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Labour Law Reforms in India: From Then Till Now

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ABSTRACT

Labour Markets form an essential element for the growth of economy in the country. It had been over decades that the country had been following old and stringent labour laws where flexibility was a very vague concept. The paper focuses on the need for flexibility in the Labour markets. The old Labour Laws had very little scope for flexibility in the Labour Markets and such had grievous result on the growth of economy. Due to the stringent laws the employers kept less number of employees and the size of the establishment also used to be small, which in turn attracted less investment. All in all, the whole market was falling. Hence reforms in the Labour laws were very much needed and thus the following paper also outlines the recent reforms of the Labour Law code by the Union Government. The reforms have been made keeping in both the employee as well as the employer in mind. Also the reforms have been made with the aim to simplify the complex labour laws by merging various state and central labour laws, with the aim of have more growth of employment as well as investment. The paper also deals with the former labour laws and how they were different when compared with the new Labour Laws.

Keywords: reforms, Labour Laws, investment, employer, employee

I. INTRODUCTION

The year 1991, marked a remarkable history in the terms of economic liberalization. India boosted a very impressive growth record during that period of time, but unfortunately during the year of 2008 there was a blown meltdown of the global financial markets and this effected India as well. The year 2020 is also no less. The pandemic has struck the whole world and India is one of the top most victims of it. These structural problems have a deep impact on the finance as well as on the economic structures of the country and thus, this brings in the demand for the reforms with relation to the Labour markets as well, and over the years the need for such demand has grown louder. The employer's freedom should never be restricted in the terms of handling the employment relation issues. Amidst the economic crisis the Labour Law reforms brought in by the Union government, is a step towards enhancing the Labour Markets which had old stringent laws over the years without any major amendments. The Labour Markets

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should operate in a smooth manner and it shouldn't be rigid, as rigidity may cause extreme consequences in terms of performance in the organised sectors. In order to compete the sector in the international markets the flexibility of the Indian Labour laws becomes very much essential and thus this can only be brought in through the reforms in the Indian Labour Laws. It can be a well admitted fact that the old Labour laws were not much inclined to the employment, because such laws used to protect employment but unfortunately did not encourage the concept of employment or employability and thus this became a very essential factor in determining the long run demand for labour. The changes brought in by the Government appears to simplify the complex labour laws as a lot of laws have been merged together and is also done with the aim to improve the business conditions, augment growth and employment as well as bring in foreign direct investments. The demand of the Trade Unions has also been curtailed to some extent.

The management and the labour should always maintain a good relation. In case any differences arise between the two, it turn the whole sector upside down, as the same is quite evident from the case of Honda Motorcycle and Scooter India². The following case was also an eye opening as this brought in the urgency for the reforms of the Labour Laws in India.³ The new Labour Law reforms has not been solely focused on the employers but on the employees as well, and the same is outlined in the later part of the article as well. How the former laws prevented labour flexibility and how the new labour laws has brought in labour flexibility is a very interesting issue to focus on. How benefited the sector will be, this only time can tell, as how the laws will be applied will be a major concern. Keeping all the factors in mind as well as the present scenario, government has brought in labour flexibility to some extent along with safety measures as well as labour rights.

II. DEBATE ON TERMS OF LABOUR FLEXIBILITY

There is always a tussle between the employers and the Trade Union advertently and sometimes inadvertently. In order to promote growth and employment the employers are often of the view that the flexibility in the Labour Markets becomes an essential factor whereas, on the other hand the Trade Unionist view that, flexibility in such will solely focus on profit maximization, leading to insufficient employment opportunities, insecurity and also snatching away the power of the Trade Union to bargain. Even with the recent reforms Trade Unions and the workers are of the view that, such is pushing back India towards the British Raj where slavery was a

² Honda Motor Cycle v. DCIT Gurgaon, (2020) S.C.C. OnLine ITAT 8 (India).

³ Steven, Strike and Police Brutality at Honda Motorcycle and Scooter India, 2005, Libcom.org Group (Oct. 4, 2020, 10:10 AM), <https://libcom.org/history/strike-police-brutality-honda-motorcycle-scooter-india-2005>.

practice, which is a very wrong viewpoint because in this competitive market we only survive with such reforms. And how will the jobs and people sustain if we are not a part of the competitive market?

When we talk of economic growth then “labour market flexibility” comes next “globalization”. The blueprint of the labour market flexibility was formulated in order to deregulate the labour market and also to cut off the protective regulations.⁴ The labour market flexibility was based on the concept of ‘market fundamentalism’. The basic idea put forward in market fundamentalism is that “...free market outcomes are efficient and Pareto optimal. The free play of market forces results in employment of resources at the market-clearing prices; this leads to both efficiency (as almost all resources are employed) and equity (all are rewarded according to their marginal contribution). Regulation of the market by the state leads to deviations from full employment of all resources. Hence, attempts should be made to remove as many of these imperfections in the market as possible so as to achieve full employment of all resources and optimal social welfare. In the case of labour market, trade unions and protective labour legislations are said to be market-distorting agents, which curtail the free operation of market forces to ensure full employment of labour. Interference by collective institutions (law and trade unions) in the market process increase transaction costs, which mar investment, thereby resulting in unemployment and welfare loss.”⁵

The two keywords in terms of labour flexibility always comes forth, i.e. “competitiveness” and “efficiency”. Most of the employers are often of the view that, with the change in the market conditions flexibility in the labour market becomes very much essential, as a result such will boost up the economic growth and will also bring in employment.⁶

Few days back before the new Labour Law Reforms, the BJP-ruled as well as non-BJP states had tweaked the labour laws in order to kick start the economy, which this pandemic has shattered. Owing to such it was quite evident that the Indian labour laws are not that flexible. In order to measure the regulatory variations across the Indian states Timothy Besley and Robin Burgess created an index. The following measure was based on the state level amendments of the Industrial disputes act. With the help of the following index the researchers had found quite easily that the Indian labour laws are quite inflexible.⁷

⁴ Guy Standing, *Beyond the New Paternalism: Basic Security as Equality*, 30 J. of Socio. & Social Wel. 225, 231-32 (2002).

⁵ A. N. Sharma, *Flexibility, Employment and Labour Market Reforms in India*, 41 Eco & Pol Weekly 2071, 2078-81 (2006).

⁶ K. R. Shyam Sundar, *Labour Flexibility Debate in India*, 40 Eco & Pol Weekly 2276, 2283-85 (2005).

⁷ Aditya Bhattacharje, *Labour market flexibility in Indian Industry*, CDESE, Mar.-Apr. 2019, at 3, 4-6.

Therefore it became very much essential to bring in flexibility in the Labour Markets and thus the recent reforms in the Labour Law code has brought in flexibility to some extent, which was the need of the hour and the only way to achieve faster growth rate.

III. FORMER REGULATIONS OF THE LABOUR MARKETS

The old Labour Law were very stringent and not very much flexible and the same has been outlined below. The old Labour Laws wont had led to a sustainable growth in terms of employment. India is the second largest country after China in terms of population, so easily it can generate enormous labour, but unfortunately, India's comparative advantage of enormous labour abundance was not being adequately utilized because of the high wage lands created by the labour legislation in the organized sector⁸.

The three main acts that had been dominating the labour markets were, The Industrial Disputes Act, 1947; The Contract Labour (Regulation and Abolition) Act, 1970 and The Trade Union Act, 1926.

The Industrial Disputes Act, 1947⁹

For various sort of industrial disputes as well as settlements to it, it was the Industrial Disputes Act, which was always referred to. The following act also included provisions for retrenchment, layoffs as well as closure of an industry. It was a very old act governing the labour law markets, hence various amendments have also been made to it with time.

One of the major amendments made in this act was of an inclusion of special chapter in the act, i.e. Chapter V-B in the year 1976. Through the following amendment, made a prior government approval was compulsory for any of the industry having more than 300 workers, if the industry is planning for retrenchment, lay offs or closure. There were few consecutive amendments with relation to the same, where the limit of worker was changed to 100 and later on it was made more than 100. Amendments are made with time, according to suitability but such amendments do have some cons as well and this brought more rigidity in the Labour Markets. It meant that, even if an employer has to retrench a single employee, where the size of number of employees is more than 100, then the employer had to seek permission of the government. Thus such stringent laws only made things more rigid. It was also found in a study that, the amendments of this act, by the states taking in the interests of the workers lowered their output and employment levels which also led to poverty¹⁰.

⁸ Bibek Debroy, *Reforming the Labour Market* 101-112 (P. D. Kaushik ed., Academic Foundation) (2005).

⁹ The Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947 (India).

¹⁰ T. Besley & R. Burgess, *Can Education Hinder Economic Performance? Evidence from India*, 119(1) Quarterly

Contract Labour (Regulation and Abolition) Act, 1970¹¹

The basic objective of the is to provide with a better working conditions and also prevent the exploitation of the contract labour, but unfortunately it is often said that, the Contract Labour Act always deviated from its objective as the provisions of the said act focused on flexibility and also encouraged outsourcing of the contract labours.

Contract labours are basically the indirect employees, who all are hired through the Contractor. The method of the payment of wages is quite different when compared with direct labour. They are basically paid by the Contractor, who is paid by the Industry availing the services of the Contractor. Here again the flexibility of the labour markets have been hampered by a few rulings of the Supreme Court, where it said that there should be abolition of contract labour, if work done such is essential to the main industry and that should be done through direct labour. Sometimes it becomes quite easy to fire a contract worker and also there are issues relating to the minimum wages given to such workers.

Trade Union Act, 1926¹²

Due to the competitiveness in the market there were instances of the workers of an industry being exploited, therefore this gave rise to the birth of Trade Unions in the country. It is not mandatory for the Trade Unions to be registered and such is also not recognized by any of the laws in India. Also it is not mandatory for an employer to recognize a trade union¹³. One of the hindrances of the following act is that, it allows outsiders to form a part of such trade unions, therefore when any sort of disputes arises within the industry the outsiders actively stand against the employer in such disputes.

The other most important concern is the strike and lockouts, where number of persons are less everyday at the workplace, due to the same. And the notice period for strike was also very short. The new labour law codes has brought some restrictions on strikes and lockouts which is outlined later in the paper.

IV. THE NEW LABOUR LAW CODES OF 2020

Recently the Parliament passed the three new Labour Law Code Bills i.e. Industrial Relations Code, 2020; Occupational Safety, Health And Working Conditions Code, 2020; and the Code

Journal of Economics 91, 112-15 (2004).

¹¹ The Contract Labour(Regulation & Abolition) Act, 1970, No. 37, Acts of Parliament, 1970 (India).

¹² Trade Unions Act, 1926, No. 16, Acts of Parliament, 1926 (India).

¹³ T.C. A. Anant, "et al.", Labour Markets in India: Issues and Perspectives 205-300 (Felipe & R. Hasan eds., Palgrave Macmillan) (2006).

on Social Security, 2020 and the following can be said as the first milestone achievement in the reforms of Labour Laws in the past three decades. These 3 labour code, consolidate the 29 central labour laws of the country.

Taking about labour market flexibility which had been one of the major concern over the years, the Government claims that, bringing in the new laws will give flexibility to the employers to hire and fire without any sort of government intervention or permission. It is also claimed the this will augment growth of the market and also promote employment. Although the workers and the Trade Unions are of the idea that this new change will put India back into the British era of slavery, but how far these new laws will impact the workers is yet to be seen. Also such reforms were very much required as the old labour law regulations were very much stringent and out dated and were also restricting growth and flexibility.

The **Industrial Relations Code, 2020**¹⁴ governs industrial disputes, trade unions, retrenchment and layoffs. Under the Industrial Relations Code, 2020 the government has introduced new hire and fire scheme where the companies having up to 300 workers can be retrenched without the permission of the government, as earlier the cap was 100 workers. Increasing the cap from 100 to 300 can somewhat reduce the rigidity and make the Labour Market more flexible. Change in the stringent old labour laws was very much required, as earlier it was very much difficult for the employers to retrench workers. Also the Industrial Relations Code, 2020 has introduced new conditions on the right of workers, in order to carry out a legal strike making the flash strikes outlawed. Now according to the new code, Unions have to give a 60 days notice for strike and any of the proceeding is pending before the Labour Tribunal or National Tribunal, then they cannot go for strike. This is applicable for all type of industries. According to the former laws, the Unions were able to go on strike in between 2 & 6 weeks of notice.

Through the new **Occupational Safety, Health and Working Conditions Code, 2020**¹⁵ legislation has basically tried to simplify the 13 labour laws which is beneficial for both the employer as well as the employees. It comes with one registration policy for all the establishments having 10 or more employees. The maximum daily work lint has been fixed at eight hours per day under the code. It provides with free health check up for all the employees of all various types of establishment annually, so that any sort of health disorder is detected at an early stage. The has come up with the definition of inter-state migrant workers where it says that, any worker who has come on his one state and obtained employment in another state with being paid up to Rs 18,000 per month. It is also giving the opportunity for the registration of

¹⁴ The Industrial Relations Code, 2020, No. 35, Acts of Parliament, 2020 (India).

¹⁵ The Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India).

the inter state migrant workers on certain portals, on the basis of self declaration and Aadhaar. Now according to the new code Women can also work at the night hours in all types of establishments, provided their prior consent is taken and safety measures are followed. Any workers being a victim of an accident, can get monetary penalties through court up to 15%. Provision has also been made for the Social Security fund for the unorganised workers.

Despite of all this, the code has ignored the contract labours. There is unfortunately no provision in the following code for the equal treatment of the contract labours.

Coming to the third newly introduced code i.e. **The Code on Social Security, 2020¹⁶**, the code subsumes 9 regulation relating to social security, retirement as well as employee benefits. For the very first time any such code provides with social security for organized and informal workers, also including the gig workers. In the vital need of flexibility in the Labour Markets it becomes very much essential to incorporate social security and hence bringing in this new code is one step towards such. Through the following code suitable welfare scheme related to provident fund, old age homes, employment injury benefits shall be formulated and notified. Also for the unorganized workers, the setting up of a National Social Security Board has been done under the code, where the board will recommend with suitable schemes for the unorganized workers.

V. CONCLUSION

With reference to the above discussions, flexibility in the Labour Law Markets had been the demand of more than decades. This recent reform in the Labour Law Code can be said a step towards an era of smooth labour markets. Although there are various critics with regard to the new labour law code saying that there are various loopholes within the code, also the workers and the Trade Unions have been neglected. But in a era of competitiveness where the whole world is running with the notion of the survival of the fittest, how can we expect things will be easy. There are many developed countries across the world where the Labour Laws are more flexible and their growth rate is enormous. So there shouldn't be any sort of problem where the policy makers are moving with that conception. The labour markets being flexible, will automatically create more employment opportunities, as the employers are getting opportunities where they can attract investments and this can lead to a healthy economy. But since the law are very new therefore, how practically can this make a difference in the growth of employment, only time can tell.

¹⁶ The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).