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Labour Laws Reforms with special reference to "Make in India" Program

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Abstract- **Labour laws reforms in India are due for a very long time, as the context in which they were framed has changed drastically. A number of laws are based mainly on old pattern on economy (socialist) but today we are having a different kind of economy (neo-capitalist). The outdated and inflexible nature of labour laws protects a handful of approx. 9-10% of the workforce, which in turn seriously hampering employment generation capacity of the organised sector and most of the 10-12 million youth joining labour force every year, are forced to join informal economy, where the working conditions are pathetic and earnings are also abysmal. Multiplicity of labour laws present operational problems in implementation and compliances that need to be looked into. Besides, using different terminologies like – employee, workman, worker to denote a worker or wages, basic wages, salary referring to the compensation, yet covering different components in each legislation, have made compliance very cumbersome multiplying litigations. For the "Make in India" initiative to succeed, it will be critical to reform and simplify India's labour and employment laws to boost the country's manufacturing sector, enhance job creation and improve ease of doing business. The endeavour of this paper would be to provide overview of the importance of labour laws reforms in reference to 'Make in India' program and to bring forth some major concerns that ought to be resolved for this ultimate purpose.**

Keywords— Labour Laws, Make in India program, Law Reforms

1. Introduction

India's position on the World Bank's "Ease of Doing Business" is at 130 among 189 nations in 2016 which sounds contradictory with the "Make in India" campaign. We can understand the importance of this campaign by just highlighting that in 1985, India and China were both equally bad in manufacturing but today China has grown insanely high to be a world leader in manufacturing. All this happened in a time span of 30 years.

But today the time has changed in favour of India, as the working population of China is getting older while in case of India, we have an edge of more working and young population and most important thing is that the Chinese wages are already quite high and big manufacturers are moving to the cheap destinations like Vietnam, Philippines etc. This gap can be filled by India very easily as India's labour costs are among the lowest in the world. According to the U.S. Bureau of Labour Statistics, average labour compensation (including pay, benefits, social insurance, and taxes) in India's organised manufacturing sector increased only marginally, from $0.68 an hour in 1999 to $1.50 an hour currently. The average compensation in China's manufacturing sector in contrast rose 20 percent year-on-year in the same period to $3 an hour. Besides, the cost competitiveness, India is a labour surplus country with 47 million unemployed below the age of 24 years and 12-13 million youths joining the labour market every year. To avoid the growing unemployment, India strongly needs labour intensive and labour friendly industries.

It is to be noted that the manufacturing sector can create a lot of jobs and an optimal ratio between all three sectors is of utmost importance. India's current contribution of these sectors in Indian Economy is as follows :

1. Agriculture - 17.01%
2. Industry / Manufacturing – 30.02% / 17.18%
3. Services – 52.97% (Highest)

It is clearly visible that our economy is over dependent on Services sector and the pattern of almost all major countries is same e.g., USA-76%, Japan: 74%, Germany: 71%, France: 80%, UK: 77% and China-43%. Except China, all these countries are struggling to revive their economy as Chinese economy maintained fine balance between Services and Industrial / Manufacturing Sector as the contribution of Industrial sector is 47% & Services Contribute 43% to Chinese GDP. Because of meticulous fine balance, Chinese economy avoided all world crisis and experienced stable growth rate. Some analysts argue that common reason for worldwide economic recession is over dependence on the Service sector.

All these facts and figures indicates that India should focus more on manufacturing sector and the answer is "Make in India". But the Indian manufacturing sector has experienced clashes so many times between employers and employees. Since last decade it has been argued (especially by employers) that labour laws in India are excessively pro-worker in the organized sector and this has led to serious rigidities that has resulted in adverse consequences in terms of performance of this sector as well as the operation of the labour markets. There have been recommendations by the government to reform labour laws in India by highlighting the need for flexibility in Indian labour laws that would give appropriate flexibility to the industry that is essential to compete in international markets. On the other side, the labour unions claim that labour laws are very often ignored or flouted. Besides, multiplicity of labour laws – 44 central and about 100 state laws – present operational problems in implementation and compliances that need to be looked into and using different terminologies like – employee, workman, wages, basic wages, salary referring to the compensation, yet

covering different components in each legislation, have made compliance very cumbersome multiplying litigations.

2. Labour laws and economic performance

In the late 1990s and early 2000s an influential literature appeared to have settled the debate in favour of the supporters of deregulation and labour market flexibility. Fallon and Lucas (1993) , using a cross-national panel data analysis, found evidence of a negative relationship between worker-protective labour law and labour demand in a number of countries, including India. This finding was repeated in the larger panel dataset of labour laws across the world constructed by Botero et al (2004) . The most significance study carried out for India was by Besley and Burgess (2004) , which found evidence of a negative impact on employment and investment of the adoption of worker-protective laws at sub-national (state) level. This study has been used to support claims that labour laws are one of the factors contributing to the relatively small size of the formal economy in India, which in 2014 accounts for less than 10 per cent of the total labour force. Professors Timothy Besley and Robin Burgess (BB) examined if labour regulations hinder economic performance in India. They examine all the state-level amendments to the Industrial Disputes Act, 1949, made between 1949 and 1992. They carefully construct an index of changes by classifying all the amendments into those that ease labour laws and those that further tighten them. Using the plant-level ASI data described above, they relate the labour law index to plant-level outcomes such as employment, productivity and output. They find that rigid labour laws lead to significant reduction in employment, productivity and growth. More importantly, they document a strong relationship between labour laws and urban poverty. In other words, rigid labour laws are also associated with increased urban poverty. BB conclude that rigid labour laws ultimately end up hurting the very same constituency that they are supposed to protect. To illustrate their point, BB compare manufacturing growth in West Bengal and Andhra Pradesh during their sample period. West Bengal, which was the largest producer of manufactured products during the beginning of their sample period, experienced a negative 1.5% growth in manufacturing, whereas Andhra Pradesh experienced a positive growth rate of 6%. Interestingly, as per the labour law index constructed by BB, West Bengal further tightened labour laws, whereas Andhra Pradesh liberalized them.

Sean Dougherty, Verónica Robles and Kala Krishna (2011) conducted a comprehensive study apart from the Industrial Disputes Act, they looked at formal and informal labour market reforms in seven additional areas: the Factories Act, the State Shops and Commercial Establishments Acts, the Contract Labour Act, the role of inspectors, the maintenance of registers, the filing of returns and union representation. More importantly, they distinguish between labour-intensive and capital-intensive firms. The idea here is that if the negative impact pointed out by Besley and Burgess is due to rigid labour laws, then the impact should be higher in industries that are heavily dependent on labour. They indeed find such a result. They also find that the negative impact on growth and productivity is higher for firms in industries that face a lot of volatility. This is understandable given such firms require a lot of flexibility. Similar results have been obtained on studies done on other countries such as Mexico and Brazil.

Sundar (2005) opines that employers view flexibility in the labour markets as essential because in this era of economic liberalization and growing competition between firms and countries, production should be organized to suit the changing market conditions. This would promote economic growth and also generate jobs. He mentions that the Second National Commission on Labour also advocates the need for flexibility in the labour markets saying that it would promote 'competitiveness' and 'efficiency' in the current wake of globalization and rapid technological progress.

Debroy (2001) mentions that labour market flexibility varies from state to state and labour laws contribute to these disparities between states. According to Dr. Rangarajan (2006) , in order to achieve faster growth rate emphasis should be laid on labour intensive sectors by skill development of the labour force and flexibility of labour laws. He also stressed on the fact that flexibility is not just related to 'hire and fire strategy' and that business units will have to function under legitimate restrictions.

3. 'Make in india' program

The 'Make in India' program was launched in September 2014 as part of a wider set of nation-building initiatives. Devised to transform India into a global design and manufacturing hub, 'Make in India' was a timely response to a critical situation: by 2013, the much-hyped emerging markets bubble had burst, and India's growth rate had fallen to its lowest level in a decade. The promise of the BRICS nations had faded, and India was tagged as one of the so-called 'Fragile Five'. Global investors debated whether the world's largest democracy was a risk or an opportunity. India's 1.2 billion citizens questioned whether India was too big to succeed or too big to fail. India was on the brink of severe economic failure and the 'Make in India' was launched against the backdrop of this crisis, and quickly became a rallying cry for India's innumerable stakeholders and partners. It was a powerful, galvanising call to action to India's citizens and business leaders, and an invitation to potential partners and investors around the world. It represents a comprehensive and unprecedented overhaul of out-dated processes and policies. Most importantly, it represents a complete change of the Government's mind-set – a shift from issuing authority to business partner, in keeping with Prime Minister Modi's tenet of 'Minimum Government, Maximum Governance'.

In a short space of time, the obsolete and obstructive frameworks of the past have been dismantled and replaced with a transparent and user-friendly system that is helping drive investment, foster innovation, develop skills, protect IP and build best-in-class manufacturing infrastructure. The most striking indicator of progress is the unprecedented opening up of key sectors – including Railways, Defence, Insurance and Medical Devices – to dramatically higher levels of Foreign Direct Investment.

Today, India's credibility is stronger than ever. There is visible momentum, energy and optimism. 'Make in India' is

opening investment doors. Multiple enterprises are adopting its mantra. The world's largest democracy is well on its way to becoming the world's most powerful economy.

4. Labour laws issues in contemporary context

As we have observed above that bringing flexibility in the labour laws brings flexibility and efficiency in labour market and economy, charts out the importance of labour laws reforms. 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. The focus of this paper is mainly on broad areas related to employment, conditions of work, wages, social security, and industrial relations (including job security) which are confined only to Industrial Disputes Act (1947) and Contract Labour (Regulation and Abolition) Act (1970) for industrial relations, Factories Act (1948) and Shops and Establishments Act (1953) in respect of working conditions; Minimum Wages Act (1948) and Payment of Wages Act (1936) in respect of wages; Employees State Insurance Act (1948), Employees' Provident Fund Act (1952) and Employees' Compensation Act (1923), for social security.

Industrial Disputes Act (1947) which aims to promote employer-employee relationship, provides for machinery and procedure for investigation and settlement of industrial disputes and applies to all industries irrespective of size. The definition of 'industry' under Section 2(j) had been amended in 1982 , but could not be enforced due to absence of a parallel machinery to investigate and settle the disputes in the excluded category of the establishments. The amended definition to a great extent incorporates the view of the Supreme Court expressed in landmark judgment of Bangalore Water Supply case which laid down the Triple Test for the determination of meaning of industry. The amended definition of 'industry' should be enforced forthwith.

Section 9-A has also been a cause of concern which requires employer to give 21 days' notice to the Union before stipulating any change in the service conditions. This includes, inter-alia changing of shifts, reducing or increasing the staff strength as necessitated by the business needs or installing new machines. This operates as a serious bottleneck, in industries, to address exigencies, such as power shortage or rescheduling work to meet emergency demands. It has been observed that this has caused problems when employees have to be redeployed quickly to meet certain time bound targets and also could constrain industrial restructuring and technological upgrading. Therefore, to respond to the market conditions and make full utilization of resources available, Sec. 9-A needs to be repealed. In this context, the 2nd National Commission on Labour has recommended that no notice would be required with regard to rationalization, standardisation dealt with by item No. 10 & 11 in Schedule-IV. This may be implemented.

Chapter V-B of the Industrial Disputes Act, 1947, which provides for obtaining a prior permission of the appropriate government in case of layoffs, retrenchment and closure in industrial establishments employing more than 300 workers, which was reduce to 100 in 1982 and increased the number of days of notice to 90 days and in 1984, this amendment was again redrafted and layoffs, retrenchments and closures in establishments having more than 100 employees had to follow the same procedures for seeking permission from the government. This provision has significantly contributed to industrial sickness as observed in many studies. According to Nagaraj (2007) these stringent rules forms the heart of the current dispute on labour market rigidity. He says that according to this provision, employers and employees are expected to inform the labour commissioner in case of any dispute. Hence, in order to retrench a single worker, the employer has to seek the permission of the labour commissioner (in case of factories employing more than 100 workers). Therefore, it is expedient to make necessary changes as soon as possible. In this direction the union government has proposed many changes which includes, factories employing less than 300 workers can be shut down without prior government approval and the retrenched workers should be paid an average salary of 45 days, instead of the 15 days at present.

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 workmen on any day of the preceding twelve months as contract labour. 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. However, the main purpose of the contracting out job work, services or employing contract employees, provides flexibility, leads to efficient idealization of resources and improves overall competitiveness. Many successful organisations and big trading companies float subsidiary companies to look after the peripheral and non-core activities of the organisation to achieve efficiency, cost effectiveness and optimization of profits and productivity to maintain a competitive edge in the global arena. In view of the above, it is recommended that the provisions of the Act should not apply to enterprises employing up to 50 workers to provide relief to a sizeable number of MSME units. Also, due to abolition of Contract Labour from one operation to the other, industry is finding it difficult to engage extra hands to discharge short term contract including export commitments; as a result, employment generation is also suffering. Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 should, therefore, be deleted to provide flexibility to engage contract workers. Most of the problems in the existing contract labour legislation arise because of workers being exploited in the hands of unscrupulous Contractors, despite welfare initiatives taken by the Principal Employers. A provision be laid down in the Act underlying certain eligibility criteria (annual turnover or total number of workers) to be fulfilled by the contractors before obtaining a license from the licensing officer. The contractor who has met all the criteria and obtained license under the Act be treated as a separate establishment and shall be fully accountable as Principal Employer for any type of compliance/liability .

Trade Union Act (1926) provided for the registration of trade unions complying with various specified requirements, it imposed no obligation on employers to recognise and deal with such registered unions. In other words, there is no

nationwide law that recognizes trade union and also there is no compulsion for the employers to enter into a collective bargaining so even though there is a right to form an association or form a trade union, it is not mandatory for an employer to recognize it (Anant et al, 2006) . However, multiplicity of Trade Unions promotes inter and intra union rivalry causes a bane to promote bi-partism. There are countries like Japan and Australia where 'one enterprise one union' is a benchmark. On the contrary, in India, we have multiple unions in one enterprise, promoting inter and intra union rivalry adversely affecting production, productivity, industrial relations. In order to reduce this multiplicity, only trade unions having membership of at least 25% of the total work force in an enterprise should be registered. Section 4 of the Trade Unions Act, 1926 should therefore be amended accordingly. In this direction, it is proposed that creating a labour union will become more difficult as 30% of workers will be required to sign for its creation (earlier it was 10%). It also prohibits politicians from becoming union leaders in organised sector establishments. The proposed changes would make it tougher for employees to form unions or go on strike, but would make all employees eligible for minimum wages.

In case of Factories Act, 1948, the units employing less than 40 people to be exempted from 14 labour laws as a move to give freedom from compliance with the rigors of the law to smaller units. The definition of a factory is to be revised by raising the threshold of minimum workers from 20 to 40 for units operating without power and from 10 to 20 for units operating with power. In case of women, restriction on night shifts by women will be removed to allow women to work after 8 pm subject to provision of security by the employer and to dispense with the need to keep documentary records and registers and to replace them with electronic records by employers.

The Shops and Establishments Act applies to every shop and commercial establishment. It does not make any differentiation between a convenience shop, small establishment or the Head Quarters of a large company. The same rules apply to all. The rules do not cognize for the size, complexity of business, the market environment or the superior terms and conditions and benefits provided in large establishments. A threshold limit in terms of manpower employed is necessary to save entrepreneurial initiative. Therefore, establishments employing less than 10 persons should not be covered by the Shops and Establishments Act. Most establishments have branches in different states. This being a State legislation, each State is empowered to make their own rules. For example, the leave provisions vary from state to state, making it complicated for establishments having branches in different states. Compliance with different set of rules is not possible since the terms and conditions are same for a category of employees, and the employees re-transferable from one state to another. It is therefore suggested that establishments may be given the flexibility of following the rules of any one given state, preferably the State where the head-quarters exist. Provision related to exemption of those working in managerial, administrative, supervisory or confidential capacity varies from state to state. In some states, some of them are exempted, in some states exemption needs to be taken, and in some states there is no provision for exemption. It is suggested that all managerial, supervisory, administrative staff and those in similar roles be automatically exempted. The other suggestion is to exclude all those drawing wages above Rs.15,000. As per the Act, every shop has to remain closed on every Sunday, provided the authorities prescribe some other day of the week as the day for closing. The Act does not recognize for today's consumer dynamics, which in many cases mandates 24 hrs. operations on all days of the year. The employer should have the flexibility to run the establishment on a continuous basis, as long as the provisions of working hours applicable for employees are complied with.

In case of minimum wages on the recommendation of the Indian Labour Conference we require an updated formula to calculate minimum wages taking into account the poverty line and court judgments as well as the wage cap for the provident fund and other related schemes as the current minimum wages are not sufficient for a worker to subsist. Recently, the National Floor Level Minimum Wage was revised by the Centre to Rs. 160 per day from Rs. 137 with effect from July 1, 2015. At present, the Act provides for fixation of minimum wages of the workers engaged in the 45 scheduled employments in the Central sphere and 1679 in the state sphere. While the Centre fixes the floor level for the minimum wage based on the consumer price index for industrial workers (CPI-IW), state governments from 1991 began to fix the minimum wages for each occupation based on local conditions. Apart from a common uniform wage structure across all occupations, there is a mandatory requirement of making wages payments through banking channels like NEFT, RTGS or transfer into bank accounts would ensure that contractors or middlemen do not take a 'cut' of the worker's wage and promote employment through staffing federations or employment exchanges.

The other important Act related to wages is the Payment of Wages Act (PWA). This Act is applicable to a class of workers in factories and establishments listed in the Act. It aims to ensure that workers receive regular, prompt and timely payment of wages for work done. It also prohibits arbitrary deduction from workers' wages in the form of fines and penalties. Some states such as Maharashtra have extended the scope of the Act and included all shops and commercial establishments under its purview. Again, as in the case of the Maharashtra Wages Act, the organised industry has no problem with the PWA. In the unorganised sector wherever this Act is applicable, both these conditions are widely violated: Payment of wages is not regular by the period specified in the contract and deductions and cuts are imposed on one pretext or another (NCEUS, 2007 ; Pais, 2004).

In case organized sector workers there are a number of provisions of social security, such as Employees State Insurance Act (ESIA), Employees Provident Fund Act (EPFA), Maternity Act (MA) and the Workmen's Compensation Act (WCA) but in case of workers in the unorganised sectors are 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).

5. Conclusion

Presently, there are 44 central and more than 100 State Governments labour laws, which deal with a host of labour issues. Unfortunately, these labour laws protect only 9-10% of the organised sector workers employed at the cost of approx. 90% unorganised sector workers. The entire gamut of the labour laws requires simplification, clubbing wherever possible and should be made less cumbersome. This can be done by shifting 'labour' entry to the State list, from existing concurrent list of the constitution as the State Governments have limited space to enact labour laws to address their own requirements i.e., more economic independence, promoting investment and employment generation.

Simplification of outdated laws is the need of the hour. The multiplicity of labour laws has promoted multiple inspections, returns and registers and to avoid these, a single Labour Authority dealing with all aspect of labour, self-certification and a single consolidated return should be put in place. A single window system under the common headlines/sets should be created. Initially this can be done with consolidating common purpose laws into one. For example, laws governing terms and conditions of employment may consolidate Industrial Disputes Act, 1947; Industrial Employment (Standing Orders) Act, 1946 and Trade Unions Act. 1926. Similarly, Laws governing wages may consolidate Minimum Wages Act, 1948; Payment of Wages Act, 1936 and Payment of Bonus Act, 1965. Laws governing welfare may consolidate Factories Act, 1948; Shops and Establishments Act; Maternity Benefits Act, 1961; Employees' Compensation Act, 1952 and Contract Labour (Regulation & Abolition) Act, 1970. And laws governing social security may consolidate Employees Provident Funds and Miscellaneous Provisions Act, 1952; Employees State Insurance Act, 1948 and Payment of Gratuity Act, 1972 into one. Besides that, uniform definition of terms like 'industry' and 'worker' is indispensable across statutes. For better interpretation and understanding, industry should be termed as 'enterprise' and workman should be termed as 'employee'. This simplification will reduce ambiguities and operational hurdles up to great extent. Unification, harmonisation and rationalisation of labour laws, proposed many times in the past, are now seriously overdue. There is no doubt that such an exercise will immensely benefit both industry and workers.

The most important area of reforms in labour regulation relates to the provision of minimum conditions of work and social security to the workers not covered by the existing labour regulations. It may not necessarily mean replication of what presently exists for the regulated sectors either in terms of the levels of protection or implementation mechanism. The 2nd National Commission for Labour recommended enactment of a law for unorganised sector workers also. In case of reforms, the amendments made by the government of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan are of significant importance while drafting federal legislation towards labour laws reforms for better and effective implementation of 'Make in India' program to be a grand success.

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