

THE INDUSTRIAL DISPUTES (AMENDMENT) BILL, 2009

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The Industrial Disputes (Amendment) Bill, 2009 was introduced in the Rajya Sabha on 26th February, 2009. The bill seeks to amend a few provision of the Industrial Disputes Act, 1947.

I. HIGHLIGHTS OF THE BILL

The Bill amends the Industrial Disputes Act, 1947. The Act provides for settlement of disputes between workers and management. The Act currently does not apply to persons who are employed in a supervisory capacity and who earn more than Rs 1,600 per month. The Bill raises this ceiling to Rs 10,000 per month.

Under the Act, a worker whose services were terminated can complain to the government, which may refer the case to a court or tribunal. The Bill allows workers to approach the courts directly. The Bill requires all establishments with more than 20 workmen to establish a grievance redressal committee to hear individual grievances. The Bill broadens the eligibility criteria of presiding officers of courts and tribunals established under the Act. All awards made by such courts or tribunals are to be executed by the relevant civil court under the Code of Civil Procedure.

II. KEY ISSUES AND ANALYSIS

1. The Bill allows for supervisors earning up to Rs 10,000 per month to be covered by the provisions of the Act. It is not clear what proportion of supervisors will be covered by this wage ceiling. The Second National Labour Commission had recommended that supervisors be kept out of the purview of the Act.
2. The Bill requires industrial establishments with more than 20 workmen to set up a mechanism to address individual grievances. Under the Act, a similar mechanism exists for large companies. The Comptroller

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and Auditor General has pointed to a lack of monitoring of these committees by the labour department.

3. The Bill expands the eligibility criteria for the appointment of presiding officers of labour courts and tribunals, removing the requirement of judicial experience. The Second National Labour Commission had recommended that officers with experience in the labour department may be appointed to this post. Some state Acts permit this. The Law Commission has recently recommended that advocates with the requisite experience be appointed as presiding officers.

The Second National Labour Commission had recommended that labour laws be simplified and consolidated. This has not been implemented.

III. Context

The Industrial Disputes Act, 1947 provides for the settlement of disputes between workers and management of industrial establishments. The Act applies to workers who perform skilled, unskilled or other tasks but not to those employees who perform managerial or administrative functions. It covers supervisors who earn wages of less than Rs 1,600 per month. It specifies conditions under which workers can strike or companies can declare lock-outs. It specifies procedures to be followed by companies when laying-off or retrenching workers. It also sets up special courts and tribunals to adjudicate industrial disputes. The jurisdiction of labour courts and industrial tribunals has been specified in schedules to the Act.

The Amendment Bill raises this ceiling wage and changes the procedure to be followed by workers who wish to approach a labour court or tribunal. It provides for the establishment of a grievance redressal machinery in industrial establishments with more than 20 workmen. It widens the qualifications of presiding officers of labour courts and tribunals and redefines the powers of such courts or tribunals to execute decrees made by them.

A. Coverage

Persons who are employed in a supervisory capacity and draw more than Rs 1,600 per month are excluded from the purview of the Act. The Bill raises this ceiling to Rs 10,000 per month. Depending on the type of institution involved in an industrial dispute, either the central or the state government is given powers to administer various provisions of the Act. The Bill expands the list of institutions for which disputes will be administered by the central government to include: (a) companies where 51% or more of shares are held by the central government, (b) central public sector undertakings or their subsidiaries (c) corporations set up under a law made by Parliament and (d) autonomous bodies owned or controlled by the central government. The Bill specifies that state governments shall administer disputes in state public sector undertakings or their subsidiaries. State governments shall also administer disputes in autonomous bodies owned or controlled by them.

B. Referral of Disputes

Under the Act, a worker whose services were terminated can complain to the government, which may refer the case to a court or tribunal. The Bill allows a workman to directly approach the court or tribunal three months after filing such a complaint. An application to the court or tribunal must be made within three years of termination of service.

C. Grievance Redressal Machinery

The Bill requires all industrial establishments with more than 20 workmen, to set up one or more grievance redressal committees to resolve grievances of individual workmen. The committee shall consist of up to six members with equal representation from the employer and the workmen, with adequate representation for women. The existence of such a committee does not affect the rights available to workmen under other provisions of the Act. The chairperson shall be appointed alternately by the employer or from amongst the workmen every year. The committee must reach a decision on any complaint within 45 days. Workmen can appeal against the decision to the employer, who has a month to respond.

D. Labour Courts and Industrial Tribunals

The Bill broadens the scope of qualifications required for presiding officers of courts or tribunals established under the Act. Such officers can now include those who (a) have been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner, with a degree in law, and at least seven years experience in the Labour Department, including three years as a conciliation officer, or (b) have been an officer of the Indian Legal Service with three years experience in Grade III. All awards or settlements made by labour courts or tribunals shall be executed by the relevant civil court according to the Code of Civil Procedure.

E. Increase in Wage Ceiling

The provisions of the Industrial Disputes Act, 1947 cover any worker who does skilled, unskilled or any other type of work. However it does not cover those workers employed in a managerial or administrative capacity or those who perform supervisory jobs and earn wages of more than Rs 1,600 per month¹.

Under the provisions of the Bill, workmen employed in a supervisory capacity and earning up to Rs 10,000 will be brought under the purview of the Act.¹ This ceiling is the same as that which applies to employees under the Employees

EMPLOYEE CATEGORY	AVERAGE MONTHLY WAGE (RS)
Workers	4247
Supervisory and Managerial Staff	18995
Other Employees	7838

Sources: Annual Survey of Industries, 2004-05, Vol-I, Table 4a; PRS

State Insurance Act, 1948 (where the ceiling is specified in rules) and the Payment of Bonus Act, 1965.³

¹ The Industrial Disputes Act, 1947 §2(s)(iv)

² The Industrial Disputes (Amendment Bill), 2009 §2(ii)

³ The ceilings under the Employees State Insurance Act, 1948 Act and the Payment of Bonus Act, 1965 were raised in 2006.

The average monthly wages of supervisors and managers in 2004-05 was about Rs 19,000 (Table 1). It is not possible to estimate the number or proportion of supervisors who earn less than Rs 10,000 per month from this data. The Second National Commission on Labour, which submitted its report in 2002, had recommended that all supervisory staff, whatever their earnings, be kept out of the purview of the Industrial Disputes Act.

F. *Grievance Redressal Committees*

The Bill provides for the setting up of one or more Grievance Redressal Committees (GRCs) in industrial establishments with 20 or more workmen, to address individual grievances. Such committees will have up to six members, with equal representation from management and workmen. The Industrial Disputes (Amendment Bill), 2009 § 6 Substituting Chapter IIB of the Industrial Disputes Act, 1947..

An Amendment to the Act in 1982 had also provided for the setting up of a grievance redressal authority by industrial establishments to address individual grievances. However, the relevant section of the Amendment was never brought into force.

Table 2 lays out the main differences between the provisions in the 1982 Amendment and the Bill with respect to the setting up of a grievance redressal mechanism.

⁴ The Industrial Disputes (Amendment Bill), 2009 § 6 Substituting Chapter II B of the Industrial Disputes Act, 1947.

Table 2: Comparison of the Grievance Redressal Mechanism in the Bill and the 1982 Amendment

TOPIC	1982 AMENDMENT	THE BILL
Applicability	Industrial establishments with more than 50 workmen.	Industrial establishments with more than 20 workmen.
Forum for settling grievances	Grievance Redressal Authority to be set up by employer; Composition to be specified in rules.	Grievance Redressal Committee with up to 6 members with equal representation from workmen and management.
Time limit on disposal of complaints	Not prescribed; procedure for authority to be specified in rules.	45 days; appeal must be disposed of within a month.
Right to use alternative procedures for redressal of grievance	The government will not refer a grievance to the labour court/tribunal till it has been dealt with by the authority.	The existence of the committee does not affect the workman's right to use other means for the redressal of grievances.
Sources: The Industrial Disputes (Amendment) Act, 1982; The Industrial Disputes (Amendment) Bill, 2009 ; PRS		

The Act allows the government to require establishments with more than 100 workmen to set up works committees, consisting of representatives of the employer and the workmen. Such committees were intended to resolve disputes between workmen and management. The Comptroller and Auditor General of India (CAG) pointed out that the functioning of such committees was not monitored by the labour departments.⁵

⁵ COMPTROLLER AND AUDITOR GENERAL OF INDIA, REPORT NO. 15 IMPLEMENTATION OF INDUSTRIAL DISPUTES ACT, 1947 AND CONTRACT LABOUR ACT, 1970 5-6-2007 available at: http://www.cag.gov.in/html/reports/civil/2007_15_perand/contents.htm

G. Eligibility of Presiding Officers

The Bill allows for personnel of the state labour departments or officers of the Indian Legal Service, with specified qualifications and experience to be appointed as presiding officers in labour courts or tribunals⁶. According to the CAG, numerous delays in pending cases in such courts or tribunals were partly due to a shortage of presiding officers.⁷ The other main reason cited was extension in time sought by both parties.

The Act currently requires presiding officers to have judicial experience. The Bill does away with this requirement.⁸ Some state amendments to the Act allow for officers with specified experience in the labour department to be appointed as presiding officers - something recommended by the Second National Commission on Labour as well. However, the Bill allows for officers without such experience to be appointed. The Law Commission was asked to look into the issue of amendments to the Act, which would allow advocates to be appointed as presiding officers. The Commission, taking into account the judgement of the Supreme Court in *S.P. Sampath Kumar vs. Union of India*, recommended that

*“Sections 7, 7A and 7B...be suitably amended to make advocates with the requisite number of years practice at the bar, in the relevant legal field, eligible for appointment as presiding officer of Labour Courts and Industrial Tribunals.”*⁹

IV. Findings of the CAG

The CAG had pointed to delays and inefficiencies in institutions and processes related to the resolution of industrial disputes. The Bill does not address these issues.

⁶ Comptroller and Auditor General of India *Supra* note 5 at 15. The other main reason cited was the extension in time sought by both parties.

⁷ The Industrial Disputes Act, 1947 § 7A(3)(aa).

⁹ Law Commission of India, 225th Report on Amendment of Sections 7, 7A & 7B of Industrial Disputes Act, 1947- Making advocates eligible to man labour courts and industrial tribunals (2009) available at: <http://lawcommissionofindia.nic.in/reports/report225.pdf>

TABLE 3: DELAYS IN LABOUR ADMINISTRATION AND ADJUDICATION DESCRIBED BY CAG

TOPIC	TYPE OF DELAY
Conciliation	Conciliation proceedings between management and labour, which are mediated by government officers, are to be completed within two weeks. The CAG found that in nearly one of four such cases surveyed by it, the proceedings had been pending for more than two years.
Adjudication	40-43% of the cases taken up by the labour courts and tribunals in the four metros between 2001 and 2006 were still pending (in 2007).
Implementation of awards	Governments must publish an award in the official gazette within 30 days. Awards are only enforceable when they are published. The CAG found that in Delhi, almost 40% of the awards were published more than 6 months after being received. The CAG said there was no mechanism in labour departments to monitor the implementation of awards, despite clear instructions. It pointed to delays in the actual implementation of awards as well.
Sources: CAG report ; PRS	

V. RECOMMENDATIONS OF THE LABOUR COMMISSION

The Government appointed the Second National Commission on Labour to suggest a reform of labour law and legislation to provide a minimum level of protection to workers in the unorganised sector. The report was submitted in 2002.¹⁰ The Commission's recommendations included the creation of a single comprehensive law covering labour relations and the standardisation of terms and definitions across different laws. Table 4 lists the main recommendations of the Commission. The Bill addresses a few of these recommendations.

¹⁰ Government of India, the Second National Commission on Labour Report (2002) available at: http://labour.nic.in/lcomm2/nlc_report.html

TABLE 4: MAIN RECOMMENDATIONS MADE BY THE SECOND NATIONAL COMMISSION ON LABOUR

TOPIC	SECOND NATIONAL LABOUR COMMISSION
General Recommendations	<p>Rationalise labour laws and standardise definition of various terms across them. Apply the law to all establishments. Define minimum employment limit for organised sector. Enact a separate law for unorganised units with less than 19 workers. Define a cut-off limit of salary above which employees will not be covered by laws for workmen. Do not cover supervisors under such laws.</p> <p>Changes in law should be accompanied by a social security package. Provide for minimum level of benefits to all employees.</p>
Labour Relations	<p>Promote arbitration and conciliation to resolve labour disputes rather than government intervention.</p> <p>Establish a grievance redressal committee to handle individual grievances.</p> <p>Tighter criteria for the declaration of strikes or lockouts.</p> <p>Make provisions in law for the participation of workers in management of establishments with more than 300 workers.</p>
Lay off, retrenchment and closure	<p>Allow for lay off (leave without pay) and retrenchment in establishments of any size without prior permission. Establishments with more than 300 workers should apply for post facto permission for layoffs of more than a month.</p> <p>Establishments with more than 300 persons should apply for permission to close down. All compensation should be made to employees before retrenchment or closure. Enhanced rates of compensation to be paid.</p>

Labour Adjudication	<p>Set up Labour Relations Commissions at national, central and state level to function as appellate tribunals for labour courts. Relax appointment criteria for officers of labour courts. Officials of the labour department with specified experience should be appointed.</p> <p>Allow labour courts to enforce awards made by them. Bar jurisdiction of civil courts with respect to issues related to labour law. Provide for a greater role for Lok Adalats to resolve industrial disputes.</p>
Sources: Report of the Second National Commission on Labour; The Industrial Disputes (Amendment) Bill, 2009 ; PRS	