DEBATE ON LABOUR MARKET REFORMS IN INDIA: A CASE OF MISPLACED FOCUS

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The paper highlights the main issues that have emerged thus far in the debate on labour market reforms in India. The dominant issue in this debate is the inflexibility of the labour market supposed to have been caused by labour regulations. There is, however, enough evidence of increased labour flexibility since the 1980s, though no significant changes in labour regulations took place in this period. After briefly discussing important labour regulations and their coverage and the measures through which increased labour flexibility has been achieved, the paper questions the focus of the debate on labour market reforms and on labour regulations in India. It argues that the focus of this debate is rather narrow, both in terms of the aspects and issues and the proportion of Indian workers for whom the debate has relevance.

I. INTRODUCTION

Reforms in the labour market aimed at increasing flexibility of labour use by bringing about changes in legislative framework has been a subject of debate for over 20 years now. The intensity of the debate, however, increased with economic reforms of the 1990s. Policy changes to facilitate globalisation of the economy have brought the subject of labour market reforms into sharp focus.

It has been argued in this context that the Indian labour market is highly regulated causing rigidities in the adjustment in the use of labour in enterprises, which result in high direct transaction costs, reduce efficiency in production and make it difficult for them to successfully operate in a competitive environment. These rigidities also tend to discourage investment, both domestic and foreign, expansion in output and increase in employment. It is, therefore, considered necessary that ‘reforms’ be brought about in the labour market through changes in the legislative framework for labour regulation, not only to encourage investment and growth of output, but also for expansion of employment in industry.

In this paper we start with a statement of the main issues that have emerged thus far in the debate on labour market reforms in India. We then discuss briefly the important labour regulations in the country, their significance in terms of coverage and effectiveness with a view to putting the entire debate on labour reforms in a perspective, so as to understand what is and what is not under contention. There have been no significant changes in labour regulations in India in recent past. However, there is enough evidence of increased labour flexibility since the 1980s. We discuss the measures through which this increased labour flexibility has been achieved in this period. Finally, we conclude by questioning the focus of this debate on labour market reforms and on labour regulations. We argue that the focus of this debate is rather narrow, both in terms of the aspects and issues and the proportion of Indian workers for whom the debate has relevance.

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II. ISSUES IN THE LABOUR REGULATIONS DEBATE IN INDIA

1. Historical Backdrop

There is no doubt that the measures to regulate employment of labour—laws, rules and conventions—have their origin in India in the recognition of unequal power balance between labour and capital. Labour has been considered to be a weaker party vis-à-vis the employer and therefore susceptible to exploitation and in need for protection. The motivation to protect labour has been further strengthened by ideas of equity and social justice that the national movement for Independence espoused and which were finally also enshrined in the Indian Constitution (Singh, 2003).

Establishment of International Labour Organisation (ILO) in 1919 was a landmark event in the annals of labour history internationally, mandating the necessity of labour legislations to protect the interests of workers. It has developed conventions and recommendations on labour standards for facilitating improvements in labour conditions, which have been adopted by its member countries including India. India is one of the founding members of the ILO and has been a permanent member of the ILO Governing Body since 1922. Dr. Shankar Dayal Sharma, then President of India, speaking on the release of a commemorative stamp on the occasion of the 75th anniversary of the ILO said that “The Constitution of the ILO and the Declaration of Philadelphia have as their objectives social justice, equality of treatment between men and women workers, ensuring a living wage and the social security of workers. These are indeed laudable aims which we, in India, have tried to secure through various constitutional and legislative mechanisms.”

Along with the birth of ILO, the All India Trade Unions Congress (AITUC) also came into existence in India in 1920, which spearheaded the movement for legislation to alleviate the conditions of workers. Since then, the trade union movements in the country have played an important role in sharpening the scope and content of regulatory measures.

2. Labour Regulations in India

The need to legislate to protect the interest of workers and also to ensure the smooth process of production in enterprises was recognised by the British rulers of India. The colonial government passed the Factories Act in 1880 laying down the minimum conditions of work in terms of hygiene, safety and hours of work, etc. Several revisions were followed in the pre-Independence period in 1891, 1911, and so on. The Trade Union Act passed in 1926 set out procedures for registration of unions and protection of unions from harassment. The pressure for protection of workers against risks at work and life mounted in the 1920s. As a result, several legislations were passed regulating work and providing social security before Independence. The provision of compensation to workmen for any injury during the course of employment was made in the Workman’s Compensation Act passed in 1923. Payment of Wages Act was passed in 1936, to regulate intervals between successive wage payments, over-time payments and deduction from the wage paid to the worker. In the sphere of industrial relations, the Trade Disputes Act of 1929 aimed to create an institutional framework to settle disputes. The Great Depression and its effects on the Bombay industry with large-scale wage cuts and resulting disputes led to some important regulations such as the Bombay Industrial Dispute Act of 1932. The Act provided that an industrial worker has the right to know the terms and conditions of his employment and the rules of discipline he was expected to follow. The “general aim of the Bombay legislations was to allow collective bargaining in a bilateral monopoly situation” (Pages and Roy, 2006). Large and dominant unions were recognised as the sole representatives of the workers.
Thus, the emergence of labour regulations in India can be traced back to the period of British rule in India. Crucial labour laws governing various aspects of work were, however, passed in quick succession of each other after Independence. And since 1947, there has been a complete change in the approach to labour legislation. The basic philosophy itself underwent a change and the ideas of social justice and welfare state as enshrined in the Constitution of India became the guiding principles for the formulation of labour regulations (Thakur, 2007). The Constitution made specific mention of the duties that the state owes to labour for their social regeneration and economic upliftment. One of the significant duties which has a direct bearing on social security legislation is the duty to make effective provision for securing public assistance in the case of unemployment, old age, sickness, disablement and other cases of undeserved want (Papola et al., 2007).

In an independent democratic country, it was considered necessary that the rights of employers to hire, dismiss and alter conditions of employment to the workers’ detriments were subjected to judicial scrutiny. Accordingly, the Industrial Disputes Act (IDA) enacted in 1947 provided protection to the workmen against layoffs, retrenchment and closure and for creation, maintenance and promotion of industrial peace in industrial enterprises. This Act was later amended in 1972, 1976, and in 1982 seemingly giving progressively greater protection to workers. Factories Act 1948, which replaced the one passed in 1884, aims at regulating the conditions of work in manufacturing establishments and to ensure adequate safety, sanitary, health, welfare measures, hours of work, leave with wages and weekly off for workers employed in ‘factories’ defined as establishments employing 10 or more workers using power and above 20 workers without use of power. Similarly, the Minimum Wage Act 1948 is the most important legislation that was expected to help unorganised workers survive despite the lack of bargaining power. The minimum wages for scheduled employment are to be fixed and periodically revised by the central and state governments in their respective spheres. The Act may be applied to every employment in which collective bargaining did not operate and purports to fix the minimum wages in such a manner as to enable the concerned workers subsist at least above the official poverty line.

Similarly, Industrial Employment (Standing Order) Act 1956 is another legislation regulating the conditions of recruitment, discharge and disciplinary action applicable to factories employing 50 or more workers. It requires the employers to classify workers into different categories as permanent, temporary, probationers, casual, apprentices and substitutes. The Contract Labour (Regulation and Abolition) Act 1970 regulates the employment of contract labour and prohibits its use in certain circumstances. It applies to all establishments and contractors who currently or in the preceding year employed at least 20 contract workers. The idea behind this Act is to prevent denial of job security in cases where it is feasible and of social security where it is legitimate legal entitlement.

In the sphere of social security, Employees State Insurance Act (ESIA) was introduced in 1948, providing compulsory health insurance to the workers. The Act provides for a social insurance scheme ensuring certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with, the work of non-seasonal factories. The Act has prescribed self-contained code in regard to the insurance of employees covered by it.

Besides the above major laws there are several others that have been enacted for improving the condition of employment and protecting the overall welfare of industrial workers after Independence in India.

It must be recognised that even though the protection of labour has been the primary motivation in introducing various measures of labour regulation, there is an implicit assumption in case of most of them that they are good for industry as well (Basu, 1995). There seemed to
be a clear recognition and understanding that humane treatment, well-being and security make the workforce more efficient and productive and it is, therefore, in the interest of the industry to provide good working conditions, social security against the risks at work and in life and an assurance that a worker will not be removed from job unfairly or without adequate notice and compensation. It is also obviously in the interest of both workers and industry to have industrial peace and therefore a mechanism for redressal of grievances and settlement of disputes should be welcome to both. Thus, regulation of different aspects of employment, conditions of work, social security, job security and industrial relations are deemed to be parts of social contract and generally accepted and honoured both by workers and employers.

3. Challenge to Labour Regulations in Recent Years

These propositions seem to have come under serious challenge in recent years, particularly over the past one and a half decade of economic liberalisation (Sharma, 2006; Shyam Sundar, 2005; Hasan et al., 2003). Areas of disagreement seem to have widened as well as got sharpened. Industry now finds several regulatory provisions highly restrictive adversely affecting growth of industry and employment; and, demands changes in laws enabling more flexible use of labour (CII-World Bank, 2002). Unions have resisted any such move and, in fact, protested against the relaxation in practices of labour use that, they observe, has been allowed to employers in recent years (Shyam Sundar, 2005). Even the Government of India appears now to formally take the stand that the labour regulations in the country are “highly protective of labour” and therefore cause inflexibility in the labour markets (GoI, 2006).

It appears that the serious divergence in views on labour regulation has arisen out of the compulsions of competition accompanying economic liberalisation and globalisation (Sharma, 2006; Shyam Sundar, 2006; Ahmad and Pages, 2006). And in so far as economic reforms have led to higher economic growth and greater prosperity and to the extent certain measures of labour regulation pose obstacles to sustain this process, there is obviously a case for reforms in labour regulation.

What would these reforms constitute, however, depends on the provisions and laws that are identified and established to be adversely affecting investment, growth, and employment. In theory all labour laws fall in this category because they aim at providing protection and facilities to workers, which inevitably result in some direct and transaction cost to industry. It is, however, presumed that the industry absorbs this cost in its normal business and is able to make profit even after incurring the cost of compliance of labour regulation. It is for this reason that often a distinction is made between more resourceful, larger and less resourceful, smaller enterprises in respect of the aspects and extent of labour regulation to be applicable. Thus, most of the labour laws are applicable only to units that employ 10 or more workers, and smaller units are exempt from their application. This distinction can, however, provide disincentive to enterprises to expand beyond the threshold size and result in proliferation of enterprises below that size leading to increase in employment only in unregulated conditions.

Let us examine whatever empirical evidence is available to identify which provisions of regulatory legislation have adversely affected growth and efficiency of enterprises and expansion of employment.

III. IMPORTANT LABOUR REGULATIONS AND THEIR COVERAGE

There are a large number of statutes, laws and rules that make up the regulatory framework both at the central as well as state level in India. We focus here mainly on ten important labour regulations relating to four broad areas of employment: conditions of work, wages, social security, and industrial relations (including job security). There are a large number of laws
covering each of these aspects and examination here is confined only to the following: Minimum Wages Act (1948) and Payment of Wages Act (1936) in respect of wages; Factories Act (1948) and Shops and Commercial Establishments Act (1953) in respect of working conditions; Employees State Insurance Act (1948), Employees’ Provident Fund Act (1952) and Workmen’s Compensation Act (1923), for social security; and, Industrial Disputes Act (1947) and Contract Labour (Regulation and Abolition) Act (1970) for industrial relations.

1. Regulations on Wages and Earnings

The most important legislation on fixation of wages is the Minimum Wages Act 1948. Industry-wise wage boards and committees were often used in the past for wage fixation in the organised sector. This practise, however, has now been virtually given up.

The Minimum Wages Act (MWA) requires the appropriate government, central or state, to fix the minimum wages for certain types of employment. The Act is applicable to any person “employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in an employment specified in the schedule and in respect to which minimum rates of wages have been fixed. This includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, finished, repaired or otherwise processed for sale.” Having said this, it should be noted that the MWA is not applicable to all workers and employment in the country. While there is no limit on enterprise size or nature of work contract (permanent/temporary or regular/casual), the Act is applicable only to employments that are included in the schedule appended to the Act.

The relevance of the MWA for the organised sector is greatly reduced in so far as enterprises in this segment of the economy are generally found to pay wages higher than fixed under the Act. In other words, wage fixation in a large part of the organised segment of the Indian industry is, by and large, left to the market at present. Consequently, the organised industry has no particular problem with this piece of legislation. The Act thus is primarily relevant for the unorganised sector. Enterprises in the unorganised sector also do not appear to have any basic problem with the law, if one goes by the opinions expressed by them in various surveys, but do find the wage rate fixed under the Act sometimes unrealistically high (Sharma, 2006; Deshpande et al., 2004; Papola, 1994). It is, however, found that the majority of workers, particularly those in the rural areas and, women, receive significantly lower wages than prescribed under the law for different employments (NCEUS, 2007; Pais, 2006).

The other important Act related to wages is the Payment of Wages Act (PWA). This Act is applicable to a class of workers in factories and establishments listed in the Act. It aims to ensure that workers receive regular, prompt and timely payment of wages for work done. It also prohibits arbitrary deduction from workers wages in the form of fines and penalties. Some states such as Maharashtra have extended the scope of the Act and included all shops and commercial establishments under its purview. Again, as in the case of the MWA, the organised industry has no problem with the PWA. In the unorganised sector wherever this Act is applicable, both these conditions are widely violated: Payment of wages is not regular by the period specified in the contract and deductions and cuts are imposed on one pretext or another (NCEUS, 2007; Pais, 2004).

2. Regulations of Conditions of Work

On conditions of work, the Factories Act is the basic legislation prescribing the physical conditions of work at workplace, hours of work, rest and holidays and safety, and so on. The Act prescribes such conditions, which could be considered to be minimum necessary for human being for the
safeguard of their health, efficiency and safety at work. The Act prohibits the employment of women and young persons in certain employments. The Factories Act is applicable to any manufacturing activity where 10 workers or more are employed and use power for production or 20 workers are involved without the use of power. The Factories Act 1948 has provisions for licensing and registration of factories. By definition the Act does not apply to the unorganised sector.

As such, industry should have no particular problem in complying with the provisions of the Factories Act (FA). It is, however, felt that provisions are too detailed and sometimes antiquated, and leave large scope for unscrupulous officials, particularly the inspectors who have relatively unfettered powers under the Act, to harass the employers and extract monetary or other favours (Debroy, 2005). Since the Act does not apply to smaller enterprises, it is argued that the existence of this distinction often discourages enterprises to expand employment to hit this threshold so as to avoid hassles and costs of application and compliance of the Factories Act. They either do not expand their business beyond what requires nine or less workers or report less workers than they employ, by hiring them on a contract basis. Data do give credence to these observations: there is a sizeable number of enterprises in the employment range close to and lower than the threshold of ten workers and also, of late, an increasingly larger use is made of the contract labour by enterprises in this size range (Deshpande et al., 2004).

The other important legislation that aims to regulate conditions of work is the Shops and Commercial Establishments Act (SCEA). The conditions of work for employees in shops and commercial establishments are governed by the provisions of the SCEA passed by various state governments and rules framed under the Act. The Act applies to shops, commercial establishments, restaurants, hotels and places of amusement. The Act is not applicable in the whole country but only in certain notified urban areas. Establishments are issued a license under the act for a period of one year. The license needs to be renewed every year.

The SCEA aims to regulate daily and weekly hours of work, payment of wages, overtime work, weekly day off with pay, other holidays with pay, annual leave, employment of children and young persons, and employment of women workers. It provides for a notice period of one month for termination of service of a worker. A large number of small enterprises in the urban manufacturing sector desiring a legal status register under this Act (Singh et al., 2004; Pais, 2004). The Act is more often observed in violation than in compliance: it is not even considered to be a labour law by many state governments; they treat it as a mechanism of revenue generation for the local bodies, through registration and renewal fees! To some extent, the Act is also used as a tool for urban planning (Gaga, 2003). For example, licenses under the SCEA are only given in areas or zones that are earmarked for commercial activities.

3. Social Security Regulations

Coming to the provisions of social security, an important regulation is the Employees State Insurance Act (ESIA) providing comprehensive protection against the risk of accidents and injury at work, sickness, maternity, and old age. The ESI covers both workers and their families. There are two types of insurance benefits provided under the scheme. First is medical care, in which the insured workers and their families are provided medical care through a vast network of panel clinics, ESI dispensaries and hospitals generally not far from the residence of the worker. Second, cash benefits are also provided in case of sickness, maternity, disablement, benefits of retirement, funeral expenses, and so on. Some of the benefits under the Act are also provided by other laws like Employees Provident Fund Act (EPFA), Maternity Act (MA) and the Workmen’s Compensation Act (WCA).
In the absence of a comprehensive pension scheme that will take care of the future of industrial workers on retirement or of the dependents of the worker in case of early death, a system of provident funds for certain category of workers was established by the government through The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. Under this Act, in certain establishments, including factories, employing twenty persons and more, workers and employees are provided with provident fund benefit. Not all industrial sectors are covered under the Act. The industries/classes in which the Act applies are listed in the Schedule 1 of the Act. A wage ceiling exists for coverage under the EPF scheme.

WCA provides mainly for relief to the workers against disability and death arising out of accidents and injury at work. The Act applies to all workmen as defined in the Schedule 2 of the Act. The central or the state governments may add to the Schedule 2 of the Act any class of persons employed in any occupation which it is satisfied is a hazardous occupation. Workers covered under the ESI for similar provisions are excluded.

In most of the schemes of social security, employers make a contribution, and, therefore, these regulations have a cost to industry. This has, however, not been a major item of contention between industry and labour, probably because the social security regulations mostly apply to the organised sector, where enterprises do not find their cost to be onerous. Still such cost is often indirectly avoided by employing workers in non-regular, casual and contract basis which makes them ineligible for such benefits. Workers in the unorganised sectors are, however, generally outside the purview of social security regulation: according to the estimate made by National Commission for Enterprises in the Unorganised Sector (NCEUS) only 6 per cent of the unorganised workers, who constitute 86 per cent of the total workers, are covered by any social security legislation (NCEUS, 2006).

4. Job Security and Industrial Relations Regulations

The aspects of labour regulation which have proved most contentious relate to job security and forms of labour use. In this respect, the focus has primarily been on two pieces of legislation, namely the IDA and the Contract Labour Act (CLA).

Let us first take up the contentious parts of the CLA. The aim of the Act was to provide for the regulation of contract labour in certain economic activities and for abolition in other circumstances. Under this Act, contract labour has been prohibited in certain category of jobs. For example, with a notification in 2001, contract labour was prohibited in handling of food grains including loading and unloading, storing and stacking in the godowns and depots of the Food Corporation of India (FCI). The Act also bars use of contract labour in ‘core’ and perennial activities and regulates employment of contract labour in other activities. The Act applies to (a) every establishment in which 20 or more contract workers are/were employed, and (b) to every contractor who employs or who has employed 20 or more contract workers, on any day in preceding 12 months.

In the debate on labour market reforms, the employment of contract labour has been one of the most contested issues. It is argued that the nature of the ‘core’ and ‘perennial’ activities has changed in the wake of globalised production systems and production based on orders. So even in its ‘core’ activity, an enterprise does not have same amount of work throughout the year and requires varying magnitude of labour from season to season. Greater flexibility in the use of contract labour is, therefore, necessary. It seems illogical not to allow an enterprise to employ workers on a non-regular, contract basis if the work that it carries out is not of a regular nature and varies in volume from time to time. At the same time, absence of restriction on the practice of contract labour may result in greater use of this form of employment by employers primarily
to deny job security and other benefits to workers. Regulation on the use of contract labour notwithstanding, the extent of contract labour has significantly increased in Indian industry since early 1990s. According to an estimate, the share of contract labour in the organised factories sector in the country increased from about 12 per cent in 1985 to about 23 per cent in 2002 (Pages and Roy, 2006). In this period the increase in the share of contract labour varied across states, declining in very few such as Assam and Karnataka, while increasing in most others. Among the states, Andhra Pradesh had the highest increase in the share of contract labour in the organised sector, an increase from 33.8 per cent in 1985 to 62 per cent in 2002.

The other equally, if not more, controversial issues relate to the IDA. The Act as a whole applies to enterprises employing 10 workers and more. There are, however, certain restrictive provisions of job security relating to layoffs, retrenchment of workers and closures of enterprises that apply only to enterprises provides employing 100 workers, or more.

The IDA, passed in 1947, was in fact adopted as a comprehensive measure by the central government with a view to improving industrial relations. It stipulates elaborate mechanism for settlement of disputes through conciliation, arbitration and adjudication and also lays down procedures for making changes in conditions of employment and separation of workers. The Act introduced the concept of compulsory arbitration and prohibits strikes without notice in public utility services. Under the provisions of the Act, in order to ensure industrial peace, the government can intervene in industrial disputes. However, a large part of the provisions of the Act are aimed at voluntary arbitration or collectively negotiated settlements.

Chapters V-A and V-B are the most contentious of the different chapters in the IDA. These sections define the conditions under which layoffs and retrenchments are permitted in industrial establishments. The Chapter V-A applies to relatively smaller industrial establishments employing fewer than 100 workers and within this Chapter, certain sections apply only to enterprises employing between 50 and 99 workers. The provisions of Chapter V-B on the other hand apply to relatively larger establishments employing on an average not less than 100 workers.

Under Chapter V-A, in enterprises with 50 or more workers, employers are permitted to layoff workers provided they are provided adequate compensation, which is defined as at least half the average wages received by the workers. For retrenchment of workers, under Chapter V-A, the employer is expected to give the worker one month’s notice, provide a retrenchment compensation that is equal to 15 days’ average pay at the time of retrenchment, for each year of completed service and give a notice to the appropriate government about the impending retrenchment. Further, the procedure for retrenchment specifies that within a category of workers, the one who is inducted last or the newer workers should be retrenched first. In other words the principle of “last in and first out” holds for retrenchment. Also when the establishment makes new recruitment, the retrenched workers who offer themselves for work are to be given first priority.

If an establishment covered under this Chapter intends to close down, the Act provides for the procedure for closure which includes 30-day notice period to workers, compensation package to workers similar to those for retrenchment and a 60-day notice to the appropriate government.

The provisions of the Chapter V-B applicable to establishments with over 100 workers are more stringent than those in Chapter V-A. Under Chapter V-B, no employer is permitted to layoff or retrench any worker or close down operations of the establishment without prior permission from the government. Except in the case of a natural calamity or shortage of power or in the case of a mine, accident or fire, explosion or floods, when an employer under the Chapter V-B intends to lay-off a worker, he is required to obtain prior permission from the government. The employer is required to apply in the prescribed format to the government and
at the same time serve a copy of the application to the worker concerned. The appropriate
government may or may not grant permission after making due enquires. The order of the
government in this regard is final and binding. For retrenchment of workers or for closing down
of an enterprise, the employer is required to provide a three months’ notice to the workers
providing reasons for the proposed retrenchment and obtain prior permission from the
government for retrenchment or closure.

In the ongoing debate on labour flexibility and labour reforms, there has been a concentrated
focus on the issue of the employers’ freedom to retrench workers. There does not seem to be
much problem either to industry or to unions in the prescribed procedure and compensation to
be paid to the workers. The industry has mainly objected to the provision of prior government
permission before lay-off, retrenchment and closure, under Chapter V-B. This section was
introduced in 1976 and made applicable to establishments employing 300 or more workers, but
amended in 1982 to make it applicable to establishments employing 100 or more workers. It
has been argued that this provision has made workforce adjustment practically impossible
because government permission has been difficult to obtain. As a result, it has a negative effect
on investment and growth in industry and, particularly, employment, as the establishments refrain
from hiring workers because they would find it difficult to fire them, when not required, in
future.

It only sounds logical that an enterprise should have the freedom to employ only as much
labour as it requires for its operations and should not be compelled to carry on burden of surplus
labour. At the same time, there should be adequate provision of notice and severance
compensation in the cases of retrenchment. Similarly, if a business is no longer economically
viable, its owner should have the freedom to close it down, with fair and legitimate provision
for compensation to those affected, including the workers. There is no serious debate on labour
markets and labour regulations in India without the mention of the IDA. Several studies on
industry, employment and labour market rigidities have attempted to show the Act has on the
whole inhibited labour market flexibility. We shall discuss these studies and others in the next
section when we discuss the focus of the debate on labour market reforms.

IV. DEBATE ON LABOUR MARKET REFORMS IN INDIA

1. Focus of the Labour Regulations Debate
Of the four broad groups of labour regulations discussed earlier, the debate on labour market
reforms appears to be narrowly focused on two sets of issues. The first set of issues relates to
the question of rigidity or the inflexibility of the Indian labour markets in general, and the other
set of issues relates to the job security provisions of the labour regulations. We discuss these
two sets of issues and argue that while these are important and need to be addressed, the focus
of the debate is misplaced. The debate has completely neglected the two important aspects that
should also form part of the reform agenda: (a) elimination of dualism in the Indian labour
market by bringing the large excluded segments of the unorganised sector workers into the
labour regulatory framework, (b) Rationalising, simplifying and harmonisation of the existing
labour laws, and perhaps in the processes reducing their total number.

A large part of the labour market reforms debate, addressing issues of labour market rigidity and
consequent inability of the industry to cope with international competition, is based more on partisan
views, suppositions and beliefs rather than hard empirical facts and logical analysis. On the one
hand, it has been argued in this context that the Indian labour market is highly regulated causing rigidities in the adjustment in the use of labour in enterprises which result in high direct and transaction costs, reduce efficiency in production and make it difficult for them to successfully operate in a competitive environment (Shyam Sundar, 2005). Scholars have argued that labour laws causing rigidities could hurt workers (Basu, 1995). In recent times, several government documents also apportion a large part of the blame on inflexible labour markets for the sluggish growth in industrial production (GoI, 2006). The Second National Commission for Labour (SNCL) has also taken a view that labour markets are not flexible enough to face global competition.

Scholars have argued that the country is paying a high cost of its labour market rigidity (Basu et al., 1996) and that reduction in labour market regulations is essential to meet global competition (Hasan, Mitra and Ramaswamy, 2003). In addition, a number of newspaper articles on the economy, industry and employment routinely mention ‘rigid’ or ‘archaic’ labour laws as the cause of a lower than expected performance by Indian industry. In these articles when the country is compared with China, the tendency is to say that “India stands out as having one of the most rigid labour laws in the world” (Ahmed and Devarajan, 2007). Reforming of the rigid labour markets is also seen as necessary condition for attracting foreign direct investment (Basu, 2005).

Indian labour regulations tend to specify details on procedures of implementation, often laying more emphasis on the process than the outcome, which typifies the preponderance of state intervention in labour matters. As mentioned earlier, state assumes the role of the protector of the rights of the workers, the weaker party. The state also considered it necessary to intervene, as it was keen to avoid frequent and prolonged disputes, industrial unrest and consequent loss of workdays, in its pursuit for industrialisation and economic development. Unions and industry welcomed this move by the state for their own reasons: unions found it as a measure that strengthens the position of labour, and, industry saw it as a way to ensure minimum disruptions in production. There was a view that emphasis on state intervention, as, for example, in the IDA which provides state intervention at various stages in industrial disputes, undermined the role of bilateral negotiations and collective bargaining. But that view was sidelined. Excessive state intervention in the labour market, it appears, has now become an issue in so far as it is seen as creating distortions in the labour market leading to inefficiency and loss of competitive efficiency in production.

As against this strong view that the Indian labour markets are inflexible, several scholars have attempted to measure the rigidity or flexibility of the different sections of the labour market. They argue that there is increased flexibility since the mid-1980s despite no significant change in labour regulations. Scholars have pointed out that employers in the country have always responded to restrictive retrenchment laws in many innovative ways such as greater use of contract, temporary and casual labour, voluntary retirement schemes, moving to states where labour is less organised (unionised), the expansion of leasing-in capacity of small firms and subcontracting, the adoption of new labour saving technologies and increase in capital intensity, and increasing resort to corruption and bribery in order to avoid the legal consequences of retrenchment (Papola, 1994; Datta Chaudhuri, 1994; Mathur, 1991; Ramaswamy, 1984).

In the post-liberalisation period, when Indian industry was opened to global competition, though no significant changes in the labour laws have been made, scholars have noted a general weakening of the bargaining power of workers through relaxed enforcement mechanisms, increased use of contract labour, changing nature of workforce with increased casualisation and feminisation, a general weakening of the trade unions and judicial interventions that have been distinctly pro-employer (Pages and Roy, 2006; Bhattacharjea, 2006; Ahmad and Pages, 2006).
The governments both at the centre and in the states have been more liberal in respect of other aspects of labour regulation also in recent years. In fact, they do not seem to be very keen on carrying a ‘pro-labour’ image that governments in the past seemed to be proud of. Though no significant changes in labour laws have taken place, changes in implementation practices to make labour regulation more ‘enterprise-friendly’ have taken place (Nagaraj, 2004). Routine inspections by labour officials have been curtailed in many states (Reddy, 2007; Shyam Sundar, 2007; Sharma and Kalpana, 2007). Relaxation of various kinds have been allowed, say in the use of contract labour and in hours of work and so on in export-oriented units and IT establishments (e.g., Government of Gujarat, 2006).

At the state level, governments competing with each other to lure investments have resorted to the mechanism of making changes in the regulatory framework through amendments to the central labour laws and the use of executive orders. According to a study on Andhra Pradesh, “there have been state amendments to central Acts and certain executive orders modifying the implementation of legal regulatory measures with far-reaching implications for the protection of rights of labour relating to basic working conditions” (Reddy, 2007). It says, the main essence of the CLA has been diluted and a whole range of activities that would not be permitted to be contracted out are now permitted. This has led to a sudden surge in the use of contract labour in Andhra Pradesh.

Overall industrial relations’ situation appears to have progressively improved in recent years. The number of industrial disputes, work stoppages, workers involved and person-days lost in them have declined. A general weakening of the trade union movement in India in the years since the early 1980s has also been widely reported (Ghose, 1994; Nagaraj, 1994; Datt, 2003; Shyam Sundar, 2004; Nagaraj, 2004; Anant et al., 2006; Reddy, 2007). These studies provide convincing evidence, both at the state level as well as at the aggregate, of a steady decline in the total number of strikes, the number of workers involved, and the number of person-days, and so on. This is accompanied by an increase in the number of employer-led lockouts thus further showing the weakness of the trade union movement.

Further there is a noticeable change in the arguments of trade union on the issue of reforms in the labour markets. The trade unions’ resistance to labour flexibility measure has mellowed. Ozaki (1999) notes that the trade unions have come to realise the need for flexibility in the face of global competition and have to some extent granted that flexibility could lead to more jobs in this situation. A large part of the trade union effort now is to help workers get adequate monetary compensation in the event of job losses due to retrenchment and closures (AITUC, 1997; Mahadevan, 1999a cited in Shyam Sundar, 2005). Apart from this, trade unionism is itself not that widespread even among the organised sector enterprises (Deshpande et al., 2004). In a study on labour flexibility in the organised sector, Deshpande et al. (2004) found that only 25 per cent of the firms surveyed were unionised. Further the study found an increase in capital intensity in both unionised and non-unionised enterprises and both types of firms were able to change employment.

It may be noted that the discussion on the rigidity or inflexibility has been related to the labour markets that cater to the organised sector of the economy. Organised sector employment accounts for only about 7 to 10 per cent of the total workforce, depending on the measure used, and in a sense, the literature on the rigidity of labour markets indirectly concedes that labour market rigidity due to labour regulations is not a significant factor by the very fact that a large proportion of the workforce is not covered by labour regulations.

Job security or job security-led labour market inflexibility is perhaps the most contentious of all issues related to the discourse on labour market reforms. There is a large number of empirical studies on labour market flexibility that aim to address the issue by narrowly analysing job security provisions in one labour regulation, the IDA (Table 1). As seen in the table, these studies are based on amendments to the IDA and the consequences to organised sector output, employment, investment, and so on. We have listed 10 important labour regulations in the previous section, of which the IDA is one. For some reason, none of the other regulations listed have received as much attention as the IDA. And within the IDA, it is the provision of job security in Chapter V-B that has in fact received all the attention. Studies listed in Table 1 have attempted to quantify the amount of decline in employment or output that amendments to the IDA are supposed to have caused. There are a number of problems with the data and methodology of these studies; thus the results suggesting negative relationship between IDA-led labour market inflexibility and certain outcomes such as employment, output and investment is not unambiguous (Bhattacharjea, 2006). Thus, despite the large number of studies analysing the changes in the IDA and its effect on the output, employment, and so on, it is still not clear if the supposed pro-employer changes have made a positive impact on industrial growth, investment and employment over the years and across the states.

Even if the data and method were satisfactory for the purpose used, it should be noted that the whole debate is around only one labour regulation (rather on the amendments to one labour regulation) which in turn applies to a very small fraction of the economy and its workforce.

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name</th>
<th>Regulation</th>
<th>Period of study</th>
<th>Effect on employment, output, investment, labour productivity</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Dutta, Roy (2004)</td>
<td>Amendments to the ID Act</td>
<td>1960-95</td>
<td>Job security is not the sole or even primary cause for rigidities</td>
</tr>
</tbody>
</table>
Table 2 gives the proportion of workers covered under each of the ten important labour regulations in India. Only 2.6 per cent of the total workforce or 5.7 per cent of the hired workers are covered by the IDA. Further, if we take only manufacturing, and in that enterprises employing 100 workers or more, on which the discussion has taken up the largest proportion of space and time, the coverage is only about 1.6 per cent of the total workforce.

The excessive focus on the subject of prior government permission for retrenchment and closure has, in fact, resulted in unnecessary waste of energy and time, and has diverted attention away from a number of other aspects of labour market reforms that could have been more amicably and fruitfully addressed. Although it appears theoretically valid to argue that restrictions on adjustments of labour can discourage hiring of workers, the empirical evidence on the subject is not clear. Decision to employ or not employ additional workers is subsequent to the decision to expand business or not which primarily depends on the market for the product; and whether to use more labour or not, to carry out the expansion of business would then depend on available technology and factor price relativities. These factors are certainly much more important than the freedom to fire, as even with restrictions on it, industries and enterprises with expanding markets have increased their production and employment. Slow growth of aggregate employment obviously cannot be attributed to the restriction on retrenchment as is often done, for it applies only to a very small segment of the economy. And the decline in organised sector employment over the recent years, particularly since 1997, is primarily contributed by the public sector for which factors other than labour regulations have been responsible (Papola, 2007).

Table 2

<table>
<thead>
<tr>
<th>Sl no.</th>
<th>Regulation</th>
<th>Sector covered (organised/unorganised)</th>
<th>Share of workers covered under different regulations by definition</th>
<th>Share of workers actually covered under different regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>In total workforce</td>
<td>In hired workforce</td>
<td>In total workforce</td>
</tr>
<tr>
<td>1.</td>
<td>Minimum Wages Act</td>
<td>Both</td>
<td>38.1</td>
<td>83.3</td>
</tr>
<tr>
<td>2.</td>
<td>Payment of Wages Act</td>
<td>Both¹</td>
<td>10.5</td>
<td>22.9</td>
</tr>
<tr>
<td>3.</td>
<td>Industrial Disputes Act</td>
<td>Organised</td>
<td>5.5</td>
<td>12.1</td>
</tr>
<tr>
<td></td>
<td>a. Manufacturing</td>
<td>Organised</td>
<td>2.2</td>
<td>4.7</td>
</tr>
<tr>
<td></td>
<td>b. Manufacturing (100+)</td>
<td>Organised</td>
<td>n.a</td>
<td>n.a</td>
</tr>
<tr>
<td>4.</td>
<td>Industrial Employment (Standing Order) Act</td>
<td>Organised</td>
<td>2.7</td>
<td>5.9</td>
</tr>
<tr>
<td>5.</td>
<td>Contract Labour Act</td>
<td>Both</td>
<td>n.a</td>
<td>n.a</td>
</tr>
<tr>
<td>6.</td>
<td>Shops and Establishments Act</td>
<td>Both</td>
<td>3.9</td>
<td>8.6</td>
</tr>
<tr>
<td>7.</td>
<td>Factories Act</td>
<td>Organised</td>
<td>3.0</td>
<td>6.6</td>
</tr>
<tr>
<td>8.</td>
<td>Workmen’s Compensation Act</td>
<td>Organised</td>
<td>3.3</td>
<td>7.2</td>
</tr>
<tr>
<td>9.</td>
<td>Maternity benefit Act</td>
<td>Both</td>
<td>1.0</td>
<td>2.2</td>
</tr>
<tr>
<td>10.</td>
<td>Employees State Insurance Act</td>
<td>Organised</td>
<td>2.2</td>
<td>4.8</td>
</tr>
<tr>
<td>11.</td>
<td>Employees Provident Fund Act</td>
<td>Organised</td>
<td>3.7</td>
<td>8.1</td>
</tr>
</tbody>
</table>

Note: 1. In some states.
2. Estimates are for the year 1999–2000 using NSS unit level data. Workers technically covered under a regulation are identified based on geographic applicability, definition of worker, employer, and enterprises under that regulation.
3. Estimates are from annual reports on the functioning of each law and compilation by the Labour Bureau.

It is surprising how much time and energy this item which concerns only a small proportion of the Indian workers has attracted. In any case, establishments have been able to retrench workers and close down despite the law; and there is evidence to suggest that the permissions have been more easily granted by governments in recent years (Debroy, 2005; Sharma, 2006).

4. Problems with the Labour Regulatory Mechanism

(i) Too Many Laws

A repeated comment on the labour regulations in India is that there are too many labour laws. Quoting the Report of the Commission on Review of Administrative Laws, Debroy (2005) notes that in all there may be up to 2500 central laws and as many as 30,000 state-level laws in India. Of course, this also includes laws other than those relating to labour and industry. In the same article, Debroy lists 45 central acts and 16 associated rules that are directly related to labour. Anant et al. (2006) list 47 central laws and 200 state laws. According to Labour Bureau there are 236 important labour acts as on March 2003 (Labour Bureau, 2004). Of these 76 are in the central sphere and 160 in the state sphere.

In India, under the constitution, labour-related laws can be enacted both by the central as well as the state governments, as it is a subject placed in the concurrent list of the constitution. A large number of items related to labour and employment are placed in the concurrent list, for example item 22 on trade unions, industrial and labour disputes; item 23 on social security and social insurance, employment and unemployment; item 24 on welfare of labour including conditions of work, provident funds, employer’s liability, workmen’s compensation, invalidity and old age pensions and maternity benefits, and item 36 on factories. However, there are some items such as the item 55 on regulation of labour and safety in mines and oilfields; item 61 on industrial disputes concerning Union employees and item 61 on inter-state migration on the central list. While the central legislation is binding on the states, any state legislation that runs counter to the central legislation is valid only if it is passed and receives the presidential assent on a date that is later than that of the central legislation.

An issue in the debate of reforms in the legislative framework, including the debate on labour regulations reform, is that that there are too many laws and there is a need for rationalisation, elimination of multiplicity and overlap in laws. There has also been a feeling in some quarters including the employers that the large number of laws is a result of placing labour in the concurrent list. This has led to a demand that labour be removed from the concurrent list and placed in the state list (TeamLease, 2006).

Not only are the laws numerous, they overlap, there is multiplicity of laws, detailed and elaborate stipulations and many definitional and conceptual inconsistencies. Multiplicity of laws often covering the same subject makes compliance difficult for the employers and also gives scope for exclusion of many workers. The problem is further compounded by varying definitions of key items in different statutes. ‘Worker’, ‘employee’, ‘factory’, ‘child’, ‘wages’, and so on, are defined differently in different Acts.

Many laws, in their zeal to provide for every conceivable aspect of the covered subject, tend to make provisions so detailed that they become difficult to implement. For example, Factories Act in providing for clean workspace prescribes also how to ensure it (by ‘sweeping daily’ and ‘washing weekly’), and ‘wholesome drinking water’ should not only be provided, but place where it is provided should legibly be marked “drinking water”! Some provisions are antiquated (vacuum cleaning can do in place of sweeping, whitewashing of toilet walls is not relevant for tiled walls!). Such details, though well intentioned, may be unnecessary and provide scope to the unscrupulous inspecting officials for harassment and extracting bribes (Basu et al., 1996; Debroy, 2005).
Limited Coverage of Labour Regulations

The most important limitation of the existing labour regulation lies in its limited coverage. Most laws apply only to relatively bigger establishments employing beyond a certain number, usually 10 workers. Thus, there is no regulation of conditions of work and no provision for social security of any kind for the workers working in establishments employing less than 10 workers. And they constitute an overwhelming majority—92 per cent of all workers and 84 per cent of all wage earners. The degree of ‘flexibility’ for this category of workers is so high that they are left completely unprotected from vagaries of the market and any arbitrary actions of the employers.

Table 2 gives the 10 important central labour regulations and estimates of their coverage by definition and in practice. Of all the labour laws, the MWA has the widest coverage by definition. About 38 per cent of the workforce or 83 per cent of hired workers are technically covered under the Act. The large coverage of the Act is because, unlike other labour regulations, it also covers workers in agriculture. The actual coverage of the Act is, however, a different story. Estimates from the report on the functioning of the Act show that in 1999–2000, only about 8 per cent of hired workers in India were actually covered under the Act.

Similarly, Table 2 also gives estimates for the definitional coverage and actual coverage of the IDA, PWA, CLA, SEA, FA, WCA, MBA, ESIA and the EPFA. Except the EPFA, none of the labour regulations listed above cover more than 3 per cent of the workforce and 6 per cent of the hired workforce. Thus, the table shows that the whole debate on labour market reforms is centred on less than 3 per cent of the workforce in India. While loud protests are made about the excessive rigidity in the labour use, there is great validity in the less frequently and rather meekly expressed view that the Indian labour market is, by and large, completely unregulated!

V. A RATIONAL AND FAIR AGENDA FOR REFORMS

The regulatory framework for labour in Indian industry should and can be more friendly towards both industry and labour. For that, it is necessary that the realities of the Indian labour market are more clearly understood and kept in view in the debate on labour reforms. Chapter V-B of the IDA needs to be removed as it has not served the interest either of industry or labour and certain changes in CLA may be necessary to meet the requirements of the new global production system. But these probably are only a small part of what needs to be reformed and need not be seen as the beginning and the end of labour reforms. There are several other aspects that either contribute to the rigidity in the labour market or tend to deprive large part of the workforce of their rightful benefits.

There is no doubt that the system of labour regulation in Indian industry requires a change. A change is needed not only to facilitate a smooth process of labour use and adjustment to meet the requirements of competitive efficiency in the wake of economic liberalisation and globalisation, but primarily because many of the premises and assumptions underlying the existing regulations have changed, as a result of sweeping changes in technologies and production systems and character and composition of entrepreneurial and working classes. Most important, the existing regulations have left most of the Indian workers outside their purview, besides not being very effective in providing the stipulated benefits even to those covered by them. Nonetheless, they create an impression that the Indian labour market is rendered highly inflexible by labour regulations. Provision of high degree of protection to a few co-exists with lack of protection to many; in fact it is argued that excessive regulation is responsible for increasingly larger number of workers getting hired in unregulated modes or in the unregulated unorganised sector.

Reform in labour regulations should, therefore, not only focus on deregulation to reduce protection of workers in the existing regulated sectors and employment, but should aim at reducing dualism in the regulatory regime. In other words, the excessive focus on Chapter V-B of IDA and some provisions of CLA should give way to a wider perspective on labour reforms.
that will go towards reducing rigidity in labour use in general and provide minimum modicum of human conditions of work and social protection. It must also be recognised that in order to be acceptable to all parties, the reforms have to be balanced, and not one-sided. While it is legitimate to ask for greater freedom to industry in the modes of use and adjustment of labour, it is also equally important that all workers irrespective of the size and sector of their employment are ensured reasonable conditions of work including wages and social protection.

From the arguments and experience mentioned earlier in this paper, there appears to be no particular justification to persist with provisions like that on prior government permission for retrenchment and closures under Chapter V-B of IDA. The proposals to raise the threshold limit for its application to 300 or 1000 also do not stand logical scrutiny. At the same time, an increase in retrenchment compensation from the present 15 days wages for every year of service needs to be substantially revised, probably to 45 days, as recommended by the SNCL. Similarly there is ample justification to have another look at the CLA with a view to allowing use of contract labour when the activity is not of even quantity throughout the year. Here again, the provision of conditions of work and social security must be strictly adhered to, which does not seem the case at present.

The second category of changes is required in respect of the multiplicity of laws and provisions and concepts and definitions and unnecessary details in prescriptions as pointed out earlier. These features of various laws tend to create rigidities in labour use without necessarily benefiting the workers and sometimes even providing gateways for denying workers the intended benefits. Unification, harmonisation and rationalisation of labour laws, proposed many times in the past, are now seriously overdue. There is no doubt that such an exercise will immensely benefit both industry and workers.

The third, and probably the most important, area of reforms in labour regulation relates to the provision of minimum conditions of work and social security to the workers not covered by the existing labour regulations. It may not necessarily mean replication of what presently exists for the regulated sectors either in terms of the levels of protection or implementation mechanism. The SNCL recommended enactment of a law for unorganised sector workers. The government followed it up by drafting a bill. Some non-governmental organisations and individuals have also made proposals in this regard. Taking all these into consideration, the NCEUS has already made comprehensive proposals for social security cover and conditions of work for the workers in the unorganised sector. The Commission has submitted draft legislations on both these aspects to the government. These proposals need to be carefully considered and seen as part of labour reforms in the direction of reducing dualism in the regulatory framework of the Indian labour market.

Notes

1. It has been argued that the statutory minimum wages set under the Minimum Wages Act are very low or have not been regularly and adequately revised over time, thus pushing it to a level where it has lost its significance to the organised large industry (Bhagat, 1997; Jhabvala, 1998). For a detailed discussion on the development of policies related to minimum wages in India see Sankaran (1997), Anant and Sundaram (1998), Unni (1998).
2. The desire for a legal status could be to facilitate access to credit from formal sources such as banks or to obtain electricity supply or to simply avoid harassment from municipal authorities.
3. Apart from this, the Contract Labour Act also has provisions that relate to the conditions of work, health and welfare of contract labour. For example, the Act provides for the regulation of physical conditions of work, hours of work, overtime, payment of wages, sanitation and creche facilities, and so on for contract workers.
4. Under this chapter, enterprises employing less than 50 workers are permitted to lay off workers without compensation.
5. This is not to say that only 8 per cent of the workers received minimum wages in India. What this estimate says is that the law has ensured that 8 per cent of the workers received minimum wages. It is well-known fact that market wages are above minimum wages in a large number of occupations. Thus the number of workers receiving above minimum wages is much higher than 8 per cent. However, the same cannot be said of social security
measures such as maternity benefits or regulations on conditions of work. In the case of social security benefits and regulation on conditions of work, the proportion of workers availing the benefits is likely to be close to the estimates in Table 2.

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