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LABOUR REFORMS SANS HUMAN FACE

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Since the shift of the Indian economy to a market-driven, open economy in 1991, manufacturing has been losing its share in GDP – from 16.6 per cent in 1990 to 13.7 per cent in 2019, except for two years (2009-10). It has failed to function efficiently in a competitive market system. Over-regulation and rigid labour laws are widely regarded as major impediments to their growth and competitiveness. Indeed, as a Team Lease (India's largest temping agency) study has brought out, India has a complex legal regime, governing labour-capital relations with 463 Acts, 3,2542 compliances and 3,048 filings. Several other studies have also argued that the multiplicity of complex labour regulations and the cumbersome nature of compliances act as a barrier to the sector's growth. A rigid regime constrains the manufacturing sector and adds to high transaction costs.

To promote a transparent and simplified system to suit the contemporary business environment and facilitate ease of doing businesses without compromising labour welfare, the Centre has brought in a series of labour law reforms. Based on the recommendations of the Second Labour Commission (1999), 29 labour laws have been consolidated into four codes. These are the Wage Code dealing with fixation of the minimum wage; Social Security Code setting thresholds for social security schemes; Industrial Relations Code dealing with the classification of workers, provisions for registration of trade unions, unfair labour practices, lay-offs and retrenchment and resolution of industrial disputes and Occupational Safety, Health and Working Conditions Code specifying safety standards and working conditions.

This article discusses a few salient features of the Industrial Relations Code (IR Code) that are directed towards enhancing the efficiency and competitiveness of the manufacturing sector while maintaining labour welfare.

Broadly speaking, by modifying, revising and widening the definition of "industry", "employer", "employee", "worker", "strike", "retrenchment", "settlement" and various "threshold numbers", the IR Code has sought to bring a paradigm shift in labour laws at one level and in employee-employer relations at another.

The obligatory requirement of industrial establishments to take prior permission of the government before lay-offs, retrenchment and closure have been hugely relaxed by raising the threshold level of workers from 100 or more to 300 or more. Appropriate government initiative could even increase the threshold to higher numbers, by notification. Again, prior permission has been exempted if the lay-off is due to shortage of power, natural calamity, and in the case of a mine, if the lay-off is due to fire, flood, and excess of inflammable gas or explosion. Further, the concept of "deemed approval" has been introduced in case the appropriate government does not respond to the application seeking permission within 60 days.

Widening the scope of "retrenchment" in the IR Code would allow employers to practice arbitrary retrenchment and lay-offs. This would create a sense of insecurity among workers even with the provision for time-bound and defined compensation in lieu of retrenchment.

The IR code has introduced a new category of employment, "fixed-term employment", which will enjoy the same benefits including gratuity as given to the permanent workers. This will give

flexibility to industrial establishments to hire seasonal workers according to their requirements. There will be scope for shifting work and activities from permanent to fixed-term since no objective criteria are laid down for any minimum or maximum period nor any ceiling on the successive use of fixed-term contracts. “Contract labour” has been defined in the Social Security Code but it does not find any mention in the IR Code.

“Recognition of Negotiating Trade Union” in the IR Code has sought to streamline the negotiating processes within a time frame by removing complexities and minimising the number of trade unions. Stricter requirements for the recognition of trade union would reduce the collective bargaining power of workers.

Under the provisions of the IR Code, dispute resolution between an employer and employee shall be dealt through arbitration on the basis of a written agreement. This will be governed by the procedure under the Code. The IR Code prescribes a two-year limit for the conciliation officer to take an industrial dispute matter into conciliation, which might not be enough in many circumstances. Two-member industrial tribunals and the national industrial tribunal with one judicial and one administrative member will replace the existing multiple adjudicating bodies like the court of inquiry, board of conciliation and labour courts

Further, various essential aspects of the law such as the increase in the threshold for lay-offs, retrenchment, and closure could now be done through rule-making. This means the Central and state governments can always play around the threshold limits.

Trade Unions have observed that the IR codes are not labour friendly and there is a clear attempt to diminish the role of trade unions. The codes will place more than 74 per cent of industrial workers and 70 per cent of industrial establishments under the “hire and fire regime” at the will of the employers; even forming a trade union will be extremely difficult; there will be a virtual ban on workers’ right to strike and even collectively agitate for their grievances and demands.

Indeed, the IR Code seems to have been designed in a way that it would encourage negotiation between employee and employer on an individual basis and thereby reduce the role of collective bargaining by labour unions. The many one-sided concessions and waivers given to employers will not be conducive to achieving labour welfare. With power being given to the Central and state governments to dilute or waive off certain clauses, there could be greater complexity in law enforcement due to the presence of different laws in different states.

Overall, the IR code has given enormous flexibility to employers while commodifying labour. This is based on the premise that the flexible labour regime would enhance the competitiveness of the manufacturing sector. There are elements in the IR codes that would lead to labour insecurity. This will undermine the loyalty and commitment of labour, and consequently, productivity.

The larger question is whether the current conditions are conducive for such drastic labour reform. It is a time when millions have lost their jobs due to a sudden lockdown. The share of labour compensation in the national income in India has been declining from 38.5 per cent in 1981 to 35.4 per cent in 2013 (ILO, India Wage report). Automation and the greater use of technology in manufacturing have impacted labour demand. Given the contraction of the economy by 23.9 per cent in the first quarter, a demand push, not wage decline, is what is urgently needed to spur the economy.

Overall, reforming and simplifying labour laws are very much needed but a hire and fire regime will not fix the problems nor unleash the desired level of efficiency in the manufacturing sector.

In reality, the Indian manufacturing sector has many other challenges including those related to land, capital and technology. Therefore, in the name of reforms, the rights of labour should not be compromised by clipping the wings of trade unions.

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