LABOUR LEGISLATION FRAMEWORK IN INDIA - ITS RELEVANCE AND EFFECTIVENESS

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All laws have to be viewed in a context. Initial labour legislation in India was drafted in response to:

- the pressure from the British textile industry to ensure its continued competitiveness.
- the abysmal working conditions in-factories in India.

The context today is very different. Organized labour, constituting less than 10% of the total work force and the main beneficiary of labour legislation, is over protected both by law and by strong, politically-affiliated trade unions.

On the other hand, the unorganized as well as migrant labour is in need of greater support and protection.

Disjointed laws and inconsistent judicial pronouncements/interpretations have also created further confusion.

As a result of the restrictions placed by some of the laws, industry is reluctant to add labour thus resulting in 'jobless industrial growth'. This is also an inhibiting factor in attracting foreign investment in manufacturing.

Indian industry will have to grow by 12%. to 14% p.a. over the next 10 years in order for it to be able to absorb the 100 million new entrants in the labour market during this period.

This is possible only by:

- Driving manufacturing productivity and flexibility to ensure competitiveness of India-made products.

- Encouraging employment generation by supporting large scale manufacturing.
- Incentivizing skill development and training as an integral part of the labour policy framework.
- Creation of a reliable safety net for affected employees with involvement of employers, employees and government.

No way can this be done with the current labour laws and policies which focus only on protecting existing employment, which actively disincentivise new job creation and which, furthermore, do not also incentivize skill development.

Ground reality suggests that a combination of high wage increases, low productivity, a young and increasingly assertive work force and inflexible labour laws are increasingly pushing industry to large scale employment of contract/casual labour with potentially disastrous consequences.

The recent unrest at Maruti's Manesar plant and its spread to other industries in the region is an indicator of a new set of challenges facing our industry and polity challenges which government, industry, trade unions and political parties can ignore only at their peril.

Labour laws, therefore need to be reframed keeping three factors in mind:

- Industrial development and competitiveness
- Employment generation
- Protection of unorganized and migrant labour

As far as Labour Laws are concerned, today there are more than 50 Central Acts dealing with labour, not counting state laws, various amendments and notifications tagged on to different acts as well as rules and regulations! Add to these, varying judicial pronouncements and we have a veritable mine field to negotiate.

In an ideal scenario these pieces of legislation should be totally revamped and consolidated into 5 main pieces of legislation covering:

Labour Relations and Industrial Disputes

- Conditions of Work.
- Wages.
- Social security and welfare.
- Employment and Training.

However failing the above, I would suggest changes in four major impact areas:

I. Industrial Dispute Act.

II. Contract Labour (Abolition & Regulation) Act.

III. Trade Unions Act.

IV. Simplification and rationalization of Labour laws.

Industrial Disputes Act - Changes in ID Act to ensure flexibility in Operations

Background:

In an open economy industry needs to be able to respond efficiently and quickly to market fluctuations in terms of:

- Temporary increase / decrease in manpower.
- Reducing number of working days.
- Shutting down certain non remunerative operations or reducing the over-all number of employees.

It is also possible that a company may either close down permanently in case it is not able to compete or wants to exit for strategic reasons. This flexibility has to be balanced with the interest of employees.

Today companies employing 100 or more employees need formal approval from the Labour Department. under Section V B for lay - off or downsizing.

Approval is normally not granted because it is seen as "politically unpopular".

As a result of current restrictions:

- Companies refrain from adding more workmen (as this results in lifelong commitment with limited options for responding to market fluctuations/ changes in manufacturing processes, etc.)
- A number of foreign companies are reluctant to invest in India because of perceived rigidity in this context leading to potential loss of FDI.
- Companies prefer higher levels of automation and minimum manpower.
- Engagement of contract labour has become rampant under the pretext of flexibility.

The net result is that these rigidities in fact negatively impact employment and job creation.

Recommended Action	Responsibility
• **Closure / Retrenchment** ➢ No prior permission required for closure of a company / downsizing with higher compensation (60 days wages per completed year of service as against the current provision of 15 days). Compensation amount has to be viewed in the absence of a social security net. ➢ Loss of lien, abandonment of services and fixed term employment of workmen to be excluded from the ambit of retrenchment • **Layoff** No prior permission required to lay off employees up to 75 days in a year (workmen during layoff would continue to get 50% of their wages as currently stipulated- in reality they get more as other benefits like housing, etc are untouched). • Notice of Change Procedural formalities that hamper implementation of productivity / work related changes (section 9 a) - Item No. 10 & 11 in IV Schedule. Government to amend provision on Notice of Change • **Strike Ballot** Need for 14 days' notice for strikes. A strike should be called only after a strike ballot amongst all workers of whom at least 51% support such action. Ballot to be supervised by the Labour Commissioner's office • **Fixed Term Employment** A specific definition should be introduced for fixed term employment	Union Ministry of Labour & employment and state governments.

II. **Contract Labour**

Background

Contract labour earlier used for "non-core jobs" e.g. housekeeping, gardening, security, loading / unloading etc. has today become more common because of specific skill requirements and also availability of qualified service providers.

- **For instance :**

  - A paint shop supplier to a car manufacturer may be made responsible for operating the paint shop, quality, maintenance, output, cost per unit etc and paid on per car painted basis I
  - Logistics companies today not only move goods from suppliers to the consuming company but also take on the responsibility of feeding the assembly line on a just-in-time basis – as an end-to-end service.

These are genuine legitimate contracts and are in fact the practice followed in many countries particularly in the automotive industry across the world. These are grey areas in the current contract labour Regulation and Abolition act. Practices vary from state to state and so do court judgements.

- Contract labour is also used to meet a temporary surge in demand. This is also necessary in an open economy.
- The problem is when contract / casual labour is used on a "permanent basis" for years on end in regular production jobs and paid minimum wages while other workmen on the shop floor doing similar work get far higher wages. It is this which creates unrest and raises charges of exploitation of workmen.

Suggested solution

Action	Responsibility
• **Section 10** of the Contract Labour (Regulation and Abolition) Act, 1970 providing for abolition of contract labour should be deleted and the Act renamed. • Remove differentiation in core and non-core nature of jobs and allow any work to be given on contract as long as statutory & welfare benefits are ensured	• Union Ministry of Labour & Employment and State Governments to make the necessary changes in the Act. If required, a Tripartite Dialogue comprising representatives from government, employers bodies such as CII/EFI and trade unions may be organized.
• **Fixed Term employment** was inserted by G.S.R. 936(E) dated 10th December, 2003 as Item 3A in Schedule I (Model standing orders). However it was omitted by G.S.R. 655(E), dated 10th October, 2007. **To be reinstated.** • Enable convergence on wages to be paid to long term contract/ casual workers doing same work as regular / permanent workers (eg: if not made permanent after completing 24 months in service they may be put in the same grade as regular workers but at the start of the grade). • The remuneration to contract labour to be paid via banks. Like in Maharashtra. • Encourage employment of contract/casual labour through large approved service providers to ensure that all statutory benefits reach the workmen.	• Union Ministry of Labour & Employment and state governments to formulate suitable guidelines.

III. Trade Union Act

The Indian Trade Union scene

- Major unions federations are affiliated to political parties. At the same time a number of unions are run by individuals as a "business".
- Union leaderships often treat unions as their pocket boroughs.
- There is little internal democracy or transparency in functioning of most unions.
- Absence of a simple clear process of union, recognition and identifying a

single bargaining agent has led to multiple union scenario in many companies resulting in inter union disputes and strife.

- New multinationals apprehensive of trade unionism and their possible impact on the shop floor are reluctant to recognize unions.
- While most unions bargain vigorously for wage and benefit increases they do little to ensure that reciprocal commitments of productivity / discipline etc. are honoured.
- While many unions collect membership fees and also hefty contributions from workmen at times of wage or bonus settlement they do little by way of facilities, amenities, training for their own members unlike other countries where unions play a proactive role in such matters.

Possible Solutions - Revamp the Trade Unions Act

Action	Responsibility
Revamp TU ACT • To ensure only one recognized union in a unit – only this union to represent workers and deal with management. Alternatively an elected worker committee to represent workers. • Unions and office bearers to be made accountable and punishable for illegal work stoppage, indiscipline on the shop floor, non adherence to agreed production norms, etc (Just as managements are also held responsible for sins of omission and commission). • De- recognition of unions which do not hold internal elections in a free and fair manner and on time. • Ensure Rigour in Accountability and transparency on funds collected / used.	Union Ministry of Labour and Employment to get convergence primarily from unions on amendment to the Trade Union Act. Industry bodies to sensitize multinationals on the advantages of recognizing and dealing with unions. The Registrar of Trade Unions to be more proactive and given more powers. Trade Unions accounts to be scrutinized more thoroughly.

The above changes will bring about a salutary impact on the functioning of trade unions and also allay apprehensions of multinationals. Once this is done union recognition may also be made compulsory.

IV. Simplification & Rationalization of Labour laws

Factories Act

- The definition of "occupier" (Section 2 a) must be suitably amended so as not to insist on a nominating a Director from the Board (Ref Supreme Court ruling on Indian Oil Case where a Depot Manager can also be an occupier. Rules for public and private sector should be the same.
- Multiple inspections under various laws should be done away with.
- The time limit for approval of new plans or buildings should be brought down to 30 days from the current 90 days.
- Multiplicity of forms should be done away with and combined returns should be introduced as in the case of Tamil Nadu.
- Engagement of women in night shifts should be allowed in all industries subject to satisfactory safeguards.
- Overtime ceiling of 50 hours in a quarter needs to be significantly raised.
- It is suggested that power to make exemptions for provisions relating to working conditions at workplace be for 1 year from the present time frame of 3-6 months.

Miscellaneous

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

Notification of Vacancies

Under this Act, a company is under no legal obligation to recruit any person who is sponsored by the Employment Exchange, though it is obligatory on his part to notify vacancies (section 4), submit quarterly and biennial returns (section 5) and give access (Section 6) to authorized government officers to records and documents.

The Act should be amended to provide for notification of vacancies in the private sector purely on voluntary basis, to save the companies from unnecessary and unproductive obligations under Section 4, 5 & 6 of the Act.

Rationalization of definitions under various labour laws.

- Basic terms like "wages" or "employed persons" / "workers" are defined differently in different Acts. There is a need for harmonizing these definitions to the extent possible. This need to be codified into common definitions across various labour laws.
- **Rationalization of inspections**.
- Rather than having various inspectors such as Labour Inspector, Factory Inspector, ESI Inspector, Welfare Inspector etc there should be a common inspector jointly organized by various agencies on a once a year basis. There should be far greater emphasis on self certification.
- **Maintenance of registers, records and notices in various registers**
- This need to be streamlined and commonalised into one or two registers at the most. Reasonable timelines should be indicated for preserving all records and registers so that old records can be weeded out. Records should be allowed to be maintained and submitted in electronic form rather than physical registers.

PF Act

- Under current provisions, PF is deducted from day one of an employee joining work. For many workmen in casual employment who move from location to location this becomes a dead loss because they find it almost impossible to get their employer's contribution refunded by the PF office. This provision needs to be relooked at apart from the PF offices being made far more customer-centric in their approach and working.

Retrospective Claims

- This has become a major irritant particularly in the case of ESI corporation and needs to be discouraged.

The above are some important changes which can help vitalize the manufacturing industry and also lead to increase in employment.

In addition, serious thought has to be given to institutionalizing a security net for workmen rendered surplus due to restructuring as well as an effective scheme for retraining such workmen. This could be a contributive scheme with industry, government and employees sharing the cost.

To sum up, what is needed is a multipronged approach towards building a comprehensive policy frame work which also outlines the way ahead and an integrated and resolute implementation process with the involvement of all key stakeholders. While many in government are aware of the need for these changes, no government has been able to muster the political will to implement these changes in the face of strident opposition from trade union leaders and their political associates. To facilitate these changes it is important to create a conducive environment where the changes and their impact can be dispassionately discussed and a consensus built up. Industry chambers & associations can play a key role in this. So can the academia.

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