

Labour Law and Governance Reforms in India: A Partial and Misguided View of Employment Relations

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Labour regulation in India has engaged the attention of not only policy makers but also social actors, researchers and practitioners. Policy measures have started rolling out from the state governments ever since Narendra Modi-led National Democratic Alliance (NDA) government assumed power in May 2014.

These have brought on its heels definitive policy and labour law changed in several states.

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Ever since the reforms concerning the product market in terms liberalisation, privatisation and globalisation kick started in a significant manner in 1991, the demand for reforms concerning the labour market and the Industrial Relations System (IRS) has been made and over the year it has grown shriller. True to the Washington Consensus, the lobbyists call for softening up the regulatory exercises such as labour inspection and relaxing the regulatory clauses in the labour laws that allegedly restrain employers' freedom in the handling of employment relations issues such as hiring, firing, remuneration, contract labour recruitment, pensions and so on. The lobbyists' advocacy of flexibility has been greatly aided by two kinds of exercises, one pro-market ranking exercise by both global and domestic agencies and academic exercises which invariably support labour market deregulation policy prescriptions.

The central government has been committed to the idea of Labour Flexibility and has strived hard to introduce "core" labour law reforms which concern liberalisation of firing clauses in the Industrial Disputes Act, 1947 (the ID Act), of clauses with regard to hiring of contract workers in the Contract Labour (Regulation and Abolition) Act, 1970 (the Contract Labour Act) and so on. Since labour law reforms lie in the realm of "mass politics" unlike say reforms concerning the capital market, the reform proposals and even the pronouncements have been met with tremendous resistance – fifteen country-wide struggles and strikes have occurred since 1991 apart from other forms of protestations and lobbying. As a result the central government has often retreated for fear of electoral backlash and unpopular rating of the ruling party.

As India liberalised the autonomy of the state governments increased considerably in managing the investments and other economic variables. Using the Federal governance structure the central government has gradually shifted the reform onus on to the state governments. The state governments initially dabbled in "soft" reforms such relaxation of inspections, of labour law compliance processes and so on. Soon after assumption of power by BJP led by Narendra Modi, the states such as Rajasthan went on an offensive and carried out core labour law reforms in the thick of labour protests. Emboldened by the successful state level reforms, the central government has proposed reforms of labour laws while reducing the numerous labour laws into

four Labour Codes. In April this year, the Centre introduced the Labour Code on Industrial Relations Bill, 2015 which it revised later.

The Code seeks to replace the three principal pieces of legislation governing industrial relations in the country, namely the Trade Unions Act, 1926 (the TU Act), the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947 (the ID Act). The Code has been drafted keeping in mind only employers' demands for greater labour market flexibility and labour discipline, ignoring the longstanding demands of trade unions. In brief, the Code seeks to broaden the range of firing rights along with a rise in compensation to the affected workers, remove outsiders from union management, impose restraints on strikes and so on.

Global institutions like World Bank, Global Economic Forum and so on use pro-market indicators to measure the degree of conduciveness of economies to doing business smoothly while largely ignoring labour standards. In fact, the ILO and global trade unions contested severely the practice by the World Bank of ranking the economies on the indicators of labour flexibility (such as hiring, firing, hours of work, severance pay and so on) on the grounds that this encourages "race to bottom" in labour standards as countries compete in diluting labour standards. As a result the World Bank stopped measuring these controversial labour market indicators though it provides "information" on them. These exercises are keenly watched by investors and hence the government and the lobbyists (including the media) pay special attention to them. The bankruptcy of the ease of doing and other pro-business exercises becomes clearly and incontrovertibly evident when countries like United Arab Emirates (UAE), Qatar, Colombia, China, Turkey are placed high[er] on ease of doing business while they are poorly rated in terms of civil and political liberties by the Freedom House based in the United States¹ and by ITUC in terms of union rights in 2016 (see later).

The World Bank recognising the shift in policy making from the central to the state governments and the emerging concept of competitive federalism now measures the states' competitiveness in terms of ease of doing business. Several researchers like Bibek Debroy also rank the states on economic freedom. Not to be outdone, the central government during Modi's tenure introduced ease of doing business ranking of the states especially on the labour front. The state governments have promptly jumped into the race on two counts, one, to be ranked as more investment friendly and to attract capital. It is important to recognize the comprehensive picture of the regime of weakening of labour rights that has been taking place in India through both formal and non-formal channels and processes.

Labour and trade unions have been pushed on the back foot on account of these exercises though trade unions are fighting a valiant battle. Labour protests are widening as well deepening, viz. in both macro and micro senses. The biggest disadvantage labour has faced is on two fronts, ideological and intellectual. Labour flexibility as the mainstream theory would have it is growth

¹ https://freedomhouse.org/sites/default/files/FH_FITW_Report_2016.pdf

aiding and it produces win-win outcomes for both capital and labour in the medium to long run. On the other hand, the idea opposite to labour flexibility is “rigidity” or “regulation” which is seen as a blockade to growth. So employers stand for something “good” while the trade unions are defending something that is indefensible even as an *idea*. Labour rights are construed as causing “labour market rigidities” affecting investment thereby growth, employment and even poverty alleviation. So trade unions are posited negatively in the growth dialectics.

Secondly, studies by mainstream economists and global institutions like the World Bank, IMF have created a huge academic bank of studies which invariably support the idea that labour market regulation even if they embody core labour rights like freedom of association considerably weaken the probability of benevolent economic outcomes and indeed produce bad outcomes like unemployment and poverty. Further, the ease of doing business indices show labour regulation in poor light. Labour-sympathetic researchers and in some senses the ILO which represent a comprehensive vision of development have significantly challenged these exercises and are in the process of producing counter-evidence – in India the debate on labour regulation is dominated by two sets of studies: studies by Fallon and Lucas (1991), Besley and Burgess (2004) and the studies using the latter study strongly support labour flexibility; studies by Bhattacharjee (2006), Prof. L.K. Deshpande (1998, 2004), the string of studies initiated by Prof. T.S. Papola (see for e.g. Papola *et al* 2008) and that by Sarkar and Deakin (2011) question if not challenge the labour flexibility thesis. The ratification of ILO Conventions has been used as an indicator of positioning of a country in terms of assuring and even implementing labour rights as embodied in the ILO Conventions and especially those enshrined as “fundamental labour rights” (the eight ILO Core Conventions concerning freedom of association and collective bargaining, forced labour, child labour and non-discrimination at work). However, this suffers from basic deficiency thanks to the absence of correlation between ratification and presence or absence of labour rights. Apart from this, there does not exist a serious counter to pro-market indicators.

The International Trade Union Confederation (ITUC) has been collecting information on violations concerning freedom of association and collective bargaining [only] for three decades and in the last three years it has codified the vast information to produce Global Rights Index (GRI) in a systematic manner. Information on violations by government and employers are sought through a questionnaire from 333 national unions in 162 countries and these are verified and clarified in cases of conflict of information; further legal researchers analyse the national legislation to identify the clauses which do not ensure or weaken internationally established labour rights. The information is coded against 97 indicators which are derived from ILO conventions and jurisprudence and a score of 1 is assigned for each item of violation and then they are added to reach the country’s score. The countries then are ranked from 1 to 5 (also 5+ which indicate complete breakdown of law) as per the total scores and the ranking score increases with increases in total score – 1 (0-8) indicates the status of “irregular violations of rights”, 2 (9-17), “repeated violations”, 3 (18-26), “regular violations”, 4 (27-35), “systematic

violations”, 5 (36 and over), “no guarantee of rights” and 5+, “no guarantee of rights due to breakdown of law”.

India has been ranked a poor 5 in the last three years², for 2014³, for 2015⁴, for 2016) and this year (2016 survey). In 2016 it has joined the ten “rogue” countries like China, Colombia, Qatar, the United Arab Emirates and so on. India was noted for violence, large number of exclusions of workers from labour law and arrests in a significant manner and hence rated as one of the top 10 worst countries for labour rights. It may be necessary to bear in mind that the GRI could be criticized principally with regard to the labour bias inherent in the exercise, the biasedness of the institutions that supply these information and the assumptions made with regard to labour law – i.e. more the exclusions of workers from the labour laws worse the labour rights. But similar even stronger biases exist in the ease of doing business exercises in terms of their sources and the assumptions they make – the more exclusions and liberalization in the clauses in the labour laws providing freedom to employers the more conducive for business. The GRI in a direct sense and the Freedom Index by the Freedom House are some of the counters to pro-market exercises. It must be borne in mind that the GRI is based on violations of selected rights (i.e. union and collective bargaining rights) while a large segment of labour rights like forced labour, child labour, gender discrimination, etc are left out.

According to the Global Slavery Index (by Walk Free Foundation), there is a wide prevalence of modern forms of forced labour, which simply means that persons are trapped in a job with no scope for free movement out of it⁵. The law allowing children to work in family occupations after school hours increases their potential risk of being employed on a full-time basis with little or no education and this will also lead more children to work in the farm sector (<https://www.theguardian.com/sustainable-business/2015/may/13/india-child-labour-reforms-dangerous-invest>). Though child labour incidence has declined globally during 2000-2012 (http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipecc/documents/publication/wcms_221513.pdf), Asia-Pacific accounts a good share of the global estimate of 168 million child labourers. Worse still, reports by Centre for Research on Multinational Corporations (SOMO) and the Committee of the Netherlands (ICN) clearly show the prevalence of child labour especially in global garment supply chain in India⁶.

The latest Monster pay survey online has revealed a 27% pay gap between men and women in favour of male employees and the pay gap is more significant in the information technology sector⁷. In its study “bias@workplace” Teamlease found significant discriminatory practices in

² http://www.ituc-csi.org/IMG/pdf/survey_ra_2014_eng_v2.pdf

³ [file:///C:/Users/ADMIN/Downloads/survey_global_rights_index_2015_en%20\(1\).pdf](file:///C:/Users/ADMIN/Downloads/survey_global_rights_index_2015_en%20(1).pdf)

⁴ http://www.ituc-csi.org/IMG/pdf/survey_ra_2016_eng.pdf

⁵ <http://www.globalslaveryindex.org/country/india/>

⁶ <https://labs.theguardian.com/unicef-child-labour/>

⁷ <http://www.thehindu.com/business/Economy/india-suffers-from-huge-gender-pay-gap-says-report/article8612245.ece>

the corporate sector in recruitment prejudiced against young and pregnant women and generally younger workforce, a poor record with reference to one of the ILO Core conventions on non-discrimination⁸ (August 5, 2013). Press reports and some surveys in some sectors like the automobile industry and especially in lower tier companies in the supply chain in the automobile industry indicate that contract workers are more prone to suffer industrial accidents thanks to poor protection afforded to them⁹.

The foregoing brief survey of the debate and the empirical realities clearly show that the State has adopted a distorted reform perspective in favour of capital plausibly in search of attractive numerics such as investment inflows, growth rates and job numbers (though poor in quality). It is well-known that income effects of foreign direct investment are much higher than the employment effects and thus foreign investment strengthens the forces of “jobless growth” (Mehra 2013). The reforms are thus partial and arbitrary and clearly one-sided which are prompted by the misguided belief in the neo-liberalism’s dictum that *growth first* will aid the working class eventually which has not been happening. As ILO has been arguing sustainable development is *the* agenda that is needed to be pursued by the governments.

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⁸ http://www.business-standard.com/article/companies/five-out-of-10-indian-employees-face-discrimination-study-113080500796_1.html

⁹ http://www.business-standard.com/article/companies/workers-exposed-to-accidents-in-tier-iii-auto-component-industry-115100600954_1.html

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