

Suggestions for Expert committee to examine the possibility of replacing multiple prior permissions with pre-existing regulatory mechanism Part II: Labour

S.No.	Related to	Issues	Existing Govt. Regulations (Give Exact regulation/clause etc)	Suggestions (Specific changes - like change in language, deletion, insertion)	Check Points	Enablers
1	<u>Industrial Disputes Act</u>		Change in conditions of Service – Section 9A – Item 10 of Fourth Schedule - It provides that rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen, would amount to change in service conditions hence notice is required to be given.	Change in Service Conditions – It is suggested that there should not be any restriction on employer. For rationalization, standardization or improvement of plant or technique. Employer should be left free to decide all these.		
2			Retrenchment – Section 25-F, 25-G and 25- H - Section 25-F requires an employ to payment of retrenchment compensation @ 15 days wages in case it retrenches a workman, 25-G, requires that employer be required to retrench last cum first and 25-H requires an employer to re-employ the same retrenched workman if he wants to re-employ anyone.	Retrenchment – Employers are in favour of increasing the retrenchment compensation provided Section 25-G and 25-H are dropped from the Act. Moreover, it is quite reasonable that once the employers are paying retrenchment compensation, he must be free to retrench any workman and condition of re-employment should also not apply.		

3			Chapter V-B – Section 25-M, N and O – This chapter requires an employer employing 100 or more workmen to seek prior permission from the Appropriate Government to layoff, retrench the workmen or to close the establishment.	Chapter V-B – Provision for prior permission for effecting lay-off, retrenchment and closure be deleted. In the present competitive economy where there is no certainty of orders, employers must be free to retrench the workmen or close the establishment if it is unviable. It is mentioned that few State Governments have increased limit of 100 workmen to 300 workmen but we strongly propose deletion of this Chapter.		
4			Section 25 Q -Penalty for lay-off and retrenchment without permission Section 25 R – penalty for closure; Chapter VI – Penalties for various Acts;	For violation of any provisions of the Industrial Disputes Act , the workman gets reinstated or gets compensated for its violation, that is sufficient punishment for the employer. Hence, provisions of imprisonment should be deleted.		
5			Definition of Workman Section 2(s) - Presently, all persons irrespective of salary limit are workmen and can raise dispute of their termination and terms of conditions irrespective it is provided in the appointment letter.	Definition of Workman - Besides managerial and supervisory category, person in the higher salary bracket should be kept out of the purview of the definition of workman. Wage may be fixed in the Act or may be enhanced by notification time to time.		
6			Power of Courts / Tribunals Section 11-A - Labour Courts/ Tribunals can reduce / strike down the punishment awarded by the employer even after conducting an enquiry.	Section 11-A - The Courts / Tribunals should not interfere with the quantum of punishment. Even in a case, where a Court of Tribunal finds that punishment of dismissal is unjustified, it should award reasonable compensation instead of reinstatement.		

7	Factories Act, 1948		Approval Licensing and registration – Section 6 – It gives excessive empowers to the Inspectors to accord approvals in case of registration of Factories and are quite cumbersome	Registration should be done based on the report of Architect and once it is as per specification, Factory should be registered on line and for renewal of licence etc be done based on self certification by employer and through an independent agency. License should be issued without interface with the Inspectorate of Factories as now we have fast technology.		
8			Chapter III and IV – Health and Safety – Both Chapter contains provisions for Health and Safety of workers and inspection is done by the Inspectors.	All decisions relating to health, welfare and safety be through a Works Committee and Safety Committee and there should not be any interference of the Inspecting Staff.		
9			Chapter VI – Working Hours – Present Act restrict working hours , spread over and overtime working.	It is suggested Working hours particularly spread over and over time working be allowed subject to consent of workers and employers. Present restriction fixed over time working be removed. It is causing lot of problems when there is excess orders etc.		
10			Section 66- restriction on employment of women - It restricts employment of women during certain hours .	It is suggested that employment of women workers be allowed during all times subject to their satisfactory arrangements for their transport to workplace and back home as well as adequate protection and security to their dignity and honour.		
11			Preservation of records – Presently, Act does provide keeping of records in old register forms except few State Governments have taken initiative to accept computerized records. There is hardly provisions upto which period it is to be kept. Records are in multiplicity as various returns are repletion.	It is suggested that simplification and maintaining of records in computers be allowed and accepted. Provisions be added to maintain records through computerization. Definitely the multiplicity of various records in various Acts need to be rationalized. Only records upto three years be kept and be demanded on inspection.		

12			Sections 92 to 106 – contains penalties for various offences	Under the Factories Act, various provisions relating to punishment is provided for maintaining of records and for other such minor discrepancies. It is suggested that there should not be any imprisonment unless it is danger to the workers / workmen or public in general by contravention. In any case there should not be any imprisonment for first offence.		
13			Accidents in Factories in case of any accident in a factory criminal proceedings starts as if it is an offence committed by employer and bail is granted by Magistrate and sometime it is considered as non-bailable.	It is suggested accident in a factory should be at par with any accident on road and should be bailable at police station itself.		
14	CONTRACT LABOUR (REGULATION & ABOLITION) ACT		Contract Labour (Regulation & Abolition) Act – Acts applies to all establishments employing 20 or more workmen. It empowers the State Government to prohibit the contract labour in certain processes as per Section 10 of the Act.	The Contract Labour (Regulation & Abolition) Act and the judgement of various courts in this regard have created serious problems for industry across the board and particularly in the manufacturing sector and export-oriented units. Part of the sickness in the industry can be attributed to the emphasis on the abolition of contract labour instead of appropriately regulating it. The fact remains that Government itself is the largest employer of contract labour. Hence it is desirable thrust should be on regulating employment conditions. Greater flexibility be provided in this Act. Section 10 of the Act relating to abolition be deleted and there should not be any difference on core or non-core activity. Provisions of Act are made applicable to any establishment employing 100 or more workmen through contract labour.		

15			Even though the Contract Workers are the Employees of the Contractor (ie immediate employer) , the Principal Employer has made responsible legally for wages and social security measures provided under the ESI ACT , EPF & Miscellaneous Provisions Act, 1952 of the Contract Labour.	It is suggested that once there are registered contractor under the ESI & EPF Act, principal employer should not be held liable for non-payment or less payment of contribution for ESI and EPF and also for wages etc.		
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17			Penalties - Section 22 to 27 contains penalties for contravention of any provision.	For contravention of provisions of Contract Labour Act, workmen do get compensation and employers are penalized as monetary loss. Hence provisions for imprisonment should be deleted.		
18	Payment of Wages Act		Payment of Wages Act – Section 20 – contains penalties for various contraventions.	In the Payment of wages Act, an employee is entitled to compensation for less wages or non-payment of wages. Hence, provisions of imprisonment should be deleted.		
19	Law for Small Scale Industry		Applicability - Presently, all the Acts including Industrial Dispute Act are applicable to establishments irrespective of number of employees.They should also be not covered under the Factories' Act.	Applicability - Small establishments employing less than 50 persons should be kept out of the purview of Industrial Dispute Act and for them a simple legislation which is easy to implement and understandable by the small entrepreneurs be enacted on lines with Shops & Establishments Act. It would avoid litigation of termination and reinstatement of workers for small establishments.		
20	LABOUR COST	Respective state government announces minimum wages from time to time. In the past big MNCs like Toyota, Honda, Suzuki, Bosch and many more companies had faced major labour unrest for such demand. At an average these industries were paying more than Rs.30000/- per month as labour cost, whereas minimum wages in any of the states is around Rs.8000 ~ Rs.10000/- per month In such scenario how MNCs can get confidence in India for large investment in India. Still Unions are raising demands for increase in wages and force unfair means to get these demands agreed.		Government should bring out the concept of "Fair Wage" over and above the minimum wages being circulated from time to time. Fair wages may be kept 1.5 to 2.00 times of the minimum wages depending upon the location the industry is located. There should be a law enacted by the Parliament that if any Industry is paying equal or more than fair wages, unions cease their right to demand for higher wages than the fair wages. Fair wages may be fixed from time to time in line with minimum wages being announced in the current practices.		

21	LABOUR PRODUCTIVITY	There are endless litigations for labour un-reset and labour disputes on account of higher wages being demanded by union. There is a big reconciliatory mechanism in place which has all the guidelines as per the Industrial Dispute Act. Unfortunately, in our country there is no government body where industries can solve the dispute for lower labour productivity.		Government should enact a fully legalized reconciliatory body where dispute for lower productivity norms being achieved by the workers can be addressed which at times go beyond the means of management to address them. Such reconciliatory bodies shall be given suitable technical skill for fixing productivity norms and giving right to the management & reconciliatory body to enforce such norms.		
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22	TRADE UNIONS	At present, any 7 workers can form a Trade Union		We suggest one Factory , One Union should be made compulsory for increase of Manufacturing Output , thereby increasing productivity and consistent quality to MAKE IN INDIA a Grand Success. Otherwise an establishment employing upto 100 workmen, a union can be formed only if 10% of workmen are its members and establishment employing about 100 workmen unless 25% consent can form a Union.		
23		In many states, the politicians/outside persons who are not employee become union leaders and they are not concerned with welfare of workers but are concerned with only for self interest.		A law should be made that only employees are allowed to form an union and become office bearer of the union.		
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25	Difficulty in Managing Inspector Raj	Each Establishment is liable for Inspection by several inspectors with little co- ordination . Their are half a dozen or so Inspectors appointed under various Labour Laws who drop quite often , one after the other , prima facie to look after the Compliance of Statutory Provisions		This is just not acceptable for Ease of Business as we cannot expect MSMEs Entrepreneurs to deal with so many Inspectors and fuel corruption on a daily basis . A total transparency has to be introduced and Inspectors cannot choose to visit Industrial Units of their choice . The whole process has to be automated on a lottery system as the visit of Inspectors and the respective Industrial Units to be informed at least 48 hours in advance .Moreover , their is no need of such huge inspection . Self Certification should be immediately introduced to avoid corruption and by which way Employers and Entrepreneurs will become accountable to abide by laws as they would know that Wrong Self Certification will bring Criminal Law upon them .		

26	Difficulty in Maintaining Records:	Industrial Establishments to computerise records and Inspectors shall not insist on Maintenance on Manual Registers despite permission given under INFORMATION TECHNOLOGY ACT (For maintaining records as Soft Copies) which involves cost , time and paperwork		A certainly detrimental way in Ease of Doing Business		
27	Maintenance of Records and submission of Returns			It should be totally simplified and the requirement of notices to be displayed near the main entrance of the Establishment should be ABOLISHED .		
28			Section 13 A of Payment of Wages Act 1936 requires the preservation of the Registers and Records for a period of 3 years after the date of last entry made therein	Time limit for preservation of Registers and Records should be laid down in each Labour Law so that OLD RECORDS are weeded out. There should be only 1 ANNUAL RETURN INSTEAD OF MULTITUDE OF RETURNS , with varying periodicity under various labour laws , as at present . Records to be Computerised , therefore Inspecting Officers should not require manual (physical) registers		

29			<ul style="list-style-type: none"> •Key provisions with respect to the appointment and termination of labour for units established in SEZs must be in place 	<ul style="list-style-type: none"> •The concept of 'fixed term employment' introduced by the SEZ Act has helped in accounting for the least manpower days lost due to labour strife 	<ul style="list-style-type: none"> •There shall be tremendous return in manpower days loss. 	Policy-cum-Technology
30	EPF & MP Act		<p>EPF Act Provides entrolment of Workmen from first day of its employment.</p>	<p>- This is causing lot of difficulty in case of causal labour who just come for one day or so. Hence, minimum number of days be provided to enrol them as member. - Recently, Finance Minister has announced in his budget speech that Provident Fund facility will be provided to the peripatetic workers particularly in construction sector with single contribution from employers and without any deduction from the workers' wage. - It is pointed out that present law does not provide for single contribution hence these workers are either not covered or are not willing to be covered as their share of contribution is required to be deducted. Hence, proposal be implemented immediately. - Construction industry is also facing problem from EPFO as law requires them to be covered with both share of contribution. This can be implemented only after amendments are made in the EPF Act. - It is further mentioned that in construction industry which employ about 6 crores workers hardly 20% are covered. In order to really extend such benefit to these workers, past records of employers should not be asked for. - It is also suggested that these workers be covered directly without any employer through camps organised by the by the PF Authorities as otherwise by the time they get UAN Number, may shift the employers.</p>		
31				<ul style="list-style-type: none"> •E-portal to provide users with efficient and time-bound services(online registrations, returns filings, license, exemptions, tracking of applications) 	<ul style="list-style-type: none"> • Time bound services to businesses 	
32				<ul style="list-style-type: none"> •Direct reconciliation of returns with bank statements to reduce physical inspections 		
33	Generic Suggestion	<p>Government has decided to limit laws and merge them into few Acts, like Law of Wages and IR Code relating to employment laws.</p>		<p>It is welcome proposal but it is suggested that it should not be merger of present laws but should be simplification and all provisions which are not investment friendly be deleted and fresh provisions be in line with ease of doing business be added.</p>		

34				<p>We should try to impress upon the state governments to promote labour intensive manufacturing. In this context, the textile industry has huge potential for employment and according to the Vision Statement of Ministry of Textiles, the present size of the industry is US \$ 110 billion which is likely to increase to US \$ 400 billion in 2022, which will lead to creation of additional employment of 20 million people. Many state governments viz. Gujarat, Rajasthan, Madhya Pradesh, Maharashtra, West Bengal, Andhra, etc. have come out with Textile Policies in which incentives are being given for setting up of textile manufacturing units. The shemes have been well received and new units are coming up in a big way in these states. Similar efforts should be made in other states viz. U.P., Uttarakhand, Haryana, etc. so that value added products are exported from India.</p>		
35	<p>Skill Development</p>			<p>Skill development is an urgent need of industry. State Governments should frame policies to promote skill development by public-private partnerships. Chamber can assist state governments in framing such policies. This would augment central government's endeavour for skill development</p>		
36	<p>Skill Development</p>	<p>a. Formation of Sector Skill Councils (SSCs), NSDC</p>			<p>• Vocational Skill Development</p>	<p>Policy / Centre of Excellence</p>
37		<p>b. Promote Private participation in Skill Deveopment</p>		<p>• Similar mission like Gujarat Skill Development Mission should be developed for monitoring, co-ordinating and providing policy direction for skill deve. Activities. Online portal should also be launched.</p>	<p>• Transparency and increased currency of certifications</p>	
38		<p>c. National Academy of Construction</p>		<p>• The National Skills Development Council has setup SSCs to work with industry to create skill development frameworks. However this has be made more vibrant and accountable.</p>	<p>• Increased ownership of private sector in overcoming skill development challenges.</p>	

39		d. Multi Skill Dev. Centres		<ul style="list-style-type: none"> •SSCs should promote Occupational standards and industry standard assessments 	<ul style="list-style-type: none"> • More efficient training resources allocation 	
40				<ul style="list-style-type: none"> •To build on other schemes to helps promote industry standard certifications amongst youth – E.g. STAR scheme, MES Schemes• 	<ul style="list-style-type: none"> • Availability of high quality skilled resources across a broad range of generic to specialized skills/trades 	
41				<ul style="list-style-type: none"> •Adoption of government ITIs by private sector (PPP model) 	<ul style="list-style-type: none"> • Alignment of training and skill development efforts to local industry needs 	
42				<ul style="list-style-type: none"> •Leveraging CSR agenda of corporates through Companies Act 2013, alignment with skill development and livelihood in the region and creation of shared value. 	<ul style="list-style-type: none"> • Multi skilling for enhanced candidate employability 	
43				<ul style="list-style-type: none"> •Incentivize setup of skill development centres in industrial clusters in sectors such as Auto, Pharma, Capital Goods, Textiles, Leather 		
44				<ul style="list-style-type: none"> •NAC has gained deep specialization in a single sector, i.e.construction with 138 centers, 21 trades and a target of training 1,00,000 technicians per annum. Considering the vast employment the construction sector offers, the numbers should be at least 5,00,000 technicians per annum with quality training. 		
45				<ul style="list-style-type: none"> •Apart from skills training, NAC should execute consultancy work by conducting third party quality control checks of constructed buildings. This improves the industry linkages for the training/ trainer development activities 		

46				<ul style="list-style-type: none"> Based on the model of A.P, at least 200 Multi Skill Development Centers (MSDCs) should be set up in each state to provide quality training to youth in various trades with potential for employment. These MSDCs will be closely aligned to the needs of local industry. 		
47		<p><u>Address the issue of limited availability of skilled manpower</u></p>				
48		<ul style="list-style-type: none"> There is a need to revise curriculum and course content for industrial training. Integrate the education system with industry requirements so that fresh graduates can meet industry's expectations in terms of the required skills 		<ul style="list-style-type: none"> Introduce a flexible model of MoU with private companies to develop need-based skill development courses in ITIs 		
49		<ul style="list-style-type: none"> Establish skill development centres(SDC) across states for short-term bridge courses under the PPP model 		<ul style="list-style-type: none"> Adopt ITIs under the PPP scheme of the Government of India 		
50		<ul style="list-style-type: none"> Establish centres to upgrade skills at industrial estates/industrial clusters/ industrial parks/SEZs 		<ul style="list-style-type: none"> Provide incentives to industries under the industrial policy to commence skill development courses as per their requirements 		
51				<ul style="list-style-type: none"> Channelise NAREGA funds for skill building and enhancing employability 		
52				<ul style="list-style-type: none"> Simplify applications by introducing a combined application form (CAF) instead of several different forms for various Departments. 		
53				<ul style="list-style-type: none"> Common register; there should be a Common Register allowed to be maintained by SMEs and other Industry units in stead of maintaining multiple registers (29 registers under various acts) by three combined registers. This has been done by Orrissa 		
54				<ul style="list-style-type: none"> Synchronised inspections to avoid multiple inspections by the Department of Labour, Inspectorate of Factories and Boilers and State Pollution Board. 		