

Away With All Labour Laws

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New Delhi : While the Manmohan Singh government's 'left-free second innings' is expected to usher in changes to India's archaic labour laws, the labour ministry is working on a quick-fix solution to help drop the country's notorious 'inspector raj' tag.

If all goes to plan, India Inc would no longer have to deal with labour inspectors turning up at their premises to check compliance with 43 central and myriad state labour legislations. Instead, firms can submit a certificate from a company secretary that validates their compliance with the numerous employment laws.

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Prime Minister Manmohan Singh led government's 'left free second innings' seems to be taking the battle against 'archaic labour laws' full steam ahead. The outgoing Union Labour Secretary, Ms Sudha Pillai, some time back shared with the media about the draft which is being prepared in the labour ministry to this effect.

The proposal, which would be shortly submitted in the form of a cabinet note, seeks to 'permit company secretaries to file compliance reports for labour laws, just like they give compliance reports for other laws.' As of now the role of the company secretary is limited to certifying the said firm's compliance with various statutes, which includes the companies act, 1956 and also the listing agreement with stock exchanges and the issue of compliance with labour laws is handled by the labour inspectors.

According to the government this new regime would boost India's global perception also. Ms Sudha Pillai, who has since demitted the post of Union Labour Secretary and has joined Planning Commission, explained the 'rationale' behind this move : "At most international fora, the pathetic compliance levels of Indian labour laws, especially in small and medium enterprises and the services sector, our labour laws were made purely for industry, but services now contribute over 55% of GDP and operate under a vague Shops & Establishments Act. Many countries are using labour issues..."

As can be expected the proposed change is a win-win for industry, employers and regulators which had been clamouring hard to do away with 'labour market rigidities'. A key point which usually finds mention and supposedly provides a legitimacy to these changes veers around a simple argument. It is said that with such institutional rigidities which result in high levels of labour costs it becomes difficult for the developing economies to compete at the world market which includes new production sites having weak labour institutions and hence, lower labour costs. Ranging from the IMF to the World Bank to the OECD, everybody seems to be pushing this what is known as labour market flexibility. It is a different matter that employers in countries like India "...[e]njoy the freedom to employ and exploit more than ninety percent of the workforce without taking account of any norm of civil society or rule of law. And, contrary to the European case, productivity of labour and profitability of capital increased manifold over the last two decades." (*Employment and Labour Market : The Myth of "Rigidity"*—Satyaki Roy, *Alternative Economic Survey*, India 2007-2008, Daanish Books, Delhi)

Interestingly, despite more than a month that (mainly) business dailies covered this press conference, there seems to be no reaction from the unions, organisations engaged in uniting labour at various levels. Should it be seen as a reaction to the way normally the 'inspector raj' unfolds itself before the labour—which seems to cover rather than expose the violations of different labour friendly laws at the shop floor level—or it is just a matter of underreporting that all those concerned people/formations have not noted it.

For close watchers of the labour scene in India, there is nothing surprising or disturbing about this 'radical' sounding proposal. In fact, the issue of deinstitutionalising and dismantling labour has been high on the agenda of the proponents of neoliberal changes in the Indian economy for a long time. And the proposal to do away with

'inspector raj'—which is constituted to verify compliance with labour laws—is part of this agenda only.

Of late, one has been witness to the determined assault on the labour laws in India through judicial caveats or legislative measures. A decade ago the then NDA government led by Mr Vajpayee had formed the 'Second National Labour Commission' (Oct 1999) to suggest rationalisation of existing laws relating to labour in the organised sector and also suggest 'umbrella' legislation for ensuring a minimum level of protection to workers in the unorganised sector. And without waiting for this commission to submit its report important changes were announced in the Industrial Disputes Act and Contract Labour System (Abolition and Regulation) act.

The growing clamour to end the 'Inspector Raj' raises few disturbing questions. Why it is that the 'Inspector Raj' becomes a dirty word in case of labour laws only and why the rulers seem to gloss over the fact that the phenomenon of 'Inspector Raj' of a different kind continues playing havoc with the lives of the ordinary wo/men. On the other hand there are attempts to strengthen it and make it powerful. There has been no curtailment of the powers of the Inspector Raj of the Indian police which was castigated as the 'biggest organised goonda force' in the country in a famous judgment by Justice A N Mullah decades ago.

As already explained corruption is rampant in the labour department and it is always a difficult task to locate genuine personnel in the department who are above it. Labour inspectors or their seniors who act at the interface of the department and the public seem to be afflicted with this 'disease' more. Definitely that does not seem to be the reason to end this 'regime'. If that would have the case then the powers that be would have been forced to take the unusual step of 'shutting down' all the government departments as none seems to be free from this malaise. Transparency International, the global corruption tracking watch dog, recently downgraded India's ranking from 72 to 85 in the list of world's corruption-plagued countries.

Why is it that the government wants to substitute the labour inspector by the company secretary?

A point worth noting is that despite presence of corruption at various levels in the labour department, the whole arrangement where the labour inspectors are authorised to verify compliance with labour laws in different units, does help the workers (albeit in a very limited way) to get some relief or forces the employers not to do away with labour laws completely. Apart from this at times judicial intervention also helps workers get some relief or compels the labour personnel to deal with a case properly. Perhaps one can get an idea of the limited impact this 'notorious inspector raj' has on the industrial units/owners/contractors from the no of cases filed by these personnel in different courts of the country and the amount of fine they have been able to recover from them as penalty. This amount runs into crores which can definitely be enhanced if there is stringent application of the laws and are able to overcome many of its loopholes. Another significant aspect of the intervention by the labour inspectors can be noted if one is able to look at judgements by different courts in all those matters where the labour inspectors have filed criminal cases against employers. A cursory glance at such judgments states that in more than 95 percent of such cases the judgments are in favour of the government i.e. in favour of the labour inspectors and the employers are forced to admit mistakes.

It is clear that for the owners of factories/industrial units/contractors/ other employers the 'notoriety' of the 'inspector raj' arises from the 'nuisance' they seem to create at various levels. One can easily notice the glee with which they welcomed the proposed move to substitute the labour inspector by company secretary.

Who is a company secretary? First and foremost thing is that s/he is an employee of the industrial unit/ service centre. Can one expect an employee of a concern to go against the interests of the owner and take steps which can hamper its immediate / long term interests. Definitely not.

To be fair to them they are not even trained for that work. A cursory glance at the syllabus formulated by the Indian Company Secretaries Institute (ICSI) for teaching company secretaries brings out the correct picture. During the three year degree course students have to cover subjects worth 1,800 marks. Out of this 1,800 only 40 marks are meant for labour laws. In fact, they are taught only limited no of labour laws.

The move to substitute the labour inspector by the company secretary has many other loopholes. The system of company secretary is present only in organised sector where merely 7 percent of the working population finds employment, rest of the 93 percent working people are engaged in unorganised sector. It is clear that the government wants to leave the broad masses of the working people at the mercy of the owners/employers/contractors by dismantling all such structures/arrangements which can provide relief to them in this unequal battle against capital.

Proponents of wide ranging changes in labour laws - supposedly to serve the interests of the capital better - also package their move in the binary of 'old' versus 'new'. In fact, they talk of doing away with 'archaic labour laws'. If one were to stick to this argument then by the same rationale one will have to get rid of many other laws which are not only more old but also better known, e.g. Indian Penal Code-1860, Transfer of Property Act-1882, Trust Act -1882, Telegraph Act-1885, Registration Act-1908, Negotiable Instrument Act-1881, Land Acquisition act-1894. One can go on enlisting similar laws which are still in operation and more old than the so-called 'archaic labour laws'. In fact all these labour laws are quite 'young' as compared to most of these laws/acts/ codes etc.

A close look at their genesis makes it clear that they have come up in the post second world war period which witnessed the emergence of a socialist bloc and militant working class movements in many other countries. The rulers of the newly independent India were also fired with the Utopian sounding imagination of building an inclusive, equitable society. The state thus willingly entered into a historic pact with labour which was reflected in the different labour laws in India which are meant to regulate labour market, protect employment and ensure social security of workers. It was also seen then as a state's entering into a historic pact with labour. One can also see the impact of the International Labour Organisation (ILO) in their formulation, which had come into existence then as part of the building and strengthening of United Nations Organisation (UNO).

In its hurry to placate India Inc and help boost India's 'Global Perception' government seems to have selectively forgotten its commitments towards labour and labour laws on international fora. It would be opportune to have a look at the Convention 81 which is related to labour inspection. It needs to be underlined that Indian government has not only accepted this convention but has been a signatory to it also. The task of labour inspection facilitates implementation of recommendations of International Labour Organisation. In the ILO Conference held in 2006 where there were discussions on a report on labour inspection it was duly emphasised that labour inspectorates should be fully independent of local authorities and labour inspectors should be such public servants who have permanent tenures and are free from any external pressures.

It was also underlined that to ensure proper implementation of labour laws it is incumbent that inspections take place at regular intervals and labour inspectors are allowed free access to different establishments and production units. Para 17 also seeks to ensure immediate legal action in case of violations of labour laws.

The report also mentions that in its 60 plus year history ILO has always recognised the importance of labour inspection. And looking at the recent changes in world economy— namely segmentation of labour markets, quantum jump in the no of migrant labourers, privatisation, growing sense of job insecurity and increasing pressure on workplace—it says that it is all the more necessary that labour receives extra protection.

It further adds that the manner in which more and more countries are implementing Convention 81 is a marker of the fact that labour inspection has played an important role in security of workers and implementation of labour laws. It concludes with the observation that a strong and effective labour inspectorate not only provides better protection to labour it also guarantees productivity of labour which is good for all.

Whether anybody sitting in the labour department and burning midnight oil to prepare the cabinet note is listening? □□□