Globalization and Labour Laws in India

India, like other countries worldwide, is experiencing the effects of globalization. In order to make conditions more friendly for investors, there is a need for adaptability. Labour legislation, such as the *Indian Disputes Act* and *Contract Labour (Regulation and Abolition) Act*, are now under debate, along with issues concerning special economic zones.

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Introduction

With more companies operating internationally, the impact on various business functions and labour laws in India is becoming more pronounced. Globalization, and the need to attract foreign investment, inevitably leads to an attack on a workers' rights by diluting existing labour standards, as trans-national corporations (such as the World Bank, the World Trade Organization, and the International Monetary Fund) concede to the demands of multinationals. This dilution of stringent labour standards and strong resistance to any strengthening of workers' rights (which sometimes become an obstacle to competitiveness in the global economy) is becoming prevalent in India.

Since the beginning of the reforms in the early 1990s, there have been demands from industry for liberalization in the stringent labour regulatory framework. The influx of foreign companies has increased the demand for more relaxation in labour laws to make investment conditions more conducive. This article identifies the areas in Indian labour laws where change is demanded in the wake of increased foreign participation and steps taken to adapt to the changing time of globalization.

Identifying areas for change in Indian labour legislation

In such a scenario, the challenge before the Indian industrial regulatory system is to devise a framework, which combines the efficiency of the enterprise with the interests of the workers. The regulators need also to ensure an investor friendly environment. For this it is necessary to take a holistic view of labour market regulation and address the reform debate with respect to the *Industrial Disputes Act, 1947* (IDA), Contract *Labour (Regulation and Abolition) Act, 1976* (CLA) and other associated labour regulations.

The Indian constitution provides that both union and state governments can enact labour laws, but the effect of national laws in the local labour market depends upon how well they are implemented. The different key aspects of labour legislation present across the country today are: restrictions on hiring measures, hours of work measures and retrenchment, restrictions of dismissals index, cost of dismissal measures, and the rigidity of employment.

Provisions of the IDA and demands for change

The debatable areas in the Indian Disputes Act, mainly applicable to commercial and manufacturing operations, includes: Chapter VB related to the special provisions of lay-off, retrenchment and closure in certain establishments; Sections 11-A related to powers of labour courts, Tribunals and National Tribunals; Section 25-F that lays down the conditions precedent to retrenchment; and Section 25-G that details the procedure for retrenchment, dispute resolution mechanism, adjudication and labour inspections.

Primarily, the disputable aspect of section 11-A of the IDA is that it permits the labour courts to modify a retrenchment order dealt to an employee, including the case in which a worker is retrenched on disciplinary grounds. In *U.P. State Road Transport Corporation vs. Subhash Chandra Sharma and Others, AIR 2000 SC 1163*, the Supreme Court observed:

> "... this section vests the Labour Court with discretion to substitute the order of discharge or dismissal of a workman into an order of reinstatement on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of

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discharge or dismissal as the circumstances of the case may require."

Court interference in matters of retrenchment order by an employer is perceived by the companies as over-interference even in their primary functioning.

Further, Section 25-F of the IDA provides mandatory conditions precedent for retrenchment of workmen. These provisions only prescribe the conditions for terminating the services and do not confer any right on the workman for permanent absorption, as suggested by the judicial interpretation in a number of cases, much to the consolation of employers. Section 25-G lays down the procedure for retrenchment. It follows the principle of "last come, first go", based on the foundations of seniority of service and rules of social justice. This rule in turn may deprive the employer to retain their most updated and technically accomplished employees. It violates the employer's right to select among the best workers, and neutralizes the right to retain the younger and better-trained workers in favour of the older and less trained ones, as the case may be.

Section 25-O of the IDA lays down the procedure to be followed by employers during closure of a company. It prescribes a condition that the employer should refer the cases of closure to the state government. However, in *Excel Wears vs. Union of India AIR 1979 SC 25*, when this aspect of law came into question, the court held that the right to close a business is an integral part of the fundamental right to carry on a business and it is wrong to suggest that an employer has no right to close down a business once he starts it. The section 25-O as it stood was declared unconstitutional. Further in *G.K. Sengupta vs. Hindustan Construction Co. Ltd., 1994 LLR 550 (Bom)*, the court held that such a permission of closure should be refused only if the Tribunal is satisfied that the management's action is not bona fide, the principles of natural justice have been violated or such a decision would not justify any reasonable person in coming to such a conclusion.

Though the approach of the section is to provide the procedure for closing down an undertaking, this section goes further and, among other things, imposes a restriction of seeking permission by the employer even to close down his undertaking.

The complication of too much legislation

The presence of a large body of legislations complicates the normal functioning of companies. The working conditions are governed principally by the *Factories Act, 1948*; the *Industrial Employment (Standing Orders) Act, 1946*, and the CLA. The principal laws relating to wages are the *Payment of Wages Act, 1937* and the *Minimum Wages Act, 1948*. Laws related to Industrial Relations include the *Trade Unions Act, 1926*, the *Trade Unions (Amendments) Act, 2001* and *The Industrial Employment (Standing Orders) Rules, 1946*.

Further, social security systems in India impose a liability either solely on the employer (*Maternity Benefit Act, 1961*) or on employers and employees together (*Employees Provident Fund and Miscellaneous Provisions Act, 1952*), or on an insurance scheme where employer, employees and the State contribute to the insurance fund (*Employees State Insurance Act, 1948*).

There is an urgent need to simplify, rationalize, and consolidate the complex and ambiguous extant pieces of labour legislation into a comprehensive but simple code that allows for labour adjustment with adequate social and income security for the workers, together with keeping the globalization patterns in consideration after wide consultation among employers, trade unions, and labour law experts.

Issues concerning the CLA

Under the provisions of the Contract Labour (Regulation and Abolition) Act, a workman is deemed to be employed as contract labour when he is hired in connection with the work of an establishment by or through a contractor for work which is specific and for a definite duration. Thus, contract labour differs from direct labour in terms of employment relationship with the establishment and method of wage payment. Contract labour, by and large, is not on the payroll. It is usual that the main social benefits paid by the contractor towards the contract labour are charged back to the establishment.

The Supreme Court of India in the *Standard Vacuum Refinery Company vs. their workmen (1960-II-LLJ page 233)* observed that contract labour should not be employed where (i) the work is perennial and must go on from day-to-day; (ii) the work is incidental to and necessary for the work of the factory; (iii) the work is sufficient to employ a considerable number of full-time workmen; and (iv) the work is done in most concerns through regular workmen.

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The CLA was created with the objective of gradual abolition of casual labour hiring, and to regulate the working conditions of casual labour, wherever permitted. Section 10 of the CLA prevents firms from outsourcing most core functions or hiring workers on temporary contracts for more than 120 days. Anyone so employed can demand permanent employment from the company. Also, the "appropriate government" under section 10 is authorized, after consultation with the central board or state board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work.

The Supreme Court in *Steel Authority of India Ltd. vs. National Union of Waterfront Workers & Others 2001 (4) LLN 135 OR*, held that the contract workers would have no right to automatic absorption. They would only have a right to a preference in employment if permanent workers were to be employed to fill in the vacancies created by the removal of the contract workers. The court added that on issuance of a notification by the appropriate government under Section 10 prohibiting employment of contract labour in a given establishment, it is for the contractor to provide work to his labour in other establishments, where the contract labour system is not prohibited.

Giving permanent status to every contract labourer after 120 days would discourage this policy of hiring skilled labour for shorter duration and specialized works. This helps the establishment to involve more labour force on a contractual basis and get work done with efficiency. The legal regulation of contract workers has profound implications for those enterprises that have a global supply chain spread over several countries. Contracting out work allows firms to concentrate on their core business and improve overall competitiveness. Therefore, there is a demand from employers for an amendment of Section 10 of the CLA so that there are sufficient guidelines for deciding any process, operation or other work in any establishment.

Issues concerning special economic zones

Apart from the demand for changes in the existing labour laws, the increase in the number of special economic zones (SEZs) and foreign companies in India has led to a fresh stipulation for the relaxation of labour laws in SEZs areas. There is also a debate about having a new set of labour and employment laws for the SEZs.

In tone with this demand, in 2001, the Federation of Indian Chambers of Commerce and Industry submitted a study to the Ministry of Commerce and Industries, which briefly sets out some of the factors for the success of SEZs and advocates a flexible labour policy for the zones. The only concern is that the free market argument with no level playing field puts workers at the mercy of developers and, therefore, all labour laws are now applicable to SEZs as well.

To create a new institutional infrastructure that can truly advance the cause of workers and promote growth, the present regulations must evolve from protecting the job to protecting the worker.

So far there has been a concession on economic aspects, now providing concession on social cost of doing business would make doing business in SEZ more profitable. The support from the Federation and consideration to this effect of the Ministry would help in the grant of concessions in retrenchment laws and the CLA.

Shift in the focus of labour laws

Indian labour laws are often perceived to be too restrictive on employers and despite repeated demands from industry for liberalization in the regulatory framework, little legal change has been allowed since the reforms began in early 1990s.

However, in recent times and pursuant to globalization, a major shift is taking place in employment from permanent to temporary, casual and contract employment. This has weakened the collective bargaining machinery of labour. The voluntary retirement scheme has become one of the main instruments for reducing the workforce. Permanent workers in non-core activities are removed and contractual workers are hired either through outsourcing to other firms or direct recruitment. Further, several states have relaxed the provision of enforcement of labour laws leading to flexible practices at the ground level. For example, the states of Rajasthan, Uttar Pradesh and Andhra Pradesh have reduced the scope of labour inspection, and have exempted several establishments from the authority of labour inspection.

To create a new institutional infrastructure that can truly advance the cause of workers and promote growth, the present regulations must evolve from protecting the job to protecting the worker. This implies transforming current provisions aimed at ensuring job security into mechanisms that protect the income and welfare of those workers adversely affected by technological changes or market fluctuations. Therefore, making job-search assistance

and training available to workers affected by retrenchment, and strengthening compensation for retrenchment and firm closure would be as logical as eliminating section 25-G and the provisions related to seeking government permission for retrenchment and closure (Chapter VB).

Conclusion

Adaptability is a necessary condition for the continued existence of a legal system. The challenges of the contemporary world (namely economic, political and social) can be successfully met by either discarding or by adjusting the labour regulations of the Indian legal system. With huge expansion in cross border capital, trade technology and information flows becoming a defining feature of the Indian economy, addressing labour concerns for making conditions more investor friendly would be the next rational step.

About the authors

Priti Suri is the proprietor of PSA, Legal Counsellors. She has more than two decades of experience on three continents in diverse areas of international commercial law, mergers and acquisitions, joint ventures, technology transfers and arbitration and litigation. After earning an LL.M. in the United States, she took part in the ABA's International Legal Exchange programme and worked at law firms in the US. Based in Paris in the early 1990s, she returned to India in February 1997 to set up the practice in New Delhi. She continues to represent several clients in a broad spectrum of industry ranging from automobiles, defence, energy, information technology, infrastructure, pharmaceuticals and telecommunications. Suri has also authored and edited two books, Open Source and the Law (the first book on the subject in India) and FDI Notifications: An Anthology, both published by LexisNexis Butterworths, India.

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