

Labour Law Reforms in India: An Overview

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Abstract

Analysts and policymakers have long been pushing the cause of flexible labour markets in India. On the other hand, such proposals have been met with staunch resistance from those whose interests are vested in an inflexible labour market, including employees, trade unions, and the labour ministry. Labor market reform is one of the most politically difficult tasks in a large democracy like India. India's labor legislation is archaic, restrictive, and convoluted, thereby discouraging businesses to expand and create more jobs. Since the 1991 economic reforms, growth in India has quadrupled but the rate of good quality jobs has stagnated. India's labour legislation has become increasingly inflexible and restrictive over time. The costs imposed by such regulation forces businesses to remain in the informal or unorganized sector, where regulation is little or absent but social security is also non-existent. As a result, 93 percent of the Indian workforce is employed in low-quality, low-paid jobs, with hardly any social security cover. On the other hand, there is evidence of productivity being higher in the formal sector. The paper presents an incisive account of emerging issues and challenges that pose for labour reforms in India and imperatives for enhancing labour productivity. Indian labour laws must be improved. A comprehensive view on labour market reforms is required which addresses the needs of both employers and workers. The failure to make any significant improvements in the laws so far, in spite of demands for over twenty years from both employers and unions, suggests that the processes used so far to try to change the laws have not been able to produce the required outcome.

Keywords: Labour, Law, Reforms, india.

Introduction

Universally the power structure in the society has been and is weighed towards the haves and therefore, the weaker sections of the society need protection. India has been no exception. That was the primary motivation for organization of workers and formulation of labour laws by the governments across the world. In India, except for four decades 1950-90, the balance of power has remained with the employers. Since the 1990s, however, the state has been soft in implementing labour laws in its letter and spirit. It realizes that the labour law regime is out of sync with the realities of the economic environment and it has not been able to restore cordial industrial relations and peace. Industrial relations had worsened during the last decade which witnessed managements' aggressiveness towards the workers and trade unions. They have been resisting formation of unions at the enterprise level and coercing the unions, wherever they exist, to terminate their political affiliations and insist on not to have outside leadership. Employment of contract labor has increased manifold much of which is in violation of the Contract Labor (Regulation & Abolition) Act, 1970. Such workers are paid much less

wages compared to a permanent worker doing the same job and have no security of job (Sodhi, 2014).

The country has plethora of labor laws. Since labor in India is on the concurrent list, the Central and the state governments are competent to enact legislation. There are 44 Central and a Large number of State laws in the country. The Central laws are categorized in to three viz: those enacted and enforced by the Central Government (12 in number); those enacted by the Central and enforced both by the Central as well as the State governments (16 in number); and, those enacted and enforced by the various State governments which apply to respective states (16 in number). The most critical laws were enacted before or just after Independence (the Trade Union Act, 1926, Industrial Disputes Act, 1947, Workmen Compensation Act 1923, Payment of Wages Act 1936 and the Industrial Employment-Standing Orders- Act, 1948). Amongst others, majority were enacted 30 years back (Maira, 2014)

Important Labour Regulations and Their Coverage

There are a large number of statutes, laws and rules that make up the regulatory framework both at the central as well

as state level in India. We focus here mainly on ten important labour regulations relating to four broad areas of employment: conditions of work, wages, social security, and industrial relations (including job security). There are a large number of laws covering each of these aspects and examination here is confined only to the following: Minimum Wages Act (1948) and Payment of Wages Act (1936) in respect of wages; Factories Act (1948) and Shops and Commercial Establishments Act (1953) in respect of working conditions; Employees State Insurance Act (1948), Employees' Provident Fund Act (1952) and Workmen's Compensation Act (1923), for social security; and, Industrial Disputes Act (1947) and Contract Labour (Regulation and Abolition) Act (1970) for industrial relations. (Papola, 2007)

Issues in Labour Law Reforms in India

The need to legislate to protect the interest of workers and also to ensure the smooth process of production in enterprises was recognised by the British rulers of India. The colonial government passed the Factories Act in 1880 laying down the minimum conditions of work in terms of 'hygiene, safety and hours of work, etc. Several revisions were followed in the pre-Independence period in 1891, 1911, and so on. The Trade Union Act passed in 1926 set out procedures for registration of unions and protection of unions from harassment. The pressure for protection of workers against risks at work and life mounted in the 1920s. As a result, several legislations were passed regulating work and providing social security before Independence. The provision of compensation to workmen for any injury during the course of employment was made in the Workman's Compensation Act passed in 1923. Payment of Wages Act was passed in 1936, to regulate intervals between successive wage payments, over-time payments and deduction from the wage paid to the worker. In the sphere of industrial relations, the Trade Disputes Act of 1929 aimed to create an institutional framework to settle disputes. The Great Depression and its effects on the Bombay industry with large-scale wage cuts and resulting disputes led to some important regulations such as the Bombay Industrial Dispute Act of 1932. The Act provided that an industrial worker has the right to know the terms and conditions of his employment and the rules of discipline he was expected to follow. The "general aim of the Bombay legislations was to allow collective bargaining in a bilateral monopoly situation" (Pages and Roy, 2006).

Large and dominant unions were recognised as the sole representatives of the workers. Thus, the emergence of labour regulations in India can be traced back to the period of British rule in India. Crucial labour laws governing various aspects of work were, however, passed in quick succession of each other after Independence. And since 1947, there has been a complete change in the approach to labour legislation. The basic philosophy itself underwent a change

and the ideas of social justice and welfare state as enshrined in the Constitution of India became the guiding principles for the formulation of labour regulations (Thakur, 2007). The Constitution made specific mention of the duties that the state owes to labour for their social regeneration and economic upliftment. One of the significant duties which has a direct bearing on social security legislation is the duty to make effective provision for securing public assistance in the case of unemployment, old age, sickness, disablement and other cases of undeserved want (Papola et al., 2007).

In an independent democratic country, it was considered necessary that the rights of employers to hire, dismiss and alter conditions of employment to the workers' detriments were subjected to judicial scrutiny. Accordingly, the Industrial Disputes Act (IDA) enacted in 1947 provided protection to the workmen against layoffs, retrenchment and closure and for creation, maintenance and promotion of industrial peace in industrial enterprises. This Act was later amended in 1972, 1976, and in 1982 seemingly giving progressively greater protection to workers. Factories Act 1948, which replaced the one passed in 1884, aims at regulating the conditions of work in manufacturing establishments and to ensure adequate safety, sanitary, health, welfare measures, hours of work, leave with wages and weekly off for workers employed in 'factories' defined as establishments employing 10 or more workers using power and above 20 workers without use of power. Similarly, the Minimum Wage Act 1948 is the most important legislation that was expected to help unorganised workers survive despite the lack of bargaining power. The minimum wages for scheduled employment are to be fixed and periodically revised by the central and state governments in their respective spheres. The Act may be applied to every employment in which collective bargaining did not operate and purports to fix the minimum wages in such a manner as to enable the concerned workers subsist at least above the official poverty line.

Similarly, Industrial Employment (Standing Order) Act 1956 is another legislation regulating the conditions of recruitment, discharge and disciplinary action applicable to factories employing 50 or more workers. It requires the employers to classify workers into different categories as permanent, temporary, probationers, casual, apprentices and substitutes. The Contract Labour (Regulation and Abolition) Act 1970 regulates the employment of contract labour and prohibits its use in certain circumstances. It applies to all establishments and contractors who currently or in the preceding year employed at least 20 contract workers. The idea behind this Act is to prevent denial of job security in cases where it is feasible and of social security where it is legitimate legal entitlement.

In the sphere of social security, Employees State Insurance Act (ESIA) was introduced in 1948, providing compulsory health insurance to the workers. The Act provides for a

social insurance scheme ensuring certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with, the work of non-seasonal factories. The Act has prescribed self-contained code in regard to the insurance of employees covered by it. Besides the above major laws there are several others that have been enacted for improving the condition of employment and protecting the overall welfare of industrial workers after Independence in India.

Social Security Regulations

Coming to the provisions of social security, an important regulation is the Employees State Insurance Act (ESIA) providing comprehensive protection against the risk of accidents and injury at work, sickness, maternity, and old age. The ESI covers both workers and their families. There are two types of insurance benefits provided under the scheme. First is medical care, in which the insured workers and their families are provided medical care through a vast network of panel clinics, ESI dispensaries and hospitals generally not far from the residence of the worker. Second, cash benefits are also provided in case of sickness, maternity, disablement, benefits of retirement, funeral expenses, and so on. Some of the benefits under the Act are also provided by other laws like Employees Provident Fund Act (EPFA), Maternity Act (MA) and the Workmen's Compensation Act (WCA).

In the absence of a comprehensive pension scheme that will take care of the future of industrial workers on retirement or of the dependents of the worker in case of early death, a system of provident funds for certain category of workers was established by the government through The Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Under this Act, in certain establishments, including factories, employing twenty persons and more, workers and employees are provided with provident fund benefit. Not all industrial sectors are covered under the Act. The industries/classes in which the Act applies are listed in the Schedule 1 of the Act. A wage ceiling exists for coverage under the EPF scheme. WCA provides mainly for relief to the workers against disability and death arising out of accidents and injury at work. The Act applies to all workmen as defined in the Schedule 2 of the Act. The central or the state governments may add to the Schedule 2 of the Act any class of persons employed in any occupation which it is satisfied is a hazardous occupation. Workers covered under the ESI for similar provisions are excluded.

In most of the schemes of social security, employers make a contribution, and, therefore, these regulations have a cost to industry. This has, however, not been a major item of contention between industry and labour, probably because the social security regulations mostly apply to the organised sector, where enterprises do not find their cost to be onerous.

Still such cost is often indirectly avoided by employing workers in non-regular, casual and contract basis which makes them ineligible for such benefits. Workers in the unorganised sectors are, however, generally outside the purview of social security regulation: according to the estimate made by National Commission for Enterprises in the Unorganised Sector (NCEUS) only 6 per cent of the unorganised workers, who constitute 86 per cent of the total workers, are covered by any social security legislation (NCEUS, 2006).

Job Security and Industrial Relations Regulations

The aspects of labour regulation which have proved most contentious relate to job security and forms of labour use. In this respect, the focus has primarily been on two pieces of legislation, namely the IDA and the Contract Labour Act (CLA). Let us first take up the contentious parts of the CLA. The aim of the Act was to provide for the regulation of contract labour in certain economic activities and for abolition in other circumstances. Under this Act, contract labour has been prohibited in certain category of jobs. For example, with a notification in 2001, contract labour was prohibited in handling of food grains including loading and unloading, storing and stacking in the godowns and depots of the Food Corporation of India (FCI). The Act also bars use of contract labour in 'core' and perennial activities and regulates employment of contract labour in other activities.³ The Act applies to (a) every establishment in which 20 or more contract workers are/were employed, and (b) to every contractor who employs or who has employed 20 or more contract workers, on any day in preceding 12 months.

In the debate on labour market reforms, the employment of contract labour has been one of the most contested issues. It is argued that the nature of the 'core' and 'perennial' activities has changed in the wake of globalised production systems and production based on orders. So even in its 'core' activity, an enterprise does not have same amount of work throughout the year and requires varying magnitude of labour from season to season. Greater flexibility in the use of contract labour is, therefore, necessary. It seems illogical not to allow an enterprise to employ workers on a non-regular, contract basis if the work that it carries out is not of a regular nature and varies in volume from time to time. At the same time, absence of restriction on the practice of contract labour may result in greater use of this form of employment by employers primarily to deny job security and other benefits to workers. Regulation on the use of contract labour notwithstanding, the extent of contract labour has significantly increased in Indian industry since early 1990s. According to an estimate, the share of contract labour in the organised factories sector in the country increased from about 12 per cent in 1985 to about 23 per cent in 2002 (Pages and Roy, 2006).

In this period the increase in the share of contract labour varied across states, declining in very few such as Assam and Karnataka, while increasing in most others. Among the states, Andhra Pradesh had the highest increase in the share of contract labour in the organised sector, an increase from 33.8 per cent in 1985 to 62 per cent in 2002. The other equally, if not more, controversial issues relate to the IDA. The Act as a whole applies to enterprises employing 10 workers and more. There are, however, certain restrictive provisions of job security relating to layoffs, retrenchment of workers and closures of enterprises that apply only to enterprises providing employment to 100 workers, or more. The IDA, passed in 1947, was in fact adopted as a comprehensive measure by the central government with a view to improving industrial relations. It stipulates elaborate mechanism for settlement of disputes through conciliation, arbitration and adjudication and also lays down procedures for making changes in conditions of employment and separation of workers. The Act introduced the concept of compulsory arbitration and prohibits strikes without notice in public utility services. Under the provisions of the Act, in order to ensure industrial peace, the government can intervene in industrial disputes. However, a large part of the provisions of the Act are aimed at voluntary arbitration or collectively negotiated settlements.

Debate on Labour reforms

Several economists, industry associations and mainstream media have attributed the deceleration in employment growth in India, particularly in the organized industrial sector, to inflexibility in the labour market, which is believed to have increased the labour costs for enterprises, thereby hindering investment (including foreign investment) and growth. Employment protection laws are also believed to be inefficient and inequitable, leading to slowdown in growth, and dividing workers into protected and unprotected categories. The limited social security in India is enjoyed by only 8 to 9 percent of the workforce. Overprotection of a small section of workers is not only ostensibly inimical to the growth of employment, but also goes against social justice as more and more workers are faced with deplorable working conditions. A recent study on the pattern of manufacturing growth during 1958-1992 concludes thus: "... States which amended the Industrial Disputes Act in a pro-worker direction experienced lowered output, employment and investment in registered formal manufacturing. In contrast, output in unregistered or informal manufacturing increased. Legislating in a pro-worker direction was also associated with increase in urban poverty. This suggests that attempts to redress the balance of power between capital and labour can end up hurting the poor" (Besley and Burgess, 2004).

On the other hand, trade unions and certain economists claim that labour cannot be treated like any other

commodity, and measures like minimum wages, job security, separation benefits, social security trade union rights, etc. are socially and politically necessary even for sustaining the process of globalization as they increase labour productivity. The Government is facing acute dilemma over this issue and labour and managements are at loggerheads with each other, forcing the Government to be circumspect in reforming the labour market. This dilemma is rooted in the philosophy of social and labour policy in the country. The essential ingredient of social policy concerning labour and employment in the country, particularly during the first three decades of planning, has been to treat labour not as a mere resource for development, but as a partner in and beneficiary of social and economic development. This philosophy of labour had its roots in the national movement and many legislative provisions for protecting labour were enacted before independence—which were strengthened later. Accordingly, provisions of social security were made more comprehensive and expanded to include various kinds of risks. Further, detailed laws governing industrial relations were enacted, and a mechanism for fixing and implementing minimum wages was developed. The basic idea behind all these protective measures adopted for labour was that the workforce was a relatively weaker partner vis-à-vis capital in the production process and that in a poor country like India, it was desirable to safeguard workers to promote both social justice and an appropriate industrial and productive climate (Sharma, 2006).

Conclusion

Labor laws must be examined by keeping in mind the goal we want to achieve. Which is to grow India's manufacturing sector and employment in it. Whatever reforms are to be made in the labour laws must be assessed with this goal in mind and must support the strategy required to reach it. The strategy has to be to build rapid learning enterprises with employees at their heart. Relations between employers and employees must become co-operative, not confrontational. Together, enlightened employers and responsible unions must establish processes that will build trust within enterprises. Together, they can determine what changes in labor laws are required. Industrial relations will be damaged if Government forces any changes in labor laws that are not founded on an understanding between unions and employers about what changes are required to ensure fairness to employees and enable faster learning and improvement of competitiveness in enterprises. It is not politically feasible for Government to change the laws without the support of both unions and employers.

The lesson from France is instructive. The productivity and growth of France's manufacturing enterprises have been hampered by rigid labor laws. Last year, the French government changed the laws without too much contention. The minister-in-charge explained that the Government was

able to make the changes because the unions and employers, following the German example of cooperation, came to an agreement about the changes required which they put to the Government to implement

References

- Alakh N. Sharma (2007), "Flexibility, Employment And Labour Market Reforms In India, Institute For Human Development , Working paper NO. 37, New Delhi
- Besley, Timothy and Burgess, Robin (2004), " Can Labour Regulation Hinder Economic Performance? Evidence from India", The Quarterly Journal of Economics, February.
- Maira, A (2014), "Rethinking Labor Law Reforms" The Indian Journal of Industrial Relations: A Review of Economic & Social Development, Vol. 50, No.1, July 2014
- NCEUS (2006), Social Security for Unorganised Workers, Report by National Commission for Enterprises in the Unorganised Sector, Government of India, New Delhi.
- Pages, Carman and Roy, Tirthankar (2006), "Regulation, Enforcement and Adjudication in Indian Labour Markets: Historical Perspective, Recent Changes and Way Forward", Paper Presented at Conference on "India: Meeting the Employment Challenge," 27-29 July 2006, New Delhi, IHD and World Bank.
- Papola, T. S (2007), "Employment in the Development Agenda: Economic and Social Policies," Discussion Paper DP/ 170/2007, International Institute for Labour Studies, Geneva.
- Papola, T. S. (1994), "Structural Adjustment, Labour Market, Flexibility and Employment", The Indian Journal of Labour Economics, Vol. 37, No. 1, pp. 3-16.
- Papola T. S. and Jesim Pais (2007), "Debate On Labour Market Reforms in India: A Case Of Misplaced Focus" The Indian Journal of Labour Economics, Vol. 50, No. 2,
- Sodhi.J.S (2014), "Labour Law Reform in India" The Indian Journal of Industrial Relations: A Review of Economic & Social Development, Vol. 50, No.1, July 2014
- Sharma, Alakh N. (2006), "Flexibility, Employment and Labour Market Reforms in India," Economic and Political Weekly, Vol. XLI, No. 21, May 27, pp. 2078-2085.
- Thakur, C.P. (2007), Labour Policy and Legal Framework in India: A Review, Institute for Studies in Industrial Development, New Delhi.