Institutional Framework of Industrial Relations in India: Still & Muddy Waters

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The reforms of the industrial relations system and the labor market are being debated in the post-reform period vigorously as if they are "new agenda" for the state to carry out. This article seeks to view the whole issue of labor law reforms in an historical perspective. It shows that the state has always skirted the core issues of reforms and left them to the employers and the trade unions to resolve their differences. The state was seeking to serve its political interests in the process which led to preservation of status quo. What is not appreciated is that this strategy has led to questionable and undesirable outcomes in the labor market and the industrial relations system.

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The institutional framework of the industrial relations system (IRS) in independent India drawing from the colonial model of industrial relations (VenkataRatnam, 1996) has been defined largely by four major labor laws, viz. the Trade Unions Act (1926) (TU Act), Industrial Employment (Standing Orders) Act (1946) and the Industrial Disputes Act (1947) (ID Act). The policy-makers, toying between the two models of governance of the IRS viz. the "state regulation model" and the "voluntarism model", preferred the former to the latter (Ramaswamy, 1984). The failures of the IR bills in 1947 and 1950 and the resignation of V.V. Giri over the retention of compulsory adjudication model reflected the policy moods of the regime then.

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State regulation of IRS was a part of the larger strategy to regulate the product market which comprised various methods of regulation such as industrial licensing, location policy and so on (ShyamSundar, 2009b). The state regula-

tion model consisted in determination of "rules" of the IRS through labor laws and regulations (government orders), compulsory adjudication and the associated judicial processes, a strong labor administration, and so on. The state's grip over the IRS was further strengthened by two processes. Firstly, the state dominated the social dialogue forums such as the tripartite Indian Labor Conference (ILC) and used them not only for consultations with the social actors (i.e. trade unions and the employers' organizations) but also to drive home its agenda. It was in this sense a "corporatist" institution (Rudoph & Rudolph, 1987). Secondly, thanks to the colonial inheritance of a politics-led-trade union movement, the ruling party could maintain controls over the trade union movement. The Congress Party used this dynamics to quell the Communist trade unions' threat in the IRS. Later, this became handy even for the regional governments like the DMK Party in the 1970s and so on (Ramaswamy, 1984). The hangovers of the freedom struggle and the development dynamics led some like Ashok Mehta in 1957 to argue for restraint over consumptionist tendencies in the working class. The management of the IRS was to aid faster economic growth through industrial peace, capital formation and price stability via restraints over real wages and high savings especially by the capitalistic class. In exchange the state assured labor welfare *via* legislation and trade union rights which would be regulated by both political class and the law. To counter the criticisms of "over doses of legalism and regulation" moral instruments such as the Code of Discipline and Conduct (VenkataRatnam, 1992) were framed both as a complement and sometimes as an "alternative" to state regulation; in the case of trade union recognition the Code served as an "alternative".

Command Economy IR Reform Argument

Collective bargaining has been perceived to be a better institutional framework for governance of IRS.

The critics of state-regulation-model of IRS and the social partners in varying manner argued for four key reforms. One, collective bargaining has been perceived to be a better institutional framework for governance of IRS as opposed to the state-regulation characterized by compulsory adjudication system (VenkataRatnam, 2003). Compulsory adjudication and state regulation has been argued to entice the trade unions and the employers to rely on them unduly (legalism and narcotic effects) which weakens self-governance mechanisms like collective bargaining. The concrete demand of replacement of compulsory adjudication and conciliation with collective bargaining system has wider implications. Two, for a stronger growth of self-governance basic conditions such as recognition of trade unions and the obligation to collectively bargain are necessary which, as "basic legal conditions", could be legislated by the state. These conditions do not prevail in the central Trade Unions Act, 1926 and obtain in some states like Maharashtra, Madhya Pradesh and so on. Three, the trade unions have been demanding a na-

tional minimum wages incorporation of the principles of minimum wages as delineated by the Indian Labor Conference in 1958 in the Pay Commissions and also re-defining of the concept of minimum wages along those lines (Sharma, 1982). Four, the employers have been demanding de-linking of dearness allowance system from the payment system as dearness allowance is not linked to workplace productivity in a direct sense and is inflationary (EFI, 1987). Five, the employers have been pleading particularly after the winters of discontent in the late 1960s and the early 1970s for a tougher legal mechanism to regulate if not outlaw them (ShyamSundar, 2009b).

The Reform Efforts

The failures of the state regulated model and even the moral suasions led to the constitution of the National Commission on Labor under the chairmanship of Justice Gajendragadkar which submitted its report in 1969. Its major recommendations pertaining to trade union recognition, industrial relations commission, etc. were not implemented thanks to lack of consensus among the stakeholders.

The Internal Emergency which was not only a response to crises in the political sphere but also in the IRS (ShyamSundar, 2009b for an analysis of IR aspects of the Internal Emergency) imposed authoritarian corporatism by completely repressing democratic rights. Thankfully, it was only an "aberration" and the second political revolution in 1977 restored the pluralistic-democratic political and IR regime. The Janata party's efforts to reform IR laws in 1978 created the first historic unity amongst the bitterly divided political unions and the IR laws were defeated.

The Sanat Mehta Committee in 1982 suggested check-off system among others to determine the bargaining agent which enjoyed support only from INTUC and hence shelved (Arya, 1988). In 1988, the Congress (I) government again introduced the two bills named as 'Trade Union (Amendment) Bill 1988' and 'Industrial Dispute (Amendment) Bill 1988'. However, the said Bill was not taken up for consideration by Parliament and was withdrawn in 1990. The ILC re-convened in April 1990 after a gap of nearly two decades took two decisions, viz. to not to pursue the 1988 Bill which was introduced without consulting the social partners and to constitute a bi-partite committee under the chairmanship of G. Ramanujam (Johri, 1994). It comprised representatives of employers' organizations and Central Trade Union Organizations (CTUOs). The Ramanujam' Committee strongly pitched in for workers' participation in management and institutionalizing bi-partism. This Committee's recommendations were shelved thanks to the opposition by the Left-based trade unions (Johri, 1994). Incidentally, the Workers' Participation Bill was introduced in 1990 which is still on the legislative business agenda. In 1994, the then labor minister P. A.Sangma introduced the Trade Union Amendment Bill 1994 in the RajyaSabha. This bill for the first time sought to make the membership of 10% of the workers in industries mandatory for registration

of trade unions. The bill however could not be enacted.

Post-Reform Period

The pro-reformers further argued that what was good for the product market was also good and even necessary for the factor market.

The balance of payment crisis in 1990-91 prompted a decisive shift in the economic policies leading to liberalization of the product market and shifting from Import Substitution industrialization to export oriented industrialization strategy. Employers and the critics of labor regulation argued for the necessity of reform of the IRS and the labor market to aid realization of gains arising out of the product market reforms. The pro-reformers further argued that what was good for the product market was also good and even necessary for the factor market, especially the labor market. So the demand for labor market deregulation and reform of the industrial relations system (IRS) has become a campaign in India. The legal framework derived from the command economy regime is argued to be characterized by rigidities that hamper the free working of the market forces and these in turn hurt the competitiveness of the economy in general and the firms in particular.

Employers demand that the firms should enjoy labor flexibility to fire workers and close down unviable firms as per market dynamics, employ workers on temporary contracts such that they could be dispensed with when not necessary, have the power to initiate technological and other changes in work organization and production and enjoy freedom from the nosy labor inspectors. Also, there are strong criticisms pertaining to the cost of living allowance system, the bonus system, political affiliations of trade unions, role of outsiders in the trade unions at the shop floor and so on (ShyamSundar & VenkataRatnam, 2007 for a discussion of labor law reform demands in India).

Owing to the stiff resistance of trade unions, the compulsions of mass politics involved in labor law reforms, and other factors, the Central Government under the National Democratic Alliance (NDA) constituted a number of Task Forces headed by corporate leaders and a Taskforce on Employment and a National Commission on Labor (NCL) under the chairmanship of Verma (ex-Labour Minister in the Janata Party rule in 1977-79), famously known as the Second NCL (SNCL). It submitted its report in 2002 (VenkataRatnam, 2006 for a summary of SNCL recommendations). Among others, it recommended a number of revisions in the ID Act and the Contract Labor Act. The major criticism against the SNCL's report was that the revisions endorse the labor flexibility demands of the employers and this provoked agitations and strikes (ShyamSundar, 2009a, b).

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The United Progressive Alliance (UPA) in its first innings (UPA 1) rolled out a Common Minimum Program (CMP) which greatly restrained the ability of the Central Government to think of labor law reforms as desired by the employers. Thanks to the Left presence and the opportunistic role of the regional parties and the opposition parties the UPA-1 was muted save for institution of the National Commission for the Enterprises in the Unorganized Sector (NCEUS). However, it passed the Special Economic Zones Act in 2005 which was in pipeline for some time. The UPA-2 became more daring thanks to the absence of the Left parties and constantly talked about the labor law reforms in various forums including the ILC. The government constituted Group of Ministers (GoM) and other cabinet bodies on labor law reforms among others. But nothing substantial emerged on the two controversial labor laws, viz. the ID Act and the Contract Labor Act.

In the meanwhile, some labour laws like the Trade Unions Act, 1926 and the social security labor laws underwent some changes, though the core issues in the Trade Unions Act were not addressed. After 1982-84, the ID Act was amended in 2010 to provide for grievance redressal machinery and inclusion of contract workers into the industrial dispute framework and so on. Still the core issues remained untouched.

The foregoing discussion and summarization would give the unfamiliar students of Indian IRS and the unwary that the legal framework is resilient in India and it is still and sound enough not to warrant changes. It may be suitable to describe the core legal framework of the Indian IRS as "still waters" wherein the ship is safely and immovably anchored.

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But two facts must be borne in mind. First, the labor law reform conviction of the Central Government is unmistakable. The mounting research evidence supporting labor flexibility, the pressure exerted by foreign capital and the multi-lateral agencies like the World Bank, and several inter-country comparisons on competition and doing business (which placed India at a lower scale) and the threats of non or re-location of capital by foreign capital definitely convinced the policy-makers. The important difference between the pre-reform demands and the post-reform demands is that the former though well-supported by research was not thought of contributing to the economic variables as explicitly and powerfully as the post-reform demands for freedom to hire and fire and contract labor flexibility. The modern governments are not even now convinced of the demand for the reform of the IRS like trade union recognition and strengthening of collective bargaining as much as they are of labor flexibility.

However, the Central Government was frustrated by three major obstacles. One, the opportunistic roles of opposition played by the major national political parties and the regional political parties even

being the part of the ruling government presented political challenges. Two, the labor law reforms being in the realm of "mass politics" are highly visible and provoke considerable agitations and strikes; so far 14 all-India strikes have taken place in the post-reform period. Three, the social dialogue forums like the ILC degenerated often in to a "talking shop" and the government has not been able to push its agenda through though in the inaugural addresses the high level ministers and the Prime Ministers (both A.B. Vajpayee and Dr. Man Mohan Singh) have bluntly spoken of the growth-and-employment-unfriendly labor laws and stressed the need for reforming them. The recommendations of the various intellectual bodies did not have the desired effects of moulding the public opinion. Indeed, the SNCL's recommendations provoked considerable agitations.

Labor Law Reforms

The constitutional system of governance provides for dual governance on the subject of labor as it is placed on the Concurrent List in the Constitution of India (VenkataRatnam, 2006). Secondly, the liberalization of economic environment has considerably increased the play of market forces and the state governments are akin to nation-states to compete for capital, both domestic and foreign. Using these two praxes, the Central Government has shifted the onus of labor law reforms on to the state governments. This strategy has a number of advantages. The primary advantage is that the protests are localized and often muted depending on the regional variations in the trade union densities and power and the political power of the ruling party. Also, the regional identities could be played especially in the case of employment generation and growth. The competition for capital is a proxy for competition for growth and employment. In the polarized social set-up such as in India, politics can play with these primordial identities.

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The trade union movement is always concerned with the "big" picture of the national level and global and multi-lateral agencies' roles and global issues such as free trade talks and so on. The regionalization and localization of industrial relations governance is something that escapes the attention of the macro-surfers like the central trade union organizations.

At the state level, the governments in their bid to attract and retain capital roll out industrial and labor policies that provide or assure several concessions on the labor front. It adopts two sets of policies. One, it introduces "hard" reforms in "soft" areas like the special economic zones (SEZs), information technology (IT) sector, shopping malls and so on. For example, the Gujarat government has amended the ID Act to nullify the effects of Chapter V-B of the Act in Mundra SEZ. The Maharashtra government has amended the Contract Labor Act to exclude the establishments in the SEZs from its purview (ShyamSundar, 2008). In rare cases, the governments

have introduced "hard" labor law reforms; for example, the Andhra Pradesh government has amended the Contract Labor Act to allow contract labor employment in the non-core areas and allow it even in core areas under some conditions (Reddy, 2008). The state governments have completely shifted the labor inspection responsibility from the Ministry of Labor to the Development Commissioner, SEZs. Most state governments have declared the establishments in the SEZs as "public utilities" under the ID Act to make strikes difficult if not virtually impossible (Ramaswamy, 1984; ShyamSundar, 2010). The governments have introduced "soft" reforms in the hard sectors by liberalizing the labor inspection procedures considerably. The labor law reform measures with respect to labor inspection ranged from self-certification by the firms to prior-sanctioned inspections and reclassification of inspection norms according to sectors (small and large) and so on. Further the state governments have simplified labor compliance processes such as data maintenance (in soft forms also), simplification and consolidation of annual returns and so on (ShyamSundar, 2010).

At the same time, the state governments intervene where extremely necessary like landmark industrial conflicts which would set the pattern for labor relations in a region. For example, the Haryana government intervened even harshly and inhumanly to quell the challenge posed by the organized labor in Honda Motors and Scooters Ltd (HMSI) (Saini, 2005for a discussion of the state's role). Similarly, irrespective of the Dravidian party in power, the workers in the Hyundai Motors Ltd. could not establish the independent and freely chosen trade union. The questionable role of police in several conflicts including that in Regency Ceramics in Yanam also reinforces the "hard" role of the states in conflicts. At the same time, in many other conflicts the state governments leave the parties to the "market methods of industrial action". It is the Janus-faced role of the state is what needs to be noted.

At the micro level, the social actors are battling it out as employers seek labor flexibility which includes resistance and even opposition to trade unions while the trade unions are struggling to establish and sustain workers' rights. The state governments turn the other side, when managerial actions resulting in labor flexibility outcomes either by by-passing the labor laws or by violating them. This has been labeled as "labor law reforms on the sly" by commentators (Bardhan, 2002; ShyamSundar & VenkataRatnam, 2007). The managerial actions include increasing contract labor employment shares in total employment, employment of non-statutory trainees, partial closure, shifting of critical machinery, promotion of workers to supervisory and managerial categories, freeze on regular employment, outsourcing and so on. The voluntary separations have assumed compulsoriness and market forces are cited to push home the workers. The thinning of the regular workforce and the bulging of the contract workers signify these labor flexibility strategies. Where collective bargaining was being con-

ducted at more centralized levels, it is being decentralized and diluted (Bhattacherjee, 1999; Kulkarni, 2002 for evidence of utter informalization of collective bargaining in a textile mill in Mumbai in the post-reform period).

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Adverse & Muddy Outcomes

It is important to understand that in the case of two failed labor law reform processes, the pre-reform and the post-reform, the outcomes on the field have been bad. The non-resolution of the demands through a formal process and leaving it to the field-actors to find their own solutions has been the strategy of the government. This strategy has produced grave and dangerous outcomes for the IRS. The pre-reform period witnessed bloody and long and bitter industrial conflicts, viz. Simpson dispute, the TVS motor company dispute, both in Madras and the Bombay textile strike during 1982-83. In the post-reform period, the conflicts in the auto-sector such as the bloody conflicts in HMSI, Rico, Pricol, GrazianoTrasmissioni, Maruti Suzuki, Regency Ceramics, to quote a few. With increased trade union unity, 14 national strikes and several forms of agitations, etc. have occurred. The costs of absence of formal labor law reforms are high while political benefits may be high. The political economy argument is as follows: in the pre-reform period, it suited the ruling political parties to not to disturb the status quo so that the governance systems could be manipulated to suit their industrial relations interests. In the post-reform period, the formal framework need not be disturbed while the government via its withdrawal leaves it to the "actors" at the workplace to carry out the reforms that they desire. In the era of globalization the bargaining power of labor vis-à-vis capital has weakened principally due to the demand for scarce capital by states (nation or regional) and the threat of re-location. Hence, the implicit and sly reforms take place. As a result of operation of these two forces, the formal framework governing the IRS remains virtually the same while the ground realities are often radically different. This is Pyrrhic victory for the state.

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Concluding Remarks:

The formal framework of the IRS has remained largely unaltered as it was in the pre-reform period despite long-standing reform demands in both the pre-reform and the post-reform periods. The waters appear to be "still"! However, the waters are "deep" and often "muddy" as industrial and employment relations have moved far away from the static formal framework. This is not healthy governance of IRS and the labour market.

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