Myth of Chinese Labour Flexibility

India has been a land of myths. Industrial relations are no exception to this trend. The arguments in the name of supporting the chorus for labour law and governance reforms, when reviewed carefully would show several myths surrounding the debate. In consonance with the globalization ideology, it is often cited that countries like China are doing well and attracting foreign investment primarily due to its flexible labour market regime and further state that India lags behind Bangladesh in garment sector exports and so on.

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Employers have been complaining that labour laws and the labour market governance system in India, designed during the command economy regime, are tough and even outdated and they impose rigidities on the working of the labour market processes. Researchers reciting Chinese labour flexibility as a means of attracting more foreign investment are relying on ***history*** when they refer to the transition of Chinese labour market system from a rigid command economy to a market economy that took place till the 1990s. In the 2000s, the Chinese social and labour policy did almost a "U" turn to promote social harmony thereby reordering the social and employment relations in such a manner to correct the "historical wrongs" which provoked tremendous amount of social and labour unrest. This policy correction is often missed out by the lobbying groups.

During the command economy regime in China, employment and wages were administratively determined which meant little or no freedom for the management to hire and fire of workers and structuring the reward for work. Thus, instead of the labour market the government agencies performed the labour allocative and pricing functions; in that sense 'labour market' was absent during the command economy regime. China started taking decisive measures to shift from its command economy regime to the market economy since the late 1970s. Through the introduction of labour contract system by which the workers worked for a fixed duration with no guarantee of re-employment at the end of the contract tenure, the 'iron rice bowl' system of the command economy regime was smashed.

The Labour Law (1994) defined labour contracts (i.e. agreements that establish labour relationship and specify rights, interests and obligations of both the parties) and gave them the legal status, detailed their contents, specified conditions for termination of workers among others. The Law was more about termination than of engagement. In the pre-reform period firing workers was virtually ruled out. But during the post-reform period employers enjoyed the right to dismiss and discipline the workers.

Employers terminating the services of workers were expected to give 30 days' notice and pay one month's severance benefits.
Through various regulations the government introduced tremendous amount of flexibility in both open and special economic zones during the 1980s and the 1990s. The labour dispatch system of employment provided further numerical flexibility. The retrenchment of workers in the state-owned-enterprises (SOEs) was aggressively pursued in the 1990s.

But overdose of labour flexibility, the aggressive reform of the state-owned-enterprises and resultant unemployment of a grand magnitude, the failure of re-habilitation of affected workers and exploitative labour market practices like poor labour contracting (including a preponderance of non-written contracts in the labour market), abusive working conditions led to tremendous escalation of social and industrial unrest in China in the late 1990s and the early 2000s. These led to a search for systems of governance and laws to ensure "social harmony". The years 2007-2008 (the years of Social Legislation) witnessed discussion and passage of Labour Contract Law (LCL), The Law on Mediation and Arbitration of Labor Disputes (LMA) and other laws.

The LCL among others sought to toughen up the clauses to ensure labour rights. It provided for ensuring even the basic labour right of a written labour contract for workers, introduced wired-ranging severance payments (though with a cap), restricted the frequency of renewal of fixed-term employment to two and so on. The law provided for compulsory permanency after two cycles of fixed-term contracts, non-provision of written contracts within a year of engagement of workers and toughened up the severance payment system. The LCL was clearly an attempt to take two steps *away* from the flexible labour market regime thanks to the undesirable labour market and social consequences that stemmed from the earlier flexible regime. However, thanks to global crisis unemployment erupted again in the post-2008 period and the government sought to provide some semblance of labour flexibility and took measures to cool the heated labour relations environment.

It may be mentioned here that in terms of the employment protection legislation (EPL) score following the methodology of OECD (OECD Employment and Labour Market Statistics), China *now* (post-2008) is more rigid than several countries like France, Spain, Germany in the conventionally labour rigidity continent of Europe. In terms of World Bank scoring, India enjoys more flexibility in hiring than China and less flexibility in terms of firing primarily due to the prior permission clause. However, the severance pay in China for redundancy dismissal with 10 years of service is 43.3 weeks of pay while it is 21.4 weeks of pay in India according to 'Doing Business' data base for 2014 of the World Bank. Sri Lanka also has a more generous severance pay system in place. It may be noted here that severance pay in India is one of the lowest in the so-called rigid countries in the world, an aspect often missed out in the debate. Then, there is always a trade-off between employment and income and social security.

The LMA liberalized the procedures for filing of complaints, disputes and so on by the workers. The LMA is often accused for escalating the number of industrial disputes, though recession impacted workers adversely as much as it did business. The struggles for labour rights including the freedom of association have intensified in the last few years indicating that notwithstanding some significant changes in the labour law regime, labour rights are yet a far cry in China though slowing down of growth rates might reflect the labour pains as well.

The upshot of this brief recount is that China paid a heavy price for its overly flexible and de-regulatory regime followed in the 1980s and the 1990s and took labour-rights-protective-steps in the 2000s. Still the labour struggles are on to the extent we know from free agency reporting. It may be mentioned in passing that unlike in India, industrial relations and social dialogue have not evolved in China and political democracy does not exist therein. So citing China is even though fashionable is not advisable from the context of borrowing policy framework.

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