LABOUR LAWS IN INDIA: CORE ISSUES AND RECOMMENDATIONS

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Abstract

Various studies indicate that labour laws in India are highly protective of labour, and labour markets are relatively inflexible. Due to the 'pro-worker' nature of our labour laws, serious rigidities have cropped up in the market. These rigidities result in high transaction costs and inefficiency in production, thereby making it difficult for the enterprises to compete in international markets. They further discourage investment, expansion in output and increase in employment. In order to undo the aforesaid adversities and prevent them from recurring, it is considered imperative to introduce reforms in the labour market through changes in labour laws. This paper covers various amendments to the two most controversial legislations in this regard, The Industrial Disputes Act, 1947 and The Contract Labour (Regulation and Abolition) Act, 1970 and how the provisions of these legislations have been interpreted by the Hon'ble Supreme Court. It further addresses the difficulties posed by these Acts and a few other labour legislations as well and their impact on the labour market. Thereafter, it enumerates the findings of various authors and economists regarding the issue of inflexibility in labour markets and does a comparative analysis of India's labour laws and market with labour laws and markets of other countries. Further, the paper enumerates the recommendations of the Government in this regard and in the end, concludes by suggesting various reforms in the legislative framework to ensure flexibility in the Indian labour market.

Keywords: Labour laws, IDA (Industrial Disputes Act 1947), CLA [Contract Labour Act (Regulation and Abolition) Act, 1970], rigid, flexibility.

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INTRODUCTION

Various studies indicate that Indian Labour laws are highly protective of labour, and labour markets are relatively inflexible.[1]For the last so many years, it has been argued that labour laws in India are excessively pro-worker in the organized sector and this has adversely affected the performance of this sector as well as the operation of the labour markets. There have been recommendations by the government and various authors and economists to reform labour laws in India by highlighting the need for flexibility in Indian labour laws.[2]According to some observers, the current laws are the strongest constraints to income and job growth.[3]It has been argued in this context that the rigidities in the labour market result in high transaction costs, reduce efficiency in production and make it difficult for the enterprises to operate successfully in a competitive environment. This further discourages investment, expansion in output and increase in employment. It is therefore considered imperative that reforms be brought about in the labour market through changes in the legislative framework for labour regulation, not only to encourage investment and growth of output, but also for expansion of employment in industry.[4]

This paper covers various amendments to the two most controversial legislations in this regard, The Industrial Disputes Act, 1947 and The Contract Labour (Regulation and Abolition) Act, 1970 and how the provisions of these legislations have been interpreted by the Hon'ble Supreme Court of India. It further addresses the difficulties posed by the provisions of these Acts and a few other labour legislations as well and their impact on the labour market. Thereafter, it enumerates the findings of various authors and economists regarding the issue of inflexibility in labour markets and does a comparative analysis of India's labour laws and market with labour laws and markets of other countries. Further, the paper enumerates the recommendations of the Task Force set up by the Planning Commission in 2002 and the Second National Commission on Labour 2002 and in the end, concludes by suggesting various reforms in the legislative framework to ensure flexibility in the Indian labour market.

RELEVANT LABOUR REGULATIONS

There are a large number of statutes, laws and rules governing the labour market, that make up the regulatory framework both at the central as well as the state level in India. The two main legislations that are the cause of contention here are the Industrial Disputes Act, 1947 and the Contract Labour (Regulation and Abolition) Act, 1970.

Industrial Disputes Act, 1947

[1] Aditya Bhattacharjea, *Labour Market Regulation and Industrial Performance in India: A Critical Review of the Empirical Evidence*, 49 THE INDIAN JOURNAL OF LABOUR ECONOMICS, (2006)
[2] RC Datta and Milly Sil, *Contemporary Issues on Labour Law Reform in India : An Overview*, ALTMRI DISCUSSION PAPER NO.5, (2007)
[3]Ahmad Ahsan and Carmen Pages,*Are all labour Regulations Equal? Assessing the Effects of Job Security, Labor Dispute and Contract Labour Laws in India*, S. P. DISCUSSION PAPER NO. 0713, (2007)
[4] TS Papola and JesimPais,*Debate on Labour Market Reforms in India : A case of Misplaced Focus*, 50 THE INDIAN JOURNAL OF LABOUR ECONOMICS, (2007)

The Industrial Disputes Act, 1947 (hereinafter referred to as the IDA) was adopted as a comprehensive measure by the Central Government with a view to improve industrial relations. It is the one of the most controversial labour regulations in India that deals with conditions for lay off, retrenchment and closure of an industry. Apart from this, it stipulates an elaborate mechanism for settlement of disputes through conciliation, arbitration and adjudication and also lays down procedures for making changes in conditions of employment.

Important Amendments To The IDA And The Interpretation Of The Provisions Of The Act By The Hon'ble Supreme Court

Various amendments to the Act have been made since the year 1947. The main amendments and their interpretation by the Hon'ble Supreme Court are as follows –

(i) ***Amending Act of 1953*** - Chapter VA, consisting of Sections 25A to 25J was inserted. New definitions of 'lay-off' and 'retrenchment' were furnished in the IDA in clauses (kkk) and (oo) of Section 2.

(ii) ***Amending Act of 1957*** - Section 25FF was amended to make a provision for payment of compensation to workmen in case of transfer of undertakings and a provision was made in section 25FFF for payment of compensation to workmen in case of closing down an undertaking.

(iii) ***Amending Act of 1972*** - Section 25FFA was inserted in Chapter VA of the Act providing for a 60 days' prior notice to be given by the employer to the appropriate government of its intention to close down any undertaking. In case of non-compliance, the person liable was to be punished under Section 30A of the IDA.

(iv) ***Amending Act of 1976*** - A new chapter, Chapter V-B was inserted in the IDA. Under Section 25-K, the provisions of this chapter were made applicable to industrial establishments employing 300 or more workmen. Section 25-M dealt with the imposition of restrictions in cases of lay-off. Section 25-N provided for conditions precedent to retrenchment of workmen. And Section 25-O, one of the most controversial provisions of this Act, provided for a 90 days' notice to the appropriate govt. for previous approval of the intended closure.
In Excel Wear v. *Union of India*[5], it was held by the Hon'ble Supreme Court that section 25-O of the IDA and section 25-R in so far as it relates to the awarding of punishment for violation of the provisions of Section 25-O are constitutionally bad and invalid as they are violative of Article 19(1)(g) of the Constitution.[6]

(v) ***Amending Act of 1982***- Section 25-O was amended and the scope of Chapter VB was extended to cover industrial establishments in which 100 or more persons were employed.

[5] (1978) 4 SCC 224
[6] S.N. MISHRA, LABOUR & INDUSTRIAL LAWS, (26th Ed. 2011)

In *Workmen, Meenakshi Mills Ltd.* v. *Meenakshi Mills Ltd*[7]., the Hon'ble Supreme Court upheld the validity of Section 25-N of the IDA. The restrictions imposed by the section were held to be reasonable and fair.

In *Papnasam Labour Union* v. *Madras Courts Ltd*.,[8] the Apex Court held that Section 25-M of the IDA was not ultra vires of the Constitution or void. The restriction imposed on the employer's right was held to be in greater public interest for maintaining industrial peace and to prevent unemployment.[9]

In *M/S Orissa Textile and Steel Ltd.* v. *State of Orissa and Ors*.[10], the constitutional validity of Section 25(O) as amended in 1982 was considered, and it was held that the amended provision was not ultra vires of the Constitution as it was saved by Article19(6) of the Constitution.[11]

Difficulties Posed By This Legislation and Their Impact on the Labour Market

Despite the fact that the constitutionality of Chapter V-B has been upheld by the Hon'ble Supreme Court, the widespread opinion is that the inclusion of this chapter, incorporated by the Amending Act of 1976, causes rigidity in the market. Under this chapter, no employer employing 100 or more workers is permitted to layoff or retrenches any worker or close down an undertaking without the prior approval of the government. The employer is required to apply to the government for such prior permission, in the prescribed format and serve a copy of the said application to the worker(s) concerned as well. The appropriate government may or may not grant permission after enquiring into the matter. The order of the government in this regard is final and binding.[12]

It has been argued that in such cases, government permission is usually difficult to obtain and therefore, the aforesaid provision has made workforce adjustment practically impossible. As a result, it has a negative effect on the investment, growth and employment in the industry, as the establishments refrain from hiring workers for they know that it would be really difficult to get rid of them when they are no more required. Logically speaking, no establishment should be compelled to carry on the burden of surplus labour and therefore, this provision fails to appeal to the intelligence of a reasonable man.

Section 9-A of the Act has also been a cause of concern when it comes to need for flexibility in the Indian Labour market. According to this provision, a 21 days' prior notice has to be given to the employees before making any change in the conditions of service of any workman in regard to the matters specified in Schedule IV of the IDA. It has been argued that this particular provision acts as a hindrance in the smooth and efficient functioning of the

[7] AIR 1994 SC 2696
[8] AIR 1995 SC 2200
[9] Rupinder Kaur & Sunil Maheshwari,*Labour Reforms: A Delicate Act of Balancing the Interests*, W.P. No. 2005-07-02, INDIAN INSTITUTE OF MANAGEMENT, AHMEDABAD
[10] 1995 1 LLJ 673 (Orissa)
[11] S.N. MISHRA, *supra* note 6
[12] TS Papola & Jesim Pais, *supra* note 4

enterprise, where employees have to be quickly redeployed to meet certain time bound targets.[13]

The IDA in an attempt to protect the interests of the workers has obstructed the expansion of the industry which can otherwise benefit the mass of unemployed workers waiting outside for a job. *Besley and Burges (2004)*[14] in their study have found that the amendments to this Act, by taking into consideration the interests of the workers and serving them, have lowered the output and employment levels in the industry.[15] The restriction on lay off, retrenchment and closure has discouraged factories from expanding to economic scales of production, thereby harming productivity. Thus, IDA on the whole hasn't really succeeded in its objective of improving industrial relations, because several provisions of the Act have increased labour's bargaining strength and thereby raised workforce adjustment problems and the costs of labour, which has adversely affected workforce discipline and has resulted in reluctance of the employers to hire further personnel.[16]

The Contract Labour (Regulation and Abolition) Act, 1970

The Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the CLA) was enacted with the prime objective to regulate contract labour in certain economic activities and abolish it in the rest.[17] The Act applies to (a) every establishment in which 20 or more contract workers are employed or were employed on any day of the preceding 12 months as contract labour, and (b) to every contractor who employs or who employed on any day of the preceding 12 months, 20 or more workmen.[18]

The constitutional validity of this Act was challenged before the Hon'ble Supreme Court in *Gammon India Ltd. and Ors.* v. *Union of India and Ors.*[19] Upholding the vires of the Act, the Apex Court held that various powers conferred under the Act were in consonance with the objective of the Act.

Important Amendments

Only twice, the Act has been amended by the Central Government since its enactment in the year 1970. The amendments are as follows:

(i) ***The Contract Labour (Regulation and Abolition) Amendment Act, 1986***– The definition of 'appropriate government' as laid down in the Act of 1970, was amended.

[13] RC Datta & Milly Sil ,*supra* note 2
[14] Besley, T & Burgess R,*Can Education Hinder Economic Performance? Evidence from India*,QUARTERLY JOURNAL OF ECONOMICS, 91-134, (2004)
[15] RC Datta & Milly Sil , *supra* note 2
[16] Aditya Bhattacharjea, *Labour Market Regulation and Industrial Performance in India: A Critical Review of the Empirical Evidence,* 49 THE INDIAN JOURNAL OF LABOUR ECONOMICS, (2006)
[17] T.S. Papola & JesimPais, *supra* note 4
[18] The Contract Labour (Regulation and Abolition) Act, 1970, Section 1, (Ind.)
[19] AIR 1974 SC 960

(ii) ***The Delegated Legislation Provisions (Amendment) Act, 2004*** – Subsection (4) was added in Section 35 of the CLA. The sub- section is as follows:
"Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.'

The law laid down by the aforementioned amendments has not been subject to much debate or discussion and does not hold much relevance when it comes to the issue of inflexibility in Indian Labour Markets. Therefore, as far as this paper is concerned, the need is not felt to elaborate further on these points.

Difficulties Posed By This Enactment and Their Impact on the Labour Market

Though the constitutionality of the whole Act has been upheld by the Hon'ble Supreme Court, Section 10 of the CLA is still one of the most controversial provisions of the Indian Labour Law and forms the heart of the current dispute on labour market rigidity. The said section gives the authority to the State to prohibit contract labour in any establishment. For example, in 2001, the government prohibited the use of contract labour in handling of food in godowns and depots of the Food Corporation of India.[20]The relevant factors considered before passing a prohibition order are whether contract labour is employed in work of perennial nature and if it is done through regular employees in those establishments or establishments of similar nature.[21]

Contracting out work or employing contract employees has the following benefits:

- Provides flexibility
- Leads to efficient idealization of resources
- Boosts exports
- Helps in meeting business contingencies
- Helps in generating employment
- Improves overall competitiveness

Any rigidity in the availability of contract labour prevents the industry from reaping the aforesaid benefits. It further affects the operations of the firm as it is compelled to perform the task with lesser number of employees, for every establishment does not have the financial capacity to hire employees on a permanent basis for each and every task of theirs. Above all, a slight benefit to the workers in terms of the protection of their rights, eventually adversely affects the pace of employment generation in the industry.

It is for the reasons mentioned above, that the industry is of the opinion that Section 10 of the CLA, providing for prohibition of contract labour should be deleted and the Act should be renamed as the Contract Labour Regulation Act.[22]

[20] T.S. Papola&JesimPais, *supra* note 4
[21] Ahmad Ahsan & Carmen Pages, *supra* note 3
[22] *Industrial Relations and Contract Labour In India*, AIOE, FICCI
http://www.ficci.com/spdocument/20189/Industrial-Relations-and-Contract-Labour-in-India.pdf

Absorption of Employees In Case Of Prohibition of Contract Labour

The workers are of the unanimous opinion that where any order, prohibiting contract labour in an establishment, is passed in furtherance of the power conferred under Section 10, the employee so discharged should automatically be absorbed as a permanent employee by the employer and should be entitled to all such benefits that are available to the permanent employees of the employer. The law in this regard, as discussed and laid down by the Hon'ble Supreme Court, is as follows –

(i) *Air India Statutory Corporation* v. *United Labour Union & Ors.*[23]- It was held by the Hon'ble Supreme Court that on the abolition of contract labour, the employer was under a statutory obligation to absorb discharged labourers.

(ii) *Steel Authority of India Ltd. & Ors.* v. *National union of Waterfront Workers & Ors.*[24]- In this case, the Apex Court overruled the judgment in *Air India Statutory Corporation's case*[25] and held that though intendment of CLA was to regulate conditions of service of contract labour and authorize in Section 10(1) prohibition of contract labour system by appropriate Government on consideration of factors enumerated in Section 10(2) of Act, it did not provide for absorption of contract labour on issuance of notification under Section 10(1). The principal employer cannot be forced to order absorption of a discharged employee in case of a prohibition order passed under Section 10.

(iii) *APSRTC & Ors.* v. *G Srinivas Reddy &Ors.*[26]- It was held by the Hon'ble Supreme Court that in view of the principles laid down in the case of *Steel Authority*[27], the High Court should not have directed the absorption of the discharged employees, more so, when there was no official notification under Section 10(1), prohibiting contract labour.

It is therefore suggested that Section 10 of the Act if not repealed, should atleast be amended to give effect to the latest ruling of the Hon'ble Supreme Court, by expressly mentioning that there would be no absorption of the employees in case a prohibition order passed under the said section.

Other than the provisions of the IDA and CLA, a few provisions of the following legislations also hamper growth and expansion of the labour market.

The Trade Unions Act, 1926

This Act allows multiple trade unions in one enterprise. Multiplicity of trade unions promote inter and intra union rivalry, adversely affecting production, productivity and industrial

[23] AIR 1997 SC 645
[24] AIR 2001 SC 3527
[25] *supra* note 22
[26] AIR 2006 SC 1465
[27] *supra* note 23

relations. To avoid this, in countries like Japan and Australia, 'one enterprise one union' is followed.[28]

The Factories Act, 1948

This Act applies to a manufacturing unit employing 10 or more workers where the manufacturing process is being carried on with the aid of power, or 20 or more workers where the manufacturing process is being carried on without the aid of power. This limit was fixed about 70 years ago and since then many safeguards and hazard free technologies/ methods have been introduced. Even then, smaller units employing as low as 10 workers are subject to the same stringent and harsh provisions of the Act. As a result of this, in order to escape compliance with the rigorous provisions of the Act, small manufacturing units employ less than the prescribed limit of workers and employment is directly affected.[29]

The Shops and Establishments Acts

These state legislations provide for mandatory closing of shops on at least one day of the week.[30] Though this provides a day's relief for the worker, it does not cater to the present day needs of the consumers, which require continuous operations on all days of the year. This again creates a problem for the employers, as they find it difficult to meet the demand of the consumers, which eventually affects the growth of the industry.

Industrial Employment (Standing Orders) Act, 1946

This Act was amended by the NDA Govt. in 2003 to introduce 'fixed term employment' as one of the categories of employees in the schedule. It was however repealed in 2007. Fixed term employment is needed to execute time bound projects[31] where the number of people required are more than the ones already employed. Therefore, the absence of 'fixed term employment' again adversely affects the performance of the industry.

FINDINGS OF VARIOUS TABLOIDS, AUTHORS, SCHOLARS AND ECONOMISTS

Various tabloids, authors, scholars and economists have commented upon and discussed the impact of restrictive labour regulations on the Indian Labour Market. A few of the relevant findings and comments are as follows:

Dougherty, Frisancho Robles and Krishna (2014)[32]

[28] *Suggested Labour Policy Reforms*, AIOE, FICCI, (2014) http://www.ficci.com/SEdocument/20301/FICCI-NOTE-ON-LABOUR-POLICY-REFORMS.pdf
[29] *ibid*
[30] *Suggested Labour Policy Reforms*, *supra* note 27
[31] *ibid*
[32] Doigherty, S, V C Frisancho Robles and K Krishna ,*Employment Protection Legislation and Plant-Level Productivity in India*, NBER WORKING PAPER NO. 17693, (December 2011)

The total factor productivity in firms in labour intensive industries as well as in industries with highly volatile demand is about 11-14% higher in states with less restrictive labour laws.[33]

HimalSouthasian, November 21st, 2014[34]

The Rajasthan Government has sought amendments to the IDA to make retrenchments and closures easier for manufacturers.

The Hindu Business Line, October 23, 2014[35]

The restrictive nature of Indian Labour laws hurts investment in the manufacturing sector.

The Hindu, New Delhi, November 6, 2012 [36]

India's labour market is over-regulated and the country's growth is being badly hurt by its rigid labour laws.

The Hindu Business Line, 2006 [37]

Planning Commission Deputy Chairman Montek Singh Ahluwalia is of the view that flexibility in labour laws would attract more investment and would be able to create more jobs.[38]

Sharma (2006)[39]

Regulation of the market by the state leads to deviation from full employment of resources.[40]

Dr.Rangarajan (2006)

In order to achieve faster growth rate, emphasis should be laid on flexibility of labour laws.[41]

GOI, 2006[42]

The Government of India appears to have taken the stand that the labour regulations in the country are "highly protective of labour" and therefore cause inflexibility in the labour markets. [43]

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[33] DevashishMitra, *International Trade, Domestic Labour Laws and India's Manufacturing Sector*, IDEAS FOR INDIA,September 22, 2014
[34] KinjalSampat, *Global Capital, Local Labour*, HIMALSOUTHASIAN, November 21, 2014
[35] PravakarSahoo, *Finally, a push for labour reforms*, THE HINDU BUSINESS LINE, October 23, 2014
[36] Kaushik Basu, *Kaushik Basu for flexible labour laws to spurt growth,* THE HINDU, New Delhi, November 6, 2012
[37] C. Rangarajan, *Improve Employability of Labour Force*, THE HINDU BUSINESS LINE, July 1, 2006
[38] RC Datta and Milly Sil, *supra* note2
[39] Sharma, A.N., *Flexibility, Employment and Labour Market Reforms in India*, ECONOMIC AND POLITICAL WEEKLY, (2006)
[40] RC Datta and Milly Sil, *supra* note2
[41] *ibid*
[42] GOI , Economic Survey 2005-06, Ministry of Finance, (2006)

Sundar (2005)[44]

The Second National Commission on Labour advocates the need for flexibility in the labour markets to promote 'competitiveness' and 'efficiency' in the current wake of globalization and rapid technological progress.[45]

Besley and Burgess (2004)[46]

Labour regulations adversely affect output and employment, particularly in the registered manufacturing sector.[47]

Hasan, MitraAndRamaswamy, 2003[48]

Many scholars are of the view that labour market regulations need to be reduced to meet global competition.[49]

Ozaki, 1999[50]

The Trade Unions have come to realize that there is a need for flexibility in the Indian Labour Market and feel that the same could lead to an increase in the pace of employment generation.[51]

INDIAN LABOUR LAWS AND LABOUR MARKET VIS-A-VIS LAWS AND MARKETS OF OTHER COUNTRIES

The following comparative analysis will help us understand how our country lacks behind many nations of the world, in terms of performance, production and productivity of the labour market and how our restrictive labour laws are responsible for the same.

(1) India and China are similarly placed in many respects including population, very large work force, cheap labour etc.[52]Still, it is argued that there is much greater flexibility available to employers in China.[53] It's been well established that China's flexible and business friendly labour laws have ensured continued investments in Chinese manufacturing industry, unlike in India where restrictive labour laws have been a cause of concern for the investors. Rigid Labour laws have deterred Foreign Direct

[43] T.S. Papola and JesimPais , *supra* note 4
[44] Sundar, K. R. S. , *Labour Flexibility Debate in India*, ECONOMIC AND POLITICAL WEEKLY, (2005)
[45] RC Datta and Milly Sil, *supra* note 2
[46] Besley, T and Burgess R, *supra* note 14
[47] Ahmad Ahsan and Carmen Pages, *supra* note 3
[48] Hasan, Rana; Mitra, Decashish; and Ramaswamy, *Trade Reforms, Labour Regulations and Labour demand Elasticities, Empirical Evidence from India*, WORKING PAPER NO. 9879, NATIONAL BUREAU OF ECONOMIC RESEARCH, CAMBRIDGE, MA
[49] T.S. Papola and JesimPais, *supra* note 4
[50] Ozaki, Muneto, *Negotiating Flexibility: The Role of the Social Partners and the State*, ILO, (1999)
[51] TS Papola&JesimPais, *supra* note4
[52] Dr. J.P. Sharma, *Labour Law Reforms in China and India: Is the China Model an Answer?* http://knowledge.icsi.edu/download/aruna_nagendran/200708020901.pdf
[53] DevashishMitra, *supra* note 32

investment (FDI) into export-oriented labour-intensive sectors in India. This is in stark contrast to China, where huge amount of FDI has been attracted in export-oriented labour intensive manufacturing, because of flexible labour laws such as the contract labour system implemented in 1995.[54]

(2) The Trade Unions Act, 1926 allows outsiders to be office bearers and members of Unions. The whole idea of outsiders standing against the employer even when they are not employed directly under him, does not make sense and therefore, does not even exist in other countries. Citing an example of the Trade Union Act in Singapore, Nath (2006)[55] says that while trade Union policies in Singapore aim at promoting country's productivity and economic growth, India's policies restrict productivity and economic growth.[56]

(3) When it comes to the issue of prior permission of the government for lay-offs, retrenchment and closure, out of 20 countries analysed in a study on the same: (i) except India, only 2 countries (Pakistan and Sri Lanka) have laws which make prior approval of the public administration mandatory, and (ii) only Vietnam, along with India, requires the consent of workers' representatives prior to collective dismissal. Even countries with restrictive labour regulations, such as Bangladesh, Philippines and Malaysia, do not have requirements of prior consultations and approval by trade unions.[57]

As a result, a Morgan Stanley Report on Labour Market Environment ranks India 99th in Labour Market efficiency among 148 countries, (owing to its rigid labour regulations), in comparison to China's 34th, Japan's 23rd and USA's 4th. Besides, India's share in global manufacturing employment is only 5.8% as compared to China's 34%.[58] An analysis of the factory employment in a few countries using UNIDO data has revealed that the average number of workers in an Indian firm is as low as 75, as compared to China's 191 and Indonesia's 178. This is despite the fact that India's manufacturing base is largely labour intensive. [59]

RECOMMENDATIONS BY THE GOVERNMENT

In order to counter 'jobless growth' and other challenges faced by the labour market, the government had come up with certain recommendations to reform labour laws, first in 2001 in its Report on Task Force on Employment Opportunities, by the Planning Commission of India and again in 2002 when the Second National Commission came up with certain suggestions.

[54] PravakarSahoo, *supra* note 34
[55] Nath, S. *Labour Policy and Economic Reforms in India in*, REFORMING THE LABOUR MARKET ACADEMIC FOUNDATION, NEW DELHI, (2006)
[56] RC Datta and Milly Sil, *supra* note 2
[57] *Comparison of Labour Laws: Select Countries*, EXIM BANK : RESEARCH BRIEF NO. 75, (2013)
[58] Labour Laws, that's the one killing mfg: Morgan Stanley, (August 19, 2014) http://www.moneycontrol.com/news/economy/labour-laws-thatsone-killing-mfg-morgan-stanley_1158604.html
[59] *Comparison of Labour Laws: Select Countries*, *supra* note 56

(i) The Task Force on Employment Opportunities focussed on Chapter VB and Section 9A of the IDA emphasizing the need to amend them immediately. Referring to Chapter VB of the IDA, it stated that difficulty in getting prior government approval proves to be a serious impediment in case of a firm trying to introduce a new technology where some workers need to be retrenched. Further, Section 9A which concerns the job content and the area and nature of work of an employee and states that a 21 day prior notice has to be given to the employee before changing the content or nature of his work and his consent is also required for the same, was seen by the Task Force as a serious hindrance in redeploying workers to meet time bound targets, as it becomes virtually impossible to do so if the employees do not give their consent for the same. Had the process of retrenchment been easier to be implemented, the workers would have been willing to accept redeployment in order to avoid retrenchment. The Task Force further stated that this inflexibility is too harsh for smaller establishments that are labour intensive and other establishments with large number of workers because the transaction costs involved in such cases are too high.[60]

(ii) The Second National Commission on Labour recommended the use of contract-labour in non-core activities and to some extent in core activities as well. Though the employers were satisfied with this and wanted it to be implemented, they were dissatisfied with the fact that the commission had not raised the cut off limit for closure permission to establishments with 1000 or more workers which was earlier indicated to them.[61]

CONCLUSION AND SUGGESTIONS

To say that Indian labour laws are archaic is an understatement.[62] Restrictive and pro-labour regulations have adversely affected the performance of India's manufacturing sector, especially in labour-intensive industries, constraining India's industrialization and economic development.[63] It is therefore considered imperative that reforms be brought about in the labour market through changes in the legislative framework for labour regulation, not only to encourage investment and growth of output, but also for expansion of employment in industry.[64]

Based on the observations made by the Hon'ble Supreme Court, the recommendations of the government and various authors and economists, it is suggested that the certain reforms need be carried out by amending the following laws to make the Indian Labour Market more flexible and less regulated:

Industrial Disputes Act, 1947

[60] RC Datta and Milly Sil, *supra* note 2
[61] *ibid*
[62] N Madhvan , *Narendra Modi Govt. is right to back Labour Reform measures,* BUSINESS TODAY, August 1, 2014
[63] DevashishMitra, *supra* note 32
[64] TS Papola and JesimPais, *supra* note 4

(a) Chapter VB of this Act which provides for prior government approval before ordering lay-off, retrenchment or closure in an industrial establishment where the workers are 100 or more in number hampers the industry's endeavour to expand, be competitive and face global challenges. It is therefore recommended to delete this chapter, or at least increase the threshold limit for this provision to apply from 100 employees to 500 employees.
(b) Section 9A of the Act requires an employer to give 21 days' notice to the employee before altering the content or nature of his work. This operates as a serious bottleneck, in industries, to address exigencies, such as power shortage or rescheduling work to meet emergency demands.[65]

The Contract Labour (Regulation and Abolition) Act, 1970

Contracting out job work not only helps the organization to achieve efficiency, cost effectiveness and optimization of profits, but promotes employment as well. Prohibition of contract labour would definitely strike out the aforementioned benefits and it is therefore, recommended to delete Section 10 of this Act, to provide flexibility to engage contract workers.[66]

Without prejudice to the above, it is further suggested to at least amend Section 10 if not repeal it, to give effect to the latest ruling of the Hon'ble Supreme Court on the subject of 'Absorption of Contract Labour in case of Prohibition' by expressly stating that the employees would not be absorbed in case of a prohibition order under the said section. This would help in preventing further litigation or disputes regarding the same.

The Trade Unions Act, 1926

To reduce multiplicity of Trade Unions, only Trade Unions having membership of at least 25% of the total workforce in an enterprise should be registered. Section 4 of the Trade Unions Act, 1926 should therefore be amended accordingly as the threshold limit currently laid down in the section is 10%.[67]

The Factories Act, 1948

In order to escape compliance with the rigorous provisions of this Act, manufacturing units employee less than the threshold limit prescribed under the Act and employment is directly affected. It is therefore recommended that Section 2(m) of this Act be amended to cover a manufacturing unit employing 20 workers or more *(instead of 10)* if the process is being carried on with the aid of power and 40 workers or more *(instead of 20)* if working without power. [68]

The Shops and Establishment Acts

[65] *Suggested Labour Policy Reforms*, *supra* note 27
[66] *ibid*
[67] *Suggested Labour Policy Reforms*, *supra* note 27
[68] *ibid*

To cognize for today's consumer dynamics, the requirement under these Acts of mandatory closing of shops on at least one day of the week should be done away with and the employer should be given the option to run the establishment on all days of the week, as long as the provisions of working hours applicable for employees are complied with.[69]

The Industrial Employment (Standing Orders) Act, 1946

To help the employers execute time bound targets and meet any exigencies, the category of 'fixed term employment' introduced in the Schedule of this Act in 2003, but later repealed in 2007, should be reintroduced.[70]

The aforesaid suggested measures if implemented would go a long way in ensuring flexibility in the labour market and consequently not only encouraging investment and growth of output, but expansion of employment as well.

[69] *Suggested Labour Policy Reforms*, *supra* note27
[70] *ibid*