LABOUR REFORMS IN CHINA AND INDIA: REFORM AGGRESSION (CHINA) VERSUS REFORM ALLERGY (INDIA)!

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Comparative research papers have generally concentrated on reform measures taken by China and India relating to the product market only. But the labour reform exercises in the two countries are worth comparing, which we do in this paper. The pre-reform institutional frameworks, the reform debates, the political aspects of reforms, the popular response to reform measures, and the problems and the intricacies involved in them are dealt with in this paper. There exist radical differences in the extent of rigidities in labour market, nature of industrial relations systems, the reform strategies, the political management of reforms, etc. between the two countries. The differences are explained in political and institutional factors.

I. INTRODUCTION

China and India followed similar developmental strategies prior to their respective reform periods (Srinivasan, 2003). The Chinese economic reform was a huge effort as compared to India’s, as India had already in place a significant presence of private sector. Both reaped the benefits of economic reforms in terms of faster economic growth; but there were some important differences. The Chinese economic growth was double the Indian average annual growth during 1978-93 (4.5 per cent); (Bosworth and Collins, 2007). But in recent years, this gap has been narrowing down—the average GDP growth rate of China was about 8.5 per cent during 1997-2005, while that of India has been around 8 per cent in recent years (ESCAP, 2006). India’s growth prospects seem to be brighter in the long run (Gylfason, 2006). Both the success stories are attributed to reforms introduced in different realms in recent years.

Economic reform process in India began during the Rajiv Gandhi’s rule, but did not gain momentum as a result of political set backs and opposition (Varshney, 1999). The balance of payment crisis in 1990-91 and the consequent conditions-attached structural adjustment loan significantly changed the reform process. It has been argued that reform of labour market and industrial relations institutions are complementary to product market reforms; indeed the effectiveness of product market reforms hinges on the implementation of factor market reforms. Employers are calling for ‘major’ labour reforms. By ‘major’ labour reforms, it is meant that the existing laws should be amended to provide for ‘free hire and fire’ and ‘free closure of firms’, among others. The governments (both central and regional) have been introducing reforms here and there (marginal, decentralised, and piecemeal). While the state is driven by its political logic, firms are driven by market logic. But employers (especially foreign firms) and pro-reform academics are not content with this approach. On the other hand, trade unions have been demanding some reforms which would widen the coverage of labour laws; better enforcement of labour laws, better economic and social security to both organised and unorganised workers...

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among others (Shyam Sundar, 2005a). Both the social actors have adopted ‘rigid’ positions and thus there prevails a ‘social deadlock’ over the reform contents and direction. The labour reform processes thus in India has been marginal, piecemeal and often decentralised (at the state level) and implicit; major reform demands from either side have been cleverly skirted. The reform process is indecisive and chaotic.

China started the reform process early (in the late 1970s) and achieved faster economic growth as seen above. China’s reform agenda of labour market and IRS agenda was heavy because the rigidities in the two were extensive. Along with economic reforms, it has been carrying out labour reforms gradually but strongly. It was gradual because of the social implications and the magnitude of reforms themselves; but the political commitment to policies and the reform process was strong. These two distinguish Chinese labour reform process from that of India. Notwithstanding the above, the labour reform process pursued in the 1990s, especially since the mid-1990s have resulted in welfare losses and social unrest. This caused the government to reconsider some of the labour reform measures. Accordingly, the Chinese government unveiled some re-reforms measures in 2006 which were kept for public response for some time; the response has been huge and significant. As a result of this social process, a new Employment Contract Law has recently been passed, and the new law will be effective from January 2008.

The discussion on labour reforms in the two countries can be better understood by placing them in the context of theoretical and empirical debates that have been raging. The issue of labour reforms has been making news all over the world in the past two decades or so. There is a group (which we designate for convenience as the “flexibility school”) which argues for fewer roles for labour regulations so as to afford flexibility to firms and other economic players to freely respond to market forces. Their prescriptions are fiercely contested by trade unions and academics believing in the role for institutions (we call this group again for convenience sake, “institutionalists”). The “flexibility school” regards the perfectly competitive market model as an ideal and disapprove any institutional interference with it. Workers in competitive markets wanting a job would secure one at the going market rate, which equals their marginal product. It is considered to be a fair and efficient system. Labour regulations in the form of Employment Protection Laws (EPL), centralised collective bargaining, minimum wage laws, etc., introduce distortions and rigidities and cripple the smooth working of the market forces. These hamper employers’ ability to make the desired changes (in the quantity, composition or the ‘price’ of labour) in the labour market. The rigidities cause misallocation of resources, mismatches; poor reward system and so on (Felipe and Hasan, 2006). As a result there could be slow growth of jobs. The three damaging effects of EPL are: unemployment spells become longer, workers at the ‘margin’ or ‘outsiders’ have little chances of entering the labour market, and inequalities prevail in the labour market.

On the other side of the debate, the “institutionalists” oppose deregulation and flexibility strategies and point out the dangers involved in them. It is well known that employers left to them would act opportunistically, myopically, and aggressively which may result in sub-optimal outcomes such as high labour turnover, low wages, poor working conditions, etc. The basic stand of the institutionalists is that labour regulations cure market failures (noted above) and equalise (to some extent) the bargaining power of the social actors.

The issues do not lend easy resolution. Government policies attempting to introduce labour flexibility have social and political implications such as unemployment (even in short run as the flexibility school argues) and the rise in unrest. They involve political costs such as alienation
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of workers (potential voters in strong, vocal, urban constituencies), social protests and electoral
reverses. They have well-known economic costs for employers and workers. The labour reform
process has become more controversial for three reasons: (a) Labour reforms are socially visible
and high social impact oriented; They belong to ‘mass politics (Varshney, 1999); (b) The strategic
twist here is that labour reforms and industrial peace are seen to be two important pre-requisites
for the entry of foreign capital which the capital-scarce developing countries need; (c) There is
considerable international pressure from highly mobile foreign capital and international lending
institutions like the IMF and the World Bank. Labour market and IRS are ‘contested terrains’
today.

Thus, it would be of interest to study the labour reform story (nature and extent of rigidities,
reform strategy, the political and social processes involved, problems, etc.) in the two countries.
The paper is presented in three major sections. Section II gives the story of labour reforms in
India, while Section III talks about labour reforms in China. The concluding section provides a
critical analysis of labour reform measures in the two countries.

II. INDIA

1. The Reform Debate

There exists fundamental right to form unions and to have freedom of industrial actions (not
right to strike, see Shyam Sundar, 2004b) subject to legal regulation in India. Although India
has ratified only five of the eight core conventions of the ILO, the Constitutional guarantees
and the liberal—pluralist legal framework uphold the principles contained in the core conventions
and India’s record in respecting the principles of freedom of association is certainly better than
that in other countries in Asia (Venkata Ratnam, 2006). The ‘logic of industrial peace’ dictated
the institutional framework of IRS and the labour market (Shyam Sundar, 1999; Kuruvilla and
Erickson, 2000). State intervention and political management of union movement were two
strategies to ensure order, stability and industrial discipline in the system. The ‘rules’ relating to
personnel, industrial relations and labour market aspects were determined by labour laws and
judicial process (case laws).

The institutional framework of the IRS and labour market are mainly covered by central
laws such as Trade Unions Act, 1926 (TU Act), Industrial Employment (Standing Orders) Act,
1948 (IESO Act), Industrial Disputes Act, 1947 (ID Act), and Contract Labour (Regulation
and Abolition) Act, 1970 (CLRA) (Anant et al., 2006; Venkata Ratnam, 2006). The labour
regulation debate in India mainly concerns employment and termination of workers. The IE
(SO) Act requires the employer to follow a tedious and extremely rigid procedure (domestic
enquiry) before terminating a worker on grounds of indiscipline. The judicial process has greatly
narrowed the freedom of the employer in terminating workers. These have made removal of
workers on grounds of ‘indiscipline’ difficult (Singh, 2002).

The contentious issues arising out of restrictive provisions of the ID Act are inability of the
employer to introduce changes in work organisation (Sec. 9-A), lay off, retrenchment and closure
in establishments employing 100 or more workers.

The employers desiring to change conditions of service relating to substantive issues like
wages, hours of work, introduction of new machinery or technology (which may result in
retrenchment), and change in workers’ strength should give 21 days of notice to affected workers.
The problem, from employers’ point of view is not with 21 days notice, but the resistance and
endless litigation that usually follow such notice. Therefore, this provision is argued to ‘delay
or obstruct all worthwhile changes in technology, workload, manning, shift work, etc” (Johri, 1996). This affects productivity and hurts competitiveness of firms (EFI, 2000). Employers demand freedom to restructure and reorganise operations. The more controversial is Chapter V-B provisions requiring the establishments (employing more than 100 workers) to obtain prior permission from the government before effecting lay off, retrenchment of workers or closure of firms. It has been pointed out that government for obvious political reasons rarely gives permission for closure or retrenchment. The compensation to be paid to workers affected by retrenchment and closure is less than that stipulated in China (Shyam Sundar, 2004a).

The CLRA provides for prohibition of, after consultation with the Advisory Board (tripartite in nature), employment of contract labour in the process, operation or other work which is incidental or necessary for the industry or is of perennial nature or is done ordinarily by regular workers or where it is sufficient to employ considerable number of full-time workers. Employers argue that firms need to concentrate on core competencies and contract out non-core and peripheral activities (SNCL, 2002) as the latter course would be least costly and more efficient. They demand that they should have the freedom to employ contract labour at least for non-core functions and in case of core activities under special circumstances (Venkata Ratnam, 2007). In short, the employers demand greater flexibility.

Trade unions stoutly resist the labour reform demands of the employers. They point out that various forms of insecurities have arisen in the new economic circumstances. The bargaining power of workers vis-à-vis employers has declined and strikes are withering away (Shyam Sundar, 2003, 2005b). Thus, they demand more and not less state intervention and social protection. While employers complain of labour code becoming thick, unions are disturbed about enforcement and compliance becoming thin. Trade unions demand removal of wage or size of establishment threshold for applying laws. They also demand (with their new interest in unorganised labour) social security laws for the unorganised. Chapter V-B provides employment security and unions would not agree to dilution in it. They demand that contract workers should be absorbed as regular workers in the event the contract system is abolished in a firm (Mahadevan, 1998). They are against liberalising engagement of contract labour as it will eventually result in substitution of regular workers with contract labour. In short, they demand more regulation, better law enforcement, job and social security, and protection of labour rights.

The empirical research using either macro or micro level data have not proved conclusive (Shyam Sundar, 2005a). We have a brief look at the debate. The jobless growth of the 1980s in India was attributed to rising power of unions, restrictive employment law, and rise in real wages (Nagaraj, 1994). The oft-cited studies in support of de-regulation are by Fallon and Lucas (1993) and Besley and Burgess (2004). These ideas have been contested (Nagaraj, 1994; Papola, 1994; Bhattacharjea, 2006; D’Souza, 2005). The basic thrust of the counterargument is that the evidence putting the blame on trade unions and labour laws is rather weak. The few but important micro level studies showed that employment laws and trade unions have not caused rigidities that employers frequently complain of. The main finding has been that firms have changed the levels and composition of employment notwithstanding tough employment laws (Deshpande et al., 1998, 2004).

2. ‘Soft Route’ to Labour Reforms
The failure of public sector, poor performance by industrial sector since mid-1960s, and inefficiencies associated with closed economy led to economic reforms process since early eighties. The balance of payment crisis in 1991 and the consequent conditional structural adjustment loan from the IMF led to intensification of reform process in the 1990s. The shift
from state regulation to market determination, larger role for private enterprise, reduction in space for public sector, and opening up of the economy were some of the radical changes introduced in the production system. Employers and reform supporters demanded liberalisation of IRS and labour market. The competition between countries for foreign capital and the ‘footloose’ character of it are exerting pressure on the government to think of labour reforms. The alliance between the political parties and its union affiliates is under strain (Shyam Sundar, 2005a, 2006c). Trade unions see the government to be advancing employers’ interests. Employers criticise the government for not taking bold and open labour reform measures.

Broadly, the reform measures include disinvestment in and privatisation of public sector units, relaxations in labour inspection system (measures include shift from compulsory inspection to inspection only on complaints or reports of violations, self-certification, joint inspections, change in attitude of inspectors), relaxations in selected laws applying to selected types of establishments like shopping malls, IT establishments, units in Special Economic Zones (SEZs), etc., permission of contract labour in non-core functions, reductions in employees strength in state sector (by a combination of voluntary retirement schemes (VRS), ban on fresh recruitment, merging and removal of posts, right-sizing staff-management ratios, abolition or merger of posts on superannuation of employees, etc), lengthening of tenure of collective agreements in public sector enterprises (from 5 to 10 years), decentralisation of collective bargaining (in banks), and so on.

Employers are pressuring the government to introduce explicit changes in legal framework regulating unions and strikes. The state and its organs are resisting in many ways. The central government sought to control unhealthy trend of multiplicity of trade unions by raising the membership threshold to 10 per cent of employee strength or 100 whichever is lower subject to the minimum of seven in 2001. In order to free some categories of establishments (like those in SEZs or IT establishments) from strikes they have been declared as ‘public utility services’ under the ID Act. Two, declare strikes of government employees illegal and take disciplinary measures on striking employees. The government employees and teachers in Tamil Nadu went on strike in July 2003 to protest against the change in conditions of service. The Tamil Nadu government imposed the Tamil Nadu Essential Services Maintenance Act (ESMA), 2002 and empowering itself with an amendment to the said Act dismissed the strikers numbering in thousands. The employees unions’ sought relief from the judiciary. The Supreme Court observed in the case of Tamil Nadu Government Staff Strike in 2005 that the public employees have no fundamental, statutory and moral or equitable strike in the country (Venkata Ratnam, 2006). Three, use repressive measures on unions and strikers. The recent instance is the HMSI (Honda Motorcycles and Scooters India Limited) episode. The workers in HMSI sought to unionise. The HMSI management resisted union entry into the firm. The state (political executive, administration, police) had unfailingly come to the aid of HMSI in its efforts to discipline workers and resist unions (Shyam Sundar, 2005b).

The central government adopted the soft route to labour reforms. It sought to create a ‘climate of opinion’ favourable to labour reforms by several means such as constitution of Special Committees and Taskforces and a National Commission on Labour (all of which recommended labour flexibility measures), announcement of labour reform proposals in the central Budget (which is unusual), talks by leaders representing the government in tripartite bodies and public occasions, and so on. It is quite another thing that notwithstanding all these, the controversial regulations still remain on the statute book. Secondly, the government sought to enhance the reform image of the government both domestically and internationally by inducting pro-reform leaders as cabinet ministers. These leaders constantly aired the reform intentions of the
government. It is interesting to note that whenever trade unions took streets on reform issues the labour minister or sometimes the prime minister would seek to soften the damage by assuring that workers' interests would fully be protected in case of reforms and workers' representatives would be consulted before taking decisions.

Thirdly, the central government used “federal politics” to shift labour reform agenda to the state governments (Jenkins, 2004). There are reasons to use federal politics on the issue of labour reforms: (a) “Labour” is in the Concurrent List of the Constitution whereby even state governments can legislate on certain matters, (b) The state governments are in competition for ‘capital’ and it makes sense to offer incentives to attract capital; labour flexibility is one of them, (c) The labour reforms at the state level would ‘localise’ workers’ protests. Also, the unions may not often know what is happening in other states, (d) There is then the ‘policy learning’ (Jenkins, 2004) and ‘policy imitation’ angles to this. This gives scope for pressure group politics at the state level. Reforms in one state are used by employers in another to put pressure on the latter to execute similar reforms in it. The policy learning and pressure group politics could also be at the national level. Some major reform measures taken by some state governments (see Venkata Ratnam, 2007 for more details; see also Shyam Sundar, 2006a) include the following: The Government of Maharashtra began to give permissions for closures more liberally in recent times. The Government of Andhra Pradesh amended the Contract Labour (Regulation and Prohibition) Act to allow employment of contract labour even in core areas for temporary periods to meet market demand. The Uttar Pradesh government issued notifications providing for self certification, joint inspection and exemptions to units with SA (Social Accountability) 8000 certification.

Fourthly, the government allowed “reforms by stealth” (Bardhan, 2002) on “hard” labour reform issues. The government used, to use less offensive term, “implicit” methods to achieve its objective. This method involves keeping formal institutional framework in tact and allowing employers to introduce acts amounting to labour reforms. Illegal closures, prolonged lockouts (often closures in disguise), increasing use of contract labour, outsourcing, subcontracting, setting up small units to escape law, voluntary retirement schemes (VRS), and job freeze are some of the measures employers in both private and public sectors have employed to circumvent the law and trade unions (Bardhan, 2002; Roy Choudhury, 2005; Shyam Sundar, 2005b).

3. Why Soft Route?

It is important to understand the political economy of labour reforms in the Indian context. Labour reforms belong to ‘mass politics’ as opposed to say reform of capital markets. They “have potentially negative or highly uncertain consequences in mass politics” (Varshney, 1999). Two issues brought labour reforms to the terrain of ‘mass politics’, viz. state sector reforms and the labour flexibility measures. The first issue provoked many a protests from the well-organised state sector employees. The major protest incidence zone in the 1990s has been the public sector. The public sector workers were well organised and were able to mobilise support and action with ease. The left-based and left-sympathetic organisations have a significant presence and support in government sector. There have been many anti-privatisation strikes and struggles. The trade unions launched several country-wide strikes on host of issues such as disinvestment, hire and fire measures, right to strike, etc. They used other forms of protest such as march to parliament, conventions, rallies, hunger strikes, signing of petitions, and so on (Shyam Sundar, 2003). The government has been avoiding the ‘hard’ reform measures for fear of backlash (Table 1). The electoral defeat of the NDA
government and of some pro-reform governments (for instance, in Andhra Pradesh and Karnataka) has been interpreted as vote against their economic policies. The electoral debacle is said to prompt political parties to be careful in their experiments in future.

There are other reasons also like union resistance, pressure from coalition partners (an important factor especially in these days of coalition governments), absence of meaningful social dialogue, market options available to employers, absence of social protection and retraining mechanisms. Also, the economic benefits resulting from labour flexibility are not significant enough to encourage the government to effect labour reforms. Thus, the labour reform strategy of the government has two aspects. On the one hand, it has deferred explicit and formal reform measures on ‘hard’ issues and allowed these reforms implicitly. On the other hand, it has undertaken some explicit reforms on ‘soft’ issues. Thus, it has been a ‘soft route’ to labour reforms. The Chinese story of labour reforms should be of interest to Indian researchers. We turn to it next.

III. CHINA

1. Labour Market in the Planning Period

It is important to discuss the pre-reform labour market and industrial relations contexts in China to understand its labour reforms. The Ministry of Labour and regional labour bureaus developed annual employment plans which the firms were required to follow (Tao, 2006). The administrative allocation of workers to state sector units (which then dominated the urban employment) meant little or no freedom to hire for management. Also, wages were determined by administrative guidelines based on egalitarian principles which aimed at narrowing wage differentials. Thus, instead of the labour market, the government agencies performed the labour allocative and pricing functions; in that sense ‘labour market’ was absent (Knight and Song, 2005). On the other hand, workers did not enjoy the right to resign from jobs (Lu, 2001). Urban unemployment was kept deliberately low by restricting migration from rural areas (via hukou system, a kind of household register card) and egalitarian urban employment policies which resulted in disguised unemployment in the state sector (Knight and Song, 2005). The workers were tied to the enterprises to which they were allocated and the latter provided social welfare

Table 1

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<thead>
<tr>
<th>Hard or indeterminate labour reform issues</th>
<th>Instances of implicit strategy on hard issues</th>
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<tbody>
<tr>
<td>Removal of employment issue appended to Section 9-A</td>
<td>Voluntary retirement schemes (VRS)</td>
</tr>
<tr>
<td>Right to lay-off and retrenchment</td>
<td>VRS, job freeze, partial termination of activities, non-filling vacancies, etc.</td>
</tr>
<tr>
<td>Exit clause (right to closure)</td>
<td>Illegal and prolonged lockouts, non-payment of government dues (like electricity or water dues), partial closures</td>
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<tr>
<td>Free resort to contract labour (at the central level)</td>
<td>Declare certain ancillary activities performed in SEZ as “temporary and intermittent work”; level reform to states; outsourcing, etc.</td>
</tr>
<tr>
<td>Privatisation</td>
<td>Disinvestment</td>
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<tr>
<td>Trade union recognition</td>
<td>Leave it to state level laws (like BIR Act) or to individual firms</td>
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Note: (a) - see Anant et al. (2006), Johri (1996), Ram Mohan (2005), Shyam Sundar (2005b, 2006a, (c), Venkata Ratnam (2006, 2007).

BIR Act – Bombay Industrial Relations Act, 1946.
benefits both at the workplace (like work injury, retirement benefits, etc) and outside the workplace like housing, education, health, etc. (Knight and Song, 2005). Absence of freedom in hiring and firing, indefinite job tenure, overstaffing, unsound wage determination policies, and burden of social security expenditure on the enterprises constituted rigidities (Fan et al., 1998; Benson et al., 2000; Tao, 2006). The urban reform process which began since late 1970s and early 1980s sought to remove or reduce these rigidities.

2. Labour Reform Measures

(i) Building up of a National Labour Market

The households in China are required to have a hukou card to have access to amenities in the urban areas such as housing and education. But hukous are expensive and limited. Most rural people cannot afford to buy a hukou or live without it (ADB, 2005). The hukou system has been gradually deregulated – e.g. giving urban hukou to rural migrants with fixed job and home in cities having less than 1 lakh inhabitants; removal of restrictions relating to categories of jobs in which rural migrants could be employed and of administrative controls on firms employing rural migrants, etc. (Reutersward, 2005, Angang and Xin, 2007). From the ‘red light’ period when rural people were prohibited entry into urban areas, the policy shifted to ‘yellow light’ period when conditional access to urban areas was allowed, and to ‘green light’ period during which (especially from 2000) reform of hukou system mentioned above took place and integration and urban labour markets to form a ‘national labour market’ took full form (Angang and Xin, 2007).

(ii) The Contract System

The contract system was started in 1983 (Lee, 1997; Gutherie, 1999) and was firmed up in the form of law in 1986. It required that new industrial workers (workers employed after 12 December, 1986) to be employed as “contract workers” (Hu and Li, 1993). The contract worker works for a fixed duration and there is no guarantee of re-employment at the end of the contract tenure. It chipped away the ‘iron rice bowl’ (Shyam Sundar, 2004a). The length of the contract varies between 1 and 10 years depending on the skill level and training (Atkinson, 1990). The spread of the contract system proved to be modest in the initial stages (Meng, 2000). The Communist Party made its intentions clear in the early 1990s. It announced in the early 1990s its intention to switch to a market economy. It also pronounced that employment generation was not its task (cited in Lee and Kuruvilla, 2001). The ‘iron rice bowl’ was finally broken in 1994 when the Labour Law was enacted. The State-Owned Enterprises (SOEs) could not hire anybody on permanent contracts and switch temporary or contract workers to permanent status (Lee and Kuruvilla, 2001; Knight and Song, 2005; Lu, 2001). The evolution of contract system is indicative of ‘gradualist approach’ to reforms (Lu, 2001).

In the pre-reform period firing workers was virtually ruled out. But post-reform, employers enjoy the right to dismiss workers on certain grounds such as indiscipline, poor performance during the probationary period, violation of company rules or bankruptcy of firms (Benson et al., 2000). The “Dismissal of Discipline-Violating Workers by State-Owned Enterprises” was introduced to curb labour indiscipline in SOEs (Atkinson, 1990). Employers terminating the services of workers should give 30 days’ notice and 30 days’ pay per year of service as severance benefits (Shyam Sundar, 2004a; see also Table A.1, Appendix). The Chinese employers can summarily dismiss erring workers, need not pay wages in lieu of notice of dismissal to workers, and more importantly need not get prior authorisation from the government for collective
redundancies. But severance compensation in China is higher than that prevails in India. All these suggest presence of considerable numerical flexibility.

(iii) SOE Reform and Lay Offs

The main objective of reform of the state sector was to improve its efficiency and reduce the burden on the government resulting from increasing presence of loss-making state enterprises. The government adopted the policy of disposing of the small and medium public enterprises while keeping the larger enterprises with it. This strategy is known as “seizing the large and letting go of the small” policy (Knight and Song, 2005; Liu et al., 2006; Ram Mohan, 2005). The government has not been bolder because it was felt that gradual process of privatisation and exemption of large enterprises would keep social discontent manageable (Ram Mohan, 2005).

The SOEs suffered from the problem of overstaffing and badly required trimming and right sizing. The Optimal Labour Reorganization Scheme was introduced nationwide in 1989 to identify and reduce surplus labour in SOEs (Knight and Song, 2005). While estimates of surplus labour are problematic, the official estimates range from one-third to one-half of the workforce in some SOEs (Fan et al., 1998; Knight and Song, 2005). The redundancy programme was initiated on a trial basis in 1994 and fully launched in 1997 (Knight and Song, 2005). As a result, some 45 million workers (four-fifths of them from state sector) were laid off during 1995-2002 (Tao, 2006; Knight and Song, 2005; Lee and Kuruvilla, 2001). This transferred the protected workers employed at a high cost from the state sector to the market and from hidden to open unemployment. The government took measures to soften the damage caused by reform measures. The surplus workers were first relocated in subsidiaries rather than firing them straight away (Lee and Kuruvilla, 2001). The government established new sub-companies such as shops, hotels and restaurants, travel agencies and companies engaged in any kind of manufacturing and services, principally for absorbing surplus labour (Sheehan et al., 2000). The damaging part of these exercises is deskilling, movement of workers from semiskilled to unskilled work (Ibid). The length of working week was reduced from six to five days.

(iv) Unemployment Insurance (UI) Scheme

The “Interim Regulations for State-Owned Enterprise Workers’ Wait-for-Employment Insurance” were introduced in July 1986. It is interesting to note that this coincided with the introduction of the contract system and bankruptcy laws (making possible bankruptcy) and provision of some freedom to SOEs for dismissing workers (Atkinson, 1990). Atkinson (1990) correctly points out these have to be viewed as a ‘package’. The Unemployment Insurance Scheme generally covered workers in state enterprises, but some cities chose to extend it to others (Atkinson, 1990). Presently, all unemployed employees in SOEs, urban collectivities, foreign-funded firms and private enterprises in urban areas are covered by the UI scheme. According to the revised scheme, workers paying premium for 1 to 5 years would be eligible to receive UB for 1 year, those with contribution period ranging from 5 to 10 years could get benefits for one and a half years and those contributing premium for more than 10 years would be entitled to the maximum period of 2 years (Ibid).

(v) The Xiagang System

The workers recruited before the introduction of the contract system (1984 or 1986) could become xiagang. They would remain in the muster rolls of the relinquishing firms though not
reporting for work (Knight and Song, 2005). They could get some financial assistance in the form of living subsidies. They could remain in the re-employment centres which provided retraining and job search assistance services. These workers could stay in the centres until they got a job or up to 3 years, whichever is earlier. Beyond this period, the worker becomes explicitly unemployed (Tao, 2006). After this, the worker could claim unemployment benefit noted above. Thus, some of the laid off state sector workers could enjoy up to 5 years of unemployment assistance (Ibid). As the re-employment centre programme was phased out in 2002 (2001 according to Knight and Song, 2005), the newly laid-off workers since then receive only unemployment benefits for two years (Tao, 2006). The effectiveness of the xianggang scheme was scrutinised. Official versions tell success tales: most workers received the stipulated benefits and retraining centres managed high rate of job-referrals. But predictably, some researchers found poor performance in terms of benefit coverage and re-employment (Tao, 2006; Brooks and Tao, 2003).

(vi) Wage Flexibility

In the command regime, wages were determined administratively via laws and directives and wages were based on age and experience of the workers in SOEs. Wage flexibility measures have been implemented since late 1970s (Brooks and Tao, 2003, Box 1; Fan et al., 1998; Meng, 2000). The first reform measure changed the wage bill system from ‘fixed quota system’ to ‘floating’ wage bill system – the wage bill was linked to firm’s profitability and the firm could retain a certain proportion of profits (after paying to the state) for welfare provision and bonuses. Bonus payment system initially subject to ceilings (of say up to 5 per cent of total wage bill) was introduced; this ceiling was gradually removed. It is reported that bonus was paid in equal amount to all. Piece-wage system was re-instituted and it grew (Lee, 1997). The individual contract system provided scope for altering the determinants of wages, though not radically. Job responsibility, educational attainments, training began to matter for workers’ pay. Wages of individual workers came to be linked to their performance. Thus, ‘wage plus bonus’ system came to be instituted (Meng, 2000; Knight and Song, 2005). Since late 1970s when reform process started, the share of basic wage declined from more than four-fifths in 1978 to little over half by mid-1990s and the share of bonus payments increased considerably from less than 3 per cent to 16-20 per cent in the 1990s (Meng, 2000, Table 6.2, p.84).

(vii) Trade Unions, Collective Bargaining and Strikes

The labour relations issue assumed importance as the government sought to introduce the reform measures such as contract system of employment, economic determination of wages, and restructuring of state enterprises. Restructuring of employment relations should be complemented by sound labour relations system. Labour Law (1994) and Trade Union (TU) Law, 1950 (amended in 1992 and 2001, http://www.acftu.org.cn/unionlaw.htm) sought to provide the legal framework of labour relations. Although workers enjoy the right to organise or join trade unions, the ACFTU enjoys monopoly position legally (Art. 2 of TU Law). The trade unions in China are led by the party and act as ‘transmission belts’ between the party and masses (Kuruvilla and Erickson, 2000). The official unions have to perform dual functions in the state corporatist system, viz. remain a part of state apparatus and represent workers’ interests (Chen, 2003). There are a number of tales of suppression of the rise of independent unions and harassment met to rebel leaders and spontaneous protests (ICFTU, 2006). It is argued that the
ACFTU being a pliable instrument of the state could only serve the interests of the state rather than that of the workers. The state controlled union could not resist the reform policies that affected the welfare of workers and the state merely expected the unions to acquiesce in the development strategy of the state (Ng and Ip, 2007).

The right to strike was removed from the Constitution in 1982 as there is no conflict of interest in a command economy. The Occupational Safety Law empowers the workers facing dangers to their personal safety to stop work; but this right is denied in practice (ICFTU, 2006). The biggest blow is the legal requirement that unions should help restoration of “normal order of production” (Art. 27 of TU Law). The Labour Law (Arts. 33 to 35) and TU Law (Art. 20) provide for the development of collective bargaining. Apart from the individual labour contract, there could be collective contracts, which would cover wages, hours of work, leave and rest periods, safety and sanitation and so on, between collective of workers (trade union or representatives of workers) and employer. The collective contracts (scrutinised by the labour administrative department) are binding on both parties. Collective consultation is one of the mediums for dispute resolution (Art. 77 of Labour Law). Collective contract is accorded secondary status and the individual contract as the primary status (Vice-Minister of Labour quoted in Taylor et al., 2003). The collective contract making process in China does not reflect the classic features of collective bargaining process in the Western countries (Warner and Ng, 1999; Levine, 1997; Taylor et al., 2003). The absence of independent union organisation and organisational strength, limited presence of unions in private and foreign enterprises, undue emphasis on ‘consensus’ and aversion to conflict, and the existence of the ‘shadow of the state’ are seen to blunt the development of this institution (ICFTU, 2006; Kuruvilla and Erickson, 2000; Shyam Sundar, 2004a).

It is interesting to note that trade unions were not wholly ineffective and that they served the interests of workers to the extent they could. The captive status of trade unions in China seems to be not wholly bad. The Communist Party entrusted the task of stabilising the workforce against the traumatic shock caused by unemployment, a necessary price to bring the SOEs back to health (Ng and Ip, 2007). The ACFTU in response pledged its full support the government to promote, sponsor and quicken the reform measures (http://www.acftu.org.cn/legref.htm). The ACFTU operating within this policy framework sought to perform three functions, viz. (a) to articulate the needs of the urban workers especially the laid off workers, (b) participate in formulation of developmental programmes and of labour laws (and follow-up laws and regulations) and express views and interests of workers (http://www.acftu.org.cn/legref.htm), and (c) extend organisational support to help the affected unemployed workers. It is interesting to note the specific aspects relating to (c) here. It (a) played an active role in building a nationwide infrastructure of training facilities and institutions and collaborated with educational and academic institutions in providing training and retraining, (b) assessed and certified the newly acquired skills of workers along with local labour bureaus, (c) lent money to affected workers, (d) sponsored training centres, (e) required its affiliates to train workers and help them to secure re-employment by using its extensive contact networks, (f) concentrated specially on women workers to improve their competitiveness by holding weekend schools and designed training programmes suiting the local needs, (g) provided technical and financial assistance to loss-making state enterprises (with a reported success rate of 80 per cent), and (h) set up nationwide network of service centres to offer advice to the jobless workers (Ng and Ip, 2007).
(viii) Labour Unrest

Policy makers feared resistance from workers and labour unrest over reforms. Predictably, the post-reform period witnessed increasing incidence of labour disputes, newer forms of protests (which would make the Party and the government agencies take notice) like sit-down protests, traffic jams, parades, demonstrations, suicide squads, blocking the working of the government, violence towards enterprise managers and buildings (Cheng, 2004; Sheehan et al., 2000; Shen, 2006). There has been a “huge upsurge in demonstrations, strikes, and other kinds of protests … in the past few years” (Global Labor Strategies, 2006; ICFTU, 2006)). The number of registered labour disputes increased during the reform period. The number of registered labour disputes was 260,471 in 2004, and it rose to 314,000 in the next year. The number of collective disputes hovered around 19,000 in a year (Shen, 2006). The social and political consequences of massive lay-offs and consequent rise in unemployment are increase in poverty (as indicated by the coverage of the programme of minimum cost of living), rise in labour disputes, growing sense of insecurity (as a result, urban residents desired restrictions on rural migrants to urban areas), widening gaps in income and social status between unemployed and the newly employed, and fast growing crime rates (Angang and Xin, 2007). Predictably, the recent reform efforts sought to take some corrective actions.

(ix) Recent Reform Measures

Various factors like changing labour relationships and labour unrest prompted the central government to think of reforming the Labour Law, 1994 (Global Labor Strategies, 2006). The Draft Law incorporating the reform measures was released by the government for comments. It is learnt that the response has been massive (nearly 2 lakh responses) and the majority of them was from the workers (Global Labor Strategies, 2006). The major shortcomings of the contract and the labour relations system are as follows: A good number of workers work without contracts. Only a few contracts were in written form and most of them were of short duration. Fixed-term contract workers receive no severance compensation. Probationary period clauses became problematic. The labour dispatch agency workers have been increasingly used. Labour relations are poorly developed. The reform measures sought to address these issues among others. There was strong opposition to reform measures from the foreign investors (ACCPRC, 2006; Global Labor Strategies, 2006s); indeed the foreign companies threatened to quit China in the event of proposed contract law was enacted (Khan and Barboza, 2007).

It is learnt that the new Law on Employment Contracts has been adopted by the Standing Committee of the 10th National People’s Congress on 29 June 2007 and is set to come into effect from 1 January 2008 (Khan and Barboza, 2007). The new labour law has sought to strengthen the protections to workers. It requires employers to issue “written labour contract” and the law specifies its contents (Baker and McKenzie, 2007). It directs the employer not to retain employee’s resident identity card. The employer should provide life-time employment to workers with 10 years of service or their fixed-term contracts have been renewed consecutively twice (Chapter 2). Severance pay is payable to even workers on fixed term contracts unless the worker refuses the offer of renewal of it (Art. 46). In the new law, the employer in the event of reducing the workforce by more than 19 persons or less than 20 but accounts for 10 per cent of it should explain to the trade union or the workers 30 days in advance, consider the opinions of the union and report the proposed reduction plan to the labour department (Art. 41). It has defined the probation period for different categories of jobs and has stipulated that the employer uses
only one probation period in case of any worker. The new law has also sought to strengthen union role in the affairs concerning workers, be it contract formation, lay offs, wages and work conditions. While employers (especially foreign) feel the new law will raise the labour costs, some analysts wish to see how the new law is going to be enforced, and others point out that the new law has not altered the union status, provisions regarding strikes, etc (Global Labor Strategies, 2007).

IV. CONCLUSIONS

The Indian labour reform story reveals a ‘mixed picture’. The government is under pressure to introduce ‘hard’ labour reforms such as privatisation, amendment to ID Act to relax the regulations governing retrenchment and closure, and to liberalise contract labour law. But trade unions have been vocal and have succeeded in stalling these reform measures. The government has resorted to ‘soft’ and ‘implicit’ routes by which it has sought to afford labour market flexibility to employers. The employers, especially foreign firms, demand explicit reforms. The soft route has been preferred because of several factors like political costs of hard reforms, opposition from coalition partners, mass struggles by trade unions and allied interest groups, and so on. Finally, absence of unemployment benefit system and retraining facilities (the National Renewal Fund was a disaster as is well known) weakened the case for labour flexibility.

The Chinese story of labour reforms is interesting in several respects. The reform strategy was to introduce reforms gradually, but definitely. The reforms causing unemployment, loss of privileges, and dislocation were introduced with great caution often gradually fearing social and industrial unrest – the fine example of this approach is the gradual but definite introduction of the contract system. Secondly, the reforms were accompanied or preceded by social protection measures to soften the impact of them. The government designed social protection measures such as unemployment insurance scheme, re-employment centre scheme, retraining, relocation in subsidiaries, etc. This is known as “make the channel before the water comes” (Sheehan et al., 2000). Thirdly, the Chinese government unlike its Indian counterpart enjoyed institutional, political, and organisational support from the official trade union, the ACFTU. But the two important lessons from the Chinese story is that (a) it is undesirable to create more labour flexibility than the socio-economic system could accommodate, and (b) the heavy dose of radical reforms however well planned could result in social unrest and dislocation. Indeed, the recent reform measure in the form of proposed new Contract Law seeks to strengthen the protections to workers. The absence of a free collective bargaining environment and the inadequate dispute resolution machinery are two disturbing features of the industrial relations system in China.

References


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Appendix 1

Table 1: Statutory Regulation of Termination of Contracts in China and India

<table>
<thead>
<tr>
<th>Sl. Nos.</th>
<th>Particulars</th>
<th>China</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Statutory regulation of unfair/unjustified dismissal of individual worker</td>
<td>Generally, No</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Must an employer justify a dismissal?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Claim of reinstatement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>Statutory notice period and compensation in lieu of notice for contracts of indefinite duration</td>
<td>30 days (flat)</td>
<td>1 month’s notice (flat)</td>
</tr>
<tr>
<td></td>
<td>Notice period (in relation to service)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pay in lieu of notice?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>III</td>
<td>Statutory provisions relating to collective redundancies</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Advanced notice to administration required?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Administrative authorisation required?</td>
<td>No</td>
<td>Yes (for 100+ establishments)</td>
</tr>
<tr>
<td></td>
<td>Statutory compensation</td>
<td>Generally 1 month’s wage for each year of service</td>
<td>Generally, 15 days’ wages per year of service</td>
</tr>
</tbody>
</table>