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India's Labour Legislation and its Employment Relation for the Next Decade



AN ASSESSMENT OF LABOUR REFORMATION PROPOSED IN INDIAN LABOUR CODE 2015 WITH SPECIAL REFERENCE TO INDUSTRIAL RELATIONS BILL

KEYWORDS: Draft Code, Industrial Relations, Trade Union, Standing orders and Industrial Dispute.

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ABSTRACT *The Labour legislations provide a framework which regulates the relationship between worker, employer, trade union and government. These legislations are introduced in different periods of time which defines the rights and obligation of the working people and their organizations. The present government is under the construction of bringing in various changes for boosting the Indian economic growth. As such one of the initiative taken is the the reformation of labour laws. It has decided to recast the 44 central laws into four labour codes which includes code on wages, code on industrial relations, code on social security and welfare and code on safety & working conditions of workers. This study focuses on the proposals made by the Central Government particularly with regard to codes on Industrial Relations Bills 2015. It makes a critical assessment of the code by specifying the changes and its implications.*

Introduction:
The present Central government has taken the proposal to compile 44 labour laws into four broad codes, dealing with industrial relations, wages, social security and welfare and safety and working condition. This need of recasting labour laws was already suggested by the First and Second National Commission of labour which took many years to implement because the process of getting consensus between the employer and worker was difficult. According to World Bank, India is country of rigid labour laws which hampers the growth of many sectors, particularly manufacturing sector which accounts for only 16% of India's $2 trillion economy, compared with 32% of China (Bhan, 2016). The government has taken the initiative with a view to craft the labour law modern, flexible, promote employment opportunities, attract many investors and to create numerous manufacturing hubs. This paper makes an analysis of the of the draft code on Industrial Relations Bill 2015 which will be specifying the various changes and implications under The trade unions Act 1926, The Industrial Employment and Standing Orders Act 1946 and The Industrial Disputes Act 1947.

Trade Unions
Trade union is an organized association of workers formed to protect and further their rights and interest. The Trade union Act stands repealed and it is replaced by the following provisions of draft code.

The draft code requires minimum of 10% of workers employed in an establishment for making an application for registration. Provided if 10% exceeds 100 workers it is sufficient to be made by 100 workers and if 10% is less than 7 workers a minimum of 7 is required to make an application for registration. There is no big change in the draft code since it restores the same as it was in the act. It has removed the applicability of 10% membership in unorganized sector which is considerable because the employer employee relation is ambiguous. A separate section (S.24) for subscription fee for membership and mode of its collection is introduced where subscriptions are deducted from the wages of workers by the employer with a written authorization. The collection period is changed from per annum to per month followed by increase in amount. It has also has created a workers welfare fund for the workers who are not members of the trade union which motivates the members to join trade union. The (S.9) office duration of the executive members is reduced from 3 years to 2 years. This will encourage every aspiring member to become office bearers of the union.

The draft code (S.10 &S.11) states that registration and certification of trade union will take place within 60 days limitation period.The trade union is deemed to be registered in case of non communication of decision by the registrar within 60 days. This contradicts with S.13 of the draft Code where provision of appeal by any member of the trade union to the industrial tribunal is allowed incase of non communication of decision to the registrar within 60 days. It doesn't state about what should be treated as conclusive evidence during non communication of decision by the registrar. In case of defects reported by the registrar to the trade union does the 60 days period begin after rectification? It should clarify whether the applicant for cancellation of trade union can only be the registered trade union or even third party is also eligible to apply? (Chatterjee &Ram 2015). In this case it is recommended not to give power to third party because there would be more political interference which cause more problems and conflicts.

The code fails to give explanations whether a convicted office bearer who gets a stay, is eligible to continue in the same post or has to apply and contest for the post once again. The reduction in the threshold of office bearers in unorganised sector not engaged in industry or establishment from more than a half to a maximum of 2 members is appreciable which doesn't affect the

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autonomy of the trade union. It restricts the outsiders in organized sector from being an office bearer of the trade union which is a welcome sign since it restricts the influence of political parties.The revised draft allow unions having 15% or 18% of votes to have their representatives on the negotiating board when there is an absence of a two-thirds majority with any trade union at the time of voting(Draft labour code, 2015).This gives wider representation to all the workers than vesting of power on a single trade union.

Standing Orders: Standing orders are legal framework within which the establishment is to mandatorily function as they govern the conditions of employment of workers. They regulate the conduct of the employers and employees, promote harmonious working conditions and make provision for redressal of grievances arising out of employment and unfair treatment (Memoria,2012). The Central government has made some modifications, alterations and changes for the benefit of both the employer and employee.

It has been mentioned in the proposal that the provisions of standing orders have become applicable and shall continue to apply to all establishments having employees less than 100 workers employed at anytime. This stands as an advantage of not losing the provisions for small scale units and encourages their functioning. The proposal has extended the scope of matters covered under the Model standing orders by including list of misconduct, medical aid in case of accident etc. The procedure of drafting and certifying standing order is made simple with appropriate changes (Roy and Sengupta, 2015). Yet another proposal made in the liability to pay subsistence allowance as to 75% of wages, if the delay for disciplinary action does not directly attribute to the conduct of the employee while in the previous provision 75% of wages was paid as an allowance to the employee irrespective of their level of misconduct is also worth mentioning. When standing orders is for the benefit of employees partially, making it tight is nowhere to go. In the current scenario, considering the lifestyle, standard of living, social life and family circumstances persuades employees to toil for bread and water. From the point of the workers pitching such a change would drastically have an irreversible impact on the part of the employee.

Industrial Disputes: Its main objective is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations (Memoria, 2012).The draft code makes changes in the following provision which is discussed below.

The proposal (S.2J) has defined industrial dispute by combining S.2A and S.2k of ID Act where there is no big difference. In defining wages the code has included remuneration and excluded allowances. It is recommended to define wages and remuneration independently so that the computation of additional payments and bonus is made simple.

The code has removed the wage amount drawn by the supervisory personnel which in turn will be notified by the central government from time to time. This considers all workers under one category without any discrimination in payment which in turn does justice to the workers' rights.

The Code (S.48) requires clear explanations under dismissal of a worker during pendency of the proceedings, when the order of approval is not granted and the consequences of failure of the employer to make application to the authority. It is unanswerable whether the worker is suspended during the interim period or not. The time frame for the authority to decide on the approval of application has been removed which leads to redundant impediments. It is ambiguous whether worker is eligible to receive subsistence allowance during the interim period. The provision of compoundability of offence (S.104) should be removed because it paves way for evading imprisonment and negotiates justice for efficiency. (Srivastava and Sengupta,2015).

The proposal (S.50) has indicated that the parties can refer the dispute to arbitration at any time even after it has been taken up by the Tribunal / National Tribunal. This becomes beneficial for the parties for immediate settlement of disputes through arbitration when it is not taken up for proceedings by the Tribunal. Instead it disrespects the authority decision if the case has been taken up by the tribunal. It has removed the Court of Enquiry, Labour Court and board of Conciliation for dispute settlement. This will make the resolution of disputes simple for concerned parties because referring it in manifold forums is time consuming. The Code has created a new provision (S.53) which allows any individual to refer to the dispute directly to the tribunal within the time limit of 3 years. This results in immediate resolving of disputes and it will avoid the influence of political whims and fancies in the adjudication process. It has fixed a time limit of 6 months for executing the award by the civil court (Sec 53(10)). In the same way it is recommended to fix a time frame for sending the award to the tribunal for ensuring appropriate performance (Srivastava and Sengupta, 2015).

The Code (S.2 (q)) has extended the scope of strike by indicating that casual leave taken by the 50% or more workers on a given day is termed be as strike. Sec 71(1) states that it is obligatory for all industries and not only public utility service to give prior notice for strike and lockout. Earlier this restriction was only for PUS but now this uniformity would decrease the occurrence of illegal strike. It also keeps strike and lockout under control by restricting it during any pendency of proceedings and settlement of award (Financial express, 2015). (Srivastava,2015) requires clarity for notice period of strike and lockout (i.e) whether it is for 6 weeks or 14 days. It is recommended not to bring any change in the notice period because it doesn't allow the employer to procrastinate. The proposal has removed the restriction in application of retrenchment, lay off and closure of units which extends beyond factories, mines and plantations. It has eliminated the provisions and explanations of lay off which was present in the statute. This omission leaves certain conditions ambiguous which includes at what point of time a worker is said to be laid off, how many hours the workers should lapse from the time the worker present himself at the work ,what happens when he is not given employment during the particular shift when he is asked to be present? At what rate of wages and dearness allowances should be provided? (Srivastava and Sengupta,2015). This will lead to deprivation of workers' rights.

The new proposal(S.85) authorize firms employing up to 300 workers to lay off, retrench and close the unit without prior government approval, as against the current threshold of 100 workers. On one hand this change will benefit the employers of small and medium enterprise that operates with less than 300 workers by making the restructuring process easy and hire and fire policy flexible. On the other hand job security of the workers lies in a disadvantageous position. Most of the MSME's operating in India are having less than 300 workers hence those MSME workers will fall outside the purview of labour provisions.

Conclusion

The modernization of labour law is a good inventiveness taken by the government but there are many loopholes in the draft code which curbs the rights of the workers who are the major resources of the Indian economy. The code has dropped out certain clauses under the respective acts without providing any explanations for eg: recognition of trade union has been

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removed which is a major need of the industry, number of workmen to be recognised as protected workmen is missing in the code.The workers have reported that the draft code has been framed from employer's perspective to create flexible labour market and has ignored the workers privileges. Therefore it is recommended that the labour law reformation should balance the interest of the employer and the worker than posing a threat to workers rights. The government should revise the draft code by setting up a tripartite consultation before the amendment of the bill.

Reference:

1) Bhan,Indu(2016),Making labour laws modern http://www.financialexpress.com/article/fe-columnist/making-labour-laws-modern/190003/ Retrieved 29 February 2016.

2) Butani, Mukesh (2015), Column: Labour reforms in the pipeline? http://www.financialexpress.com/article/fe-columnist/column-labour-reforms-in-the-pipeline/170120/ Retrieved 14 February 2016.

3) Chatterjee, S. & Ram, V. (2015), Analysis of the Labour Code on Industrial Relations Bill – Part I (Trade Unions), Journal of Indian Law and Society. https://jilsblognujs.wordpress.com/2015/06/30/analysis-of-the-labour-code-on-industrial-relations-bill-part-i-trade-unions/ Retrieved 08 February 2016.

4) Draft Labour Code on Industrial Relation Bill (2015), Human Resource Info, http://www.hrinfo.in/2015/10/draft-labour-code-on-industrial.html Retrieved 16 Feb 2016.

5) Labour Code On Industrial Relations Bill (2015), http://www.prsindia.org/uploads/media//draft/Labour%20Code%20on%20Industrial%20Relations%20Bill%202015.pdf Retrieved 11 February 2016.

6) Mamoria & Gankar. (2012), Dynamics of Industrial Relations, Mumbai: Himalaya Publishing House.pp144-174,441-459&460-526.

7) Mehrotra (2015), Labour Policy Reforms in India –Anti Worker or Pro Employer https://www.linkedin.com/pulse/labour-policy-reforms-india-anti-worker-pro-employer-mukesh-kumar Retrieved 20 feb 2016.

8) Roy ,R. & Sengupta , A. (2015), Analysis of the Labour Code on Industrial Relations Bill – Part II (Standing Orders and Negotiating Agents), Journal of Indian Law and Society. https://jilsblognujs.wordpress.com/2015/07/09/analysis-of-the-labour-code-on-industrial-relations-bill-part-ii-standing-orders-and-negotiating-agent/ Retrieved 09 February 2016.

9) Shroff, V. & Gopalakrishnan, V. (2016), Employment Law Outlook 2016, The Bureau of National Affairs, Inc., pp 1-5

10) Srivastava , A. & Sengupta , A. (2015), Analysis of the Labour Code on Industrial Relations Bill – Part IV, Journal of Indian Law and Society. https://jilsblognujs.wordpress.com/2015/08/01/analysis-of-the-labour-code-on-industrial-relations-bill-part-iv/ Retrieved 15 February 2016

11) Srivastava , A. & Sengupta, A. (2015), Analysis of the Labour Code on Industrial Relations Bill – Part III (Definitions, Conditions of Service and Compounding), Journal of Indian Law and Society. https://jilsblognujs.wordpress.com/2015/07/25/analysis-of-the-labour-code-on-industrial-relations-bill-part-iii-definitions-conditions-of-service-compounding-of-offences/ Retrieved 20 February