**By Invitation**

# Labour Law Reform in India

## J.S. Sodhi

*There has been an all pervasive recognition that the county needs to reform its labor law regime. It has become counterproductive to the twin objectives of job creation and industrial peace and hurts the very people it meant to benefit. Successive governments failed to match their rhetoric with concrete action. The present government's intent of reform followed by selective swift action is a welcome departure from the past. Malaise of the labor laws is deep rooted and covers the broad spectrum of 44 Central and a large number of State laws. The paper, however, takes up the critical changes needed to make these laws less cumbersome and less rigid while keeping intact the legitimate rights of the workers.*

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### Introduction

Universally the power structure in the society has been and is weighed towards the haves and therefore, the weaker sections of the society need protection. India has been no exception. That was the primary motivation for organization of workers and formulation of labor laws by the governments across the world. In India, except for four decades 1950-90, the balance of power has remained with the employers. Since the 1990s, however, the state has been soft in implementing labor laws in its letter and spirit. It realizes that the labor law regime is out of sync with the realities of the economic environment and it has not been able to restore cordial industrial relations and peace.

Industrial relations had worsened during the last decade which witnessed managements' aggressiveness towards the workers and trade unions. They have been resisting formation of unions at the enterprise level and coercing the unions, wherever they exist, to terminate their political affiliations and insist on not to have outside leadership. Employment of contract labor has increased manifold much of which is in violation of the Contract Labor (Regulation & Abolition) Act,

1970. Such workers are paid much less wages compared to a permanent worker doing the same job and have no security of job (Sodhi-ILO, 2010).

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Strangely enough, Government of India has also been an active player in the employment of contract labor in contravention of the Contract Labor Act. In fact it is the largest employer of contract labor. The violation of other labor laws is happening under its very nose. Labor law enforcement in Export Promotion Zones is negligible. The position is similar in the IT sector. State governments like Kerala have passed orders restricting the functioning of trade unions. Haryana State Government had passed a similar order preventing its employees from going on strike.

**The Legal Framework**

**There are 44 Central and a large number of State laws in the country.**

The country has plethora of labor laws. Since labor in India is on the concurrent list, the Central and the state governments are competent to enact legislation. There are 44 Central and a Large number of State laws in the country. The Central laws are categorized in to three viz: those enacted and enforced by the Central Government (12 in number); those enacted by the Central and enforced both by the Central as well as the State governments (16 in number); and, those enacted and enforced by the various State governments which apply to respective states (16 in number). The most critical laws were enacted before or just after Independence (the Trade Union Act, 1926, Industrial Disputes Act, 1947, Workmen Compensation Act 1923, Payment of Wages Act 1936 and the Industrial Employment-Standing Orders-Act, 1948). Amongst others, majority were enacted 30 years back. Chronologically, sixteen of the forty four Central laws were enacted before or immediately after Independence, nine in the late 1950s and the 1960s, ten in the 1970s, six in 1980s, two each in the nineties and one in the last decade. (Annex 1)

**Changing Labor Laws**

Obviously, the laws are too old. While the age of the law per se may not be an indicator of its relevance or otherwise, it is important to mention that liberalization and globalization, which began in the 1990s, had totally changed the the economic paradigm in the country. The context in which these laws were enacted has, therefore, undergone a metamorphosis.

With these laws in the background, doing business in India is a cumbersome vocation particularly for an upright entrepreneur. The multifarious labor laws, with varying connotations and definitions, force the employer into submission to the labor inspectorate, multiple trade unions

and rigidities in which it cannot retrench any employee once employed (subject to the completion of 240 days of continuous work). The laws bind him to not even close the enterprise. Government permission is required to effect these changes.

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The object of formulating labor laws was laudable but the changing economic environment has made them outdated. The malady is well recognized at the highest levels. The former Prime Minister Dr Manmohan Singh had repeatedly stated that labor laws needed to be changed. He had said (ILC 40th Session) "the process of doing business with India has to become less intimidating, less cumbersome and less bureaucratic to attract more investment. Many of the legacies of the past have not much relevance today. Indeed, some of them have become counterproductive today and may well be hurting the very people they are meant to benefit". He further stated that the country needed new laws which provided safety standards catered to the basic needs of workers, took care of their welfare and were flexible enough to create rather than destroy jobs.

The plea for changes in the labor laws had gathered momentum with the present government's commitment to create a conducive environment for investors and liberate the entrepreneurs from the tyranny of myriad labor laws. Equally important is the fact that India needs to create 80 million jobs during the next 10 years while at present it has created only two million jobs every year during 2005-12. Almost five million persons lost jobs in the labor intensive manufacturing like the textiles and apparels and electronics during 2005-10. According to Goldman Sachs, it is because firms are substituting capital for labor largely because of fear of coming into the ambit of a large number of labor laws.

Despite the felt need, the noise and commitment have almost never been followed through with any concrete action. The logic given for no major changes in the laws is that any change in Central legislation has to be approved by both houses of the Parliament and the States (labor is on the concurrent list) can bring in appropriate regulations given in the broad structure of labor laws (Panagariaya, 2014). The President of India has the constitutional authority to amend the laws as sent by the State governments under section 254 (2) of the Constitution. However, despite this, only states like Gujrat, Maharashtra, Andhra Pradesh and Rajasthan (proposed amendments), amongst others have addressed the issue to some extent.

Amendments have also been made during the last four years to the Central laws. The Employees Compensation Act (earlier known as Workmen's Compensation Act) had been changed with respect to the wage ceiling limit, which was increased from Rs. 4000 to Rs 8000 per month for purpose of calculating compensation along with other minor changes;

Employee State Insurance Act, 1948 was amended to improve the quality of service under the scheme; the Plantation Labor Act, 1951 was amended to provide safety and occupational health care to plantation workers and the Industrial Disputes Act, 1947 was amended in 2010 to: amplify the term 'appropriate government' defined under section 2(a) of the Act; enhance the wage ceiling from Rs. 1600/- to Rs. 10000/- per month to cover workmen working in supervising capacity; provide direct access to workman to the labor court or tribunal in case of disputes arising out of Section 2 (a) of the Act; establish grievance redressal machinery; and, empower labor courts or Tribunals to execute Awards. Some of the proposed amendments are with various committees of the Parliament and at various stages of discussions.

**Amendments by State Govenments**

Some of the state government's have been active in making amendments. For example, the Gujarat government had made changes allowing the SEZ's to lay off redundant workers without seeking the permission of the government. It mandaded the SEZ's to give a formal notice, severance pay and a compensation of 45 days for a year of work rather than the 15 days given to other workers. It also allowed "Fixed Term Employment" under the Industrial Standing Order Act 1946 and Gujarat Rules 1955 which defines conditions of employment, Self consolidation–cum-consolidated Annual Return scheme; keeping a maximum of two inspection registers and, following the Supreme Court verdict, no pay for no work was also introduced.

The State of Rajasthan has recently proposed changes in the Industrial Disputes Act, 1947 to the effect that government permission will now not be required for retrenchment in companies employing up to 300 (up from 100 under the Central Act) workers. Other amendments relate to the change in the Factories Act regarding the applicability of the Contract Labor Act, 1970 to establishments by raising the limit of number of workers to 20 and 40 with or without power up from the present 10 and 20 workers. These amendments though have to be ratified by the President of India.

Andhra Pradesh government had made amendments in the Contract Labor Act, 1970 which were hailed as a model for other states to follow. It had introduced a clause restraining the employment of contract labor in core activities of any establishment if the same was prohibited by notification. However, wide ranging exemptions were made such as the normal functioning of the establishments such that the activity is ordinarily done through contractors; or the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods as the case may be; and any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time. The amendments amply clarified the core activity meaning as any activity for which establishment is set up which includes any activity essential or necessary to the core activity with certain exceptions.

West Bengal government has turned the clock back in 2014 by making it virtually impossible to shut down a loss making factory. The law in the state applies to all establishments employing up to 60 workers.

It is argued that the States of Gujarat, Andhra Pradesh, Maharashtra and now Rajasthan have made meaningful amendments to labor laws of the country. Gujarat has been able to create more manufacturing jobs than other states, such as West Bengal & Kerala with restrictive labor laws. However, these forward looking changes have been done by a handful of states and are partial in nature. Moreover, the amendments relating to the Central laws have not addressed most of the core issues plaguing the labor laws.

Let us, for example, take up some core issues being discussed and debated in the context of labor law reform. These are: too many laws and their consolidation; anomalies and divergent definitions of the worker, establishment, wages etc.; employment of contract labor in activities longer than presently allowed; applicability of labor laws to companies with varying size & employment; labor administration and enforcement of labor laws or the inspector raj, dispute settlement; and rigidities of labor laws. The demand to remove rigidities has drawn the maximum attention and debate. Let us take it up first along with other issues related Acts.

**ID Act 1947**

*Flexibility vs. Rigidity:* Flexibility debate in India has been mired in the controversy of too much protection to the workers: lay off and retrenchment of the workers; and, the closure of the enterprise. The clauses state that an employer cannot layoff or retrench any worker or close down operations of the establishment without prior permission from the appropriate government. There is though a caveat that permission is deemed to have been granted by the appropriate government after 60 days if no communication is received by then.

This clause, according to employers and economists, has been a major bottleneck of employment generation in the organized sector. While total employment has increased during the last ten years, formal sector employment has been decreasing i.e., employment generation in smaller establishments (where no permission is required for lay off, retrenchment and closure) has been increasing faster than in other (those with 100 workers and above) establishments.

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In view of these rigidities, the employers have been resorting to technology up gradation with the intention of keeping their workforce below 100. UNIDO's (2012) report in this context states that the clause relating to applicability of the ID Act has kept the Indian enterprises small. According to them, the

average number of workers in Indian firms in the organized sector is 75 (UNIDO, 2012), compared to 178 in Indonesia and 191 in China. The Government of India's Economic Survey (2012-13) stated that it could be due to the outdated labor laws.

It is also argued that India is among the very few countries where prior permission is required for lay off, retrenchment and closure. A comparison with other countries (Table 1) shows that such permission is required in India, Pakistan and Sri Lanka only. Such permission is not required in Bangladesh, China, Indonesia, Philippines, Malaysia, Thailand and Vietnam. In all countries of Europe, North America, and those in Africa, such a permission is not required. In China, Indonesia and Vietnam and most of the countries in Europe and Africa, only prior consultations are required with the trade unions. In UK, every employer must give a reasonable notice after one month of work for severance of employment and after two years of service, employers must provide a sufficiently fair reason of dismissal and redundancy payments.

The Government of India had set up many committees, including the Second National Commission on Labor (NCL, 2002) to look into the broad framework of labor laws including the ID Act and suggest changes. The NCL which had broad based consultations had suggested a fine balance between organizations' need and workers interest. It had suggested that prior permission may not be necessary in respect of layoff and retrenchment in an establishment of any size. It, however, suggested an enhancement of the notice period from one to two months and enhancement of retrenchment compensation from the present 30 to 45 days. For closure of the enterprise too the compensation (which is 30 to 60 day's salary depending upon whether it is a sick and ongoing industry with a view to become viable, nonprofit organization etc.) may be enhanced.

**Prior permission may not be necessary in respect of layoff and retrenchment in an establishment of any size.**

The issue and the prognosis appear simple and should be implemented. However, there is a huge question mark on the role and intentions of the employers while dealing with the issue. Many argue that the employer's attitude is just to get rid of the workers because of multifarious reasons not necessarily connected with the vagaries of business. Some of these are: permanent workers are drawing much higher salaries by virtue of the number of years of service and replacing them would reduce their wage costs substantially. Most of them are unionized and they do not submit to the whims of the employer; the process of legal suspension is very cumbersome even for the genuine delinquents. Senior age worker's skills and productivity are always a matter of concern. In any case the employer is happy to have a workforce whom they can hire and fire. Large scale employment of contract labor, much in contravention of the law, is a

**Table 1 Labor Laws Provisions Related to Consultations and Notifications Prior to Collective Dismissal: Comparison in Select Countries**

| Country | Prior Consul tations with trade unions req-uired | Notification to the public admin-is tration required | Notification to the workers' represen -tative required | Approval by public admini-stration or judicial bodies required | Consent of workers' represent -atives required | Employers obligations to consider alt ernatives to dismissal required |
|---|---|---|---|---|---|---|
| ASIA | | | | | | |
| Bangladesh | No | Yes | Yes | No | No | No |
| China | Yes | Yes | Yes | No | No | Yes |
| India | Yes | Yes | Yes | Yes | Yes* | Yes |
| Indonesia | Yes | No | Yes | No | No | Yes |
| Pakistan | - | - | Yes | Yes | - | - |
| Philippines | No | Yes | No | No | No | No |
| Malaysia | No | Yes | No | No | No | No |
| Sri Lanka | No | Yes | No | Yes | No | No |
| Thailand | No | Yes | No | No | No | No |
| Vietnam | Yes | Yes | Yes | No | Yes | Yes |
| EUROPE | | | | | | |
| France | Yes | Yes | Yes | No | No | Yes |
| Germany | Yes | Yes | Yes | No | No | Yes |
| Russia | Yes | Yes | Yes | No | No | Yes |
| UK | Yes | Yes | Yes | No | No | Yes |
| NORTH AMERICA | | | | | | |
| USA | No | Yes | Yes | No | No | No |
| FRICA | | | | | | |
| South Africa | Yes | No | Yes | No | No | Yes |
| Tanzania | Yes | No | Yes | No | No | Yes |
| Uganda | No | Yes | Yes | No | No | No |

Source: International Labour Organisation (1947) cited in Exim Bank (2013)

* Section 25N of ID Act states that the appropriate government or the specified authority may grant or refuse permission after giving a reasonable opportunity of being heard to the employer, the workmen, and the persons interested in such retrenchment, which implies that without the consent of the workers' union it would be difficult to get the permission granted.

point in this direction. It is, therefore, rightly feared that giving them the right to hire and fire would result in large scale unemployment in the organized sector with an adverse effect on working conditions of those (contract or casual workers) who will be hired.

Despite this, there is acceptance that no government permission may be required for lay-off, retrenchment and closure of the enterprise and required changes may be made in Chapter VA and VB of the ID Act. But given the attitude of a large section of the employers, it may be appropriate to make it justifiable (based on economic/business ups and downs which they should give in writing to the unions and have discussions with them). The retrenchment compensation

though must be high (at least 60 days of each year of completed service or number of years of service left whichever is less) including a notice period of two months may be statutorily fixed. This is to enable employers to achieve flexibility but in case of absolute necessity only. The issue of closure may also be dealt in a similar manner. It is well known that there are sick companies in India but not sick employers. In fact, many of them remain very rich and enjoy a lavish life style.

*Notice of Change:* Section 9A (item 11 of fourth schedule of ID Act) requires employer to give 21 days notice of change in workers conditions (with respect to change in technology, workload, manning, shift work etc). It has been forcefully argued that in today's context, it is a serious drawback on the functioning of day to day activities of the factory as many changes are to be implemented at a short notice. The employers have been demanding that this section should be completely deleted from the ID Act.

It is fair that no notice may be required and the amendment may be made after discussions with the unions on the legitimacy of the change.

*Dispute Settlement:* The ID Act sets a procedure for settling labor disputes through collective bargaining-- Section 18 (1), negotiation, conciliation-Section 18 (3) and mediation, voluntary arbitration (Section 10A), compulsory adjudication in labor court (Section 7) and industrial Tribunal (section 7A) and National Tribunals (Section 7B). Labor courts are constituted by the appropriate government for the adjudication of industrial disputes relating to any other matter specified in the Second Schedule. Industrial tribunals likewise are constituted for the same purpose under the Second or the Third Schedule.

The ID Act's main objective was to contain dispute, promote cordial industrial relations and keep litigation to the minimum. However, experience has proved to the contrary. The major reasons have been: lack of trust between the employers and the unions/workers; lack of success of conciliation; legal provisions (section 2a and section 36 of the ID Act) permitting a worker or a union to raise a dispute any time after its occurrence; lack of faith in the arbitration process; the dilatory legal process which is favored by the employers; absence of a proper and statutory bi-partite forum (Works Committees have been defunct for a long time) to settle differences without the third party intervention; and above all employers' disinclination to settle the dispute as a majority of them are regarding the dismissal of the employees.

The solution lies in introducing multiple amendments of having competent conciliation officers (Sodhi & Guha, 2006), fixing a limit of one year for raising a dispute (Section 2A and Section 36), barring the unions below 15% of the representation and most importantly, bringing in amendment to statutorily promote bi-partite forums to settle disputes rather than depending upon a third party for the same. The country can take cue from the German Co-determination Model which

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has statutory bi-partite forums where most of the issues have to be resolved (Sodhi et.al, 1995).

Most of the disputes in the labor tribunals and courts relate to suspension and dismissal of the worker. There is a fair and a comprehensive mechanism of suspension and dismissal given in the ID Act. It is suggested that if the worker is dismissed after proper and fair enquiry on charges of violence, sabotage, assault, as well as insubordination of any kind, the matter may be deemed to have been sorted out at this stage itself and it should not be allowed to be escalated upwards as allowing the worker to raise this dispute at higher levels is tantamount to questioning of the process of suspension of the employee.

An amendment may be made here to broad base the representation of suspension and dismissal process by including one person of eminence in the existing process-an ombudsman type to allay the apprehensions of the unions and workers about the fairness of the process. The recommendation of the committee should be binding on both the parties on a broad based list of acts of misconduct which may be developed by the government. Similar process may be followed in other cases of differences including the grievance redressal machinery between the management and the workers/unions. No dispute under this list may be allowed to go to the labor tribunals or court. In a few others (10-20% of the cases), if the dispute remains unresolved at the bi-partite level, it may be referred to conciliation and upon its failure to arbitration or adjudication with a directive that the legal process would be completed on a maximum of three hearings. This change may be brought about statutorily. This will, on the one hand, reduce the role of third party intervention and on the other, de-burden the courts leading to a speedy completion of the pending cases.

*Applicability of the Act:* The ID Act is applicable to every enterprise irrespective of the number of workers. However, Chapter VB of the Act is applicable to enterprises which are not seasonal or work is not performed intermittently employing more than 100 workers on an average per working day in the preceding 12 months. The applicability was reduced from 300 to 100 workers during the Emergency (1976). There has been intense debate on the restoration of the manpower threshold limit as according to some studies (Fallon & Lucas, 1993) the 1976 amendment of the ID Act 1947 reduced the demand for labor by 17.5%. The employers have also been arguing that this threshold limit should be restored. This change may be favorably considered.

**Contract Labor (Regulation & Abolition) Act, 1970**

The Act allows employment of contract labor in a large number of activities which are considered peripheral in nature. It stipulates that such employment

should be provided through contractors who are expected to adhere to the legal obligations of employment of contract labor. The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months. It does not apply to establishments where the work is of intermittent nature. The Act applies to establishments of the government and local authorities as well.

The 'appropriate government' under section 10 (1) of the Act is authorized after consultation with the Central or State Boards to prohibit employment of contract labor in any establishment in any process operation or other work. Such restrictions are often decided on the basis of: whether the work is of perennial nature; whether the work is incidental or necessary for the work of an establishment; whether the work is sufficient to employ a considerable number of whole time workmen; and, whether the work is being done ordinarily through regular workmen in that establishment or a similar establishment.

The main purpose of the Act was to facilitate the employment of workmen in activities which are not perennial and do not form the core activity of the organization. However, the practice has been otherwise both by the government and other organizations. The reason given is the inflexibility of the existing labor laws. Also, employers' claim that in today's changing economic-environment, the distinction between the core and non-core does not exist. This belief by the employers has led to large scale employment of contract labor, mostly in contravention of provisions of the Contract Labor Act.

Admittedly, the rigidities of labor laws and employers inability to regulate their workforce in high and lows of the demand is an important issue and organizations must have the flexibility to adjust work force to remain competitive. There are two sets of the policy changes which may be considered here. One, the recommendation that flexibility can be introduced by deleting Ch. VB and Section 9A of the ID Act as highlighted in the earlier part of the paper. If this amendment is made, contract labor should only be permitted as per the law in non-core activities and the appropriate government should strictly enforce their right to abolish them in activities which are core to the organization. Aberrations may invite serious penalties which need to be enhanced sufficiently.

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Two, in the absence of the suggested changes in the ID Act, the law should be renamed as Contract Labor Regulation Act and the word 'prohibition' may be removed. However, contract labor employment may be allowed in specified activities, the list of which may be decided through consultations. This should be done if the industry would employ them responsibly by paying wages suitably calibrated with the skill levels of the employees rather the minimum wages. Wages should be fixed in relation to the equivalence of the job in which per-

manent workers of a particular organization are engaged, the level of skills required for the job and years of experience of those being employed as a contract labor (Sodhi, 2013). Tripartite consensus on engagement of contract labor and payments as well as the working conditions must be created before Section 10 of the Act is deleted. An integral part of the amendment is the responsibility of the contractor and the aberrations inviting severe penalty on them.

Another possible approach in engagement of contract labor is the concept of 'Fixed Term Employment' under which employment is for a predetermined period and wages and allowances as well as statutory benefits would be similar to regular workers with such workers not having any right to regularization after completion of the term.

**The Trade Union Act, 1926**

The Act and its many clauses have led to more confusion and problems than sorting them out. It gives the right to any seven persons to register a union but is silent on its recognition in the enterprise. The Act allows one-third of its leaders as outsiders. All this has led to multiplicity of unions, problems in recognition of unions and outside leadership (Section 16) which led to politically motivated leaders' interference in the affairs of the establishment.

The multiplicity of trade unions is abhorred by the employers and creates problems with respect to their recognition as a bargaining agent. Even countries like Bangladesh and Srilanka have enacted far reaching amendments to suit the present competitive environment. For example, Bangladesh reformed its labor law and minimum membership of workers required for forming a trade union is 30, in Pakistan 20 % for its registration and union with one third of the workers for collective bargaining (2012 amendment). In Sri Lanka, only the union with 40% of the membership in the company can engage in collective bargaining (EXIM Bank, 2013).

It is suggested that only one outsider may be allowed as an outside leader and that there should be a limit of companies in which an outsider can become a leader of internal unions. Second National Commission on Labor (NCL) had made a number of meaningful suggestions to bring amendments in the Trade Union Act. These were: union must have the representation of 20% of the workers for its recognition as a bargaining unit; and that section 16 of the Trade Union Act may be deleted. These are important suggestions and the Act may accordingly be amended.

**Labor Administration**

Labor administration comprises Labor Commissioners, Labor Officers and Labor Inspectors. Section 4(1) (9b) (v) of Chapter 6 defines their roles and duties. The most difficult and annoying part of labor administration for the employers is the inspection notoriously given the label of Inspector Raj. The labor officers and inspectors are expected to verify multifarious sets of regulations under the labor and industrial relations legal framework. The officials have the power to seek information/records as well as en-

ter any establishment, factory or office and make copies of any documents maintained by the management. They can impose fine for any labor law violations.

**Since the employers find it extremely cumbersome to maintain such registers, the violations are high.**

The system has been unable to meet the laudable objective of monitoring the implementation of labor laws largely because of the multifarious registers and regulations. The scope extends to regulating the height of urinals to workers wash rooms to how often the workplace must be lime washed. The employer is expected to maintain 6 different registers of attendance logs, 10 different accounts of overtime wages, five types of annual returns besides adhering to a host of other stipulations and maintenance of registers. Since the employers find it extremely cumbersome to maintain such registers, the violations are high. The employer prefers to give bribes rather than maintain all the registers and they find a willing partner amongst majority of labor inspectors. This system has remained ineffective because quite often labor officers do not have reliable information about the location and dispersal of establishments within their jurisdiction. The ratio of labor inspectors to the number of enterprises is also adverse. It is physically impossible to cover the area and the number of companies under the jurisdiction of one inspector. Even facilities like transport and other logistics to carry out inspections are insufficient.

For a policy recommendation, the two issues which need to be looked at are: the number of laws and their procedures have to be simplified along with a drastic reduction in the items under inspection; and total freedom from inspection which the employers want would be total disregard of the primary obligation of the state to formulate and regulate the implementation of the laws. There is, therefore, the need to maintain a balance first by statutorily reducing the provisions and list of inspections while keeping intact the objective as administering the compliance or otherwise of the legal obligations. The matter has been under consideration and a number of suggestions which have already come up as follows.

The Prime Minister's Council on Trade & Industry on 4th December 2004 was set up under the Chairmanship of Anwarul Hoda, Member (Industry), Planning Commission and it recommended in December 2005, the following steps:

"A system of third party inspection should be established to give to enterprises an option to get their regulatory compliance certified by reliable agencies like the ISO 14001 certification by the Quality Council of India, Occupational Health and Safety Standard (OHSAS 18001) by the British Standard Institute UK, Social Accountability Standard (SA 8000) by Social Accountability International, USA and corresponding standard developed by Bureau of Indian Standards (BIS). Once such certification has been obtained, the unit should be exempted from routine inspection. Special inspection would be authorized only on receipt of credible complaints".

The employers demand is for self certification and some of the state governments have already introduced this system. However, given the rent seeking behavior of the labor inspectorate, the employers will get away with whatever they do. The Government of India's program of filling e-returns is welcome. But this not being implemented swiftly and may take a long time. Therefore, till the time this process is completed, a mechanism of joint inspections with joint annual calendar of inspections should be developed. However, it is imperative that the list of inspection is significantly pruned.

**It is imperative that the list of inspection is significantly pruned.**

## Other Issues

*Too many laws:* There are too many laws and there is an urgent need to consolidate them. As Second National Commission on Labor (NCL) suggested, these must be grouped together under five categories: labor relations; wages & working conditions; social security, and a separate bill for agricultural workers and others in the unorganized sector. Also, there are different laws applicable to establishments according to micro, small and medium, size of workforce and across sectors. This should be done away with.

*Different definition of the worker in laws:* There is also the problem of no uniform definition of a worker in the Acts. Some like the Minimum Wages Act, Payment of Gratuity Act, Employee Provident Fund Act and others do not define a 'worker' and instead define an 'employee' with different definitions. The ID Act Section 2(g) defines workman "as any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward……". This in itself has given rise to ambiguity as courts have upheld that even a Pilot is a workman since their work is of technical nature. Even supervisors are a part of the definition of a worker according to the ID Act.

One definition of a workmen irrespective of the act and the size of establishment is the immediate need. The supervisors should be out of the ambit of the definition of the worker except in the smaller establishments (10 and 20 workers), in which the salary is of below Rs. 10000/-.

A summary at all the suggested amendments in labour laws is given in Table 2.

## Concluding Remarks

Business must not be tied up to too many rules and regulations and then expected to deliver. Labor law reform though not the only contributor, will pave the way for robust growth and investment. It has been an important agenda of a number of governments, national committees and the Second National

**Table 2 Suggested Labor Law Changes at a Glance**

| Labor Law | Current Legislation | Proposed Amendment/Change |
|---|---|---|
| **1.ID Act, 1947** | • Government permission required | a. No government permission may be required for lay off, retrenchment and closure |
| • Lay off, Retrenchment & Closure (Chapter VB, VA) | • Retrenchment compensation of 15 days for each year completed.<br>• One month's prior notice indicating reason for retrenchment<br>• Compensation for closure depends upon whether the industry is sick, non-profit etc. | b. Retrenchment compensation to be increased to 45 days per year of completed or number of years of service left whichever is less<br>c. Notice period of 2 months for retrenchment<br>d. Closure requirements may be made stringent with higher compensation compared to the present one. |
| •Notice of Change (Section 9A) | • 21 days notice to be given to the government. | a. No government notice may be required<br>b. Carry out the changes after discussion of the legitimacy of change with the unions/workers. Submit the legitimacy report to the government. |
| **2.Dispute Settlement** | | |
| • Provision for raising a dispute (Section 2 A & Section 26)<br>•Collective bargaining Section 18(1), (3), and Labour Courts (Section 7A & B), Voluntary arbitration (Section 10A) and Compulsory adjudication (Section 7) | • Permits a worker/union to resort to a dispute any time<br>• Bi-partite forums, except Works Committees, are not statutory in Nature | a. Put a six month limit for raising a dispute<br>a. Bar unions with less than 15% from raising the dispute<br>b. Provide legal sanctity to the bi-partite forums like the co-determination model of Germany.<br>c. Involve a third party like the ombudsman in the enquiry process of suspension and dismissal.<br>d. The recommendation should be binding (on a broad based mutually developed list). On both the parties.<br>e. The remaining 10-20% of the cases, where disagreement persists, should be referred for conciliation and upon its failure to voluntary arbitration or adjudication. |

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|---|---|---|
| **3.Contract Labor (Regulation and Prohibition Act, 1970** | • Meant for regulation and prohibition of contract labour employment<br>• Applicability of the Act to establishments with 10 & 20 worker, with and without power<br>• Section 10 of the Act allows prohibition of of contract labour in any process, operation or other work in any establishment<br>• Contract labor is entitle to the payment of Minimum Wages as announced by the government from time to tome | a. Keep the applicability limit of worker from 10 to 20.<br>b. Mutually develop a broader list of core activities<br>c. In case chapter VA & VB are amended, Section 10 for the Contract Labour Act may not be amended.<br>d. Introduce an amendment in CL Act that the employer may pay contract labour above the minimum wages calibrated with the skill levels of such workers having a bearing with the wages of permanent workers in each establishment.<br>e. Introduce 'Fixed Term Employment' for a predetermined period with wages equivalent to the regular workers with no right to regularization. |
| **4. Trade Union Act, 1926** | • Section 16 allows one third of its leaders to be outsiders | a. Only one outsider member may be allowed as an outside leader.<br>b. Put a limit in the number establishments an out sider can be leader of internal unions.<br>c. Unions must have the representation of 20% of the workers for its recognition as a bargaining agent |
| **5.Labor Inspection** | • To seek compliances of labor law stipulations | a. Reduce the items/registers required by employers for labor inspection.<br>b. Allow submission of online compliances.Till this takes place, allow self certification with strict penalties |

**6. Others**

- Too many Laws
- Different definitions of 'Worker' in Acts
- Supervisors are categorized along with worker
- Penalties for labor law violations

- Consolidation of labor laws

All laws may be consolidated under five categories.

1. Labor relations
2. Wages and other components of compensation
3. Working conditions
4. Social security
5. Agricultural and other workers with unorganized sectors

- One definition of worker irrespective of the Act.
- Only supervisors with a salary of Rs. 10,000/- may be covered under the Acts.
- The current penalties are an insufficient deterrent to violate labour laws. These must be enhanced substantially.

Commission on Labor. All of them have categorically stated the need to change labor laws. What has stalled these reforms is the lack of consensus among the three actors i.e., the government, employers and the unions. The unions and the employers just would not give up an inch of their respective turfs. Yet a consensus at the tripartite forums is the essence of the labor law framework of India. The Central Government had also not been steadfast despite understanding the felt need and public postures. The stalemate has, therefore, continued. The governments have also been anxious of the so called 'political backlash'. It is difficult to comprehend that successive governments have not been so much concerned about giving legal protection at par with the organized sector workers to 94% of the unorganized sector workers but is worried about the political backlash of making amendments for six percent of them. It will be pertinent to highlight here that the coverage of ID Act, 1947, the rigidity clauses of which have been the bone of contention, has a coverage of about 1.4% of the workforce or 3% of the hired workforce. The other apprehension is of large scale retrenchments and closure which is not without valid reason. This though can be addressed by substantially increasing the compensation to be paid in such cases so that the employer resorts to them only in case of absolute necessity. The experience of some of the state governments like Andhra Pradesh for the contract labor, Gujarat for making a number of desired

changes in the labor laws and now the proposed ones in Rajasthan should help the authorities in allaying some of these apprehensions to create an investor and business friendly, environment. As long as the amendments in labor laws do not trample the rights of workers, these should be carried forward. Fimally, the Central Government must take the lead in bringing the desired amendments rather than passing the buck on to the State governments. Leaving it to the latter will only escalate disparities within the country with its economic and social consequences.

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**Annex I Labor Laws Enacted by the Central Government**

| Sl No. | Name of the Act |
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| **a.** | **Labor laws enacted & enforced by Central Government** |
| 1. | The Employees' State Insurance Act, 1948 |
| 2. | The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 |
| 3. | The Dock Workers (Safety, Health and Welfare) Act, 1986 |
| 4. | The Mines Act, 1952 |
| 5. | The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare(Cess) Act, 1976 |
| 6. | The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act, 1976 |
| 7. | The Mica Mines Labor Welfare Fund Act, 1946 |
| 8. | The Beedi Workers Welfare Cess Act, 1976 |
| 9. | The Limestone and Dolomite Mines Labor Welfare Fund Act, 1972 |
| 10. | The Cine Wokers Welfare (Cess) act, 1981 |

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| 11 | The Beedi Workers Welfare Fund Act, 1976 |
| 12 | The Cine Workers Welfare Fund Act, 1981 |
| **b.** | **Labour Laws enacted by Central and enforced by both the Central as well as the State Governments** |
| 13 | The Child Laobr (Prohibition and Regulation) Act, 1986 |
| 14. | The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) act, 1996 |
| 15. | The Contract Labor (Regulation and Abolition) Act, 1970 |
| 16. | The Equal Remuneration Act, 1976 |
| 17. | The Industrial Disputes Act, 1947 |
| 18. | The Industrial Employment (Standing Orders)Act, 1946 |
| 19. | The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 |
| 20. | The Labor Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 |
| 21. | The Maternity Benefit Act, 1961 |
| 22. | The Minimum Wages Act, 1948 |
| 23. | The Payment of Bonus Act, 1965 |
| 24. | The Payment of Gratuity Act, 1972 |
| 25. | The Payment of Wages Act, 1936 |
| 26. | The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 |
| 27. | The building and Other Construction Workers Cess Act, 1996 |
| 28. | The Apprentices Act, 1961 |
| **c.** | **Labour Laws enacted by Central Government and Enforced by the State Governments** |
| 29. | The Employers' Liability Act, 1938 |
| 30. | The factories Act, 1948 |
| 31. | The Motor Transport Workers Act, 1961 |
| 32. | The Personal Injuries (Compensation Insurance) Act, 1963 |
| 33. | The Personal Injuries (Emergency Provisions) Act, 1962 |
| 34. | The Plantation Labor Act, 1951 |
| 35. | The Sales Promotion Employees (Conditions of Service) Act, 1976 |
| 36. | The Trade unions Act, 1926 |
| 37. | The Weekly Holidays Act, 1942 |
| 38. | The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 |
| 39. | The Workmen's Compensation Act, 1923 |
| 40. | The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 |
| 41. | The Children (Pledging of Laobur ) Act 1938 |
| 42. | The Bonded Laobur System (Abolition) Act, 1976 |
| 43. | The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 |
| 44. | The Unorganized Workers' Social Security Act, 2008 |