CHAPTER 4
IR SYSTEM IN INDIA-A HISTORICAL PERSPECTIVE

The system of IR which has emerged in free India should be seen as a sequence of colonial labour management relations pattern as evolved by the British. Main emphasis at that time was avoiding or minimizing conflicts. On attaining freedom, we merely changed the title of the policy keeping the contents the same which resulted into different set of objectives in theory than in practice.

At the time of independence along with nationalist movement, a trade union movement had existed for over 25 years. A considerable body of labour legislation existed along with a body of Govt. regulations and intervention. This mainly consisted of

1) Indian Trade Union Act, 1926
2) Industrial Employment (Standing Orders) Act, 1946
3) Factories Act, 1948
4) The Minimum Wages Act, 1948
5) The Industrial Disputes Act, 1947

It is clear from the examinations of the main legislation that just about the time of independence of India had inherited a framework of labour law typical of an enlightened colonial regime where it was assumed that Indian Trade Unionism is undeveloped and Govt. must assume the paternalistic role of assuring minimum employment conditions and deciding the merits of labour disputes. These values pervaded all official thinking and Governmental policy declarations at that time (Unions Employers and Government - V.D. Kennedy).

1) Paternalism- This attitude was evident both in the management as well as the Govt. approach in the labour relations. It resulted into extensive programme of welfare legislation for redressal of power imbalances and recognition even to the minority unions for bargaining and representation.

2) Harmony - An extension of Gandhi's doctrines of Truth and Non-Violence in concrete terms it means avoidance of violence, strike and lock-out through Govt. settlement machinery. It also implies discarding the coercive methods by
the parities to IR and adopting peaceful methods and solution through compromise.

3) Evolution of standardized norms - There was an acceptance amongst all the parties to IR that every problem of labour relations is capable of a correct and just solution as per some objective standard, irrespective of and independent of the undercurrents of that particular relationship. And the ideal of social justice is good enough a framework that can be invoked in arriving at such standards.

These qualities together resulted into a variety of simultaneous goals for the IR policy of the Govt. some of which were clearly conflicting. The avowed objective of a healthy growth of Trade Unionism suffered as a consequence of preaching of industrial peace and harmony at the cost of collective bargaining which inevitably leads to "Trials by Strength". In fact one of our dedicated labour leader and one time Labour Minister late Shri Khandubhai Desai encouraged state regulation of IR as a more preferable method of resolving industrial disputes than leaving the workers on their own resources to seek justice for themselves.

**EVOLUTION OF LABOUR LEGISLATION**

Some of the important labour legislation as discussed earlier were enacted in the pre-independence period. The early 20s marked the enactment of legislation to protect the basic interest of workers and their unions. Noteworthy amongst them are the Indian Factories Act of 1881 and 1911 and the Indian Trade Unions Act of 1926. The 30s were the depressing period for Indian Labour without any major breakthrough on any front. Though late 30s again produced another important piece of legislation - The Bombay Industrial Disputes Act, 1938. This was the result of the efforts of the popular and prominent labour leaders such as Gulzarilal Nanda and V.V.Giri who had taken over as Labour Ministers during this period. The Bombay Industrial Relations Act is largely based upon this BIDA of 1938 with a few additions and modifications. The most significant feature of the Act was elimination of inter-union rivalries by introducing a system of recognizing the dominant union.

On attaining independence, on one hand the Industrial Disputes Act of 1947 which incorporated the Defence of India Rules promulgated by the British to regulate IR during the War became the key to Labour Management relations. This Act plays
increasing reliance on intervention and control of labour relations. This was done as a clear cut policy measure to outmaneuver the growth of collective bargaining process. At the same time the Trade Unions Amendment Act of 1947 providing for the recognition of Trade Unions and conferment of rights on unions bringing order to chaotic Trade Union situation was not permitted to become law. This also resulted in weakening of possible greater unity amongst the labouring class and till date this change has not been introduced.

The conflicts in goals set in policies and goals pursued in practice is a noteworthy feature of Indian IR system since its historical beginning. The harsh economic reality of increasing industrial production at the fastest possible rate necessitated compromises on IR front but the highmindedness and the ideological approach to all the national problems and the dearth of competent professionals in IR system resulted into ad hoc, hot-house cultivation type of approach to problems of IR. Inspite of highly committed leaders with undoubted integrity the field lacked pragmatic action oriented professionals like those were available in the fields of economic development. This created a dualism and vagueness about the course of action likely to be pursued by the Govt. American scholars like V.D. Kennedy described this as a quality of "tender-mindedness" that pervaded all levels of thinking in India. In his opinion this quality of tendermindedness is akin to highmindedness insufficiently disciplined by intellect. It is argued by him that majority of the educated and powerful Indian Leaders had high ideals for human and social betterment along with the belief in the ability of man to adapt their behaviour to these ideas. They were disinclined and insufficiently trained and experienced to put highmindedness notion to the acid test of facts and rigorous intellectual analysis and accept the consequences. The undesirable consequences of this quality in the area of IR activity were - 1) the mystical confidence in Indian traditions and culture and a special exclusive quality of the unity which will carry India through all the troubles during the process of industrialism and urbanism.

2) Evolution of set of values like equality, non-violence, trusteeship, cooperation, social justice, freedom for the individual etc. which became part of the rhetoric in matters of social policy, the commitment to which seemed only doctrinaire for the majority of the leaders.

These values on economic front resulted into government primacy over private enterprise as the idea of socialistic pattern of society had come to signify morality of a social order that embodies the above values and such a social
order can be assured only by the Government. It also substantiated the argument on IR front that only Govt. intervention and regulation can help the cause of the labourer.

3) Belief in the ability of man to reform the society by making education available to all. Appealing to moral conscience of the people and enacting laws as JK Galbraith had said "Above all it is socialists who are responsible for the paralyzing belief that success is a matter of faith not work". This resulted into putting the form before the substance. What needs to be done is overshadowed by the elaborate procedures and ceremonies.

On IR front, laws and procedures representing forms took precedence over the implementation and evaluation of its working representing the performance. Enactment itself became a measure of accomplishment rather than the working of such enactment.

4) Reluctance to use power to achieve certain social ends as inconsistent with belief in the goodness and reasonableness of men and to use compulsion as violative of democratic rights and harmonious relations. The govt. has refrained from using compulsion to bring order and fair practice into labour relations. This is clearly perceived in the approach to strike by successive labour leaders. All the leaders who shaped labour policy always condemned strike as an outmoded unsocialistic method of decision making and promoted voluntary arrangements.

All these factors shaped the labour policy of this country with the objectives of socialistic pattern of growth with maximum peace and growth of healthy trade unionism.

POST INDEPENDENT LABOUR RELATIONS POLICY

As India had already developed a sort of industrial relation set up on attaining independence some attempts were made to reshape the system. In 1947, inspired by the American Wagner Act, 1935 the Parliament enacted a law to bring about fundamental changes in trade unionism. It provided for recognition of representative union and gave the union basic protection against unfair employer practices. These were however, never put into effect.
In 1950, two new bills had been drafted which also included proposed amendments of 1947. In addition to this, many more far-reaching changes endorsing collective bargaining and strong unionism were included. However, the bills never became law and lapsed with the Parliament. After that, when V.V. Giri became Labour Minister, he vigorously pursued the proposed changes but lack of political will of the ruling party due to opposition of these changes from various quarters resulted into a final rejection of these changes. Though legislative measures in favour of strong unionism and collective bargaining could not succeed, the labour policy chapters of successive plans have referred to the advisability of healthy trade union movement and collective bargaining. It was during the second five-year plan that it was perceived that "closed shop" or "union shop" practices should be approved. It also suggested to the States to adopt some statutory provisions for recognition of unions, keeping in mind the desirability of having one union for one industry. It suggested restrictions on the number of outsiders serving as union office bearers, office bearers to be given additional protection against victimization, and a differentiation between bargaining issues and joint consultation issues. As legislative measures failed to take effect on labour relations policy area, the Government tried to make changes through non-legislative means. The central theme of these non-legislative means has been voluntarism and mutual agreement on certain principles and rules which can reshape the labour relations scenario then prevailing. The emphasis had shifted from legalistic approach and compulsions to moral sanctions. It resulted into quasi-legal arrangements and machinery like Annual Indian Labour Conference and Standing Labour Committees as tripartite bodies. Some important innovative developments during this period can be summarized as follows:

1) Initiation of schemes of worker participation in Management
2) Setting up of a scheme of workers' education on all India basis
3) Code of discipline imposing obligations on the parties to industrial relations. This was a major attempt at including the proposed changes in 1947 or 1950 bills thru' a voluntarily agreed upon code.
4) Designing a model grievance procedure
5) Evaluation and implementation machinery to promote the observance of the code of discipline and other problems relating to observance of labour laws.
6) Code of conduct for the unions to restrain abuses of inter-union rivalries.
7) Voluntary arbitration was given a special place of importance.
The third 5 year plan witnessed growing reliance on tripartite forums like Wage Boards, Pay Commission and Bonus Commission to deal with labour cost items like Wage and Bonus. This naturally changed the nature of Indian collective bargaining as major disturbing factors in IR were always the wages and bonus issue. With these items out of collective bargaining it naturally meant less number of motivational issues for workers to engage in trial of strength. Even during the period of Chinese agreement a sense of emergency induced both the parties to adopt the industrial truce resolution which emphasized a no-conflict pact in a national crisis. However, this was simply an emergency situation reaction the effect of it waned soon enough.

THE NATIONAL COMMISSION ON LABOUR

The Labour Policy of the Government in the two decades since independence came in for major review by the NCL in 1967-68. The commission appointed 4 study groups to report on the state of IR. In its finding on IR the NCL accepted the inadequacy of the existing legal framework which is heavily biased in favour of compulsory adjudication instead of collective bargaining. It called for a gradual shift in emphasis in the direction of an increasingly greater scope for collective bargaining. The four regional study groups appointed by the Commission to report on the state of IR criticized the policy of compulsory adjudication as inhabiting the development of collective bargaining relationship and not effective even in curtailing work stoppages. There were observations about misuse of Governments Supremacy in IR to promote partisan political ends (power and justice-E.A.Ramasamy, Delhi Oxford University Press,1984).

To remedy this situation the NCL made two important suggestions: 1) Provision for union recognition has to be made in the Statute itself. 2) A regulated right to strike and lock-out to the unions except in essential services.

It recommended an independent IR commission to combine the functions of conciliation and adjudication. It its conclusion it observed "having made this recommendations we think it necessary to emphasise the fact that the main consideration which has influenced our decision in making this recommendations is that the setting up of the IR commission with two wings will in the long run make negotiations between the parties more earnest and serious and thus introduce a new era of successful collective bargaining. We recognize that in the initial stages of the working of this scheme mutually negotiations may not always succeed but we hope
that where this happens sustained efforts by the commission's conciliation wing will materially assist the parties in reaching satisfactory solutions to their problems amicably. If this process continues for some time the number of industrial disputes which will go before the commission for its adjudication will gradually decrease. That is the end which we have in mind. " (NCL report, Delhi, Govt. of India, 1969 Page 327).

However, the 26th Session of the ILC in 1969 effectively knocked down all the major recommendations of the Commission on IR. The majority in the conference expressed a view that collective bargaining must receive due importance but the subject of wages should be within the purview of wage boards only. Also direct action period before resorting to adjudication recommended by the Commission was considered unnecessary. The recommendation of a separate IR commission was met with stiff opposition from the State Governments as it meant curtailment on the right of reference of Industrial Disputes. Eventually, important recommendations of the NCL were not acted upon by the Government. In 1978, the Janata Government did introduce a comprehensive IR Bill in the Lok Sabha restricting the registration to unions organizing at least 10% of the work force and conferring sole bargaining rights on the dominant union, but with a change of Govt. the bill was shelved. Till date, no major changes have been brought about in the status of trade unions or rights of parties in collective bargaining with respect to resort to direct action.

THE LEGAL FRAMEWORK FOR IR IN INDIA
POST COLONIAL PERIOD
(1947-1990) - A BRIEF REVIEW

Labour being a concurrent subject both the central as well as the State Governments in India have jurisdiction to legislate on this subject. It is estimated that about hundred legislation and a plethora of judge made law govern the field of labour relations in India.

The basic framework provided for is (1) consultative machinery (2) Conciliation machinery (3) Arbitration and adjudication machinery

Consultative machinery act at three levels as indicated by Kochan. In India it includes at the top level ILC and SLC (National and State Level Labour Conferences) at the enterprise level includes joint management councils and works committees, and
statutorily provided canteen committees or safety committee. Dispute resolution process normally begins as bipartite negotiations and goes on either thru' the channel of conciliation-arbitration - adjudication though however, not necessarily always in this order.

Practical working of the legal system has been reviewed by different scholars and the major findings which emerge are 1) conciliation is vary weak due to inherent structural as well as operative difficulties 2) Arbitration has not been very popular due to deep seated adversarialism in labour management relations 3) the most popular state supported method of dispute resolution has been adjudication.

In spite of a huge volume of legislation implementation is extremely inadequate. The law is created for subsequent resolution of dispute by the State rather than creating an enabling environment for the parties to settle their dispute according to respective strengths. State regulation is far too direct. Not only this, state being the largest employer of man-power in the organized sector as well as regulator and enforcer of labour laws many discrepancies have crept into the enforcement systems by the State itself. For example, in spite of a contract labour regulation act, State and its agencies have continued to employ contract labour, State itself declares various services and occupations as essential service and prohibits freedom of direct bargaining sanctions like strikes and lock-outs, State being the agency specifying the minimum wage does not follow the criteria of need based minimum wage etc. Bipartism in India though given a lip service has always remained as zero-sum game without any practical significance. India has so far ratified 36 conventions of ILO but not those relating to freedom of association and right to collective bargaining. This conflicting legal frame work has resulted into divergence rather than convergence in labour relations with predominant value system being uniteraist, not pluralist.

THE NEW INDUSTRIAL POLICY OF 1991 AND THE EXIT POLICY

With the initiation of large scale liberalization measures on economic front in 1991 the demand for reforms in the existing labour legislation also has become more emphatic in its tone. So far the only change likely to have important consequences for the IR situation in India introduced by the Government as a correctional measure in current situation is the setting up of National renewal fund for the retrenched workers. The
A fund has been set up to provide a corpus for shaking off excess manpower especially from the public sector with a golden hand-shake and also to create infrastructure for retraining and redeployment of the retrenched work force. The working of this fund so far shows that it has been used mainly to finance the voluntary retirement schemes for central public sector employees. There is widespread demand for finalizing the proposed exit policy and for that and other purposes modifying the existing labour laws but no major changes have been brought about so far. The existing framework renders work re-organization or sustained technological renewal and resulting demanding and remaining of organization too costly in money and time but the trade unions are skeptical about intermediate redundancy stage and creation of a re-training set-up and hence they opposed these changes tooth and nail. Moreover, sections of management and supervisors as well fear the harsh impact of NIP on them too.