LABOR LAW REFORMS: A BIG OVERHAUL

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Abstract

The 1991 economic reforms accelerated the pace of economic growth in India but failed to bring any noteworthy change in labor laws. Restrictions on hiring and firing of workers in medium and large enterprises are one of the greatest challenges of doing business in India. The firms are unable to adjust their workforce due to the rigid labor laws. The present article cast light on the debate going on with regard to the labor law reform in India and how these rigid laws have made India a very difficult place of doing business. The initiatives taken by our Prime Minister to improve India's rank in ease of doing business and amendments in the three laws namely, Factories Act, 1948, Apprentices Act, 1961 and The Labor Laws Act, 1988 have also been discussed in detail. The article, however, suggested to make these laws less stiff while keeping in mind the legitimate rights of the workers.

Keywords: Economic reforms**,** labor laws, rigidity in laws.

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Introduction

Law is an instrument to control, manage and direct the conduct and activities of industries and their groups in a society. Law is a dynamic concept and changes with the mounting needs of the society. Progressions in the field of technology, economy and other aspects influence the society. Law is also a universal phenomenon, having presence in all the societies of the world. No walk of life particularly business and industry can manage without law. Law is unavoidable and its significance can be felt by every individual of the society (Singh, 2007a).

As the maxim goes, "ignorantia facti excusat, ignorantia juris non-excusat", ignorance of law is no excuse, however, ignorance of fact may be excused. While it is impractical for anyone to know the entire collection of laws yet it is necessary to know the chief principles and fundamentals of law particularly for persons engaged in business and industry (Singh, 2007a).

Law creates not only rights and privileges but also imposes responsibilities, duties and restrictions. Laws are straightforward tools which can be utilized to achieve just society. Law requires revamping frequently and at regular intervals. This can be reflected in the various new enactments, orders of High Courts and the Supreme Court and is based on the demands of the altering circumstances (Singh, 2007b).

Labor laws must be inspected by keeping in mind the target we want to reach. Relations between employers and employees must become supportive, not fierce. Together, enlightened employers and responsible unions must establish processes that will build trust inside the organization. They can determine what amendments in labor laws are required. Industrial relations will get to be fierce if Government compels any adjustments in labor laws that are not founded on an understanding between unions and employers about what changes are required to guarantee fairness to employees and enable quicker learning and improvement of competitiveness in enterprises. It is not practically possible for Government to alter the laws without the support of both unions and employers. The lesson from France is a good one. The efficiency and growth of France's manufacturing enterprises have been hindered by stiff labor laws. A year ago, the French government reformed the laws without too much opposition. The

Government was able to make the changes in light of the fact that the unions and employers came to an agreement about the progressions required (Maira, 2014).

According to World Bank's annual World Development Report, 2013, "There is no consensus on what the content of labor policies should be. Views are polarized, reflecting differences in fundamental beliefs. To some, labor market regulations and collective bargaining are sources of inefficiency that reduce output and employment, while protecting insiders at the expense of everyone else…..To others, these policies provide necessary protection to workers against the power of employers and the vagaries of the market." The Report says, "The challenge is to set labor policies on a plateau—a range where regulations and institutions can at least partially address labor market imperfections without reducing efficiency." The 'plateau' is a coherent combination of regulations, processes, and orientations amongst the stakeholders—employers, workers and their representatives and regulators. The plateau between too stiff regulations and too little regulation has to be found in each country (Maira, 2014).

Numerous observers believe that Indian labor law is increasingly obsolete, complicated and burdensome and poses a structural hindrance to sustained economic growth (Venkataratnam, 2004; Hill, 2009; Saini, 2009; Krueger, 2013). India has a highly complex, technical and protective regime of labor law (Debroy & Kaushek, 2005; Venkataratnam & Verma, 2010).

At the beginning, it must be acknowledged that adjustment in Indian labor laws is overdue. Many are extremely old and need refurbishing to suit the requirements of today's environment. There are too many laws and regulations contradicting each other. The laws are not executed properly, perhaps because many cannot be implemented in practice, or because the government machinery to implement them is inadequate. Not only are employers demanding improvements in labor laws, unions are too. India ranks towards the bottom of the World Bank's rankings of countries for ease of doing business and its position has been slipping (Maira, 2014).

Indian labor laws needs refurbishing as mentioned before. However, the improvements required must be in concurrence with both the employers and employees. We must find our own level. The inability to make any noteworthy improvements in the laws so far suggests that the

processes used so far to try to change the laws have not possessed the capacity to generate the desired outcome (Maira, 2014).

The present article focuses on labor laws in India. The article first highlighted the various labor regulations applicable in India and the debate going on with regard to the rigidity of labor laws. The various ongoing reforms in labor laws are also been talked about in the article.

Labor Regulations in India

The need to legislate to safeguard the rights of workers and to ensure the smooth running of business was recognized by the British rulers of India. The colonial government passed the Factories Act, 1880 which later amended in the years 1891, 1911 and so on. The act lay down the minimum conditions of work in terms of hygiene, safety and hours of work, etc. The Trade Union Act passed in 1926 provides for registration of unions and protection of unions from exploitation. The pressure for protection of workers against risks at work and life increased in 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 resolve 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 (Pages & Roy, as cited in Papola & Pais, 2007).

Thus, the emergence of labour regulations in India can be traced back to the British period in India. Innumerable labour laws governing various aspects of work were passed 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 essential duties which have 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 others (Papola & Pais, 2007).

In an independent democratic country, it was considered indispensible 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 lay-offs, 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 unorganized workers 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 claim to fix the minimum wages in such a manner as to enable the concerned workers live at least above the official poverty line (Papola & Pais, 2007).

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 bans its use in certain activities. It applies to all establishments and contractors who currently or in the preceding year employed at least 20 contract workers. The main aim behind

this Act is to prevent refusal of job security and social security to the workers (Papola & Pais, 2007).

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. Besides the above major laws there are several others that have been passed for improving the condition of employment and protecting the overall welfare of industrial workers in India (Papola & Pais, 2007).

It must be recognized that even though the protection of labour has been the primary motivation in introducing various measures of labour regulation, there is an implicit assumption in case of most of them that they are good for industry as well (Basu, 1995). This if for the reason that humane treatment, well-being and security make the workforce more efficient and productive and it is, therefore, in the interest of the industry to provide good working conditions, social security against the risks and an assurance that a worker will not be removed from job unfairly or without adequate notice and compensation. Thus, regulation of different aspects of employment, conditions of work, social security, job security and industrial relations are deemed to be parts of social contract and generally accepted and honored both by workers and employers (Papola & Pais, 2007).

Labor Market Reforms: A Debate

The Prime Minister Narasimha Rao, along with his Finance Minister Manmohan Singh, initiated economic liberalization of 1991. The reforms did away with the License Raj, reduced tariffs & interest rates and finished many public monopolies, permitting automatic approval of Foreign Direct Investment (FDI) in many sectors. Since then, overall thrust of liberalization has remained the same, although no government has yet solved a politically difficult issue of liberalizing labor laws ("Economic Liberalization in India", 2015). This forces businesses to remain small, and in turn operate in the informal sector. About 450 million informal employees

who make up 93 percent of the total workforce stand to benefit from reforms to labor laws and improve business productivity (Shah, 2014).

Indian labor legislation is complicated, outdated and prohibitive in nature. About 50 Central laws overlap with 150 State regulations. The clauses of the Industrial Disputes Act (IDA) of 1947, one of the imperative regulations, were conceived under the British Raj. In 1976, the introduction of Chapter V-B to IDA declared that firms employing 300+ people should ask for government consent to effect lay-offs, retrenchments and closures. This was further limited to firms with 100+ workers in 1982, making hiring or firing new workers extremely cumbersome even if they are incompetent (Sharma, 2006).

The IDA also prohibits strikes only by public utility services without notification, however such restrictions should also be extended to other industrial establishments to discourage "wildcat strikes." And perhaps the most crucial reform of all is to Chapter V-B that restricts laying-off workers in a factory with 100 or more workers (Bhagwati & Panagariya, as cited in Shah, 2014). Other than India, Pakistan and Sri Lanka are the only countries that require approval by public administration before undertaking any dismissal (Iyer & Vijay, 2013). The Contract Labour Act and Factories Act also need to relax their caps on restrictions (Shah, 2014).

The 1970 Contract Labor Act permits firms to employ contract labor for tasks of permanent nature however the law allows the government to ban contract use if similar establishments use regular workers for that same task (Bhagwati & Panagariya, as cited in Shah, 2014). The 1948 Factories Act limits the maximum hours of work per week to 48, requires paid holiday for each 20 days of work and prohibit the employment of women for more than nine hours a day. (Bhagwati & Panagariya, as cited in Shah, 2014).

Rigid labor regulations affect industrial development and curb economic growth of the country. Firms are restrained from expanding and harnessing the economies of scale and forced to remain informal (Shah, 2014). The World Economic Forum's 2014 Global Competitiveness Index ranks restrictive labor regulations as among the top issues for businesses to operate in India (Schwab, as cited in Shah, 2014). However, the World Bank's depiction of labour market

"inflexibility" is questionable in light of the fact that labour flexibility has been greatly increased since 1991 without any change in labor regulations. Since 1991, a large number of workers have been forced to leave their jobs and thousands of factories have closed without legal formalities. The total organized sector jobs have declined consistently on account of closures, retrenchments and lay-offs ("Aspects of Indian Economy", 2005).

The debate around labor law reforms in India became prominent once again with the election of Bhartiya Janta Party (BJP) government. The previous Congress-led governments had failed to undertake any critical change in labor laws and so great expectations now await the new government for reforms in labor policy (Verma & Gomes, 2014).

In India, a noteworthy demand of those advocating for greater labor flexibility is to ask the government to spell out an "exit" policy that would make it simpler for employers to terminate workers who are no more required as a result of changes in technology or in its budgetary capacity to maintain a workforce. By itself this is not an unnecessary demand (Verma & Gomes, 2014).

Certain facts and trends concerning labor flexibility in India have become clear in the debate that has occurred in recent years. First, India has one of the strongest legal regimes of employment protection. Second, the legal regime suffers from a proliferation of regulations that often overlap and are not easy to follow. Most writers on the subject acknowledge this intricate web of laws and advocate the kind of simplification that would lead to better understanding of the regulations and thereby, better compliance (Sharma, 2006).

Bhirdikar, Bino & Venkatesh (2011) examined the relation between labor market flexibility and employment over 1999-2006. They found that formal employment declined and informal employment expanded significantly. It suggests that employers have progressively resorted to contract labor and to informal work to cut labor costs. Employers have effectively skirted the formal legal protections that make re-allocation of labor rather rigid. Within the organized manufacturing sector they found a trend towards hiring contract labor and a rise in flexible work arrangements. They also found that states with stronger worker protection laws,

accounted for more workers hired on contracts. The finding reveals that the strong worker protection laws do not necessarily mean more employment.

When we consider India's needs in this light, it puts the labor flexibility debate in a somewhat different light. As recommended before, there is no doubt that some reform of the complex web of labor laws would bring greater clarity for both employers and workers. On the other hand, simply making it easier for employers to hire and fire would be an over-simplification of a policy challenge. In addition, there is no guarantee that any social gains would result from a single and simple change in the law (Verma & Gomes, 2014).

The targets are three labor legislations which have been the central points in the labor market flexibility debate – The Industrial Disputes Act (1947), Contract Labor (Regulation & Abolition) Act, 1970 and the Factories Act (1948). Trade unions have their own stand on the reforms debate as reflected in statements by their leaders. In the words of General Secretary of the Centre of Indian Trade Unions, "The labor force is the real contributor to the value-added society so they should be treated as human beings and not as a commodity" (Joseph, 2014).

The Ongoing Reforms in Labor Laws

Prime Minister Narendra Modi is preparing to launch India's biggest overhaul of labor laws. The ministry proposes to loosen strict hire and fire rules and make it tougher to form unions. The changes, if approved by parliament, will be the biggest economic reform since India opened its economy in 1991, but is likely to meet stiff opposition from labor activists. As part of proposed revamp, a factory employing fewer than 300 workers will be allowed to lay-off workers without government permission. It is also proposed that retrenched workers should be given an average salary of 45 days for every completed year of service instead of present 15 days' compensation ("Labour Laws set Big Overhaul", 2015).

Our Prime Minister has taken serious incremental steps to make labor laws less onerous for business ("Labour Laws set Big Overhaul", 2015). According to him, "ease of doing business is the first and foremost requirement if Make in India has to be made successful". Some changes

have recently been initiated in the three acts namely, The Factories Act, 1948, Apprentices Act, 1961 and The Labor Laws Act, 1988.

The Factories Act, 1948

The amended Factories Act has reduced the eligibility of paid leave for workers from 240 days to 90 days. Also establishments liable to provide restrooms or shelters have been reduced from 150 workers to 75 workers. The Bill also enhances safety measures for workers exposed to hazardous processes and increased penalties for the violation of act. But the debatable question is that how far will these provisions be implemented, when the inspection standards relating to labour and industrial regulations in the factory sector are recorded to be awful? There is evidence of a sharp drop in inspection rates in the factories in the recent past. Moreover, the Bill also allows women workers to work in night shifts (7 pm-6 am), of course with proper safety measures. Now, whether adequate safety measures are adopted or not remains to be seen. However, it would certainly help firms in cutting down on wage cost through substitution of men by women workers, since women workers' wage is typically half of their male counterparts even in the organized manufacturing sector. A third major change has been the increase in the limit of overtime work. Overtime limit for shift workers has been raised from 50 to 100 hours per quarter (that is, per three months period). The same has been raised for typical workers from 75 to 115 hours per quarter and up to 125 hours per quarter for public utilities. This move would definitely extend working hours, thereby curtailing fresh job creation and further help firms in cutting down labour costs as overtime wages would not include allowances which would otherwise to be paid to new workers such as house rent allowance, transport and so forth (Roychawdhury, 2015).

Apprentices Act, 1961

There is a view that the employability of the youth can be augmented by imparting a proper set of skills, normally demanded by the industry. Consequently, apprentices are provided on the job training for imparting requisite skills to match the requirements of the industry. There is an argument that the existence of majority of unemployed youth in India is primarily due to skill mismatch or the Apprentice Training Scheme (ATS) is not performing satisfactorily as around 30 per cent of sanctioned apprentices' seats remain unfilled. Therefore, far reaching changes have been introduced in the Apprentices Act (Roychawdhury, 2015).

In the amended Apprentices Act, the definition of workers has been changed to include contractual workers. Earlier only regular workers were considered for determining the number of workers in an enterprise. This limited the number of apprentices an enterprise could hire as it has to maintain a fixed worker to apprentice ratio prescribed by the government. Thus, by making the definition of workers more inclusive would help firms in increasing the number of apprentices they can hire. Further, the eligibility qualification for undergoing apprenticeship training has been broadened to include students from non-engineering background. In fact, to provide further flexibility to employers with respect to the areas of deployment of apprentices, new categories of economic activity (to be solely decided by employers under the name of "optional trade") have been allowed to use apprentices (Roychawdhury, 2015).

Further, until now daily and weekly hours of work an apprentice has to put in an enterprise was decided according to the norms prescribed by the Central Apprenticeship Council. In the recent amendment, employers have been given the power to unilaterally decide on the daily and weekly working hours of an apprentice. Thus, working hours of apprentices would now depend on the whims and fancies of the employers. Earlier there was no obligation on employers to offer job to an apprentice successfully completing training. However, there was an option that if such an agreement was mentioned in the contract of an apprentice at the time of joining training, then the firm was bound to offer employment at remunerations effectively decided by the Apprenticeship Adviser appointed by the government. This has been drastically changed with the employers now being given full freedom to formulate their own policies regarding recruitment of apprentices. This move is clearly going to increase the unrestricted power of employers in recruiting apprentices (Roychawdhury, 2015).

However, the most important change in the current amendment is with respect to the penalty for the violation of the provisions of the Act. Earlier offending employers, either failing to employ the minimum number of apprentices prescribed in the Act or not complying with the terms and conditions mentioned in the contract of an apprentice were liable to pay monetary penalty or/and jailed. With the current amendment any employer breaching the Act is only liable to pay monetary penalty and cannot be put behind the bar under any circumstances. All these changes are explicitly in favour of employers (Roychawdhury, 2015).

The Labour Laws Act, 1988

This act was first proposed to be amended by the UPA Government. A Bill was introduced under the name of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment and Miscellaneous Provisions Bill, 2005 in Parliament. The Bill was referred to the Standing Committee on Labour (SCL), which advised its withdrawal on the ground that the proposed amendments were immensely in favour of employers. It was reintroduced in 2011 with some changes but met the same fate with the SCL noting: "The Committee strongly feels that the amendments proposed need to be revisited to secure the rights and welfare of labour". The 2011 Amendment Bill was tabled by the Modi Government and now has been passed in the Rajya Sabha. The question arises that how does it affect the working class? In order to answer this we need to understand the changes that have been introduced. The Labour Laws Act, 1988 in its original form exempted "very small establishments" (employing up to nine workers) and "small establishments" (employing 10 to 19 workers) from maintaining registers and filing returns individually/separately for nine labour laws (about meeting the prescribed norms/standards), if these establishments provided a consolidated account for the same. The basic reason for such exemption is to facilitate business by curtailing the transaction/compliance costs (Roychawdhury, 2015).

Now the recent amendment has changed the definition of "small establishments" and allowed consolidated submission of returns for seven additional labour legislations. The limit for determining "small establishments" has been increased from 19 to 40 workers. This is clearly a business-friendly move since a larger set of firms would now come under the Act. Additionally, they would now be exempted from separately furnishing information for sixteen labour laws as against nine (Roychawdhury, 2015).

Conclusion

From the above analysis it is clear that Indian labor laws are out of date and need revamping immediately. However, any change in the law must be in agreement with both the employers and employees. Since 1991, repeated proposals have been made to revise the provisions of labor regulations but no government has yet solved this issue. Rigidity in labor laws affect industrial development adversely and curb economic growth.

Interestingly, although there has been no noteworthy change in labor laws but there is evidence of changes in their implementation as in the past neither the central government nor the state government easily granted permission for lay-off, retrenchment and closure of any unit under the Industrial Dispute Act, 1947 but now, the permission is easily granted.

The debate around labor law reforms became prominent once again with the election of BJP government. Prime Minister Narendra Modi has taken a number of steps to bring flexibility in labor laws. Some noteworthy changes have recently been initiated with respect to The Factories Act, 1948, Apprentices Act, 1961 and The Labor Laws Act, 1988. The primary aim of these changes is to provide greater flexibility to the employers so as to improve India's rank in the ease of doing business.

However, India is a labor surplus economy and all the proposed changes would mean an expansion of the unorganized sector. This will lead to informalization of jobs with little or no protection of workers' rights. The reforms, along with the smooth running of business, should safeguard the rights of the workers. There is a need to improve their enforcement, including functioning of labor courts. Indian labor laws are too numerous and thus, need streamlining because India need fewer and simpler labor laws.

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