Labour Law Reforms: Labour Code on Industrial Relations Act

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INTRODUCTION

The major countries in the world inherited labour law system from the colonial period, with serious problems in terms of multiplicity of labour laws with serious inconsistencies. In India also many time the labour movement raised the demand of uniform labour laws, but no serious attempts were made by the government in this direction. Every new law and every new amendment increased the complexities further, rather than resolving it. Recently the NDA government also proposed to bring various amendments in existing laws and bring some new laws to end the existing problem prevailed in labour market. The Labour Law reform includes merger of 44 existing central labourlaws into five broad codes, dealing with industrial relation, wages, social security, industrial safety and welfare. "Labour Code on Industrial Relations act" is one f them which is proposed to be made after amalgamation of The Trade Unions Act, 1926, The Industrial Employment (Standing Orders) Act, 1946 and The Industrial Disputes Act, 1947. The stated objective of the government is to simplify the country's archaic labour laws relating to the registration of trade unions, conditions of employment, investigation and settlement of disputes and related matters.

Previous Bill on the same issue

The National Law Commission in its 1969 report had suggested cosmetic changes, which include changing the name of the Industrial Dispute Act to Industrial Relations Act so that it would not sound a discordant note and encourage smooth industrial relations. secondly the consolidation of the Trade Unions Act (1923), the Industrial Employment (Standing Orders) Act (1946), and the Industrial Disputes Act (1947).

But instinct of the NLC recommendation report, no attempts were made to consolidate and simplify laws. After a decade the newly formed Janata Party government introduced the Industrial Relations Bill (IR Bill) (1978) in parliament, but it was later dropped. In 1982, the Congress government introduced another IR Bill. But due to no clarity on the attendant legislations to be brought in for the categories excluded from the IDA, that move also failed. Even after it many attempts and recommendations were made among which

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the proposed bill mainly concentrate on the National Law Commission Report 2002 discussed in next part. .

Need to Bring Changes in existing Labour Laws

As per the FICCI's Labour Policy Reform 2014 the existing laws are mainly concentrated to the manufacturing sector but do not address the problem relating to the service sector which presently account for 55 per cent of Gross Domestic Product. The outdated and inflexible nature of labour laws protects a handful of 7 percent of the workforce, 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 abysmally[2]. Even where legislation operates, large numbers of casual workers are unable to get legal protection. While trade unions seek a comprehensive labour legislation, employers seek more and more deregulations or exemptions from the law. Normally, a contested industrial dispute takes a minimum of 20 years to reach the finality of a conclusion. A survey of the disputes that come up for adjudication before labour courts shows that 90% of them had to do with the dismissal of individual workers[3].

The Multicity of different state & central law (100&44 respectively) also create operational problem. Many provisions of labour laws are inconsistent to the provisions of other labour laws. Absence in major required provision with present scenario also leads to loosing the investment from other foreign countries.

Second Law Commission Report 2002: Law on Labour Management Relations

As early as in 2002 also, the Second National Commission on Labour had suggested the formulation of labour codes similar to those in Russia, Germany, Hungary, Poland and Canada. The present draft is very similar to the report of law commission as well as FICCI Report. The law commission report proposes various changes which includes-

No Prior permission in respect of lay-off and retrenchment or shut down in an establishment of any employment size as prescribed by law. 2 months prior notice or notice pay in lieu of notice is made compulsory, in case of retrenchment or shutdown. The

[2] http://www.ficci.com/SEdocument/20301/FICCI-NOTE-ON-LABOUR-POLICY-REFORMS.pdf
[3] http://peoplesdemocracy.in/2014/0817_pd/ad-hocism-decisions-modify-labour-laws

commission suggested increasing the rate of compensation in case of retrenchment where the organisation is running than a closed organisation. It would however recommend that in the case of establishment employing 300 or more workers where lay-off exceeds a period of 1 month such establishments should be required to obtain post facto approval of the appropriate government. The Commission recommends that the provisions of Chapter V B pertaining to permission for closure should be made applicable to all the establishments to protect the interest of workers in establishment which are not covered at present by this provision if they are employing 300 or more workers[4].

The laws regarding Strike should be made tough. It can be called by the recognised negotiating agent only and that too only after it had conducted a strike ballot among all the workers, of whom at least 51% of support the strike. The participation of workers in management process is also felt.

The Commission had also recommended the Approaches in drafting the Law on Labour Management Relations which include that *Firstly,* the gender neutral expression 'worker' instead of the currently used word 'workman'. *Secondly,* the law will apply uniformly to all such establishments. *Thirdly,* we recognise that today the extent of unionisation is low and even this low level is being eroded, and that it is time that the stand was reversed and collective negotiations encouraged. Where agreements and understanding between two parties is not possible, there, recourse to the assistance of a third party should as far as possible be through arbitration or where adjudication is the preferred mode, through Labour Courts and Labour Relations Commissions of the type be proposed later in this regard and not governmental intervention. A settlement enter into with recognised negotiating agent must be binding on all workers. *Fourthly,* the provisions must be made in the law for determining negotiating agents, particularly on behalf of workers. *Fifthly,* the law must provide for authorities to identify the negotiating agent, to adjudicate disputes and so on, and these must be provided in the shape of labour courts and labour relations Commissions at the State, Central and National levels. *Finally,* The Commission was of the view that changes in labour laws be accompanied by a well defined social security package that will benefit all workers, be they in 'organised' or 'unorganised' sector and should also cover those in the administrative, managerial and other categories which have been excluded from the purview of the term worker.

[4] https://nitekrawler.wordpress.com/tag/labour-laws/

Amendment

The proposed Draft Code contains 107 sections and 3 schedules, which deals with various industrial relations issues such as registration of trade unions, standing orders, notice of change of terms of employment, strikes, lockouts, lay-offs, redundancy and site closures etc. The major changes are discussed below.

Registration of Trade Union

The present code provide for minimum requirement of 7 members in case of registration whereas the proposed code provide for minimum of 10 per cent of workers to apply for registering of a trade union[5]. In the where the 10 per cent of workers are less than 7 minimum 7 members shall require. While, in a case where the 10 per cent of workers exceed 100, hundred workers shall be sufficient for registering the trade union in new draft code. Thus the new provisions would discourage formation of trade unions in India.

Retrenchment and Shut Down

The present Industrial Dispute Act provides the need to take permission of the government in case of retrenchment, layoff or shutdown unit of more than 100 workers, the government is going to raise these limit to 300 workers. The proposed amendments would allow the firms employing up to 300 workers to retrenchment, lay them off or shut down the unit without prior government prior approval[6] but beyond the limit appropriate reason is required to take government approval. Though Three months of notice is made compulsory in case there is a plan for retrenchment, but it shall not apply to an "undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work[7]".

In the case of the Closure of any undertaking sixty days prior notice is made mandatory[8]. Currently, at the time of a worker's redundancy, if they have at least one year's continuous service, the ID Act requires the employer to pay compensation equivalent to 15 days' average pay for each completed year of service, or any part year in excess of six months. The Draft Code proposes to increase redundancy compensation to 45 days' average pay for each completed year of continuous service, or any part year in excess of six

[5] Sec 5 of the Draft Bill
[6] Sec 86 of the Draft Bill
[7] Sec 88 of the Draft Bill
[8] Sec 83 of the Draft Bill

months[9].The firms having work capacity of less than fifty employs or seasonal industries are kept out of the preview of above discussed provision[10].

Strikes and lockouts

The provision regarding strike and lockouts[11] are made very rigid in the new law to prevent the happening of strike at frequent basis. Six weeks priors notice is made necessary for strike. No legal strike can be started where any judgement of tribunal or any court is pending on the same matter. A specific manner shall be prescribed for giving the notice otherwise it shall not be considered as valid as treat as breach of contract. "Go slow", "Gherao" and demonstration at the residence or any place of managerial level or any employers is also prohibited in the proposed code. Financing such illegal lock out or strike is also prohibited in the code. The penalty of twenty to fifty thousand shall be imposed in the case of illegal strike with/or one month imprisonment.

Judicial view

The amendments which are proposed to be brought by the Government regarding raising the limit of retrenchment was previously brought by the Government in Amendment act 1976. These provisions were challenged before the various High Courts and the two High Courts held the Section to be violative of the right guaranteed under Article 19(1) (g) of the Constitution imposing unreasonable restrictions on the right of the employer to retrench workmen, and invalid[12]. These provisions were also challenged by employers as being arbitrary and un-constitutional, and they were repelled by the Supreme Court of India in the Meenakshi Mills case[13], Madura Coats case[14], and Orissa Textiles case[15].

Though the different changes brought by the Government in existing norms to boost up the economy with the help of foreign investment in the mean of Privatisation, Globalisation also received strong support from the higher judiciary. Various Challenges were made to the disinvestment of public sector units, but all these were rejected by the Court

[9] sec 79 of the Draft Bill
[10] sec 74 of the Draft Bill
[11] sec 71 to 73 of the Draft Bill
[12] 1994 AIR 2696
[13] AIR1994SC2696,
[14] AIR1995SC2200
[15] 78(1994)CLT511

and the judicial reviews were made prohibited in the Balco Employees Union case[16] and the Devans Modern Breweries case[17].

The Higher judiciary set various Regulation in the matter of Retrenchment that it should be fair and not unjust. In the case of Umesh Chandra v Nagar Nigam[18], the Allahbad High Court held that Termination Of a Workman, who has completed one years continous service, will be illegal if neither any notice nor retrenchment compensation has been paid at the time of his termination. In another Judgement[19] the court observed that a termination without retrenchment compensation as required under ID Act will be set aside.

Conclusion

Fewer laws mean better monitoring, easy compliance and benefit to both industries and workers. In India the entire system of labour laws should be made simplified by clubbing together wherever possible and made less cumbersome to make the environment more employment friendly. The main objective of these reform in labour laws is required to make India a more attractive country for investments, and to enable manufacturing here to become globally competitive; which is a necessary condition for Make in India. However, amendments to the labour laws do require consultations with the trade unions, and the government cannot bypass this process.

[16] 2002 LLJ Vol. 1550
[17] 2004 11SCC26
[18] 2005 LLR 495
[19] *U.P. State Road Transport Corporation* V *State of UP and others* 2005 5 AWC4273All