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Paper 10: INDUSTRIAL RELATIONS AND LABOUR LEGISLATIONS
Module 09: Indian Labour Policy- Evolution and Key Concerns,
Recommendations of 2nd National Labour Commission



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| Module Title | Indian Labour Policy: Evolution, Key Concerns, Recommendations of 2nd National Commission on Labour |
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| Pre-Requisites | Understanding the need of labour policy for regulating the issues related to |
| Objectives | <p>Upon completion of the module the student should be able to understand:</p> <p>Understand the Indian Labour policy and how the Indian labour policies are evolved during the various historical phases in Indian context.</p> <p>Explain the key concerns of labour policy and how the labour policy environment is characterised.</p> |
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QUADRANT-I

| Module 9: INDIAN LABOUR POLICY: Evolution, Key Concerns, Recommendations of 2nd National Commission on Labour | |
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1. LEARNING OBJECTIVES

After studying this chapter, you should be able to:

- Understand the Indian Labour policy and how the Indian labour policies are evolved during the various historical phases in Indian context.
- Explain the key concerns of labour policy and how the labour policy environment is characterised.
- The implications of 2nd National Commission on Labour in context of labour policy environment.

2. INDIAN LABOUR POLICY: INTRODUCTION

In every country, the state plays some role in industrial relations. It is however, the nature of this role, the extent of the involvement, and the influence it has over the two other actors in the drama, that distinguishes one state or one role from another. The degree of state intervention is determined by various factors, such as the political complexion of the ruling party or group, the economic conditions of the country, the history of industrialisation and the experience of the main players, and the state of development or underdevelopment. Generally speaking, developed economies with a history of free-market forces, and democratic traditions, have less state intervention in labour relations, with developing situations and critical economic situations inviting closer state control. The National Commission commented (1969) that in some cases state role ‘has taken the form of laying down bare rules for



observance by employers and workers, in others, the rules cover a wider area of relationship and there is equally greater supervision over the enforcement of these rules’ (para 22.0).

In the *US*, the state has confined itself to enacting legislation for ensuring the workers’ right to organise and bargain collectively. It has constituted an independent authority, the National Labour Relations Board, to administer and interpret legal provisions and decide on complaints of unfair labour practices. It is only in cases where disputes or work stoppages are likely to have serious consequences on the economy that government may order a cooling off period. The state also strongly

supports a national arbitration system, in case the usual expedient of collective bargaining fails.

In the *UK*, the industrial relations system has been marked by the primacy of free collective bargaining. Even disputes relating to jurisdiction between unions, is generally left to the Trade Union Congress (TUC). In recent years it has created an economic system where management are given more and more freedom to deal with their unions. The turnaround began from the Thatcher era, when the government disciplined the unions over the coal strike. The Australian system has had a long tradition of state regulation. The government intervenes through the Commonwealth Conciliation and Arbitration Commission for the settlement of interest disputes and through the industrial court to settle differences about interpretation. At the same time there is a fair scope for collective bargaining.

In *Japan*, the right to collective bargaining is guaranteed under the Constitution and the State has enacted legislation to promote it. Direct state intervention is permissible in during strikes which might jeopardise the national economy and public life. There is a Central Labour Relations Commission, which may order 50-day cooling-off periods. All these countries have brought about changes in such a way that government controls to oversee industrial relations are being progressively reduced, and the parties are themselves able to work out their own relations.

In the erstwhile *USSR*, three important factors regulated industrial relations during the communist rule. The imperatives of a socialist state, the operation of a centrally planned economy and the overriding presence of the single party in all spheres of existence introduced several constraints on labour and management. The absence of private enterprise did not allow the usual management labour relations to develop, although in later years considerable degrees of autonomy were granted to state enterprises in their relations with employees.

In three developing countries in Asia - *Myanmar, Malaysia and Philippines* - the role of the state in industrial relations has been more marked. Not only does the state lay down rules and procedures for the settlement of disputes or provide arbitration machinery, but it has, to a great extent, restricted the freedom of unions to stop work. In *Singapore* and Malaysia or in *Taiwan*, the freedom of unions is curbed in significant ways by the state. Thus, there are various types of state interventions in industrial relations.

It is necessary to distinguish between a one-time intervention and a change of system. What happened in the *UK* during Thatcher's regime was more a one-time action of the government. But this was important to introduce system changes subsequently. However, a system change can be achieved without such one-time action as well. The minimum that the state does in any country is to frame rules for the conduct of industrial relations. But how the state arrives at these rules is also important, and differences exist from one country to another in this matter. In democratic countries, the state frames these rules after consultation with the concerned parties or at least, turns long-established practices into rules and procedures. But the maximum that a state does, or can do, is enormously large, since there is no check on state power, especially in autocratic regimes.

Apart from the political propensity of the state or its degree of commitment to democracy, any state is under compulsion to protect its economy. This compulsion is less in developed economies or in free economies, but increases as the economy appears less buoyant or is more state-controlled. For instance, countries which would like to enhance the pace of development, generally tend to restrict union rights to stop work or to strike. States, which would like to attract foreign investors, are more than willing to allow employers the right to hire and fire. This obviously restricts union power. It is ironical that the state's economic policies and its attitude towards unions may not always appear to be consistent. For instance, there is the paradox of the South-East Asian countries, which have believed in a free-market economy, but have easily curbed union rights. On the other hand, we have our own instance, which has for long believed in state-sponsored economic development, but a free and democratic set up for unions.

3. EVOLUTIONARY PHASES OF INDIAN LABOUR POLICY

India's labour policy has been shaped by three major considerations –

- Colonial Economics,
- British Democratic Traditions and
- Nationalist Movement.

The three apparently contradictory elements have helped to create a peculiar system within the sub-continent. This system, however, after 1947 has considerably diversified in the countries of the subcontinent like Pakistan, Bangladesh, Sri Lanka or Nepal.

In India itself, colonial industrialisation helped to create a divide between management and labour, which has been interpreted as a proneness to conflict. The national government, as a result, perceived itself as a dispute settler in the field of industrial relations, and till the 1990s took this role very seriously.

At the same time, the strong democratic principles of British public life have influenced government policy and established a free regime for unionisation in the legal framework of the country, quite distinct from the repressive government policies in South-East Asian countries, which depended primarily on foreign investment.

The nationalist movement and the close links of the leadership with the unions have ensured the continuing linkages among unions, political parties and governments in free India, to such an extent that foreign investors still find it difficult to understand. The degree of government intervention, which is legally permissible in the system, is enhanced and strengthened immensely due to these close links.



During the long struggle for India's freedom, a deep concern about problems associated with mass poverty, low rate of industrialisation, and economic and social handicaps was felt. The Indian National Congress (INC) had thought seriously about these. The National Planning Committee established by the Congress in the late 1930s, indicated the outlines of a future labour policy by favouring gains for labour within the framework of a planned economy. This was governed by a comprehensive system of state sponsored compulsory adjudication. Thus, state intervention was built into the ruling party's agenda. A National Reconstruction Committee was set up in March 1943 to work out a plan for national development. In 1944, the National Planning Committee of the INC also finalised a report. Industrial Labour received due attention from all these committees, which recommended multi-dimensional programmes for the improvement of wages, welfare, and working conditions of labour.

The interim National Government in 1946, in recognition of its duty to protect the working class and promote its welfare, drew up a **blueprint on labour policy - a Five Year Programme for labour**,

designed to develop basic labour standards in respect of working conditions, health, welfare and safety in industrial undertakings.

The programme included:

- statutory prescription of minimum wages;
- promotion of Fair Wage Agreements; legislation to regulate hours of work;
- spread-over, weekly rest periods and holidays with pay for all classes of workers including shops and commercial establishments; road transport services; docks and municipal labour,
- prescription and enforcement of right standards in regard to lighting; ventilation, safety, health and welfare of workers;
- improvement of conditions of work, particularly in unorganised industries;
- organisation of industrial training and apprenticeship schemes;
- provision of adequate housing for workers to the extent of available resources;
- organisation of Health Insurance Schemes for various categories of workers; and
- the extension of social security to as many workers as possible (NCL 1969, para 8.5 and Annexure 1).

This statement of policy acquired significance after independence, when the framers of the Constitution made specific reference to working conditions in the Directive Principles of State Policy and replaced many of the old Acts with comprehensive new legislation. The first few years were thus also characterised by the enactment of various pieces of legislation, either as major amendments to existing labour laws or in some cases, as new laws. Under the influence of stressful conditions created by the World War II and more particularly the need for greater production the Government of India realised that the problems of labour could best be tackled on the basis of a carefully drawn plan.

By and large, the policy objectives of the new government in 1947 were:

- Protective provisions for a weak labour force, apparently unable to stand up to a much better organised management.
- The imperative to ensure industrial peace and harmony so that rapid industrialisation could continue unhampered
- The need to develop a framework to sustain an industrial relations system, distinct from the colonial hangover (though this was not always possible).

In the context of these broad objectives, labour policies and practices began to take shape in India from the mid-1940s onwards, taking an evolutionary path which is not difficult to trace. But this evolution has also been the victim of various events and developments in the socio-economic arena.

If it is at all possible to compartmentalise the history of policymaking, seven distinct periods can be identified in this evolutionary process. These are:

| Phase No. | Periods | Characterisation |
|------------|--------------|---|
| I | 1947 to 1956 | The Introductory Or Initial Paternalistic Phase, |
| II | 1957 to 1965 | The Tripartite Phase, and |
| III | 1966 to 1976 | the Fragmentation and Conflict Phase, and Interventionism |
| IV | 1977 to 1980 | the Post-Emergency Phase |
| V | 1981 to 1990 | the Phase of Creeping Reforms |
| VI | 1991 to 2000 | the Post-Liberalisation Phase |

| | | |
|------------|--------------|--|
| VII | 2001 onwards | Consolidation of Liberalisation and Growth |
|------------|--------------|--|

4. KEY CONCERNS IN LABOUR POLICY

The key concerns of policy makers in the sphere of labour policy can be listed as under:

- Job protection and employment creation
- Upholding international labour standards and enforcing labour legislation
- Extending legal protection to the unorganized sector
- Improvement in living standards, linking wages to productivity
- Vocational training and skills development
- Trade union recognition
- Workers' participation in the management of the enterprise at all levels
- Industrial sickness and attendant problems
- Social security benefits, including pension, occupational health and safety, etc.
- Reforming labour laws based on political consensus among different stakeholders



5. ENVIRONMENTAL TRENDS NECESSITATING CHANGES IN GOVERNMENT ORIENTATION TOWARDS LABOUR POLICY

The processes of liberalization, privatization, and globalization mean that the government's role in social and labour matters has to change, not diminish. Paradigm shifts in the government's role and attitude to labour should reflect the following:

- I. The content and the purpose of labour policy and labour law should focus on facilitation rather than regulation; pro-action and on the creation of harmonious relations conducive to social and economic development rather than dispute resolution. A decline in the role of the state in economic activity need not necessarily lead to a decline in its regulatory/supervisory role in labour and industrial relations matters. In fact, when the private sector becomes the engine of growth, the state may need to play a much stronger role in ensuring a balance between the rights of both labour and management.
- II. Labour policy should focus more broadly on the entire labour force. It should be developmental, not regulatory. There should be a decisive shift towards proactive labour market intervention, with the major thrust on development of skills and attitudes conducive to building a cohesive and productive work culture. Labour policy must be more closely aligned to changes in industrial and other policies., It should provide stimulus to rather than shun job creation.
- III. Globalization is leading to decentralized industrial relations. There is a need to create and strengthen institutions/mechanisms for information sharing, consultation, communication, and consensus development at the enterprise/firm level.
- IV. The labour market is characterized by dualism: an illiterate, unskilled, unorganized, unprotected, and mute majority of the workforce and a literate, skilled, organized, protected, and vocal

minority of the workforce existing side by side. Political unions acting in unison with the state may force it to pursue labour market policies based on political considerations rather than considerations of labour and product market characteristics. The resultant distortions are contrary to the declared goals of equity and efficiency and may even precipitate state and market failures. The state should, therefore, broad base the scope of labour policy and labour legislation to cover the unorganized sector in a more substantive manner than is currently being done.

- V. The state should give up the negative function and assume the positive one of promotion of sound labour-management relations. Statistics on strikes and lockouts do not always reflect the actual state of industrial relations either at the firm, industry, state, or national level. Here the state can provide mediation and arbitration services. It can also acknowledge the semi-public status of the labour market parties, but in democratic tripartite structures.
- VI. Hitherto public sector enterprises have stressed the need for them to be model employers. Now, with growing competition due globalization, there is a need for them to be model performers as well.
- VII. Sustaining growth and fostering competitive labour markets are critical to ensuring job and income security. The demand for jobs does not depend on the supply of labour. There is a need for a fundamental change in employment and income security measures. The concept of bankruptcy is not accepted in India where jobs are considered as property with the attendant notion of hereditary rights in some employment contexts. Employment flexibility, recruitment, transfer, promotion, work assignment, workforce adjustment, etc., need to be considered dispassionately with due regard to employment and social stability as well as business imperatives, if any. Job security at any cost, regardless of the viability of the enterprise which provides the jobs in the first instance, can lead to a counter productive work culture. The state should consider it its obligation to eradicate poverty and end unemployment through the creation of productive jobs which do not sacrifice the basics of quality of life. Here labour intensive industrialization strategies are appropriate and the options should be different in existing businesses vis-a-vis new businesses. During the transition period, foreign investment may lead to jobless growth. Therefore, parallel domestic/public investments should target areas where job potential is high.
- VIII. The state should, therefore, ensure wider social dialogue for broad-based social consensus and social cohesion. Tripartism cannot survive without state patronage. Despite the long tradition of tripartite consultation, in the past quarter century it was atrophied due to the weak and unrepresentative character of the three social partners. Traditionally, tripartism is restricted to consultations among government and organizations of workers and employers in the organized sector. There is a need to extend the scope to other sections of society including the unemployed, the unorganized, and even consumers. In South Africa, the establishment of the National Economic Development Labour Advisory Council merits attention for possible lessons. Academicians should be associated with tripartite bodies. While the government has already taken initiatives to rationalize and restructure tripartite committees, there is a further need to reform the way in which tripartite meetings are conducted. They focus on the draft proposals concerning the agenda and follow the double-discussion procedure in considering ILO conventions. Ministries other than the labour ministry also need to take an active interest in such consultations.
- IX. There is a growing concern that globalization benefits few but affects many in negative ways. Commitment to rural labour, women labour, child labour, bonded labour, and labour in the unorganized sector so far has been largely rhetorical.
- X. The state also has an obligation to make social justice an integral part of developmental planning. Exhortations like sacrifice today for a better tomorrow will not hold much water in societies



where the rich continue to get richer and the poor poorer. As Reich (1995) cautioned, *'Persistent unemployment/underemployment, declining wages and living standards undermine the moral fabric of capital democracy.... In a democracy, people will vote for economic dynamism only if they have a fair chance of benefitting from it'*.

6. Recommendations of 2nd National Commission on Labour

Since Independence, a plethora of committees and commissions have addressed the issue of comprehensive reforms to various aspects of labour and labour management relations in India. The most important one during the pre-independent India was the Royal Commission on Labour which submitted its report in 1931. In the post-independent India there were two national commissions. The First National Commission was appointed in 1966. It submitted its report in 1969. Many of the recommendations were not acted upon and they continue to be relevant even today. The Second National Commission on Labour (2nd NCL) headed by a Gandhian and former Union Minister for Labour, Shri Ravindra Verma, was appointed in 1999 and it submitted its report in 2002.



- I. **The Approach:** From the commitments of the Government of India, the following rights of workers have been recognized as inalienable and must accrue to every worker under any system of labour laws and labour policy:
- right to work of one's choice
 - right against discrimination
 - prohibition of child labour
 - just and humane conditions of work
 - right to social security
 - protection on wages including right to guaranteed wages
 - right to redress of grievances
 - right to organize and form trade unions and right to collective bargaining

One cannot overlook the fact that rights are also related to duties. Existing set of labour laws should be broadly grouped into four or five groups of laws pertaining

- (I) Industrial Relations,
- (II) Wages,
- (III) Social Security
- (IV) Safety and
- (V) Welfare and Working conditions.

There is a need for uniform definition of the term 'worker' in all groups of laws. There is no need to define 'industry' because laws should cover all establishments employing 20 or more. There should be a separate legislation for establishments employing 19 or less than 19 persons. There should be uniformity and consistency in the definition of 'appropriate government' under all groups of laws. Another legislation is proposed to provide social security cover for the unorganized labour. Labour should remain in the Concurrent list of the Constitution. All those drawing upto Rs 25,000 per month should be ordinarily treated as workers. All the supervisory personnel, irrespective of their wage/salary, should be kept outside the rank of worker.

- II. **Trade Unions:** It would have been desirable if the Trade Union Act 1926 also provided for a ceiling on the total number of trade unions of which an 'outsider' can be a member of executive bodies. 10% membership requirement should not apply to workers in the unorganized sector. All workers concerned should benefit from agreements whether they are members of that union or not. A worker who is not a member of any trade union will have to pay an amount equal to the subscription rate of the negotiating agent or the highest rate of subscription of a union out of negotiating college. The amounts collected on this account may be credited to a statutory welfare fund. There should be no craft or caste based unions. Provision to set up a separate political fund may be allowed to continue. However, care must be taken to ensure that the general funds of trade unions are not used for political purposes. To strengthen trade unions, the incentives for consolidation can lie in the field of registration and recognition where the criteria for eligibility can be upgraded or at least proportionately upgraded.
- III. **Industrial Action:** Strike could be called if 51% or more support the decision through a strike ballot. In essential services once 14-day notice is given strike could be deemed to have occurred and dispute must forthwith be referred to compulsory arbitration. The union which leads an illegal strike must be derecognized and debarred from applying for registration or recognition for a period of two or three years. 'Go slow' and 'work to rule' are forms of action, which must be regarded as misconduct. Essential Services Maintenance Act should be withdrawn.
- IV. **Negotiating Agent:** Check off is favoured, with 66% entitling the union to be accepted as the single negotiating agent, and if no union has 66% support, then unions that have the support of more than 25% should be given proportionate representation. The validity of check off, the tenure of union recognition and wage settlement should all be four years.
- V. **Prior Notice Under Section 9-A:** The Commission does not see any merit in statutory obligation for the employer to give prior notice. Notice under Section 9A should not operate as a stay under Section 33 though such a decision of the management will be justiceable under Section 33A.
- VI. **Chapter VB:** Pay adequate compensation, offer outsourced jobs to retrenched workers or their cooperatives, if any enterprise decides to close down give workers or trade unions a chance to take up the management of the enterprise before the decision to close is given effect to. Prior permission is not necessary in respect of lay off and retrenchment in an

- establishment of any employment size. Establishments employing 300 or more can obtain post facto approval of the appropriate government. Retrenchment is more precisely defined and compensation is less in case of closure of sick units (30 days per completed year of service) to 45 days per completed year of service in case of retrenchment in sick units to make them viable to 60 days per completed year of service in profit making organizations.
- VII. **Arbitration/Adjudication:** Establishment of National Labour Relations Commission (NLRC) at the Centre and Labour Relations Commission at the state level under Article 323-B of the Constitution are recommended. The NLRC should have same powers as the Supreme Court. Revamp of labour court and introduction of labour lok adalats is favoured.
- VIII. **Grievance Redressal:** Every establishment shall establish a grievance redressal committee consisting of equal number of workers' and employers' organizations.
- IX. **Workers' Participation in Management:** The time has come now to legislatively provide for a scheme of workers participation in management, initially in establishments employing 300 or more persons. For small establishments, a non-statutory scheme may be provided.
- X. **Contract Labour:** Organizations must have the flexibility to adjust the number of their workforce based on economic efficiency. It is essential to focus on core competencies if an enterprise wants to remain competitive. Contract labour shall not, however, be engaged for core production/service activities. However, for sporadic seasonal demand, the employer may engage temporary labour for core production/service activity. Such labour will, however, be remunerated at the rate of a regular worker engaged in the same organization doing work of a comparable nature. The principal employer will also ensure that the prescribed social security and other benefits are extended to the contract worker. No worker should be kept continuously as a casual or temporarily worker against a permanent job for more than 2 years.
- XI. **Minimum Wages:** There should be a national minimum wage based on the formula of the 15th Indian Labour Conference. The Commission does not endorse the recommendation of the study group on unorganized sectors regarding the level of minimum wage (equal to that of the lowest paid government employee as per V Central Pay Commission award), because it is high, but sets even higher limit of need-based minimum wage endorsed by the Indian Labour Commission in 1957 as the goal.
- XII. **Bonus:** One month's wage should be paid as bonus to every worker. Any demand for bonus up to a maximum of 20% will be subject to negotiation. The existing ceilings for bonus entitlement should be enhanced to Rs 7,500 and Rs 3,500 for entitlement and calculation respectively.
- XIII. **Factories Act:** There need not be any restriction on the question of night work for women if the number of women workers in a shift in an establishment is not less than five, and if the management is able to provide satisfactory arrangements for their transport, safety and rest after or before shift hours.
- XIV. **Working Days/Hours:** We do not approve of the practice of declaring a holiday on the death of a person. On polling days, half day may be permitted to those who have to go to cast their votes.



7. SUMMARY

In every country, the state plays some role in industrial relations. It is however, the nature of this role, the extent of the involvement, and the influence it has over the two other actors in the drama, that distinguishes one state or one role from another. The degree of state intervention is determined by various factors, such as the political complexion of the ruling party or group, the economic conditions of the country, the history of industrialisation and the experience of the main players, and the state of development or underdevelopment. Generally speaking, developed economies with a history of free-market forces, and democratic traditions, have less state intervention in labour relations, with developing situations and critical economic situations inviting closer state control. In the US, the state has confined itself to enacting legislation for ensuring the workers' right to organise and bargain collectively. In the UK, the industrial relations system has been marked by the primacy of free collective bargaining. In Japan, the right to collective bargaining is guaranteed under the Constitution and the State has enacted legislation to promote it. In the erstwhile USSR, three important factors regulated industrial relations during the communist rule. The imperatives of a socialist state, the operation of a centrally planned economy and the overriding presence of the single party in all spheres of existence introduced several constraints on labour and management. In three developing countries in Asia - Myanmar, Malaysia and Philippines - the role of the state in industrial relations has been more marked. Not only does the state lay down rules and procedures for the settlement of disputes or provide arbitration machinery, but it has, to a great extent, restricted the freedom of unions to stop work. In Singapore and Malaysia or in Taiwan, the freedom of unions is curbed in significant ways by the state.

India's labour policy has been shaped by three major considerations: Colonial Economics, British Democratic Traditions and Nationalist Movement. The three apparently contradictory elements have helped to create a peculiar system within the sub-continent. The key concerns of policy makers in the sphere of labour policy can be: Job protection and employment creation; Upholding international labour standards and enforcing labour legislation; Extending legal protection to the unorganized sector; Improvement in living standards, linking wages to productivity; Vocational training and skills development; Trade union recognition; Workers' participation in the management of the enterprise at all levels; Industrial sickness and attendant problems; Social security benefits, including pension, occupational health and safety, etc.; Reforming labour laws based on political consensus among different stakeholders. The processes of liberalization, privatization, and globalization mean that the government's role in social and labour matters has to change, not diminish. Since Independence, a plethora of committees and commissions have addressed the issue of comprehensive reforms to various aspects of labour and labour management relations in India. The Second National Commission on Labour (2nd NCL) headed by a Gandhian and former Union Minister for Labour, Shri Ravindra Verma, was appointed in 1999 and it submitted its report in 2002.