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**INDUSTRIAL DISPUTES ACT:
A CRITICAL APPRAISAL**

Arnab Kumar Hazra

**RAJIV GANDHI INSTITUTE FOR
CONTEMPORARY STUDIES**

1. INTRODUCTION

Conflict and disputes are endemic to industrial societies. The Industrial Disputes Act of 1947 was enacted with the specific purpose of settling industrial disputes and to secure industrial peace and harmony by providing the machinery and procedure for the investigation and settlement of such disputes. It seeks to regulate the employer-employee relationship and streamlines a network of machinery and authorities stipulating their powers and procedures.

Besides the Trade Unions Act, 1926, the Industrial Disputes Act, is the most important Act that govern industrial relations in India.¹ Both these Acts have generated a lot of controversy in the past. This time the Industrial Disputes Act has again come into the vortex of discussion following the budget speech (2001-02) of the Finance Minister. Chapter V-B, which was inserted in 1976 and amended in 1982, has always remained at the centre of discussion. Under chapter V-B, for industrial units employing 100 or more workers, the prior permission of the appropriate Government is a must before any workman can be laid-off or retrenched or the undertaking closed down. This permission is not given to the employers for populist reasons, and various committees have recognized this. The Finance Minister has sought to amend this chapter thereby giving rise to a veritable storm.

If we look at the historical context when the Industrial Disputes Act was promulgated, we find that the industrial outlook has undergone a sea change. Till the Second World War, there practically was no effective machinery for industrial disputes in

1. There are 165 pieces of legislation, including 47 Central Acts on labour in India. However, labour legislation in India can be broadly divided into three heads – laws that relate to industrial relations (Industrial Disputes Act is an example), laws that relate to wages (Payment of Wages Act is an example), and laws that relate to social security (Payment of Bonus Act is an example).

India. In this direction, the Bombay Industrial Disputes Act, 1938 was the first important legislation. However, during the Second World War, State intervention became necessary in the settlement of industrial disputes and the Defence of India Rules was promulgated by the British. The Industrial Disputes Act, which was enacted at the time of independence, incorporated these Rules². Thus, in essence, the Government placed increased reliance on its own intervention in, and control over labour relations. The labour force was seen to be weak and helpless and their protection was necessary. The Act provided for a system wherein Labour Officials could legally mediate and conciliate between disputing parties, and if this failed, refer the dispute for compulsory adjudication. The justification was to ensure social justice to both employers and employees, as the State was a socialist one, operating in a mixed economy.

All these have changed in the last decade with the onset of the policy of liberalization, and so it is imperative to look at the Industrial Disputes Act afresh. In this age of liberalization, the Government needs to give up its 'protection of labour force' stand. The need of the hour for Indian industry is to be competitive. To be competitive, technological innovations sometimes become a must and economic and commercial viability is a pre-requisite for job security along with flexibility in the labour market. So we might have to sacrifice some jobs to save many.

Workforce adjustment is one of the responsibilities of the employer. Productive resources should be used properly and the onus has to be with the employers. Our contention, is that, it is not just Chapter V-B which is the controversial area that needs to be tackled, rather it is the entire Act, which needs to be re-drafted so as to render relevance to the philosophy of the Act to the present context. So, we

2. Compulsory adjudication, introduced for the first time in India as an emergency measure to maintain industrial peace during the war, was contained in Rule 81-A of the Defence of India Rules. Even though Rule 81-A was repealed the contents of that rule are embodied in the Industrial Disputes Act as legislation for normal periods.

first present a broad framework of the Act, and then critically examine the various Sections that need to be amended. Finally we look at Chapter V-B in a separate section altogether as this remains at the heart of all controversies. A brief conclusion sums up the discussion.

2. BROAD FRAMEWORK OF THE ACT

The Act contains 40 sections and five schedules. The Act extends to the whole of India and applies to every industrial establishment.

Sections	It relates to :	Comments :
<i>Chapter I : Preliminary</i>		
1	Title	
2	Definitions	Definition of Workman is out-dated in terms of the monetary threshold prescribed. The definition of industry is <i>de facto</i> non-existent as almost every industrial establishment is an industry after the <i>Bangalore Sewerage Board v. Rajappa Case</i> .
<i>Chapter II : Authorities under this Act</i>		
3	Works Committee	No powers are envisaged making it a dead letter.
4	Conciliation Officers	No decision making power, thus a futile exercise.
5	Board of Conciliation	Rarely put to use; Section 4 can be merged with it.
6	Court of Inquiry	An ad-hoc arrangement rarely constituted by the Government.
7, 7-A, 7-B	Labour Courts, Tribunals, National Tribunals	Dysfunctionality of Jurisdiction.
8	Filling of vacancies	The procedure laid down is time consuming.
9	Finality of orders constituting Boards	
<i>Chapter II - A : Notice of Change</i>		
9-A and 9-B	Notice of Change and Power to exempt	Provisions can seriously jeopardise industrial restructuring and technological up-gradation. Should be scrapped.
<i>Chapter II-B: Reference of individual disputes to grievance settlement authorities</i>		
9-C	Individual disputes	Rarely put to use.

<i>Chapter III : Reference of disputes to Boards, Courts or Tribunals</i>		
10	Reference of disputes to Boards, Courts, Tribunals	Discretionary power of the Government to refer disputes can be self-defeating.
10-A	Voluntary Arbitration	Has not been effective due to a failure to free arbitration from the apron strings of courts.
<i>Chapter IV : Procedure, Powers and Duties of authorities</i>		
11 to 21	Procedure, Powers, Duties and functions of Boards, Conciliation Officers, Courts and Tribunals	Dysfunctionality of jurisdiction and loose demarcation. These provisions needs tightening up.
<i>Chapter V : Strikes and Lock-outs</i>		
22 to 25	Strikes and Lock-outs	Prohibition is applicable only to public utility services but should be applicable to all industries. The word 'Restriction' should replace 'Prohibition'.
<i>Chapter V-A : Lay-off and Retrenchment</i>		
25-A to 25-J	Restrictions on lay-offs, retrenchments, transfers and closures of industrial establishments employing 50 to 99 workers.	This Chapter can be deleted altogether.
<i>Chapter V-B : Special Provisions relating to Lay-off, retrenchment and closure in certain establishments</i>		
25-K to 25-S	Restrictions on lay-offs, retrenchments, transfers and closures of industrial establishments employing more than 100 workers.	A parallel Chapter (V-A) exists. The requirement of a prior government permission restricts lay-off and retrenchment and hinders industrial restructuring and gaining in competitiveness. The Chapter should be applicable to industrial establishments employing more than 500 workers
<i>Chapter V-C : Unfair Labour Practices</i>		
25-T & 25-U	Unfair Labour Practices	
<i>Chapter VI : Penalties</i>		
26 to 31	Various Penalty provisions	Provisions are too less both in terms of monetary fine and imprisonment term; needs to be spruced up drastically.
<i>Chapter VII : Miscellaneous</i>		
32 to 40	Various offences, powers, delegation of powers and protection clauses	Section 33-B which gives 'Power to transfer certain proceedings' interferes with the judicial process

SCHEDULES		
First Schedule	Industries which may be declared to be public utility services	Discretionary power of the government gets exercised to include more and more industries under the fold of public utility service
Second and Third Schedule	Matters within the jurisdiction of the Labour Courts and Industrial Tribunal respectively.	Unnecessary and dysfunctional
Fourth Schedule	Conditions of service for change of which notice is to be given	
Fifth Schedule	Unfair Labour Practices	The law discourages domestic enquiry.

2.1 Definitions

This is covered in Section 2(a) to 2(s) of the Act. Some of the important definitions covered pertain to Appropriate Government, Public Utility Services, Employer, Strike, Lock-out, Lay-off, Retrenchment and Closure.

Industrial Dispute is defined in Section 2(k). However, along with Section 2, all disputes related to the matters specified in Schedules II and III, constitute an 'industrial dispute'.

Workman is defined in Section 2(s). Sub-clause (iv) exempts any person in a supervisory capacity drawing wages exceeding one thousand and six hundred rupees per month, from the definition of a workman. The definition of Workman is out-dated in terms of the monetary threshold prescribed, and provides scope for circumvention of various provisions under the Act.

Industry is defined in Section 2(j). This definition specifically excludes agricultural operations, hospitals or dispensaries, educational institution, scientific, research and training institutions, institutions engaged in charitable activities, khadi or village industries, and any activity which is performed by less than ten people. Profit motive is irrelevant. Though the 1982 amendment to Section 2(j) of the

Industrial Disputes Act lays out a fairly comprehensive definition of 'industry', it has not been brought into effect.

So the Supreme Court judgement in the *Bangalore Water Supply and Sewerage Board v. A. Rajappa* remains the law³, and almost every industrial establishment is an industry after this case. The definition of industry is thus *de facto* non-existent.

Going through the case laws one finds that the following are considered as industries - a panchayat samiti (*Chuttan Lal v. State of Rajasthan and others, 1990*), a state hospital (*State of Bombay v. Hospital Mazdoor Sabha, 1960*), an establishment engaged in 'Family Planning Scheme' (*Mahila Samiti, Tikamgarh, etc., v. State of v. State of Madhya Pradesh, 1988*), a real estate company (*Karnani Properties v. State of West Bengal, 1990*), running of tube wells (*Gurnail Singh v. State of Punjab, 1991*), primary health centres (*Gulab Singh Chauhan v. State of Madhya Pradesh, 1984*), Federation of Indian Chamber of Commerce (*Federation of Indian Chamber of Commerce v. workman, 1972*), a religious institution (*workman M/s Baikuntha Nath Debashan Trust v. State of West Bengal and others, 1990*), Government Ayurvedic Aushadhalaya (*Yaswant Singh v. State of Rajasthan and others, 1989*), universities and research institutions (*Bangalore Water Supply and Sewerage Board v. A. Rajappa, 1978*).

However, the courts have held that the Posts and Telegraph Department (*Union of India v. Labour Court, 1984*) and Central

3. The definition of "industry" as explained by the Supreme Court is that where there is any systematic activity organised by cooperation between an employer and his workman (the direct and substantial element is chimerical) for the production and/or distribution of goods and services calculated to satisfy human wants or wishes, *prima facie*, there is an industry. However, industry does not include spiritual or religious services or services geared to celestial bliss. Absence of gainful objective or profit motive is irrelevant for industry, be the venture in public, joint, private or other sector. The true focus is functional. The decisive test is the nature of activity that is, the employer-employee basis and this coupled with the systematic activity and the production and/or distribution of goods and services, form the triple tests to determine an establishment as "industry". If the organisation is trade or business, it does not cease to be one because of philanthropy animating the undertaking. The judgement had opened up a Pandora's box and has virtually made everything an "industry"

Institute of Fisheries (*P. Jose v. Director, C.I.F., 1986*) are not industries, while holding that State Government Irrigation Department (*Des Raj and others, v. State of Punjab and others, 1978*), and Department of MES (*Bhamani Singh and others, v. Union of India and others, 1984*) as "industries". The ambiguity is further heightened in the *Shri Jagannath Sanskrit Vishwa Vidyalyaya v. Sridhar Behera and another, 1989*, case. In this case the court held that an educational institution, such as a school or a college, or a university, may be an industry in so far as it relates to the skilled or unskilled workers. But the teachers cannot be treated as workmen and in so far as they are concerned, the educational institutions cannot be treated as industries. Thus the educational institutions assumes a double character.

2.2 Dispute Resolution

As is evident from the title of the Act, dispute resolution is the primary objective. This is envisaged mainly in Sections 3 to 21 (under chapters II, II-A, III and IV) The Industrial Disputes Act envisages a three dimensional process to deal with the investigation and the settlement of industrial disputes. They are voluntary negotiation, conciliation and adjudication. Although the act thus streamlines for some non-adjudicatory authorities for settling disputes as the first step, the accent on compulsory adjudication is glaring and clear. Conciliation of disputes is compulsory in all public utility services but non-mandatory in non-public utility services. The non-adjudicatory authorities are 'Works Committees', 'Conciliation Officer', 'Board of Conciliation' and 'Court of Inquiry' apart from 'Voluntary Arbitration'; while 'Labour Courts', 'Industrial Tribunals' and 'National Tribunals' are the compulsory adjudication authorities. The establishment and jurisdiction of these bodies are envisaged under Sections 3 to 10, while their procedures, powers, duties and functioning are given in Sections 11 to 15.

The Non-Adjudicatory Authorities

'Works Committees' are sought to be established under section 3. However it is a purely consultative body whose

recommendations and suggestions are not binding⁴. No real powers are thus envisaged through the Act, making it a dead letter, and therefore should be scrapped.

The appropriate government appoints 'Conciliation Officers' under section 4, either permanently or temporarily. They facilitate or/and strive to find solutions by bringing the disputing parties together, in an impartial way. However, they have no powers to decide, in effect also being a dead letter. 'Boards of Conciliation' is another machinery for conciliation involving third party intervention, empowered under section 5. The powers of the board are broader and largely similar to the ordinary courts⁵, and under Section 13 the board must endeavour to bring about a settlement of the dispute it was referred to.

A 'Court of Inquiry' is constituted under Section 6 by a notification in the official Gazette to inquire into any industrial dispute. However, the court of inquiry is not an institution but an ad-hoc arrangement, rarely constituted by the Government.

The Industrial Disputes Act is filled with State intervention and has ample scope for discretion. Provisions are different for establishments that are for public utility and those which are not. They are more stringent for the former.⁶ The state has the discretionary power to declare any industry a public utility, and most industries have been so declared.⁷ Again the Act empowers the Government or the Labour Department to intercede in any industrial dispute even on

4. Metal Boy Co v. Workmen, 1952, LLJ 882 (LAT)

5. The Conciliation proceedings before a board are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code. This however is not so for a Conciliation Officer. While the Conciliation Officer is clothed with the powers of a Civil Court under the Code of Civil procedure, 1908, only for the production of documents and material objects, the Board of Conciliation has certain additional powers of a Civil Court to compel the attendance of witness, examine them on oath and issue commissions for witness.

6. For example, for public utility, a fourteen days notice is essential before any strike or look-out, while it is not mandatory for the others. Same is the case for conciliation.

7. This means more industries under the garb of extra regulation.

its own or when it apprehends one, and conciliate. It also sets the process of conciliation in motion, when an intimation of a lock-out or strike is received. Major disputes invariably climbs up the bureaucratic ladder of the Government or the Labour Department, from the Labour Officer to the Labour Commissioner. Any dispute that cannot be resolved at this level⁸ goes to the Labour Minister at times and sometimes even to the Chief Minister. If the process fails, the dispute is referred back to the Labour Officer and the process gets repeated.⁹ Needless to say, delays and suffering are inbuilt in the system.

However, apart from this dispute dragging process, the conciliator does not have any decision making power and uses only persuasive methods (wherein he has discretionary power) inspite the fact that the conciliation settlement agreement is binding.¹⁰ The Conciliation Officer can neither compel any side to accept his suggestions nor even compel them to be present during conciliation sessions. His powers are ambiguous, as are his duties. There are no directives as to how the Conciliation Officer is to use his discretionary power. With an overburdening and changing nature of industrial disputes, possibilities of taking up frivolous issues and leaving out important ones cannot be ruled out. Trade Unions allege that Conciliation Officers succumb to pressure from different sources while deciding the demands that should be admitted in conciliation. Consequently there are cases in which trivial demands such as that for providing a free cup of tea to the staff are admitted, while major demands such as the classification of grades are omitted (Nagraj, 1995, pg.52). The result can be a mockery of the system and wastage of time. The National Labour Commission noted that the disputing parties often treat conciliation as a mere hurdle before the next step

8. The failure of the Labour Commissioner to resolve disputes has become distressingly frequent.

9. The Chief Minister then, virtually becomes an arbitrator with the caveat that he belongs to a political party and so might not be impartial.

10. It is binding on all parties if, the agreement is with the approval of the conciliator, otherwise it is binding only on the parties to the agreement, under section 18(3). However, it has more sanctity than a bilateral settlement.

(i.e., compulsory adjudication). Compulsory adjudication can be resorted to only after conciliation has ended in a failure, reducing the system of conciliation to a formal and fruitless exercise. This perhaps explains at least partially, the low success rate of conciliation as found by Nagraj (1995). Conciliation is mandatory only for the public utility services. Effective conciliation machinery should be made mandatory for all industrial establishments, before resorting to adjudication. This will lessen the burden on the adjudicatory bodies.

The Board of Conciliation is much better equipped to end the proceedings successfully. Over and above the powers of a Conciliation Officer, the Board has additional powers of a Civil Court to compel the attendance of witnesses, examine them on oath and issue commissions for witness. The proceedings are deemed to be judicial. However, unlike in the case of the Conciliation Officer the disputes will have to be referred to the Board of Conciliation by the appropriate Government, which constitutes it. In practice, the Board of Conciliation is not used. Thus we again see the scope of discretion and state intervention. Without meaning that such intervention is bad *per se*, the discretionary powers can often be counter productive. What is required is a rethinking on the conciliatory machinery to make it effective. Thus the Board of Conciliation has been in effect reduced to a dead letter. The same holds true for Court of Inquiry as well. There is no need to have both Sections 4 and 5. They can be merged into a single Conciliation machinery, with the Conciliation Officer in charge. The powers should be those that are presently vested with the Board of Conciliation. The Conciliation machinery should be made mandatory for all industrial establishments. The Court of Inquiry, along with the Sections wherein its powers and functions are envisaged, should be scrapped.

Voluntary Arbitration

Voluntary Arbitration as a method of resolving industrial disputes is provided for under Section 10-A. Before an industrial dispute is referred for compulsory adjudication, the disputing parties may refer the dispute, by a written agreement, for arbitration. There can be two

types of voluntary arbitration. (i) voluntary arbitration without a notification by the appropriate Government where the disputing parties can choose any person as the Arbitrator, (ii) voluntary arbitration with a notification by the appropriate Government; here the Government chooses an impartial Chairman. The purpose behind arbitration is to solve industrial disputes effectively and at a fast rate, but the discretionary power of the Government to refer disputes for compulsory adjudication undermines the process.

The faith placed by the statute on arbitration as a method of resolving conflict has not been vindicated by experience. The problems are similar to those that have plagued general arbitration, which fundamentally is a failure to free arbitration from the apron strings of courts¹¹. However, four things are important. First, there is a terrible lack of qualified arbitrators and arbitrate procedures are very similar to those of regular court procedures. Secondly, the courts have regularly accepted appeals against the award of arbitrators. This makes a mockery of the arbitration procedure and undermines it. Thirdly, arbitration suffers from the same problems that plagues conciliation, namely, it is not taken seriously and indeed it is unusual for disputing parties who cannot compromise through conciliation to agree to arbitration. Lastly, recognition of Trade Unions on the part of the employers is a necessary pre-requisite for the success of voluntary arbitration.¹² In this regard, only Rajasthan has the provision of 'Representative Union' and a well laid out framework. Overall

11. Bibek Debroy (1997), "Labour Market Reform", *Policy Paper Number 22, Project LARGE*, Allied Publishers.

12. Collective bargaining is not explicitly encouraged by the Industrial Disputes Act. However, the main impediment lies in the Trade Union Act, which encourages multiplicity of Trade Unions as any seven or more employees can start a Trade Union and apply for registration. According to Section 18(1) of the Industrial Disputes Act, collective bargaining settlements are binding only on the parties to the agreement. So a settlement with a union, representing one section of workers is not binding on members of another union. There is no provision requiring that the trade union must represent a minimum percentage of employees. In spite of all these limitations, collective bargaining agreements are on the increase (Nagraj, 1995), especially when there is a collective interest and neither party wants to go into the lengthy and inefficient adjudicatory machinery.

Government intervention in voluntary arbitration and Supreme Court decisions has caused problems. It is placed lower than a settlement arrived in the course of conciliation and award of compulsory adjudication.

Compulsory Adjudication

'Compulsory Adjudication' is envisaged as a last resort for dispute resolution under the Industrial Disputes Act. It remains the ultimate real remedy. The Government may, on its own discretion, separately refer the dispute to the Labour Court or Industrial Tribunal for adjudication. If a dispute involves a question of national importance, or is likely to affect the interests of industrial establishments in more than one state, the central Government is to refer the dispute to the National Tribunal. Clearly there exists dysfunctionality of jurisdiction and loose demarcation, which needs tightening up.

All these bodies get jurisdiction only on reference. Under Section 10, the appropriate Government forms an opinion as to whether an industrial dispute exists and a reference is necessary or not. It may also decide to make a reference and then change its mind and decide to the contrary.¹³ Such discretion is purely administrative and no judicial determination is involved. In the *Sankari Cement Alai Thozhilalar Munnetra Sangam v. Government of Tamil Nadu* case, in 1980, the Supreme Court chided the Government of Tamil Nadu for refusing to make a reference using its discretionary power. The Court issued a writ of mandamus, directing the Government to make the reference for compulsory adjudication and held that given the relevant circumstances, the appropriate Government had failed to perform the duty imposed by the Statute. Thus now writ of direction can be issued. On the other hand, by succumbing to pressure and referring all disputes, including ones which are extremely belated not only helps in keeping conflicts alive, but also devalues the efficacy of the conciliation machinery.

13. But the opposite case is invalid and ultra virus. See *State of Bihar v. D.N. Gangully*, AIR 1958 SC 1018.

To pick up cases only with *prima facie* merit and acting honestly and in a *bona fide* way is not a tall order.

The adjudicating machinery was conceived as a specialised body to adjudicate industrial disputes more efficiently and effectively than the regular judiciary. The idea was to circumvent the technicalities and rigidity of the Evidence Act and the Civil Procedure Code. So, it is essential that the presiding officers of adjudication bodies must be persons of high caliber with all round awareness and understanding of an industrial dispute in particular, and the labour situation in general (Nagraj, 1995). However, there is a dearth of such trained personnel, which invariably adds to undue delays in deciding disputes. This has to be addressed. In-service training facilities, which are non-existent, should be started. Provisions should be added to Section 10 of the Act so that only a year is permitted for raising old disputes and cases once rejected should not be referred subsequently unless some new facts have arisen. Adjudicating authorities should be strict and prevent any possibility that may delay proceedings. For example, only three adjournments can be granted to each of the disputing parties. This should be uniformly followed. The ban on legal practitioners should be enforced.

Ambiguous, over-regulatory and impractical clauses and sections should be done away with or re-drafted. For example, the time schedules provided for in the various machinery of dispute resolution are all impractical and should be re-drafted. Even making the publication of awards by the Government is unnecessary and causes confusion and undue delays. It is impractical and should be made non-mandatory.

2.3 Notice of Change

Chapter II-A, deals with the Notice of Change and comprises of Sections 9-A and 9-B. Section 9-A was incorporated with the object of preventing unilateral action by the employer to change the service conditions to the prejudice of the workmen. Section 9-B gives the power to the appropriate government to exempt certain classes of industrial establishments or class of workmen employed in any industrial establishment from the application of Section 9-A.

Section 9-A can in effect seriously jeopardize industrial restructuring and technological up-gradation. A workman has the right to challenge such a change in the form of an industrial dispute. Subsequently, not only are the changes held up in an inefficient dispute resolution system, the burden of proof of justifying the change devolves on the employer. Surely if technological up-gradation or restructuring is essential for the enterprise to be economically viable, profitable and competitive, it must be allowed. We must understand that economic and commercial viability of the enterprise is a prerequisite for job security, and the onus has to be left to the employers, for if the alternative becomes lock-out or closure, the workers have everything to lose. The philosophy of the law should change to a proactive one. The Government should maintain neutrality between the conflicting interests of the employers and the employees. So, Section 9-A needs to be either modified to suit contemporary industrial needs or done away with.¹⁴

The appropriate Government, under Section 9-B, can exempt the employer from the provisions of Section 9-A. However, this leaves an enormous discretionary power with the Government, and before exemptions are granted, the mention of 'public interest', a much-abused expression, obviously implies that such an exemption is seldom granted (Debroy, 1997). Section 9-B should also be scrapped along with Section 9-A. In this regard the recommendations of the Ramanujan Committee (1991) is also useful and can be incorporated. It deals with what is popularly known as "rationalization without tears". There should not be any retrenchment, whatsoever, on account of automation, computerization and modernization, provided the employees accept retraining and re-deployment. The surplus can be absorbed in other plants under the same management or in jobs of a similar nature, without reduction in emoluments.

14. The Bajaj Committee Report (1992) on industrial restructuring suggested that the notice period should be reduced to seven days and more Labour Courts and Tribunals should be set up, with streamlined procedures, to review these notices. Debroy criticises this and advocates scrapping the Section as Workmen are otherwise protected in many different ways.

There has to be a well-defined body of laws that protect the rights of workers; but these should be flexible enough to encourage the introduction of new technology and shop floor practices. Unfortunately the labour laws encourage rigidity and the interpretations in High Courts and the Supreme Courts have only aided inflexibility. Re-deployment of workers - within plants or to other locations - was severely resisted and often struck down by courts and it was difficult to introduce computerization. (Anant & Goswami, 1994, cited in Debroy 1997). Perhaps the case of the composite textile mills sector eventually turning sick is a classic example of what damage Section 9-A can inflict.

2.4 Strikes and Lock-outs

In order to resolve disputes in one's favour, pressure tactics are always used. Strike is recognized as a weapon used by the workers and Lock-out is the antithesis used by the employer to pressurize each other. Both these hamper production. Sections 22, 23 and 24 lay down certain conditions and unless these are complied with, strikes and lock-outs are illegal. However, the title of Sections 22 and 23 are misleading. The correct word should be 'Restriction' and not 'Prohibition'. The two words, restriction and prohibition, are different in connotation and content.

If speedy redressal of disputes and protection of the labour force are the goals of the Act, then there should not be any difference between establishments, which are in the public utility services and others. Under Section 22, there is a provision for prior notice in the case of public utility services, but no such stipulation in the case of non-public utility services exist. Surely sudden strike or lockout is not beneficial either to the worker or to the employer and definitely not to the industry as a whole. Disputes can be solved through negotiations or otherwise, saving on loss of wages to the worker, loss of profits to the employer, and loss of production to the nation. The necessity of prior notice in case of strike/lockout, and mandatory conciliation should also be stipulated for non-public utility services by amending Sections 22 and 23, and made into a single Section.

Section 24(3), states that "a lock-out in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal". Thus while acting as a counter check, it also remains susceptible to manipulations and although this clause seems quite simple, it has far-reaching consequences. The areas along the river Ganges adjoining Kolkata was once the lifeline of Indian industries, but most of the industries have declared a lock-out under this provision and West Bengal today is one of the industrially backward states.

2.5 Lay-off, Retrenchment, Transfer and Closure

The 1953 amendment to the Industrial Disputes Act introduced Chapter V-A to regulate lay-off, retrenchment, transfer and closure of industrial undertaking with less than 50 workers in the preceding calendar month. A new chapter V-B was added by the 1976 amendment to the Industrial Disputes Act, to mitigate the hardship caused by large-scale lay-off, retrenchment, transfer and closure. Large was interpreted as industrial establishments employing 300 or more workers, when the chapter was inserted in 1976. However, in 1982, the benchmark was reduced to 100 workers. Since the applicability of the two chapters is not the same, the need for two parallel chapters, applicable to different groups of enterprise is baffling.

Both the chapters do not apply to industrial establishments which are of a seasonal character or in which work is performed only intermittently. To decide such character, or the subjective issues, the opinion or discretion of the appropriate Government is final. The two chapters are also fraught with State intervention and discretionary power. They need to be restructured and dysfunctional sections needs to be scrapped. The various subsections under both the chapters spell out in details the procedure and exemptions from such lay-off, retrenchment, transfer and closure of the industrial undertaking.

A difference between the two chapters is that, while for chapter V-A, a notice to the appropriate Government was to be given and the corresponding compensation had to be paid, under chapter V-B the prior permission of the appropriate Government is a must before any workman can be laid-off or retrenched or the undertaking closed down.

This permission is not given to the employers for populist reasons. Chapter V-B typifies the 'protection of labour force' stand of the government. It remains the most criticized part of the Industrial Disputes Act. Consequently, we look at Chapter V-B in the next section.

2.6 Penalties

Sections 26 to 31 deal with penalties under the Industrial Disputes Act. The Act extensively provides for penalties when provisions mentioned under various sections are contravened. Most of the provisions relate to either the Government or its agent, or any private individual. In case of an offence by a company, body corporate, or other association, under Section 32, its director, secretary, agent, or any other officer concerned with its management, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his knowledge or consent.

Except for the closure of an undertaking in contravention of an order refusing to grant permission for closure or non-compliance of an order to reopen a closed undertaking, wherein the penalty can be imprisonment upto one year or fine upto Rs. 5000 or both, and for continuing of the offence, a further fine upto Rs. 2000 per day, the fines prescribed are quite lenient. Most of the fines prescribe a combination of a maximum of Rs. 1000 and six months of imprisonment. Even an honest employer can lay-off, or retrench or close the undertaking by simply adhering to the penalty provisions. For illegally laying-off or retrenching, without obtaining prior permission or, for declaring an illegal lockout the penalty is imprisonment upto one month or fine upto Rs. 1000 or both. This is too negligible. Again closure without obtaining prior permission or even giving a prior notice of sixty days attracts a penalty of imprisonment upto six months or fine upto Rs. 5000 or both. Even this is negligible. If the employer is prepared for such temporary and negligible imprisonment and fine, he can easily prove the Industrial Disputes Act to be a meaningless exercise. Minimum imprisonment for the employer and the workmen, contravening any provision, should be 7 years and 3 years respectively, and the minimum fine should be rupees ten lakhs and fifty thousand respectively. Moreover, Unfair labour Practices should be severely punished.

Interestingly, closure without permission has imprisonment of six months (maximum) while closure after applying and receiving an order wherein such permission is refused, has imprisonment upto one year. Although the fine in both cases is Rs. 5000, in the latter case, a continuing fine of Rs. 2000 per day is levied. Clearly, the Act discourages application for the permission to close down by prescribing a relatively lesser punishment. This is important because, it is a foregone conclusion that such permission will never be given.

2.7 Miscellaneous Provisions

The Miscellaneous Provisions are contained in Sections 33 to 40. Some of the Sections are quite important. For example, Section 34 provides for the cognizance of offenses. It provides that only a Metropolitan Magistrate or a Judicial Magistrate of the first class or above can try any offense punishable under this Act, and that too after a complaint has been made by or under the authority of the appropriate Government. Section 35(1) gives certain protection to persons who refuse to take part in an illegal strike and lock-out. Section 36(3) bans any person/party to be represented by legal practitioners. Section 40, the last section of the Act, provides the scope to amend the Schedules, through a notification in the Official Gazette.

The language of the laws is also important. They are written in incomprehensible language and right from the start the reader is confused as he constantly encounters profundities that sound awesome but mean nothing. Laws need to be easy, simple to read and user friendly. To cite an example from the Industrial Disputes Act, Section 35(1) which consists of just one sentence (!!) reads as follows:

“No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this Section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right of benefit of which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect either directly or

indirectly, under any disability or at any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.”

Section 35(1) can be simplified to mean:

“For taking part in any illegal strike or lock-out, under this Act, no person will be penalised in any manner whatsoever; or deprived, from any benefit he was otherwise entitled to, directly or indirectly; or expelled from any union or society.”

2.8 Schedules

The First schedule deals with the industries, which may be declared public utility services. The appropriate Government can add to the list, and invariably the discretionary power gets exercised to include more and more industries under the fold of public utility services. The Second Schedule deals with matters within the jurisdiction of Labour Courts, under Section 7, and the Third Schedule deals with matters within the jurisdiction of the Industrial Tribunals, under Section 7-A. The Fourth Schedule deals with items under conditions of service for the change of which a notice has to be given by the employer. The Fifth Schedule deals with unfair labour practices under Section 2(r)(a).

Any workman can be dismissed or discharged for misconduct, by the employer. But the employer should hold a fair and proper enquiry into the misconduct. The action of dismissal or discharge can be contested before the labour court or Industrial Tribunal. Then the employer will be given an opportunity to show the evidence and thus justify the actions taken by him. Now, the Fifth Schedule lists unfair labour practices. It does not hold such dismissal or discharge without an enquiry as an unfair labour practice. But an enquiry with utter disregard to the principles of natural justice is an unfair labour practice and attracts a penalty. So, the law discourages the conduct of domestic enquiry before the discharge or dismissal of any workman by the employer. An amendment is thus required.

Under Section 10(1), any unfair labour practice, irrespective of the Schedules, can be referred to either the Labour Court or the Industrial Tribunal, and the discretion is with the Government. The demarcation of Second and Third Schedule is thus redundant. However, this was not the intention of the Act. Section 7, Section 7-A and Section 10 along with the Second and Third Schedules labouriously chart out regulation with the intention of demarcating jurisdictions. But over-regulation conveys the opposite.

The 6th entry in the Second Schedule says "All other matters other than those specified in the Third Schedule". This entry itself renders the Second Schedule meaningless as one can just have the Third Schedule and the Sections that have any reference to the Second Schedule can have this entry instead.

Infact the multiplicity between the labour courts and the tribunals within the framework of the Industrial Disputes Act, can be eliminated by scrapping the Second and the Third Schedule altogether. There can be a broad classification of disputes, as Nagraj (1995) suggested, into collective disputes and individual disputes. Industrial tribunals can have jurisdiction over collective disputes and the Labour Courts can have jurisdiction over individual disputes. Overall, the example of the Indian Labour Code can be followed, and an Industrial Relations Commission can be constituted in the hierarchical structure at the State level. A special commission can be set up to replace the National Tribunal. The Industrial Relations Commissions should be totally independent bodies and should be empowered to take *suo moto* action for the maintenance of industrial peace and adjudication of industrial disputes. The award of the Industrial Relations Commission should be final and only an appeal to the Supreme Court, under article 136 of the Constitution should be allowed.

3. CHAPTER V - B

India is a country that is over-legislated and under-governed. Chapters V-B, of the Industrial Disputes Act, typify this aspect and by far remain the most criticized portion of the Act. Following the budget speech, 2001-02 of the Finance Minister, Chapter V-B has again come to the limelight, and so a close introspection of this chapter is necessary. This is attempted in this section.

There are three aspects pertaining to Chapter V-B that makes this clause totally irrelevant. The first aspect is that the philosophy behind the Chapter is 'outdated' in this age of liberalization. The second aspect is of 'circumvention' as there are enough ways and means to circumvent the clauses of Chapter V-B, making the entire exercise irrelevant. Lastly, the aspect of 'inefficiency' propagated in the name of protection has resulted in the labour markets have become rigid and employers adopt artificially high capital intensity. Thus Chapter V-B has ended attaining exactly the opposite of what it set out to do, and an amendment to Chapter V-B is imperative.

3.1 Outdated

The main criticism against Chapter V-B is that of the requirement of a prior permission from the appropriate Government before any workman can be laid-off or retrenched or the undertaking closed down, which is seldom given for populist reasons. The industrial establishment must employ 100 or more workers. Various committees including the Report of the Inter-Ministerial Working Group on Industrial Restructuring (March 1992) have recognized this. The report noted that "a terminally sick unit cannot continue to produce [profitably] or pay its labour. As a consequence, the unit remains in a state of suspended animation for years, though on paper it may be shown to have been locked out..... the workers are deprived of their current wages and do not also have any possibility of receiving their terminal benefits." (Page 90).¹⁵ The Goswami Committee Report on Industrial Sickness and Corporate Restructuring (July, 1993) cites the example of several thousands of textile workers in the cities of Bombay and Ahmedabad, who "have been deprived of their terminal benefits and arrears of pay in the last five years, when mills have declared lock-outs to escape the barriers imposed on retrenchment and closures" (Page 81). The report argues that "India has enough labour laws and court judgements that prevent any employer from victimizing unionized workers, or from unjustly or illegally laying-off or retrenching labour..... Equally, it is well known that dishonest entrepreneurs with political connections can easily circumvent

15. However it suggested only cosmetic changes as remedial measures.

sections 25(N) and 25(O) by declaring an indefinite lock-out and so, force labourers to quit. In such cases, these two sections are effectively irrelevant. So, in the "best-case scenario," Sections 25(N) and 25(O) are redundant; and in the "worst-case scenario," these are irrelevant. Hence, it makes sense to eliminate them altogether." (Page 102). However, according to the Goswami Committee, if the sections are to be amended, prior Government permission should definitely be scrapped, and Chapter V-B should be applicable to industrial undertakings having 300 or more workmen. Incidentally, when in 1976, chapter V-B was incorporated, the threshold of application was 300 or more workmen. It was reduced to 100 by the 1982 amendment. The committee also recommends the increase in the compensation for retrenchment and closure from fifteen days' wages to one months' wages per year of completed service, so as to make the minimum pay-off more attractive. Overall, the committee recommends that the focus should be on consultation and notice to the employees/union as well as on proper compensation, by the Government, in cases of such lay-off or retrenchment or closure.

It is best to delete Chapter V-A altogether and the threshold for the applicability of the clause of prior permission from the government under Chapter V-B should be increased to a minimum of 1000, as envisaged by the Finance Minister. The quasi-judicial powers of the government should be minimized. Sections 25-F, 25-FF and 25-FFF should also be amended so as to increase the compensation for retrenchment or transfer or closure from 15 days' wages to two months' wages per year of completed service. Moreover such compensation should be applicable to establishments employing twenty or more workers. Clearly, "rationalization without tears" should be followed, but when retrenchment becomes inevitable, such compensation can hedge the difficulty of the retrenched worker.

The Government needs to have a proactive and not protective labour policy. It must increasingly take up a neutral stand between the conflicting interests of the employer and the employees. It must realize that economic and commercial viability is a pre-requisite for job security. The labour markets need to have certain amount of flexibility. So we might have to sacrifice some jobs to save many.

The onus needs to be handed over to the employers so that they get flexibility in their operation.

3.2 Circumvention

Various clauses in this Act provide ample scope to the employer to circumvent the provisions of Chapter V-B. The definition of a workman under Section 2(s), for example, provides scope for circumvention. Sub-clause (iv) exempts any person in a supervisory capacity drawing wages exceeding one thousand and six hundred rupees per month, from the definition of a workman. Now, in reality, very few people would fall within the monetary threshold of Rs. 1600 per month. This lacunae is often used to retrench or lay-off any worker, contending that he is not a 'workman' (Chapter V-B applies to a 'workman'). The wage threshold should be increased to rupees five thousand a month, and indexed to the annual rate of inflation of the industrial sector.

Circumvention of the law as acknowledged by both the Committee reports mentioned above, can also take place under Section 25-N(4) and Section 25-0(3). After the employer seeks the permission for retrenchment and closure, the appropriate Government needs to communicate the order granting or refusing such permission, within 60 days. Such permission is granted on the expiration of 60 days. Influential employers can manipulate officials so that the communication of the order is after 60 days. In that case, he can legally retrench or close the undertaking paying the required compensation. Communication by the appropriate Government should be mandatory.

Under Section 25-S of chapter V-B, Section 25-FF of Chapter V-A is applicable to chapter V-B. Section 25-FF deals with transfer of undertakings. Thus for the transfer of ownership, there is no classification of industrial establishments like in the case of lay-off, retrenchment and closure. So by way of transfer of ownership, it is even possible to retrench all employees without any prior permission from the Government and by just paying the required compensation. This is an easy way to circumvent the law. In the age of liberalization, mergers, takeovers and strategic alliances would be the norms rather

then exceptions. The employment conditions can be made secure (like re-deployment, and with the scrapping of Section 9-A this would not result in any industrial dispute either) in the event of transfer of ownership.

Again, by Section 25-M, any employer can lay-off his workers due to 'shortage of power' without obtaining prior permission from the appropriate Government. The definition of lay-off as contained in Section 2(kkk) also has a similar position. Now non-payment of electrical dues will lead to severance of power connection. Then the employer can legally lay-off the workers. It is interesting to note that the Maharashtra Government amended Section 2(kkk) to add specially "or on account of discontinuance or reduction of the supply of power to the industrial establishment for contravention of any provisions of the Bombay Electricity (Special Powers) Act, 1946 or of any orders or directions issued thereunder." Such amendment indirectly offers employers ways or means to circumvent the law and make the state attractive for investment.

3.3 Inefficiency

India is regarded to have the advantage of a huge and cheap labour force, and this aspect gives its industries a competitive edge. Following India's commitment to the provisions of WTO, and with the opening up of its economy, remaining competitive is the key to survival for Indian industries. However, it is our hypothesis that Chapter V-B, primarily a job security legislation, has had a detrimental effect on the demand for labour thereby promoting artificial substitution of labour by capital. This clearly hinders efficiency in production, for capital is costlier. Chapter V-B then turns out to be detrimental for Indian industries and fatal for the labour force.

Substitution of labour by capital can take place at two levels. First, after Chapter V-B was introduced, or more specifically after the threshold was brought down to just 100 in 1982, the new industrial establishments would tend to be more capital intensive. This is more of a long-term effect. Secondly, employers would tend to substitute labour with capital by not employing more labour in response to an

increase in production, as retrenching them in lean periods would be difficult. This is relatively a short-term effect of Chapter V-B.

Towards this end we first look at the trends in capital, especially fixed capital, and labour. Then we use a log linear model and with the help of dummy variables in the model test if there is an effect of the job security clause on labour demand.

The chief source of data is the Annual Survey of Industries (ASI), published by the Ministry of Commerce (MOC), Government of India. It contains data on the absolute number of factories, fixed capital, productive capital, employees, workers, gross output and value addition figures among others. The data is given for various employment ranges and encompasses the entire manufacturing sector desegregated to 36 industries

There has been a change in data classification in ASI from the year 1979-80. Before 1979-80, ASI gave data only on the total number of employees. Employees include both managers and the workers. So data on employees is reported from 1973-74, while data on workers is reported from 1979-80. The last observation pertains to 1997-98. Thus the data set is 25 years for employees, and 19 years for workers. Data for both employees and workers are used in analyzing the trends but only data for workers is used for the model.

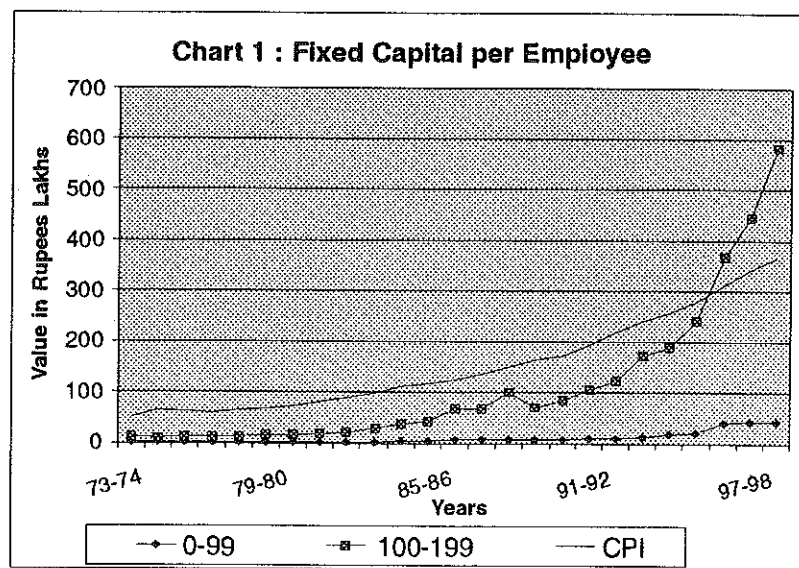
3.3.1 Trends in Capital and Labour

Since Chapter V-B applies to industrial establishments employing 100 or more workers, the threshold of 100 is very important. We have divided the data into three sets. The first set comprises of factories having less than 100 workers, the second set comprises of factories having between 100 and 199 workers and the third set comprises of all factories having more than 100 workers. Unlike the model (which follow) where only the first and the third set of data is used, we also have the second category here, because this set is directly and perhaps the worst affected by Chapter V-B as it lies at the threshold. It is our hypothesis that substantial changes in the trends takes place since the mid-eighties along with a clear substitution of labour by capital for the second set and third set of factories while no major change over time is noticed for the first set.

Trends in Fixed Capital

We first look at the trends in Fixed Capital per Factory, which is given in Chart 1, below. This is given for factories employing less than 100 workers and factories employing 100 to 199 workers. What is clearly evident from the chart is that while the two trends have been very similar and also close to each other in value till about the mid-eighties, the later witnessed a sharp increase thereafter, unlike the former. This clearly demonstrates that the input of fixed capital per factory has remained similar and unaffected for industrial units outside the purview of Chapter V-B, while showing a very sharp increasing trend for industrial units employing 100-199 workers, which is the group most affected by this Chapter. Since the mid-eighties and especially since the nineties, the difference has been marked and substantial, as the industrial units became more capital-intensive comparatively, leading to less job creation. One can of course argue about the availability of better technology since the mid-eighties, but the substantial difference in the trends vindicates our hypothesis.

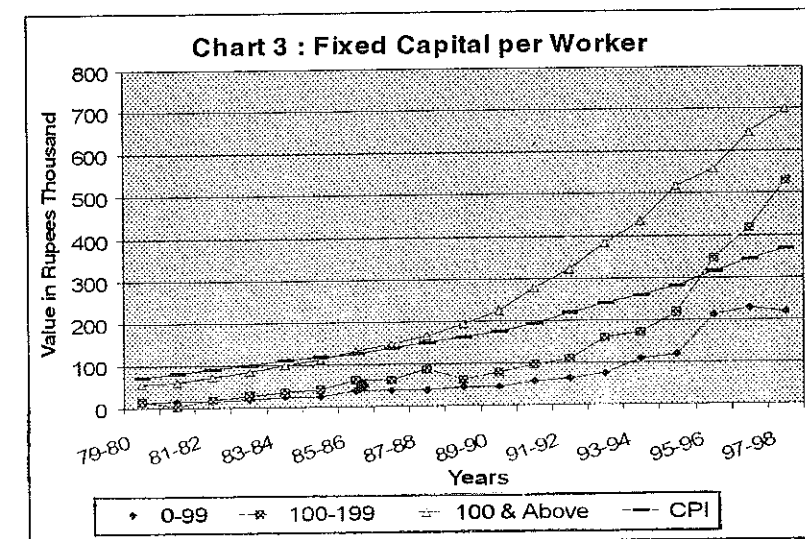
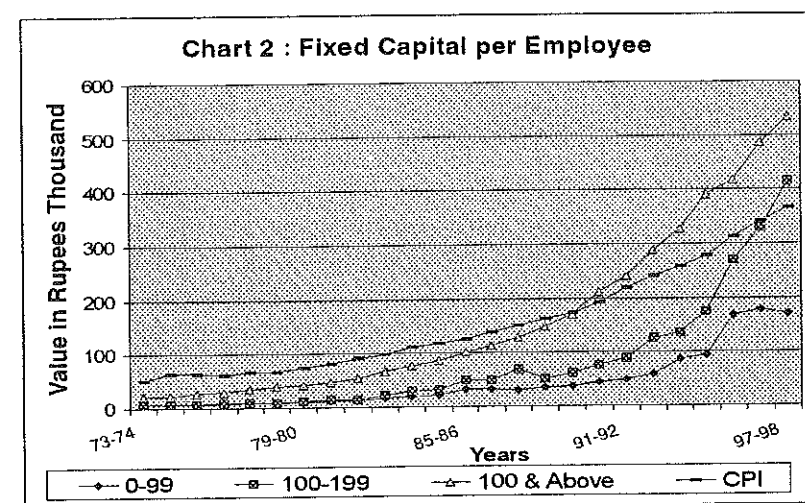
In the Chart, we also have a third trend, representing the Consumer price Index Number for Industrial Workers, with the base year being 1982 when it is taken to be 100. The trend is without any



variation and quite smooth. This reflects that inflation has not mirrored any rise in the nominal values for Fixed Capital.

Trends in Capital-Labour Ratio

We next look at two more charts that gives the trends in the 'Capital-Labour Ratio'. Chart 2 depicts Fixed Capital per Employee and Chart 3 Fixed Capital per Worker.



It is also evident from both these charts that from the later part of the eighties, a gap in the capital-labour ratio starts building up between industrial firms employing less than 100 employees/workers and for industrial firms employing more than 100 employees/workers. The shift is evident for both the categories, 100-199 (the immediate group where the legislation affects) and for '100 & Above' (that is, all factories affected by the legislation). Moreover, by the mid-nineties the capital-labour ratio is much higher in the 100-199 category than in the 0-99 category. Thus there seems to be a clear case of substitution of labour by capital since the mid-eighties.

In both these charts the Consumer Price Index Number for Industrial Workers, with 1982 as the base year is also inserted. Alternatively, one can deflate the value of fixed capital by the Index so as to get the values in real terms to mirror for inflation or money illusion. However, with the Index showing no variation and a smooth rising trend, one can discount the ambiguities arising from representing the data in nominal values.

If fixed capital is substituted either by productive capital or by total capital we still get almost identical trends. Thus an increasing Capital-Labour Ratio (K/L Ratio) is being used in the Indian industries at all levels, that is both short-term and long-term.

3.3.2 A Model for Labour Demand

We next test this hypothesis that there has been an effect of the job security legislation as envisaged under Chapter V-B, through a model. From the trends it was clearly evident that there has been an increase in the capital-labour ratio since the mid-eighties. This in other words means that there has been an artificial decrease in the demand for labour as labour has tended to be substituted by capital. So through a model we test the hypothesis that there has been an effect of the job security legislation on the demand for labour, where Chapter V-B applies.

The model is a log linear one. The idea is to determine the elasticity response of the explanatory variables on the explained variable. The model specification is as follow:

$$N_t = \alpha + \beta D + \sum \delta W_{t-\mu} + \sum \gamma V_{t-\mu} + \eta N_{t-\mu}$$

Where, N_t is the logarithm of the numbers of workers employed in period t ;

D is the dummy that captures effect of job security legislation on employment;

$W_{t-\mu}$ denotes the logarithm of the wage rate in period $(t-\mu)$, where $-\mu$ indicates values lagged μ years from the period t ;

$V_{t-\mu}$ is the logarithm of output value added in period $(t-\mu)$, where $-\mu$ indicates values lagged μ years from the period t ; and,

$N_{t-\mu}$ denotes logarithm of workers employed in period $(t-\mu)$, where $-\mu$ indicates values lagged μ years from the period t ;

Assumptions in the Model

The first assumption pertains to the independent variables. Labour demand, the dependent variable is assumed to be a function of the wage rate, value addition and previous employment levels. The rationale behind this is that, a firm while deciding upon the number of employers to be hired will be influenced by its past experience on wages, employment and the value addition.

The second assumption pertains to the value of μ . This is taken to be 2. It is well known that the labour market in India is not entirely flexible. So, all the explanatory variables, that is, the wage rate, net value addition, and previous employment level is taken with a lag of two years. Even for the dummy variable, a lag of two years is assumed, and so the dummy takes the value one from 1984-85 till 1997-98 and zero for all previous years till 1979-80. The labour demand function is then estimated for the two sets of data.

It is, however, always rational for a firm to employ labourers on the basis of the profit maximizing criteria. Depending upon the

market situation it is profitable for a firm to hire more labour in case of higher perceived demand and less when it foresees a fall in its product demand. However such flexibility in hiring or retrenching labourers may not be a useful proposition in presence of high transaction cost. It may not be a viable option for a firm to retrench workers easily due to the job security legislation. So even if a firm foresees higher demand for its products in a given period, it will be reluctant to employ more workers because of this problem in retrenching them during lean period. Here lies the rationale for incorporating the job security dummy. However, we have only assumed the intercept dummy and not the slope dummy to affect the explained variable. This assumption is essentially to keep the model simple and see if there is a shift in the demand for labour due to the job security legislation.

Since a lag of two years was assumed, the values for two previous years was interpolated using the technique of four yearly moving averages and assuming them to either increase or decrease monotonically in the immediate neighborhood. The wage rates as well as the net value addition figures are deflated by consumer price index number for industrial workers (with 1982 as the base year), so as to get the values in real terms in order to mirror for inflation or money illusion.

The Results

The model is tested for two sets of data - factories having less than 100 workers and factories having more than 100 workers. The assumptions and rationale remains the same. For the first set there is no effect on the demand for labour as it remains outside the purview of the job security legislation and the opposite case for the second set of data. Tables 1 and 2 below, gives the respective results of the regressions run on the model. The number of observations is 19 as we have used data from 1979-80 to 1997-98.

Table 1: Some important Results of the Regression run on Labour Demand for Factories Employing less than 100 Workers

Parameters	Less than 100 workers			
Overall Results				
<i>R-squared</i>	0.948186			
<i>Adjusted R-squared</i>	0.933382			
<i>Standard Error of Reg.</i>	0.037738			
<i>F-statistic</i>	64.04885			
<i>Probability for F-statistic</i>	0			
<i>Durbin-Watson statistic</i>	2.331739			
Variables	<i>t-Statistic</i>	<i>Probability</i>	<i>Coefficient</i>	<i>S. E.</i>
Intercept	1.945665	0.0721	8.320918	4.276644
Dummy Variable	-0.56222	0.5829	-0.01793	0.031895
Wage Rate	0.849385	0.41	0.153053	0.180192
Net Value Addition	1.839463	0.0871	0.161379	0.087732
Previous Employment	1.503964	0.1548	0.415811	0.276477

Table 2: Some important Results of the Regression run on Labour Demand for Factories Employing more than 100 Workers

Parameters	More than 100 workers			
Overall Results				
<i>R-squared</i>	0.873649			
<i>Adjusted R-squared</i>	0.837549			
<i>Standard Error of Reg.</i>	0.030597			
<i>F-statistic</i>	24.20069			
<i>Probability for F-statistic</i>	0.000004			
<i>Durbin-Watson statistic</i>	2.544653			
Variables	<i>t-Statistic</i>	<i>Probability</i>	<i>Coefficient</i>	<i>S. E.</i>
Intercept	5.234991	0.0001	14.29155	2.730005
Dummy Variable	-2.51798	0.0246	-0.0786	0.031215
Wage Rate	-2.86345	0.0125	-0.35464	0.123849
Net Value Addition	5.746865	0.0001	0.416556	0.072484
Previous Employment	-1.50444	0.1547	-0.35175	0.233809

Interpreting the Results

Both sets of regression results are given in the table above. The first set regression is for the factory set employing 0-99 workers. Both R-Square and the adjusted R-Square have very high values, the F-Statistic is significant and the value of the Durbin-Watson statistic is also close to 2. This implies that the model is robust and there is no auto correlation present (as it is a time series data). Moreover, there is no problem of multi-colinearity as this was also tested for by dropping one variable at a time.

However, none of the variables including the dummy variable is significant at 5 percent level of confidence. On the other hand, if we run the regression without the dummy variable, the variables are significant at 5 percent level of confidence. Together we can conclude that although the dependent variable does explain the independent variable, that is the demand for labour, there is no effect of Chapter V-B on this set of data. Thus there has been no apparent effect of the job security legislation on factories having less than 100 workers and since Chapter V-B applies to industrial establishments employing more than 100 workers, this result is consistent with our hypothesis. So, there is no artificial capital-labour substitution or effect on labour demand where Chapter V-B is not applicable. This result although seems very simplistic, has very important connotations. Only if the results for the set 0-99 is not significant but the results for the other set, that is, factories having more than 100 workers is significant, will our hypothesis be validated.

The second set of regression results is very interesting. Except the previous employment level, all the variables are significant at 5 percent level of confidence. The sign of the coefficient for the dummy, the wage rate as well as for the employment in the previous period, is negative while it is positive for the net value addition. This means that as the wage rate increases, the demand for labour falls, or if the previous employment level is high, there is less demand for labour while if the value addition or production increases than the demand for labour increases. These coefficients are thus consistent with economic theory and the demand curve is negatively sloped. The

sign of the coefficients are also consistent with those reached by Fallon and Lucas (1991). Even the R-Square, Adjusted R-Square and the Multiple R have very high values.

When the sign of the dummy variable is negative and the dummy variable is significant, then it follows that the demand curve shifts to the left due to the effect of the job security legislation implying a decrease in the demand for labour. Thus our hypothesis is true and there has been a detrimental effect of the job security legislation on job creation from an economic standpoint.

The overall results also vindicate the robustness of the model. Not only are values of R-Square and the adjusted R-Square substantially high, the F-Statistic is significant as is the value of the Durbin-Watson statistic. Thus there is no problem of auto correlation that arises with time series data. Tests for multi-colinearity was also done and even this problem was ruled out.

Thus we find highly significant results for the set of factories employing more than 100 workers. Hence Chapter V-B ends up biasing against labour, the cheaper input and promotes its substitution by capital, leading to inefficiency in production.

4. CONCLUSION

The Industrial Disputes Act was enacted to help solve industrial disputes. Although one of the primary aims of the Industrial Disputes Act is to absolve the disputes expeditiously, statistics point to the contrary. For example, the Conciliation Officer is to submit his report within 14 days and the Board of Conciliation has to submit it with two months. For adjudicatory bodies, the time period for the submission is specified by the Government and is usually within three months, and when the Government itself decides, it has to do so within two months. Clearly speedy redressal was sought to be the 'end'. However, adherence to such time periods is farthest from reality. A simple contrast with the figures given by Nagraj (1995) is illustrative enough. In 1992, in the Principal Labour Court of Bangalore, an average of 64.67 cases per day were posted, of which, 64.34 cases were adjourned and an average number of 0.33 cases

were heard per day. Compared to the court sitting hours of 300 minutes per day, the court actually worked for only 83.75 minutes per day. In fact, 90.4 per cent of the termination disputes, which had gone for compulsory adjudication was not disposed off within 365 days! The figures for the Additional Labour Court are just as stark. A termination dispute that is contested all the way can go on for even twenty years, before disposal. Writ petitions admitted in High Courts against awards, under Articles 226 and 227 of the Constitution, take 8-10 years for disposal. And if a special leave petition is admitted in the Supreme Court, under Article 136 of the Constitution it may take another few years. However, the Industrial Disputes Act expects a termination dispute to be decided within a maximum period of three months, but in reality, they have been pending for periods extending beyond eight years. As regards conciliation, for Karnataka in 1992, out of a total 1926 cases, 415 were settled, 856 ended in a failure, 456 were carried forward to the next year and 199 were withdrawn. So even apart from the cases that were carried forward, more than 58 percent of the remaining cases resulted in failure. It must be mentioned that withdrawn cases are those, which were settled bilaterally after conciliation, was initiated. Clearly, such delays add to the woes of the labour force, and calls for a rethinking on what went wrong.

It is true that these essentially relate to procedural aspects. Some of the reasons for this inefficiency are systemic in nature. Filling up of vacancies (under Section 8) in time is one of them. Again there are other problems like, judges appointed to the labour judiciary are often transferred from the civil judiciary and have no special expertise in industrial relations. However, the argument runs much deeper. It is no secret that there is over-legislation and over-regulation resulting in a litigious industrial society. Non-compliance of time schedules and delays have also been due to difficult and impractical regulations. Not only are different statutes dysfunctional, but so are various sections within the Industrial Disputes Act itself. Excessive Government intervention remains at the root cause of the malaise.

Although an employer-employee relationship ought to be in the nature of a personal contract, with an optional provision of

resorting to the government in the case of exploitation, the provisions envisaged under Chapter V-B make recourse to the government and thus to labour commissioners, mandatory. We have seen that Chapter V-B is fraught with State intervention seriously undermining Indian industries from being competitive. Chapter V-B in specific and the Act in general, discourages technological up-gradation through its protective stand towards labour. This has led to less job creation in the long run as economic and commercial viability is a prerequisite for job security and ultimately the protective labour laws are not beneficial for labour. Again, there exists lot of discretionary powers with the government. This gives rise to ways and means of circumventing the law if the employer is powerful and politically connected. This also is detrimental for labour in general. As a whole the rigid and over protective Chapter V-B and excessive discretionary power of the state inhibit expansion of the labour force. This hypothesis was also tested and the empirical results support the theoretical analysis that there has been a substitution of labour by capital since the mid-eighties. The employers, in reaction to the rigid labour clause and the ensuing rigidity in the labour market adopted artificially high capital intensity.

The philosophy of the Industrial Disputes Act promotes compulsory adjudication as the real ultimate remedy for dispute resolution. "The natural consequence of this open-minded definition of industrial disputes is that public authorities and Courts are choked with workers' demands styled as industrial disputes".¹⁶ This must change. We must realize that delays and a litigious industrial society cannot be blamed on procedural aspects. So, reports like the J.L. Bajaj Committee Report are to a large extent meaningless. They do recognize the inherent and practical problems but still end up suggesting cosmetic changes. We must follow the ILO (1994) recommendations. Collective bargaining and voluntary arbitration should be given a much larger role. After all as the ILO put it, Collective Bargaining is "based on the premise that a negotiated agreement, however unsatisfactory, is to be preferred to an imposed solution; the parties should always retain the option of returning

16. Surendranath as quoted in Venkataratnam (1997).

voluntarily to the bargaining table". This implies that whatever dispute settlement mechanism is adopted, it should incorporate the possibility of suspending the compulsory arbitration process if the parties want to resume negotiations.

Industrial growth and economic development are intricately linked with the policy of industrial relations. However the philosophy of the Industrial Disputes Act is seriously questioned today in this age of liberalization. The Government needs to have a proactive and not protective labour policy. It must increasingly take up a neutral stand between the conflicting interests of the employer and the employees. It must realize that economic and commercial viability is a pre-requisite for job security. We might have to sacrifice some jobs to save many. Prior notice to the employees/union and proper compensation to the affected workers should be focused upon rather than prior approval of the Government. It must be recognized that workforce adjustment is one of the responsibilities of the employer. Productive resources should be productively used and the onus cannot be snatched away from the employers. If not incentives atleast disincentives should be avoided. Most importantly, from an efficiency point of view, today there is near unanimity that the objective of protection has been self-defeating.

Venkataratnam (1997) provides a very illustrative example. Tata Iron & Steel Company employed 50,000 persons to produce one million tonnes of steel 80 years ago. Now it produces three million tonnes of steel with less than 45,000 workers. In a three million tonne plant that the Tatas plan to set up in Orissa, they may employ just about 3000 workers. We must recognize and accept technological innovations as necessary for firms to keep their competitive edge and survive. Otherwise it is detrimental for everybody. But the Industrial Disputes Act has enough provisions to actively discourage them. Section 9-A should be scrapped and Chapter V-B amended (if not scrapped). The role of the State should be minimized. Discretionary power being at the root of the malaise has to be accepted and eradicated. There should be a credible system of incentives and deterrents. For example the role of performance indicators and Trade Unions can be incorporated.

Given the other clauses of the Act, the requirement of governmental permission can be dispensed with, without adversely affecting the interests of labour. Unless this rigidity in labour markets is removed, higher growth will not necessarily translate into greater employment. What is necessary is an exit policy for labour. The statute makes it impossible for companies to exit and competition cannot function without free exit.

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