LABOUR LAWS IN INDIA

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Presented at the Asia Pacific Conference on Labour Laws in Bangkok, 2008

The history of labour legislation in India is naturally interwoven with the history of British colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for indenturing workers became necessary. This was obviously labour legislation in order to protect the interests of British employers.Then came the Factories Act. It is well known that Indian textile goods offered stiff competition to British textiles in the export market and hence in order to make India labour costlier the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile magnates of Manchester and Lancashire. Thus we received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly welfarist the real motivation was undoubtedly protectionist!To date, India has ratified 39 International Labour Organisation (ILO) conventions of which 37 are in force. Of the ILO's eight fundamental conventions, India has ratified four – Forced Labour 1930, Abolition of Forced Labour 1957, Equal Remuneration 1951, and Discrimination (employment and occupation) 1958.

The organised and the unorganised

An important distinction that is popularly made nowadays in all discussions relating to labour legislation is between workers in the organised/formal sector and those in the informal/informal sector. Many who make this distinction do so with ulterior motives, yet we must reckon with it – especially because out of the total workforce in the country, 92 percent work in the informal sector while only eight percent work in the formal sector.

At the outset it must therefore be remembered that those who were unorganised yesterday are organised today and those who are unorganised today aspire to become the organised tomorrow. Moreover, many rights, benefits, and practices, which are popularly recognised today as legitimate rights of the workers, are those that have accrued as a result of the struggles carried out by the earlier generation of workers. The attempt, prevalent in some circles to pit one section of workers against the others, must therefore be carefully understood and deserves to be rejected outright.

Trade unionism and the Trade Union Act 1926

There are almost ten major central union organisations of workers based on different political ideologies. Almost every union is affiliated to one of these. These central organisations have

state branches, committees, and councils from where its organisation works down to the local level.

The first central trade union organisation in India was the All India Trade Union Congress (AITUC) in 1920 – almost three decades before India won independence. At about the same time workers at the Buckingham and Carnatic Mills, Madras went on strike led by B P Wadia. The management brought a civil suit against the workers in the Madras High Court and not only obtained an injunction order against the strike but also succeeded in obtaining damages against the leader for 'inducing a breach of contract'. This was followed by widespread protests that finally yielded in the Trade Union Act 1926 giving immunity to the trade unions against certain forms of civil and criminal action. Apart from this aspect the Trade Union Act also facilitated registration, internal democracy, a role for outsiders and permission for raising a political fund subject to separate accounting requirements.The Trade Union Act facilitates unionisation both in the organised and the unorganised sectors. It is through this law that the freedom of association that is a fundamental right under the Constitution of India is realised.

The right to register a trade union however does not mean that the employer must recognise the union – there is in fact no law which provides for recognition of trade unions and consequently no legal compulsion for employers, even in the organised sector, to enter into collective bargaining.
Yet in reality because of the strength of particular trade unions there is fairly widespread collective bargaining, especially in the organised sector.

Wage determination in the un organised sector

Wage determination in India has been achieved by various instruments. For the unorganised sector the most useful instrument is the Minimum Wages Act 1948. This law governs the methods to fix minimum wages in scheduled industries (which may vary from state to state) by using either a committee method or a notification method. A tripartite Advisory Committee with an independent Chairman advises the Government on the minimum wage. In practice unfortunately, the minimum wage is so low that in many industries there is erosion of real wage despite revision of the minimum wage occasionally. A feeble indexation system has now been introduced in a few states only.

Collective bargaining in the organised sector

An important factor that is not much recognised, but which still prevails in many organised sector units is fixing and revising wages through collective bargaining. The course of collective bargaining was influenced in 1948 by the recommendations of the Fair Wage Committee that reported that three levels of wages exist – minimum, fair, and living.These three wage levels were defined and it was pointed out that all industries must pay the minimum wage and that the capacity to pay would apply only to the fair wage, which could be linked to productivity. In addition to this the fifteenth Indian Labour Conference, a tripartite body, met in 1954 and defined precisely what the needs-based minimum wage was and how it could be quantified using a balanced diet chart. This gave a great boost to collective bargaining; many organised sector trade unions were able to achieve reasonably satisfactory indexation and a system of paying an

*annual bonus. It is now the law, that a thirteenth month of wage must be paid as a deferred wage to all those covered by the Payment of Bonus Act. The minimum bonus payable is 8.33 percent and the maximum is 20 percent of the annual wage.***Strikes and lockouts**

Workers have the right to strike, even without notice unless it involves a public utility service; employers have the right to lockout, subject to the same conditions as a strike. The parties may sort out their differences either bilaterally, or through a conciliation officer who can facilitate but not compel a settlement which is legally binding on the parties, even when a strike or a lockout is in progress. But if these methods do not resolve a dispute, the government may refer the dispute to compulsory adjudication and ban the strike or lockout.

Conciliation, arbitration, and adjudication

When parties engaging in collective bargaining are unable to arrive at a settlement, either party or the government may commence conciliation proceedings before a government appointed conciliation officer whose intervention may produce a settlement, which is then registered in the labour department and becomes binding on all parties. If conciliation fails it is open to the parties to invoke arbitration or for the appropriate government to refer the dispute to adjudication before a labour court or a tribunal whose decision may then be notified as an award of a binding nature on the parties. Disputes may be settled by collective bargaining, conciliation, or compulsory adjudication.

Colonial dispute settlement machinery

The Industrial Disputes Act 1947 (IDA) provides for the settlement machinery above. The framework of this legislation, which is the principle legislation dealing with core labour issues, is of colonial origin. This law originated firstly in the Trade Disputes Act 1929, introduced by the British, when there was a spate of strikes and huge loss of person days and secondly through Rule 81A of the Defence of India Rules 1942, when the British joined the war efforts and wanted to maintain wartime supplies to the allied forces. Interestingly the interim government on the eve of formal independence retained this framework by enacting the IDA, which still remains on the statute book.

Developments after independence

Even though the IDA was primarily meant for industry in the organised sector, its present application has now extended well into the unorganised sector, through judge-made law. Its pro-worker protection clauses and safeguards against arbitrary job losses have evolved over a period of time both through the process of sustained legislative amendments and through the process of judicial activism spread over more than five decades.

The original colonial legislation underwent substantial modification in the post-colonial era because independent India called for a clear partnership between labour and capital. The content of this partnership was unanimously approved in a tripartite conference in December 1947 in which it was agreed that labour would be given a fair wage and fair working conditions and in return capital would receive the fullest co-operation of labour for uninterrupted production

and higher productivity as part of the strategy for national economic development and that all concerned would observe a truce period of three years free from strikes and lockouts.

Regulation of job losses

Space does not allow a detailed discussion of this transformation in labour policy and consequent amendments to labour law, but provisions that deal with job losses must be noted. Under the present law any industrial establishment employing more than 100 workers must make an application to the Government seeking permission before resorting to lay-off, retrenchment, or closure; employers resorting to any of the said forms of creating job losses, is acting illegally and workers are entitled to receive wages for the period of illegality. The Reserve Bank of India commissioned a study into the causes of sickness in Indian industry and they reported cryptically, 'Sickness in India is a profitable business'. This chapter in the IDA, which has been identified as offering high rigidity in the area of labour redundancy, has been targeted for change under globalisation and liberalisation.

Protection of service conditions

A feature of the IDA is the stipulation that existing service conditions cannot be unilaterally altered without giving a notice of 21 days to the workers and the union. Similarly if an industrial dispute is pending before an authority under the IDA, then the previous service conditions in respect of that dispute cannot be altered to the disadvantage of the workers without prior permission of the authority concerned. This has been identified as a form of rigidity that hampers competition in the era of the World Trade Organisation.

Removal from service

A permanent worker can be removed from service only for proven misconduct or for habitual absence – due to ill health, alcoholism and the like, or on attaining retirement age. In other words the doctrine of 'hire and fire' is not approved within the existing legal framework. In cases of misconduct the worker is entitled to the protection of Standing Orders to be framed by a certifying officer of the labour department after hearing management and labour, through the trade union. Employers must follow principles of 'natural justice', which again is an area that is governed by judge-made law. An order of dismissal can be challenged in the labour court and if it is found to be flawed, the court has the power to order reinstatement with continuity of service, back wages, and consequential benefits. This again is identified as an area where greater flexibility is considered desirable for being competitive.

Almost all pro-worker developments that accrued since independence are now identified as areas of rigidity and in the name of flexibility there is pressure on the government of India to repeal or amend all such laws. Interestingly, if such a proposal is fully implemented, labour law, especially for the organised sector, will go back to the colonial framework where state intervention was meant primarily to discipline labour, not to give it protection. GlobalisationThe most distinctly visible change from globalisation is the increased tendency for offloading or subcontracting. Generally this is done through the use of cheaper forms of contract labour, where there is no unionisation, no welfare benefits, and quite often not even statutorily

fixed minimum wages. Occasionally the tendency to bring contract labour to the mother plant itself is seen. This is very often preceded by downsizing, and since there is statutory regulation of job losses, the system of voluntary retirement with the 'golden handshake' is widely prevalent, both in public and private sectors.

Regulation of contract labour

The Contract Labour (Prohibition and Regulation) Act 1970 provides a mechanism for registration of contractors (if more than twenty workers are engaged) and for the appointment of a Tripartite Advisory Board that investigates particular forms of contract labour, which if found to be engaged in areas requiring perennial work connected with the production process, then the Board could recommend its abolition. A tricky legal question has arisen as to whether the contract workers should be automatically absorbed or not after the contract labour system is abolished. Recently a Constitutional Bench of the Supreme Court held that there need not be such automatic absorption – in effect this 'abolishes' the contract labourer and has given rise to a serious anomaly.

Phase between organised and unorganised

We are already witnessing a reduction in the organised labour force and an increase in the ranks of the unorganised. The above law is a kind of inter-phase in the process of regulating the transition from regular employment to irregular employment. If contract labour is seen as introducing a form of flexibility, a strict enforcement of this Act could have had a salutary effect on the transition process. Instead the enforceability of the Act is now diluted and consequently even the minimum protection envisaged under this law to contract labourers is in jeopardy. Dominant thinking in relation to globalisation is having its effect on the judicial process also, ignoring Directive Principles of State Policy contained in the Constitution of India.

Employment injury, health, and maternity benefit

The Workman's Compensation Act 1923 is one of the earliest pieces of labour legislation. It covers all cases of 'accident arising out of and in the course of employment' and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. The younger the worker and the higher the wage, the greater is the compensation subject to a limit. The injured person, or in case of death the dependent, can claim the compensation. This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Scheme, which is conceptually considered to be superior to the Workman's Compensation Act.The Employees State Insurance Act provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. It facilitates both outpatient and in-patient care and freely dispenses medicines and covers hospitalisation needs and costs. Leave certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies

to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining.The Maternity Benefit Act is applicable to notified establishments. Its coverage can therefore extend to the unorganised sector also, though in practice it is rare. A woman employee is entitled to 90 days of paid leave on delivery or on miscarriage. Similar benefits, including hospitalisation facilities are available under the law described in the paragraph above.

Retirement benefit

There are two types of retirement benefit generally available to workers. One is under the Payment of Gratuity Act and the other is under the Provident Fund Act. In the first case a worker who has put in not less than five years of work is entitled to a lump sum payment equal to 15 days' wages for every completed year of service. Every month the employer is expected to contribute the required money into a separate fund to enable this payment on retirement or termination of employment. In the latter scheme both the employee and the employer make an equal contribution into a national fund. The current rate of contribution is 12 percent of the wage including a small percentage towards family pension. This contribution also attracts an interest, currently 9.5 percent per annum, and the accumulated amount is paid on retirement to the employee along with the interest that has accrued. Unfortunately the employee is allowed to draw many types of loan from the fund such as for house construction, marriage of children, and education etc. As a result very little is available at the time of retirement. This is also a benefit, which is steadily being extended to sections of the unorganised sector, especially where the employer is clearly identifiable.

Women labour and the law

Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as labourers and cultivators. In urban areas, the employment of women in the organised sector in March 2000 constituted 17.6 percent of the total organised sector.Apart from the Maternity Benefit Act, almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of an occupational hazard concerning the safety of women at workplaces, in 1997 the Supreme Court of India announced that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint

*mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment Standing Orders Act 1946.****Implementation of labour laws***

The Ministry of Labour has the responsibility to protect and safeguard the interests of workers in general and those constituting the deprived and the marginal classes of society in particular with regard to the creation of a healthy work environment for higher production and productivity. The Ministry seeks to achieve this objective through enacting and implementing labour laws regulating the terms and conditions of service and employment of workers. In 1966, the Ministry appointed the First National Labour Commission (NLC) to review the changes in the conditions of labour since independence and also to review and assess the working of the existing legal provisions. The NLC submitted its report in 1969. The important recommendations of NLC have been implemented through amendments of various labour laws. In the areas of wage policy, minimum wages, employment service, vocational training, and worker's education, the recommendations made by the NLC have been largely taken into account in modifying policies, processes, and programmes of the government. In order to ensure consistency between labour laws and changes in economic policy, and to provide greater welfare for the working class, the Second NLC was constituted in 1999.All labour laws provide for an inspectorate to supervise implementation and also have penalties ranging from imprisonment to fines. Cases of non-implementation need to be specifically identified and complaints filed before magistrates after obtaining permission to file the complaint from one authority or the other. Very few cases are filed, very rarely is any violator found guilty, and almost never will an employer be sent to prison. Consequently these powers are used by corrupt officials only for collecting money from employers.

This does not however mean that no labour laws are implemented. On the contrary experience has proved that the implementation of such laws is directly proportional to the extent of unionisation. This generalisation is particularly true of the informal sector.

The unorganised sector

Many of the laws mentioned above apply to the unorganised sector also. In some cases a separate notification may be necessary to extend the application of a particular law to a new sector. It is useful to notice that some pieces of legislation are more general in character and apply across the board to all sectors. The Trade Union Act 1926, The Minimum Wages Act 1948, The Contract Labour (Regulation and Abolition) Act 1970, The Workman's Compensation Act 1923, and The Payment of Wages Act 1936 are examples of this type. In certain cases, even the IDA 1947 would be included.In addition to the above there are special sectoral laws applicable to particular sectors of the unorganised. Under this category are laws like the Building and Construction Workers Act 1996, the Bonded Labour System (Abolition) Act 1976, The Interstate Migrant Workers Act 1979, The Dock Workers Act 1986, The Plantation Labour Act 1951, The Transport Workers Act, The Beedi and Cigar Workers Act 1966, The Child Labour (Prohibition and Regulation) Act 1986, and The Mine Act 1952.Broadly speaking these sectoral laws either abolish or prohibit an abominable practice like bonded labour or they seek to regulate exploitative conditions by regulating working hours and conditions of service.

A recent trend has been to seek the creation of a welfare fund through the collection of a levy from which medical benefits or pension provisions are made. Workers and management may contribute and attempt to set up tripartite boards for implementation of welfare benefits. In some states like Kerala a large number of such boards have already been set up to take care of welfare in different sectors of employment.Another contemporary effort is to provide an umbrella statute to take care of employment conditions and social welfare benefits for all unorganised sections. Common central legislation for all agricultural workers is also on the anvil. Many powers are vested in quasi-judicial authorities, labour courts, and magistrates' courts. The power of review is in the High Courts and finally in the Supreme Court.

The general experience, with the occasional exception, is unbearable delay. Even where statutes prescribe reasonable time limits, they are not adhered to. Frustration with labour-related justice is heightened by these unlimited delays. A case of dismissal takes almost ten years for the labour court to decide and if the parties decide to seek judicial review in the higher courts there can be unlimited delay.

For the unorganised sector a renewed attempt to focus on the core labour standard identified by the ILO in its Declaration on Fundamental Rights at Work would still be worthwhile, especially if we take steps to ensure the implementation of the first of those core labour standards namely the freedom of association and the right to collective bargaining. It is only through the organisation of potential beneficiaries that we can hope for some benefits at least to percolate down into the hands of the needy.