

Labour Issues and Labour Laws in India

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Abstract

Labour is a very significant factor input in production and it forms the backbone of any Economy. But the condition of labour is grim in India. Labourers in India, in spite of their contribution to the economy are confronted with various problems. There are many labour laws in India to address these problems, protect the labourers from exploitation, and strengthen the values of industrial relations. These laws are basically socio economic legislations relating to the various industrial disputes and problems of labourers. This paper delves into the existing labour laws in India, discusses the effectiveness of such laws. It discusses the recent call for reform in the outbreak of the corona pandemic which has a possibility of further aggravating the condition of labour in India, at the same time jeopardising the fundamental rights of labourers.

KEYWORDS: Labour Issues, Labour Laws, Fundamental Rights, Directive Principle of State Policy.

I. Introduction

Labour issues are many in India due to the large size of the labour force, and the lack of the absorptive capacity of the Economy to absorb the surplus labour force. The condition of workers/labourers in India was never good during the colonial rule. Deprived of all fundamental rights they were forced to surrender to various forms of atrocities and at times were getting united to fight for their rights. However, in the absence of elaborate legislations their voice was mostly remaining unheard. But even after Independence despite enactment of various labour laws the condition of labour has not improved much. In 2012, about 487 million workers were there in India. Out of this over 94 percent workers were engaged in unincorporated, unorganised enterprises. The unorganised sector, in spite of its large size accounted for just 57 percent of India's national domestic product in 2006. Productivity of this sector is very low and it offers lower wages. Poverty rates are reported to be significantly higher in the unorganized sector. Most of the workers in Agriculture, dairy, horticulture and related occupations belong to the unorganized sector and these sectors alone employ 52 percent of labour in India. According to the 67th report of NSSO, the unorganised manufacturing, unorganised trading/retail and unorganised services employed about 10 percent of all workers, as of 2010.

Two categories of migrant labourers are present in India. One of these being the one that migrates to temporarily work overseas, and the other migrates domestically on work available basis. Domestic migrant workers are further classified as workers employed either full-time or part-time and temporary or permanent workers. They get remuneration

in cash or in kind, in any household through any agency or directly, to do the household work, but do not include any member of the family of an employer. While some work for a single employer, others work for more than one employer. The compensation, condition and duration of work are typically at the will of the employer and the worker.

The number of internal migrants in India was 450 million as per the 2011 Census. This is more than double the population of Bangladesh, under half the population of Europe and more than that of the U.S population. It shows a growth of 45% over the 309 million recorded in 2001. This growth is much more than the population growth of 18% from 2001 to 2011. A large chunk of migrant workers are going to Middle East due to the attraction of better salaries, possibility of earning overtime pay, and opportunity to remit funds to support their families in India. However, after completion of the projects, they come back to India without any employment or social security benefits. Often complaints of abuses such as unpaid salaries, unsafe work conditions and poor living conditions etc. are noticed.

II. Labour Laws in India

There are various labour laws in India to deal with such problems of workers. For instance, these laws have provisions regulating the conditions of work, safety and welfare of workers, settlement of disputes, formation of associations and trade unions, collective bargaining etc. These laws also protect the interest of the migrant workers. The Constitution of India guarantees a series of fundamental labour rights, particularly the right to join and take action in a trade union, the principle of equality at work, and the certainty of earning a minimum wage with decent working conditions.

Articles 14-16, 19(1)(c), 23-24, 38, and 41-43A of the Constitution of India deal with labour rights. These articles which are meant for all citizens also guarantees the workers with various rights like the right of equality, right to form associations or unions, protection from trafficking and forced labour (under article 23), etc. Article 24 of the Constitution, prohibits child labour under 14 years of age in a factory, mine or any other "hazardous employment".

Articles 38-39, and 41-43A, listed in Part IV of the Constitution are not enforceable by courts, and are in the form of Directive Principles of State Policy. Article 38(1) enjoins upon the state the duty to "strive to promote the welfare of the people" with a "social order in which justice, social, economic and political, shall inform all the institutions of national life. Similarly article 38(2) enjoins the duty on the state to "minimise the inequalities of income". Article 39(d) provides that men and women should receive equal pay for equal work. Article 41 guarantees a right to work. The National Rural Employment Guarantee Act 2005 has been enacted with a view to guarantee such right of workers. Article 42 requires the state to make provision for securing just and human conditions of work and for maternity relief. Article 43 deals with the workers' right to a living wage and conditions of work ensuring decent standard of life. Article 43A, included in the 42nd amendment of the Constitution of India in 1976, says that workers have the right to codetermination.

In the light of the provisions in the constitution relating to the matter of workers/labourers, the Industrial Disputes Act, 1947, brought about major changes in labour laws in India. Since then 45 national laws along with about 200 state laws regulate the relationships between the worker and the employer. Inspectors have the power to examine the establishment anytime and declare fines for violation of any labour laws and regulations.

Most regulations pertaining to employment contracts in India involves government involvement which is rare elsewhere. There are a number of terms like working hours, leave, productivity goals etc. under the Industrial Employment Standing Order Act 1946. The Contract Labour Regulation and Abolition Act of 1970, aims at regulating employment of contract labour. The Payment of Wages Act, 1936, requires that employees receive wages on time, without any unauthorised deductions and stresses on the mode of payment to be in money and not kind. The Minimum wages Act sets wages for the different economic sectors. However, it leaves a large number of workers unregulated. Discretionary power has been vested on both the Central and state governments to set minimum wages. State governments have their own minimum wage schedules. The Employees' Compensation Act 1923 requires compensation be made to workers, injured in the course of employment, or benefits to dependants. The Equal Remuneration Act 1976, implemented this principle in legislation. Besides, we have the Factories Act, 1948, National Pension scheme too was operationalised.

The Employees' Provident Fund Organisation of India was established by the Employees' Provident Fund and Miscellaneous Act of 1952. The Provident Fund created under this, urges both the employees and employers to contribute equally and to use it as a pension fund. Similarly, the Employees' State Insurance, created by the Employees' State Insurance Act, 1948, provides health and social security insurance to the employees. Provisions as coverage of life and disability benefits, health and maternity benefits and old age protection for the unorganized workers has been dealt by The Unorganised Workers' Social Security Act, 2008. The Trade Unions Act 1926, amended in 2001, contains rules on governance and general rights of trade unions. In spite of having the Bonded Labour (Abolition) Act 1976 which meant for abolishing bonded labour, it has been found out that around 2 to 5 million workers are working as bonded labourers.

For women workers, the Sexual Harassment of Women at Workplace (Prevention, prohibition and Redressal) Act, 2013, seeks to protect and provides a mechanism for women to report incidents of sexual harassment at workplace. Women are now permitted to work night shifts too. The Maternity Benefit Act, 1961, ensures the right to payments of maternity benefits to women who worked in any establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery. The Maternity Benefit Amendment, Act, 2017, provides for 26-weeks paid maternity leave for women employees.

III. Labour Issues

There is no dearth of labour laws in India to protect workers from exploitations of different forms. But majority of Indian workers even now do not come under the fold of many such laws. Unorganised labourers of the organised sectors too fall into this line. A

recently released government report throws light on the condition of workers in India, majority of whose earning is less than half of the minimum accepted norms, 71% not having any written job contract, 54% not getting paid leave and over 57% in rural areas and nearly 80% in urban areas working much beyond the stipulated norm. The report, called the Periodic Labour Force Survey (PLFS), is based on a survey conducted between July 2017 and June 2018 by the National Sample Survey Organisation (NSSO) renamed as the National Statistical Office (NSO), under the Ministry of Statistics. The report further reveals that over 52% of workers are 'self-employed', either doing farming or running petty shops or enterprises. The percentage of casual labour doing work on a daily basis is very high.

According to the Seventh Pay Commission, the minimum wage or salary needed for a four-member household was about Rs. 18,000 per month in 2016, which was calculated on the basis of the minimum calorific value of food requirement and all other essentials like clothing, fuel, housing, and also education of children etc. It included the Supreme Court guidelines of 1992 regarding such fixation. In rural areas, both self-employed and casual workers earn less than half of this minimum standard while the regular employees earn about two thirds of it. This indicates the plight of workers including small and marginal farmers who contribute substantially in building the nation.

In urban areas, both self-employed and regular employees including the whole of the elite class earn larger than the average. Despite inclusion of the elite section, the earning level is still below the minimum standard. It means there must be a large number of urban employees or self-employed that are earning much less. In the urban areas, the casual labourers earn about half of the minimum standard. Earnings discussed here are not necessarily for an eight-hour working day. 57% of workers in the rural areas are working more than the stipulated eight hours per working day, which is 79% in case of urban areas.

It was also found in the report that 71% of the workers did not have any written contract or appointment letter. This means that they can be removed from service at any time, without prior notice. Even they have no proof that they ever worked in the enterprise. This was for the so-called regular wage/salary earners.

Over 54% of the workers did not get paid leave. In case they were forced to take leave because of illness or a marriage in the family, are not being paid at all. Nearly half of the regular employees did not get any social security benefits, like provident fund (PF), health insurance, pension, maternity benefits etc.

These 'regular' wage or salary earning employees were no better than others except for the fact that they earned on a regular basis. Most of these are contract employees, whose numbers have been rising over the years. The employers give the minimum benefits to them in order to keep their own profit margins high.

IV.Labour Reform

Since decades there has been an ongoing discussion regarding the reformation of labour laws in India. According to some of the scholars, labour laws have constrained the growth of the formal manufacturing sector. Even the World Bank in its report of 2008, pointed out that heavy labour reform would be desirable in India. Because, India's labour regulations are considered to be among the most restrictive and complex in the world, affecting the growth of the formal manufacturing sector where these laws have their widest application. Reformed labour regulations can attract more labour-intensive investment resulting in creation of jobs for the unemployed and those trapped in poor quality jobs. It has also been pointed out that although there are too many laws, but are not effectively implemented resulting in rampant corruption and rent-seeking. The employers often say that the labour laws are excessively pro-worker which has led to serious rigidities in terms of performance of this sector. Essentially, if India had fewer and easier-to-follow labour laws, firms would be able to expand and contract depending on the market conditions, and the resulting formalisation would enable workers to get better salaries and social security benefits. In contrast to this the contention of the trade unions is that corporate need flexibility in labour market to use it as a strategy for maximizing their own profit. They also believe that such strategy reduces their bargaining power without employment opportunities.

In the wake of the migrant crisis, during the Covid 19 pandemic, several states have tried to amend the existing labour laws, either suspending them altogether or by increasing working hours. Uttar Pradesh, for instance, had suspended almost all labour laws including the Minimum Wages Act with the exception of the Bonded Labour System (Abolition) Act 1976. This sort of a reform will not only strip the labour of its basic rights but will also drive down wages. Moreover, instead of formalising the workforce, this will turn the existing formal workers into informal workers as they would not get any social security. Removal or dilution of the labour laws in the name of reform has a greater possibility of increasing the number of informal labourers and bring down the wage rate sharply.

It was also reported that the Gujarat government had been planning to issue a directive allowing factories to initiate disciplinary proceedings against migrant labourers who have returned to their home state. The Supreme Court in the case of PUDR vs. Union of India (1982), held that laws protecting contract labour and inter-state migrant workmen were intended to ensure basic human dignity. It further held that violation of these laws will violate the right to life under Article 21. Fortunately, after huge protests, these so called reforms to be initiated by few states have been stopped.

V.Conclusion

In November 2019, the Centre introduced the Industrial Relations Code (IRC) in the Lok Sabha, on which the Lok Sabha Standing Committee on Labour published its report in April, 2020. The Code seeks to replace the Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act with a unified

code. The IRC has been criticised, but it is an attempt to modify the existing laws, not to do away with it. It is expected that these amendments will be as per the fundamental rights guaranteed to labour, as well as the Directive Principles of State Policy. This is an appropriate time for the governments, both at the Centre and the states, to renew their commitment to the DPSP, and if the laws are designed properly it is going to solve many labour issues in India. But the reality is, despite having very good laws, we are still unable to implement these to protect the rights of the workers. Labour reform is the necessity of the hour, but without implementation, it may fail to fulfill the objectives for which it is formulated.

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