coimbatore firm (dnaindia 2009 12-arrested-for-murder-of-pricol-v-p-near-coimbatore**)** and a Manesar firm (timesofindia.indiatimes2012manesar-plant-awanish-kumar-dzire) which were linked to on-going disputes and thus have a bearing on the discourse on reforms related to disputes resolution. A careful analysis of anecdotal information available in the public domain related to the three tragic events referred to above suggests ample evidence of a serious deficit in the area of industrial relations disputes resolution.

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At the root of the three incidents clearly is the progressive increase in "de facto labor market flexibility" expressed in the form of the ratio of contract workers to permanent workers. The insecurity and inequality which enters into the shop floor dynamics as a result of the contradictions inherent in workforce structures becomes a major factor accounting for the simmering discontent. The Coimbatore firm workers, for in-

stance, were agitating for over two years against the hiring of contract workers prior to the workplace incident (reuters 2009-pricol-killing-labour-at-the-receiving-end). According to the top management, at the Manesar plant, the ratio of regular to contract was 50-50 before the incident as compared to 30-35 percent contract workers in the parent country (businesstoday.intoday 2012-violence-at-maruti-manesar-criminal-act).

Contractualization has led to wage disparities between permanent and contract employees contravening the "equal pay for equal work" principle leading to serious disaffection and disputes with managements. The Coimbatore firm workers were agitating for over two years against the non-payment of pay and other benefits prior to the incident (reuters/2009/pricol-killing-labor-at-the-receiving-end).The management had also been deducting up to Rs.1,000 a month from each worker citing the loss incurred by the company as the reason (hindu/2009/09/26/).The Greater Noida firm dismissed 250 contract employees in June after they had staged a sit-in demanding a salary raise and the status of permanent employees consequent to the Greater Noida firm reneging on an agreement to provide a 3000 Rupees per month pay increase, by attaching conditions to the pay hike (timesofindia. indiatimes. 2008-india-unit-graziano-trasmissioni-commercial-production). A fact-finding team of a union that visited the spot after the September 22 incident found that out of the 1200 workers employed in the factory, only 500 were regular workers, and the rest were on contract. The Greater Noida firm at the time paid its regular workers Rs.3200 a month for working 12 hours a day; contract workers were paid Rs.2200 per month, and denied various rights (sanhati/998/12)

Disaffection and discontent and worker reactions with wages and working conditions have been countered with terminations and suspensions which are used freely especially at the slightest sign of mobilization and collectivization for enhancing wages or for demanding regularization. For forming a union the Coimbatore firm terminated about 1,500 workers who had not been made permanent for the last 20 years (cpiml/liberation, 2009). The company terminated 42 employees for indiscipline on grounds of preventing capacity utilization of the factory and stopping other workers from carrying out their duties (dnaindia 2009 report12-arrested-for-murder-of-pricol-v-p-near- coimbatore).

The Greater Noida firm had been compelled by worker protests to agree to reinstate all but 15 of the 200 contract employees whom it had dismissed after they had staged a sit-in demanding a salary raise and the status of permanent employees (timesofindia. indiatimes. 2008).The Manesar plant's reaction to the July 18 violence was strong, "There is no scope to retain any of the workers involved in the assault and violence at Manesar. We want to create a strong deterrent with a clear message to miscreants that the guilty have no chance as we restart production" (economictimes.indiatimes,2012). Again as reported, the Manesar Plant, while lifting the

month-long lockout from August 21 served termination notices on 500 regular workers (indianexpress, 2012 manesar-violence-maruti-suzuki-to-lift-lockout-sacks-500-workers)

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Another tactic used is to threaten closure although this has not been implemented in any of the three cases. The Coimbatore firm, for instance, said these strikes have hit profitability and they could shift base (reuters/2009/pricol-killing-labor-at-the-receiving-end). When the Greater Noida firm top management came to India after the incident and a local company director said as quoted, ‘’One of the key issues they will discuss is whether the Greater Noida plant should continue to function or be closed down. (timesofindia.indiatimes, 2008_greater-noida-lalit-kishore-chaudhary-marcello-lamberto)

As many as six workers who formed a union in Coimbatore were transferred to Uttaranchal (cpiml/liberation/2009) and the workers protested against it a couple of years before the incident (cpiml/liberation/2009). A senior official was quoted as saying that the HR manager was targeted because he was “weaning away” employees from a union that was leading the protests (hindu, 2009/09/23).Though the workers were ready for talks, the management said they should not be part of a particular trade union (cpiml/liberation/2009).

“There is no compromise on violence,” was the Manesartop management assertion when asked whether he was ready to engage the Union, in any kind of peace talks to start operations (Ttimesofindia.indiatimes,2012-07-21, manesar-plant-maruti-suzuki-workers-union-shinzo-nakanishi). And when asked what would happen to the new union that had got recognition from the Haryana Government as well as the Manesar management’s support after the previous one was disbanded last year, the response was unequivocal-“It will be derecognized, for sure” (timesofindia. indiatimes/2012-07-22, manesar-plant-awanish-kumar-dzire)

To try and offset the influence of the union on the worker, a good conduct bond was required to be signed by the workers at the Manesar plant to declare they would “not resort to go slow, intermittent stoppage of work, stay-in-strike, work-to-rule, sabotage or otherwise indulge in any activity, which would hamper normal production in the manufacturing unit” and was intended as a preventive mechanism (indianexpress,2011/11/29maruti-good-conduct-bond—unfair). In addition, as an alternative to worker affinity to unions, top management said that the company had taken steps to improve relations with the workers by engaging a consultant to conduct an impartial assessment and also conducted communication programs. “Perhaps it was not enough” (timesofindia.indiatimes, 2012-07-21manesar-plant-maruti-suzuki-workers-union-shinzo-nakanishi) to show any permanent result and remove any chances of a trust deficit. From what

transpired on July 18th, such initiatives did not appear to have weaned away workers from their unions or improved relationships with supervisors and managers. "The management and the workers need to improve relationships," MSI Chairman said (english.samaylive/maruti-violence-manesar-new-delhi-gurgaon-business-news.html)

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The analysis and interpretation of the three tragic workplace incidents and the emergent insight into the ecosystem of industrial relations disputes suggests that the underlying inducers which have emerged are also the main themes of the reforms agenda related to industrial relations. In a sense the analysis is also indicative of the kind of issues which industrial relations will confront if the *de facto* reforms of lived industrial relations experiences as described above become a *de jure* reality through changes in labor laws.

However in the backdrop of a long and well established context of a democratic society and polity, industrial relations has evolved into a complex phenomenon in which employers and their organizations, employees and their collective associations as well as the state and its agencies connect in order to evolve procedural as well as substantive policies and instruments to regulate the point of contact employer-employee relationship, to manage contradictions which arise in their transactions and to work towards consensus among contending stakeholders. Conflict and congruence, contradictions and consensus, cooperation and confrontation characterize the interactions of various stakeholders brought together by the contract of employment within the framework of legality and constitutionality. Respect for constitutionally and legally conferred rights like the right to associate, right to be recognized, right to represent workers in collective bargaining processes, right to withdraw labor when all else fails could be the foundations for strengthening fair and speedy disposal of disputes even as the Indian democracy considers reforms in the arena of disputes resolution.

The changes in labor laws initiated by the state of Rajasthan are but a harbinger of things to come in the thrust towards labor market flexibility. Disputes are likely to increase as a consequence even as labor feels the heat. Disputes resolution needs to be strengthened for the sake of the vulnerable employee and for the survival of organizations which provide livelihoods for the employed. What are the changes which can create a fair industrial relations disputes resolution system is the question before us.

Disputes Resolution Practices: Current Scenario

The Industrial Disputes Act 1947 prescribes a multi stage structure for resolution of disputes:

Level I: Works Committees to address and deal with issues on an ongoing basis in a proactive and participative manner.

Level II: When a collective of workers feels aggrieved and negotiations with management fails, can resort to a strike by giving a strike notice as per the provisions of the Act or conversely management can declare a lockout when it apprehends threat to the firm's assets or personnel. The provisions related to strikes or lockouts as a means of disputes resolution are as follows:

- A notice of strike or lockout is to be issued and from the date of issue of the notice, the notice is valid for 6 weeks.
- The strike can commence only after 14 days of the date of issue of the strike notice
- A strike or lockout during the pendency of conciliation or arbitration or adjudication proceedings would be declared illegal with the attendant consequences in respect of employees like the initiation of disciplinary proceedings under the Industrial Employment Standing Orders Act (1946) which may lead to dismissal and the imposition of the "no work, no pay" principle for a period equivalent to the duration of the illegal strike.

Level III: On receipt of the notice of strike or lockout, the appropriate government – state or Centre depending on jurisdiction – initiates conciliation proceedings by appointing a Conciliation Officer to negotiate with the parties and try and help the parties to find a solution as per the provisions of the Act towards a settlement. Conciliation is mandatory in "public utilities" and recommended in non-public utilities although generally conciliation is initiated even in such cases. Any organization is deemed to be a public utility if it is notified as a public utility by appropriate government.

Level IV: If conciliation fails, there are three possibilities – the appropriate government can refrain from further action, or make a reference of the dispute either to arbitration proceedings or to the Labor Courts for adjudication proceedings. If the appropriate government refrains from further action, the ball is back in management-employee court for either negotiating an agreement amicably or engaged in a contest of wills through a prolonged strike or lockout till either party blinks.

Level V: If reference is made for arbitration as per the provisions of the Act subject to the consent of both parties, the dispute goes through arbitration proceedings towards an award.

Level VI: If reference is made to the Labor Court, the disputes go through adjudication proceedings with provision for appeals by either of the aggrieved parties through a single judge and then a Bench of the High Court on to the Supreme Court for a decade or more of litigated resolution of the dispute with all the attendant delays, costs and consequences. Labor courts have original jurisdiction only in termination cases.

The praxis of industrial relations disputes resolution system seems to be oriented to containment of the disputants as well as the dispute rather than inclined towards a purposeful deliverability of sustainable solutions within the framework of legality, constitutionality and mutuality within a specified, reasonable time frame. There is also the tendency to use the elements of the resolution processes to stall and to obstruct rather than to move towards a legally, constitutionally and substantively sustainable conclusion. Once disputes get into the statutory processes, they meander around interminably with negative work life and livelihood consequences for the more vulnerable among the employee categories with mounting frustration and anger among the marginalized leading to untoward and avoidable incidents.

If disputes are inevitable in industrial relations irrespective of whether the current laws are amended or not, and if deliverability of sustainable solutions informed by skill and speed is the goal, the current arrangements are woefully lacking. If disputes resolution is to be given an identity and character, and the focus is on legally, constitutionally and substantively sustainable deliverability, bringing about changes in the disputes resolution machinery becomes a categorical imperative.

Fair & Speedy Disputes Resolution

The first change proposed is to replace the Works Committee with an Organizational Ombudperson or Ombuds Committee which is representative, impartial, independent to deal with employee grievances and disputes internally, amicably and honorably. The composition could consist of a management representative, a trade union or an elected worker representative and a neutral third party acceptable to both parties as Convenor. The Ombuds Committee should be effective enough to find solutions through an iterative and interactive process with the main parties to the dispute within specified time frames.

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The second change can be by making a strategic shift from government run disputes resolution machinery to a professionally run disputes resolution machinery within the framework of "minimum government, maximum governance". This will call for deregulation of the disputes resolution processes especially with reference to the conciliation machinery. This will mean conciliation services to deal with industrial relations disputes will be offered both by government and professional service organizations, will have the same powers as they have now and will be fee based. Accreditation and registration systems can be developed to have a choice of recognized conciliation and mediation services on offer for disputants. Disputants can approach whichever agency they see as capable of independent, impartial solu-

tions deliverability in the shortest possible time at reasonable cost and within a framework of purposeful mutuality. This will also open up employment possibilities for disputes resolution professionals skilled and experienced in this field and professionalize disputes resolution.

The third change relates to the power of reference of appropriate government to labor courts and industrial tribunals if conciliation or mediation fails. More often than not the power of reference has been used to curb strikes and lockouts rather than to resolve disputes. It is for the disputants to decide if they wish to seek justice from the courts or not and to weigh the costs and benefits of litigation over a conciliated or mediated resolution of the dispute or through strikes and lockouts. Labor courts should also be primarily oriented to get labor and management to resolve disputes through conciliation processes. The feasibility for labor courts to be given original jurisdiction (currently available only in termination cases) should be explored so that any aggrieved party – individual employee, a group of employees, a trade union, an individual employer, a group of employers or an association of employers can approach the labor court with provision for appeals to the High Court and Supreme Court as may be necessary or permissible as the contending disputants move towards a resolution of their dispute. This will give protection to aggrieved individual employees to seek justice in the context of non-unionized or even unionized settings.The possibility of litigation or direct action as a choice available to individual or collective disputants might act as a check and also serve as a leverage to seek resolution through conciliation and mediation from the reinforced services available with both government as well as non-government professional conciliation agencies.

The current practice of using conciliation as well as the power of reference to curb strikes and lockouts and not so much to find conciliated solutions through professional, independent and impartial services needs a rethink. This conclusion is based on the current provisions of law related to strikes and lockouts in the Industrial Disputes Act 1947 wherein the restrictions on strikes and lockouts described earlier only have to do with making a determination on whether the strike or lockout is legal or illegal with the penalties associated with engaging in an illegal strike or lockout activity. The provisions of law only spell out the penalties which can be imposed when a strike is declared illegal but by themselves they do not prevent a strike or a lockout from taking place. The calling of a strike in the pursuit of dispute resolution by a union or collective of workers is a function of collectively mobilized power and perceived ability to sustain the withdrawal of labor long enough to get managements to the negotiating table and to negotiate a resolution. The current practice of using conciliation and the power of reference as restrictions on strikes is only adding to the low credibility of conciliа-

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tion as a disputes resolution mechanism, which in industrial relations circles is considered just a "waiting room" before the dispute is referred to adjudication. While the provisions related to giving a strike notice before going on a strike and the specification of a strike date may be retained, the provisions prohibiting strikes during the pendency of conciliation should be repealed in order to give conciliation a fighting chance as a disputes resolution mechanism. The prospect of prolonged litigation or direct action should impel management and labor towards reinforced and professional conciliation and mediation services.The reforms related to disputes resolution therefore should be geared towards strengthening the ombuds committee and the conciliation alternative as the key instruments of fair and speedy solutions deliverability through relevant amendments to the Industrial Disputes Act 1947.

Conciliation Services &Conciliator Competencies

The challenge of recasting the disputes resolution identity with Ombuds committees and Conciliation can be met only through the enhancement of capabilities and competencies rather than by succumbing to the clamor for the expansion of the statutory powers and authority of the conciliator.Based on our interactions with Central Conciliators, our informed and considered view is that the following competencies are necessary to fulfill their roles with credibility and professionalism:

1. *Interpretative Understanding of Labor Laws Towards Disputes Resolution:* This skill calls for not only understanding labor laws which fall within their jurisdiction but also to be able to interpret the laws in specific disputes contexts while trying to get the disputing parties to move towards sustainable agreements and settlements. The higher order competency is the ability to interpret law in the context of disputes which may arise in the industrial relations context to ensure legality and constitutionality while seeking resolution of the substantive issues.
2. *Multiple Stakeholder Orientation:* Invariably, the practice of industrial relations is characterized by multiple stakeholders engaging each other on a roller coaster cooperation-conflict continuum. Different stakeholders dealing with the issues on the table bring different perceptions and interpretations which may often make the situation appear intractable to the uninitiated. For the seasoned conciliator, the challenge is to see the issues on the table through the eyes of the interacting stakeholders and to try and steer their expectations into a zone of workable agreements by helping them to recognize areas of congruence and divergence through a process of iterative engagement.
3. *Solutions Generation Capability:* Disputes in the industrial relations arena are often characterized by rigid bargaining positions and partisan posturing. Ruthless power play featuring a fruitless exercise of blaming and point scoring vitiates relationships and stakeholder com-

munications. In this context the ability to help disputants to see beyond the game playing and getting them to move towards a reasonably sustainable agreement is best served by the ability to generate creative solution propositions. The more the solution propositions generated the greater the possibility of getting the disputants to the dotted line. This is possible only if the conciliator can see beyond the partisan perceptions and conflicting expectations and visualize solution propositions which can lead to sustainable outcomes informed by legality and constitutionality.

4. *Self-Confident Serenity:* Disputes in the industrial relations space are informed by atmospherics and theatrics. The conciliator needs to guard against misinformation and misrepresentation by one or more of the disputing parties. Verbal abuse and physical threats, allegations and accusations are all inextricable components of industrial relations disputes. The ability to be able to maintain one's composure whatever the provocation and the capacity for verbal dexterity in the midst of verbal violence can go a long way in gaining respect and staying in control of the situation whatever the ultimate outcome.

5. *Professional Relationship Building Skills*: Conciliators in today's environments face greater danger of collusive or opportunistic relationship orientations in their engagements with disputing parties. A collusive approach to relationships involves swinging towards one or other of the disputing parties for personal gain or to avoid personal loss with little sensitivity to conflict of interest considerations. An opportunistic relationship orientation operates on the basis of expediency and instant gratification. A professional relationship orientation is always conscious of one's role as a conciliator wherein one is part of the disputes resolution process and yet not part of the dispute. The challenge is to maintain that equilibrium day in and day out in the midst of playing out one's role – a state of mind which can best be described as one of detached engagement.

6. *Integrity based Credibility*: The greatest danger in today's opportunistic environment is to surrender integrity based credibility to the lure of illicit gain and instant gratification. In a context of corruption and bribery, abuse of power and misuse of statutory authority, adopting a policy of unflinching and unyielding integrity is a rare standard of professional behavior. Conciliation without credibility is like a body without a soul and is essential for long term effectiveness as conciliators

7. *Resilience:* Given the nature of the conciliation process and considering that the process is based on disputant voluntarism and the disputant commitment to speedy resolution, setbacks and failures are intrinsic to the process. To be a great conciliator calls for great resilience in the

wake of hostile posturing, rigid positional bargaining and raw power play especially by the more powerful disputants. The ability to stay the course with persistence and patience are vital qualities for the conciliator.

8. *Transactional Impartiality:* Very often, stakeholders engaged in industrial relations disputes perceive conciliators to be biased in their dealings– epithets like pro labor or pro employer are often heard in industrial relations circles. Few conciliators earn the respect of stakeholders on both sides of the fence on grounds of transactional and relational impartiality, independence, fair play and purposefulness. The ability to be respectful to all and partial to none while being intensely engaged with the stakeholders in order to try and move them towards a sustainable settlement is a daunting task but critical to the long term effectiveness and efficiency of conciliators

Besides these competencies, conciliators also need to expend efforts in "perspective building" in order to understand better the changing context of conciliation processes and the attendant need for conciliation professionals to become more aware of the dynamics underlying industrial relations today. Some of the elements in the perspective building framework are as follows:

- Developing a critical understanding of the contemporary economic and business environments in order to better appreciate the challenges and opportunities confronting conciliation professionals. A deeper understanding of the thinking behind modern commercial businesses with their unwavering focus on profit maximization and the impact such a focus has on workers, consumers and the ecological environment can help in situating the conciliator role dynamics, pressures and challenges.
- Gaining a better understanding of the impact of the neo liberal ideologies and free market orientations on the industrial relations institutions like legislative bodies, labor ministries and functionaries, workers and trade unions, legal provisions and compliance pressures, collective bargaining and settlement processes, disputes resolution and adjudication processes.
- Within the above context, while acknowledging the legal acumen of the conciliators born of long years of experience in their multifaceted roles as regulators and enforcers, there is also need to look at the conciliator role and to recognize that there is a need to focus on one single skill which could make or mar the compliance and conciliatory role of the commissioners – the skill of negotiating - to move the interacting employers, employees and unions individually and collectively towards better processes, better relationships and better outcomes.
- Need to realize that business "utilitarianism" driven by shareholder centric profit maximization has to be countered with the normative infusion

of legal and constitutional standards within the conciliator jurisdiction considering that even compliance with law is seen purely in cost benefit terms by business in a market driven economy

- Need to uphold legal and constitutional rights of individual and organized labor even as the conciliator steers the disputants towards a sustainable outcome.

The perspective building approach should move away from an overly legalistic approach towards a skill based approach. Legal acumen is necessary in understanding and applying law in a creative manner to industrial relations situations, but what is needed in today's dynamic and volatile environment in which market dynamics dominates discourse, is the ability to influence interacting industrial relations solutions through astute and enhanced conciliator capability. Speedy disposal will only come through skilled handling of multiple stakeholders and their conflicting and congruent interests. Solutions generation creativity comes through human and social sensitivity.

As long as there are employers and employees and a contract of employment, there will be disputes and the direction of reforms as well as the industrial relations experiences of the recent past suggest higher workplace volatility and hence the need for systems for speedy and skillful resolution of disputes in a fair and just manner. Utilitarian Reforms oriented to unitarist restoration of managerial prerogative are contra indicated with the democratic ethos of the constitutionally constructed industrial relations disputes resolution system in India. Managerial prerogative can manage resources but the democratic dividend unleashes resourcefulness through connectedness and relatedness. It is the clash of the antithesis with the thesis which produces a higher order synthesis – this is the law of higher order change.

Strikes and lockouts, conciliation, arbitration and adjudication are options available to resolve disputes. Credible Ombuds Committees and competent conciliation can still hold its own provided Ombuds Committee professionals and conciliation services have the right competencies and the right perspectives to deploy the competencies for facilitated disputes resolution processes, while it is incumbent on disputants to work towards strengthening the ecosystem for conciliated settlements as opposed to resolving disputes through other available methods.

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