

# LABOUR REFORMS/ LABOUR LEGISLATION IN THE CHURNING PROCESS

(A Chronology of Initiatives undertaken by the Government and the Reactions  
of Trade Unions and Employers towards the same)

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## ABSTRACT

*Labour reforms have a key role to play in improving the business environment in India. Acknowledging this fact, the union government is actively and aggressively discussing, drafting and engaging with labour groups to address their concerns with respect to Labour reforms. Since assuming of power in 2014, the present NDA government has taken many initiatives in this direction. A brief account of these initiatives will help comprehend the whole discourse and sides taken up by various stakeholders on Labour reforms.*

*Unfortunately, labour laws and industrial relations in our country have been based on the assumption that the interests of employees and employers are adversarial. There is a general feeling that the employers, exceptions apart, in our country are exploitative and, therefore, it is the trade unions that have to protect the interest of workers. With this type of confrontation between the employees and employers we cannot expect any 'labour reforms' in the right sense of the term.*

*It is good that the government is holding consultations with all parties before proceeding with the reform process and now it is up to the trade unions to rise above the narrow politics to facilitate the ease of doing business that would lead to the creation of a cordial business environment in India.*

*Keywords: Labour Reform, Labour Legislation.*

Although the talk of labour reforms had started during the regime of UPA government but with the assuming of powers by the NDA government in 2014, many initiatives have already been taken/ are being taken in this direction. A brief account, in a *chronological order*, of the initiatives/ dialogues with the unions and employers/ actions taken by the Government with regard to labour reforms are as follows:

### **Changes proposed in the Factories Act, 1948 and reaction of Trade Unions -**

Just days before the 2014-15 Union Budget, the government on 7<sup>th</sup> July, 2014 said that it plans to amend the archaic Factories Act, 1948 – the first move in more than a decade to revamp labour laws. Most governments have avoided labour reforms for fear of a backlash from the politically powerful labour lobby.<sup>1</sup> The proposed major amendments would include *relaxing restrictions on night duty for women in factories subject to certain conditions and increase in the limit of overtime to 100 hours (existing 50 hours) in a quarter.*<sup>2</sup> However, the trade unions have opposed the above proposal. The

*unions also claim that the move to double overtime hours will give more liberty to employers. The amendments would also include provision of protective equipment for safety of workers and more precautions against fumes and gases. Besides, the Central Government would be empowered to make rules, a departure from the current practice where States frame the rules.*

A.K. Padmanabhan, President of CITU, opined that the final version of the amendments should be discussed with the trade unions. There should be no unilateral move.

### **Proposed Changes in the 'Inspector Raj', 'Submission of Returns' -**

In an advisory to all ministries, aimed at checking fishing expeditions by inspectors, the department of industrial policy and promotion (DIPP) has said that *no inspection of business premises and factories should be done unless it is approved by the head of the department.*

It has also asked all ministries to shift to a system of self-certification of adherence to norms by all companies, barring those engaged in activities regarded as "hazardous" or involving "risk".

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Ministries have been told that *all returns should be filed online through a unified form* and a checklist of required compliances placed on the ministry / department website. They have also been asked to replace all registers that are required to be maintained by businesses with a single electronic register.<sup>3</sup>

### **Proposed Amendments in 3 Labour Laws -**

The ministry of labour and employment will soon seek Cabinet approval for amendments to three archaic labour laws, kick-starting a long-pending revamp of labour market rules with the aim of benefitting workers and increasing productivity.

The ministry is finalising *changes to the Child Labour Act of 1986, the Minimum Wage Act of 1948 and the Apprenticeship Act of 1961*. The amendments are being finalised by incorporating the views of various stakeholders. The Minister of State for Labour and Employment said, "Government is actively considering amendments to various labour laws. The inter-ministerial/public/tripartite consultations is in progress."

As part of the amendments proposed to the Minimum Wage Act, the ministry will set a *national floor for minimum wages for workers across professions*, resulting in a significant jump in salaries for workers in the unorganised sector. The minimum wages would be revised *every five years* by the Centre in accordance with the NSSCO's Consumer Expenditure Survey. It would also be revised every six months by State governments in accordance with the Consumer Price Index.

In the Child Labour (Prohibition and Regulation) Act, 1986, the proposed amendments will *bar children between 14 to 18 years from taking up hazardous occupations such as mining related jobs*. At present, children under 14 years can work except in prohibited sectors such as domestic work, automobile workshops, bidi making, carpet weaving, handloom and powerloom industry, and mines. The move is significant as child labour accounts for nearly 8.5% of the country's 312 million-strong workforce. Of these, 43.53 lakh children are between 5 and 14 years of age, as per the Census 2011.

The government's emphasis on *skill development will also lead to amendment to the Apprenticeship Act* over the next one month, in line with the announcement made by finance minister Arun

Jaitley in his budget speech. The key changes proposed include dropping the clause that mandates imprisonment of company directors who fail to implement the Apprenticeship Act of 1961 and doing away with an amendment proposed by the UPA mandating employers to absorb at least half of its apprentices in regular jobs, besides adding 500 new trades and vocations under the scheme, including skills for services sectors like IT-enabled services.<sup>4</sup> (See Exhibit - 1)

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### **EXHIBIT-1: Sensible Proposals on Labour Reform: The Apprenticeship Act calls for change**

The government plans to amend three labour laws: on minimum wages, apprenticeship and child labour. This is welcome. India's labour laws must be aligned with the needs of the 21<sup>st</sup> century. These laws must protect workers' interests, sure, but also give employers the leeway to adjust to market needs. The outdated apprenticeship law is one reason why India has only 3,00,000 formal apprentices, while Germany has six million. Arbitrary rules on how many apprentices and in what ratio to the workforce, etc, hamper skill acquisition by young people rather than protect them. The licence raj on nationwide permissions for national employers makes no sense and should also be scrapped.

Apprenticeships are not jobs. The government should desist from any change in the law that will force employers to absorb apprentices. A pragmatic way is for employers to formulate their own hiring policies. The training period varies from six months to four years now. A maximum training period of three years, as proposed by an inter-ministerial group, seems sound, for both employers and apprentices. Employers who violate the law should face fines rather than prison terms. Stipends for apprentices are too low, and should be raised. However; the entire cost need not be borne by the employer: the state can chip in, if it is serious about skill development and job creation. The point is to have a robust law that will help greatly expand formal apprenticeship as part of a flexible market for skills.

Amendments proposed to the Minimum Wages Act - such as setting a floor for minimum wages across professions, revision every five years based on NSSO's Consumption Expenditure Survey - will raise salaries of workers in the unorganised sector and is, therefore, welcome. The amendment to the Child Labour Act to bar children between 14 and 18 years from taking up hazardous occupations is in order. But at a more fundamental level, the political class should intervene at the grass-roots to change the socioeconomic foundations to send children to school, rather than to work.

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The Economic Times, July 25, 2014, p. 14.

On the Apprentices Act, unions feel the new government has not made provisions to monitor breaches by employers.<sup>5</sup>

### **Unveiling of a String of labour reforms in Employees Provident Fund and Misc. Provisions Act, 1952 and Inspection of Factories -**

On 16<sup>th</sup> October, 2014, Prime Minister Narendra Modi unveiled a string of labour reforms aimed at making rules simpler and employee-friendly, removing arbitrary inspections at factories, reducing cumbersome paperwork and making India more investor-friendly.

*Provident fund (PF) accounts have been made portable, enabling employees to maintain a single PF account - called a Universal Account Number (UAN) - even when they switch jobs. Modi said Rs. 27,000 crore of PF money was currently lying unclaimed with the government and he wanted to return it to those it belonged to.*

A new labour inspection scheme seeks to *eliminate India's infamous 'inspector raj' and make processes more transparent and accountable.* Under it, a computer lottery will be used to pick factories that will be inspected and officials will need to upload a report within 72 hours.<sup>6</sup>

He also launched a *unified web portal for easier compliance of labour rules* for industry through a common window and a single form replacing the earlier 16 forms.<sup>7</sup>

Industry leaders welcomed the reforms. "Simplification of procedures has been a long-standing concern for industry," said Chandrajit Banerjee, Director General, Confederation of Indian Industry.

Industrialists cite India's complex labour rules as a major hurdle that keeps away large-scale private investments in what should otherwise be a massive, attractive market. (For Government Rings in Labour Reforms **See Exhibit-2**)

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### **EXHIBIT-2: Government Rings in Labour Reforms**

PM Narendra Modi announces several measures to prevent harassment of officials & extend social security benefits to labourers.

### **WHAT ARE THESE MEASURES?**

#### **1. SHRAM SUVIDHA PORTAL:**

- **Around 7 lakh** units will be allotted a unique labour identification no. for online registration
- **Units can now** file self-certified & single online return for 16 labour laws
- **Portal will be** operative in EPFO, ESIC, DGMS, & CLC.

#### **2. UNIVERSAL ACCOUNT NUMBER:**

- **Over 4 crore EPFO** subscribers will have direct access to their EPF accounts
- **It will allow** portability of social security benefits across jobs
- UAN will be seeded with bank accounts & Aadhar for financial inclusion.

#### **3. LABOUR INSPECTION SCHEME:**

- **Inspections will no** longer be discretionary
- **They will be** based on a computer generated list
- **Only serious matters** to be covered under mandatory inspection
- **Inspection reports have** to be uploaded within 72 hrs

#### **4. RASHTIYA SWASTHYA BIMA YOJANA:**

- **Aam Aadmi Bima** Yojana & National Old Age Pension Scheme to be converged on RSBY smart card
- **Nearly 93% workers** in unorganised sector will now get wellness check

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### **Proposal of classifying all the existing 44 labour laws into Five Labour Codes**

The government plans to push through labour reforms by revamping existing laws into five broad codes dealing with key issues, as recommended by a panel more than a decade ago, to introduce uniformity of terms and definitions and remove anomalies.

All the existing 44 laws will be reclassified into these categories, marking another step in the series of labour reforms kick-started by the BJP government aimed at redefining them and bringing about greater clarity.

**Approval of Bill to amend the Labour Laws Act, 1988** - The Rajya Sabha on November 25, 2014 approved the bill to amend the Labour Laws Act, 1988, which will *simplify the procedures of filing returns for small firms.*

As part of the amendment to the Labour Laws (Exemption from furnishing returns and maintaining registers by certain establishments) Act, 1988, the ministry of labour & employment

has proposed that *companies with 10-40 employees will now be exempt from provisions under various labour laws that mandate them to furnish and file returns on various aspects as against establishments with up to 19 employees.*

The unions say the proposal to increase the threshold for compliance with the Labour Laws Act to 40 employees from 19 should have been made gradually and not at one go.<sup>8</sup>

Besides, the ministry has proposed to extend the coverage of the Principal Act from 9 Schedules Acts to 16 Schedules Acts, which means that small firms can now *use a unified compliance format from nine to 16.* The amendments would also allow small firms to maintain two registers as against three till now besides enabling records and registers in computer, floppy, diskette or on any other electronic media as well as file it through e-mail.

### **Rajya Sabha's Nod to Apprenticeship Amendment Bill**

On November 26, 2014, the Rajya Sabha passed the Apprenticeship Amendment Bill with a voice vote paying way for industry to take on the task of imparting skills to millions of youth entering the labour workforce every year without much fear. The bill which has already been passed in the Lok Sabha during the last session, will now go for the assent of the President after which the proposed amendments would be notified. In 2013-14, just 2.11 lakh apprentices were appointed in industry out of a potential identified capacity of 3.6 lakh seats – numbers that are miniscule for a workforce that is now growing by 12 million a year with most of them having no employable skills. To put that in perspective, Germany has 3 million, Japan 10 million and China has 20 million apprentices who pick up critical employment skills through a hands-on approach.<sup>9</sup>

### **Labour Minister Urges Agitating Trade Unions for Consensus on Reforms**

Labour Minister on November 26, 2014 asked trade unions in the country to help build a consensus on labour reforms, saying the government will not carry out any reform “at the cost of the working class”.

The minister's appeal comes ahead of a nationwide protest planned by major trade unions on September 2, 2015 to protest against a series of labour reforms initiated by the Narendra Modi government. The Minister asked trade

unions to cooperate with the government and create consensus over three key amendments.<sup>10</sup>

In his first news conference after taking over as the labour minister, Dattatreya said his *government will focus on providing social security cover to the unorganised workers, which constitute 93% of the country's workforce.*<sup>11</sup>

### **Stage Set for Rollout of Apprenticeship Rules -**

The labour ministry has set the ball rolling on changing the outdated apprenticeship rules after amendment to the Apprenticeship Act, 1961 was notified in December 2014 (**See Exhibit - 3**). A Working Group constituted by labour ministry for framing draft apprenticeship rules, in its meeting held on January 12, has prepared draft recommendations on the proposed amendments in Apprenticeship Rules, 1992 and guidelines of Third Party Agencies (TPA), to be finalised after incorporating the views of the stakeholders, in consultation with the Central Apprenticeship Council.<sup>12</sup>

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### **EXHIBIT 16-3: Proposed Draft Rules after amendment to the Apprenticeship Act, 1961 were notified in December 2014**

The rules will allow establishment of specific apprenticeship training instead of trade specific training and less stringent penalty for employers who fail to comply with the rules.

According to the draft rules, each establishment shall engage apprentices in a band of 2.5% to 10% of the total strength of the establishment including contractual staff and only employers having six or more workers shall be eligible to engage apprentices.

Under the earlier provisions, an employer had to reserve 50% of regular jobs for apprentices they train.

Besides, firms would now be able to formulate their own policies for recruiting trained apprentices and companies having operation in more than four states can now approach the Centre for apprentices rather than each state that they operate in.

Labour ministry has sought public comments on draft rules required to implement the recently amended Apprentices Act, 1961, that allows employers to fix the hours of work and leave as per their discretion or policy.

Parliament has passed the Apprentices (Amendment) Bill, 2014.

“Labour ministry has taken quick steps to implement the amended Apprentices Act. Draft recommendations for rules under the Act have been placed on website for

public comments. Comments can be sent by March 2, 2015," a labour ministry statement said.

According to the statement, these amendments have been made with the objective of expanding the apprenticeship opportunities for youth.

"While non-engineering graduates and diploma holders have been made eligible for apprenticeship, a portal is being set up to make all approvals transparent and time bound," it said, adding that the apprenticeship can be taken up in new occupations also.

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*The Economic Times, Feb 14, 2015, p.15*

### **Union Cabinet's Approval to Changes in Child Labour (Prohibition & Regulation) Act, 1986 -**

On 13<sup>th</sup> May, 2015, the Union Cabinet on Wednesday approved amendments to the Child Labour (Prohibition & Regulation) Act, 1986, which will *pave the way for children below 14 years to work in family enterprises* and as artists in audio-visual entertainment industry after school or during vacations<sup>13</sup> (See Exhibit - 4).

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### **EXHIBIT-4: Changes approved by the Union Cabinet in the Child Labour (Prohibition & Regulation) Act, 1986**

The changes approved banning adolescents between 14 and 18 years from working in hazardous occupation and doubling the penalty in case of contravention of the Act.

The amendments seek to align the age of prohibition of employment to age under the Right of Children to Free and Compulsory Education Act, 2009, which enjoins the state to ensure free and compulsory education to all children in the age group of 6 to 14 years.

The Child Labour (Prohibition & Regulation) Act (CLPR Act) 1986 prohibits employment of a child in 18 occupations and 65 processes and regulates the conditions of working of children in other occupations and processes including domestic work, automobile workshops, bidi-making, carpet weaving, handloom and power loom industries and mines.

"Further, CLPR Act is not in conformity with the International Labour Organisation (ILO) Conventions 138 and 182, which provide for minimum age of entry into employment and prohibition of employment of persons below 18 years, in work which is likely to harm health, safety and morals," the statement said. The proposed changes raised the penalty for employing any child or adolescent in contravention of the Act to Rs. 50,000 from Rs. 20,000 and imprisonment for six months to two years, up from three months to a year.

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- *The Economic Times, May 14, 2014*

Barring these exceptions, the Child Labour (Prohibition & Regulation) Amendment Bill, 2012 has proposed a complete *ban on employment of children below 14 years in all occupation and processes*, an official statement said. The bill will now be presented in the Rajya Sabha during the monsoon session.

### **Flexible Laws for Hiring Contractor Workers -**

The government is proposing *relaxed set of labour laws for hiring of contract workers with greater flexibility to companies* and a proposal on this may soon be taken to the Cabinet. "The proposal is ready and can be presented in the Cabinet very soon. And after that the related bill can be presented in the upcoming monsoon session of Parliament," a labour ministry official said. The government is seeing reforms as a key to create jobs and boost investment.<sup>14</sup>

### **Factories' Social Audit -**

The government is *mulling social audit* of all factories to check whether workers are getting conducive working conditions, continuing with its strategy of extracting benefits for employees as part of strategy to build support for labour reforms. The social audit will include *safety norms for factories*. There is no provision of social audits by the government under the existing legislation related to employment in the factories. Hence, prescribing quality norms and conducting social audits could be a stumbling block for employers.<sup>15</sup>

"Prescribing norms for air and water quality for factories will unnecessarily put additional cost burden on the employer, as workers will anyway be exposed to contaminated air and water when they walk out of the factory premises. India has a workforce of 397.4 million people, of which just 49.7 million are employed in the formal sector; while 347.7 million are in the informal sector, often deprived of safety and security measures, which in turn impact physical and mental well-being over a period of time.<sup>16</sup>

### **Trade Unions' Plan of Strike Against NDA Government's recent moves to amend various labour laws -**

The *Central unions decided to launch a nationwide protest against government's move to dilute labour laws* and the decision to go on strike to protest against it was to be taken in the convention on May 26, 2015. Besides BMS, the central trade

unions which would participate in the convention include Indian National Trade Union Congress, All India Trade Union Congress, Hind Mazdoor Sabha, Centre of Indian Trade Unions, All India United Trade Union Centre, All India Central Council of Trade Unions, Trade Union Coordination Committee (TUCC), United Trade Union Congress (UTUC), Self-Employed Women's Association of India (SEWA) and Labour Progressive Federation (LPF). According to the Secretary, All India Trade Union Congress, "The government's desperation to please corporate is evident as they are rushing through bills like Industrial Relations Code, Small Factories and Employees' Provident Fund, in the name of ease of doing business and boosting 'Make in India'".<sup>17</sup>

#### **Contract Workers May Get Regular Wages -**

The labour ministry is re-examining its proposal to bring wages of contract workers on a par with those of regular workers. It may cost government more than Rs. 10,000 crores annually as contract labour accounts for 55% of public sector jobs and 45% of private sector jobs in our country.

#### **Increase in the Minimum Daily Wage -**

The government has increased minimum wage across the country to Rs. 160 a day from Rs. 137 with effect from July 2015. Instructions have been sent to all chief ministers and lieutenant governors to take necessary steps to fix minimum rates of wages in respect of all scheduled employments in states and union territories not below the revised level.<sup>18</sup>

#### **Small Factories Bill to be Pushed Through -**

The government planned to introduce the Small Factories Bill in the monsoon session of Parliament that would make life easy for firms employing less than 40 people.

The small factories bill seeks to exempt units employing less than 40 workers from 14 labour laws, alongwith combining provisions of various labour laws at one place. It also envisages rules for wages, overtime hours, social security and appointment of factory inspectors in such small units. The amendment proposes to club allowances with wages for the purpose of deduction of provident fund, a provision that can reduce the take-home pay of workers, while increasing the corpus of retirement savings. It also allows employees to choose between Employees' Provident Fund Scheme

and New Pension Scheme (NPS). However, Code on Industrial Relations Bill 2015, which allows companies employing up to 300 workers to lay off staff without seeking official sanction, may not be introduced in the coming session.

Trade unions have opposed the contentious provisions of the bill forcing the government to form a committee of four central Union ministers to hold dialogues with the stakeholders.<sup>19</sup>

#### **Labour Code on Industrial Relations to consolidate three Central legislations into comprehensive framework -**

The Labour Code on Industrial Relations, the draft of which was published for public comments in April, hopes to consolidate three central legislations into a comprehensive framework. (For employers' and trade unions' views/perceptions about the government's moves and labour reforms, see Exhibits- 5 and 6 respectively).

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#### **EXHIBIT-5: A leading Employer's views on amendments to labour laws**

"There is general consensus that amendments to the labour laws are required to make India a more attractive country for investments, and to enable manufacturing here to become globally competitive; a necessary condition for Make in India," says RC Bhargava, chairman of Maruti Suzuki, India's largest carmaker. "However, amendments to the labour laws do require consultations with the trade unions, and the government cannot bypass this process. It is always good to carry(along) stake holders in any process of reform."

*The Economic Times, July 14, 2015, p. 18.*

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#### **EXHIBIT-6: Perception of Trade Union Leaders about the Government's move to Labour Reforms**

"The government was trying to push everything through unilaterally," says Baij Nath Rai, president of Bharatiya Mazdoor Sangh, India's largest trade union and ideological ally of the ruling BJP. Meanwhile, the Centre for Trade Unions had filed a complaint with the International Labour Organisation (ILO) against the move of (Government of India) to reduce inspections at workplaces.

*The Economic Times, July 14, 2015, p.18*

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## Government of India's Assurance to ILO -

Following the complaint lodged by CITU with the ILO against the Government's move to reduce inspections at workplaces, the issue came up for scrutiny before the committee of experts at the annual ILO conference in Geneva in June. Labour minister Bandaru Dattatreya assured the ILO that India had no intentions of by passing its conventions (For ILO's reaction, see Exhibit - 7).

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### EXHIBIT-7: ILO's reactions to the complaint, lodged by CITU, regarding inspectors

The ILO's provisional report states, "The (Indian) government reiterates its commitment to the obligations contained in the convention (C-81) that workplaces shall be inspected as often and as thoroughly as necessary. There is no intent either to dilute this principle in theory or practice, or to relax the enforcement of the rule of law.

According to labour ministry, the earlier envisaged random inspections will not do. The Ministry is now planning to have *intelligence based inspections*. The intelligence mostly will be based on filings by companies and employees. Inspection is a major bone of contention between industry and government. The inspection set-up in the country is severely understaffed, underpaid and ill-equipped.

### What Government Wants vs. What Unions Want?

What the Government wants and what the Unions want is shown in Exhibit - 8

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### EXHIBIT-8: What Government Wants vs. What Unions Want?

#### What Government Wants

**Small factories law** By pass 14 labour laws, Less inspections, self-certification from employers.

**Labour Code on Industrial relations** consolidating three central laws.

**Maharashtra wants to** allow factories with less than 300 workers to lay off/shut down without prior permission

**Labour Code on Wages** consolidating four laws.

#### What Unions Want

**Disagree with definition** of small. Do not want exemption from laws. Want frequent, thorough inspections.

**Disagree with new** norms for association, registration.

**Want government** to retain prior permission.

**Want minimum wages** to be raised to Rs. 15,000 with indexation.

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*The Economic Times, July 14, 2015. p. 18*

### Central Unions decision to go on Strike September 2, 2015 against Government's move to go ahead with labour reforms

Prime Minister Narendra Modi's first meeting with trade union leaders failed to make any headway as the trade unions alleged that the interaction didn't result into any firm commitment from the PM. The trade union leaders later told HT that they are *going ahead with their general strike on September 2*.<sup>20</sup> This could make it difficult for the BJP-led government to get some key labour legislations passed in the upcoming monsoon session of Parliament as trade unions are opposing reforms.

### No looking Back on Labour Reforms

The government is determined to go ahead with labour reforms. After the conclusion of the 46<sup>th</sup> Indian Labour Conference on 21<sup>st</sup> July, 2015 (See Exhibit-9), the Government appeared to be committed to the consultations with stakeholders but, it said, that *resistance from any one group would not halt the pace of labour reforms initiated by it (NDA Government)*. The present scenario could, therefore, further strain the government's ties with the trade unions which have been criticising the BJP-led NDA government over its unilateral approach to amending labour laws in the country. The four Bills lined up for introduction are the Employees Provident Fund and Miscellaneous (Amendment) Bill, Payment of Bonus (Amendment) Bill, Small Factories Bill and the Child Labour (Prohibition and Regulation) Amendment Bill.

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### EXHIBIT-9: Key Recommendations of the 46<sup>th</sup> Indian Labour Conference (July 20 - 21, 2015)

- **IMPLEMENT** recommendations of the last three ILCs with periodic review.
- **REDUCE THRESHOLD** coverage under EPFO and ESIC from 20 to 10.
- **PROVIDE SOCIAL** security cover to those in the unorganised sector.

- **EPF PENSION** to be linked with price index to take into account inflation.
- **ANY LABOUR** law amendments should consider rights and welfare of workers.

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The Union Cabinet has already approved the Child Labour Bill while the remaining Bills will have to get Cabinet clearance before being tabled in the House.

The government has had two rounds of stakeholder consultations on the Small Factories Bill as well as the Employees Provident Fund and Miscellaneous (Amendment) Bill and they are being finalised for Cabinet approval.

The EPF amendment Bill is likely to be taken to Cabinet by the first week of August, while the other Bills are likely to get approval before August 10.

Trade unions have voiced concern on the Small Factories Bill and the EPF amendment Bill, saying the former takes away the rights of the workers gathered over the last 60 years. Under the Small Factories Bill, the labour ministry wants to exempt factories deploying fewer than 40 workers from complying with 14 central labour laws, including the Industrial Disputes Act.<sup>21</sup> If approved, the Bill will also allow the doubling of overtime hours from 50 a quarter to 100 and from 75 hours to 125 hours in cases of emergencies.

As per the EPF Amendment, the government has proposed to make the National Pension System (NPS) an alternative to the EPF and allow small factories to deduct 9% of salary instead of the current 12% for mandatory provident fund compliance.

“NPS has several flaws, but no one is talking about them. Everybody wants to put poor workers’ money in the stock market or make NPS an alternative. Here, the government’s intention is doubtful” said DL Sachdeva, national secretary of the All-Indian Trade Union Congress.

Under the Child Labour Amendment Bill, the government will impose stricter punishment on those employing children below the age of 14, but will allow children to “help” families in non-hazardous enterprises.

The changes in the Payment of Bonus Act would raise the salary limit for getting a bonus from Rs. 10,000 per month to Rs. 19,000, and are at an advanced stage with a draft Cabinet note being moved earlier this

month for comments from ministries, senior labour ministry official.

Separately, the government is initiating stakeholder consultations to *amend the Maternity Benefits Act of 1961* and the *Payment of Gratuity Act of 1972*.<sup>22</sup>

Currently, companies are legally required to grant 12 weeks of maternity leave to employees though several leading employers offer additional time off and other benefits (See Exhibit – 10).

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### **EXHIBIT-10: Example of Maternity Leave in some of the Organisations**

For instance, Accenture offers five months off to new mothers while Flipkart offers 24 weeks paid leave. Citibank also offers a crèche allowance to new mothers, as do some other multinational firms and investment banks. Norway based Telenor Group has adopted a six month paid maternity leave policy as a minimum standard globally across its 13 markets, including INDIA.\*

\* The Economic Times, September 30, 2015, p.20

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The Ministry of Women and Child Development has been pursuing this with us extensively as it is primarily responsible for women’s welfare, so the ministry is framing a proposal to kick off talks with employers and trade unions on *enhancing the maternity leave to 24 weeks*.

One option being considered is to limit the enhanced maternity leave to two children and an employee having a third child would be granted 12 weeks off, in line with the present norm.

#### **Reduction in 5-year eligibility**

Similar tripartite discussions are also being launched on amending the gratuity law to do away with the requirement that employees serve at least five years in a single workplace to be eligible for the benefit.

Employee representatives have been seeking a *reduction in the five-year continuous service clause to qualify for gratuity* and the social security committee of the Indian Labour Conference had endorsed the idea in May 2013.

The possibility of reducing the five-year eligibility for gratuity benefits is being examined. However, this requirement would be redundant if gratuity is allowed to be transferred from one job to



another. So both the options, official are being looked into.<sup>23</sup>

The Payment of Bonus Act of 1965, expected to be the first of the three laws for which amendments will come up for the Cabinet's consideration, sets two numerical ceilings for limiting bonus payouts to workers.

All employees earning up to Rs. 10,000 a month are eligible for a minimum bonus of 8.33% of their annual salary and a maximum of 20%. This ceiling takes into account any productivity-linked bonus that employers may offer.

The Rs. 10,000 salary cut-off is only used for eligibility purposes and actual bonus payments are linked to a separate 'calculation ceiling'. Bonus payments for anyone earning more than Rs. 3,500 a month are made assuming his or her salary is Rs. 3,500 per month. Both these thresholds were last revised in 2006. The proposed changes, in brief, are shown in **Exhibit - 11**.

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### EXHIBIT-11: Proposed Changes

#### MATERNITY LEAVE

- Current - 12 weeks.
- Proposed - 24 weeks

#### BONUS LIMITED TO THOSE EARNING

- Current - Rs. 10,000
- Proposed - Rs. 19,000

#### BONUS CALCULATION CEILING

- Current - Rs. 3,500/- per month
- Proposed - Rs. 6,600/- per month

#### GRATUITY PAYABLE AFTER

- ❖ Current - 5 years of continuous service
- ❖ Proposed - 5 years cap to be slashed; gratuity to be portable with job changes

**Bonus payments to be doubled, gratuity to be made portable**

*The Economic Times, July 22, 2015, p.1*

**Government Shield for Domestic Servants** - The government is equally concerned about the lot of workers in the unorganized sector and initiating steps as indicated in **Exhibit - 12**.

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### EXHIBIT-12: National Policy for Domestic Workers

- All domestic helps to be hired through placement agencies
- Direct hiring to be treated as bonded labour

- Employer will have to pay for social security
- Both parties will have to adhere to code of standard practices
- Salary will be equivalent or higher than minimum wages
- Formal pact mandatory
- Employee will be entitled to a weekly off, maternity leave & 30 days of paid leave in a year.

#### Boost for Formal Employment

|   |   |
|---|---|
| 3 CRORE DOMESTIC WORKERS WILL BENEFIT                             | EMPLOYEES<br>would get all their basic rights       |
| VIOLATION OF provisions would be addressed at appellate authority | IT WILL HELP<br>to move towards organized workforce |

*- The Economic Times, August 6, 2015, p.12*

### Construction Labourers' Eligibility to Avail Benefits may be Relaxed -

The labour ministry is likely to soon propose certain steps for the benefit of construction workers as indicated in **Exhibits - 13 & 14**.

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### Exhibit-13: Link PF A/cs to Aadhaar Cards

A lower minimum work period for availing social security benefits makes sense. But more importantly, what's required is ready portability of employee provident fund accounts across employers and geographies. It would make no sense to simply reduce the work period and have a huge and rising number of untraced accounts as a consequence. Instead, we need to revamp the delivery mechanism so that workers have active accounts, even as they change jobs and place of work. Hence, the need for modern electronic accounts linked to Aadhaar cards for unique identification.

*- The Economic Times, August 19, 2015, p.13*

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### EXHIBIT-14: Relaxation in Rules to enable Construction Workers to avail Social Security sops

The labour minister may soon propose to reduce to a third the minimum of work days a construction worker is required to clock to avail social security benefits under the Building and Other Construction Workers Act.

The measure will be a bonanza for over 25 million building and construction workers in the country, most of whom are part of the unorganized sector.

The ministry is revisiting the law that will make construction workers eligible for social security benefits under the Employees' Provident Fund Organisation and the Employees' State Insurance Corporation by working for 30 days instead of 90 days as stipulated under the Act. The ministry is making the necessary changes to the Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996, to widen the scope of its implementation and simplify it so as to remove all difficulties pertaining to registration of the workers under the Act. The draft amendment will soon be put in the public domain for stakeholder consultation. As per other changes mooted to the Act, henceforth, the worker will have to simply declare on affidavit that he/she is a construction worker and get himself enrolled under the Act using the Aadhaar Number. Besides, the worker will not be required to pay any amount to the registrar and even the annual registration will no longer be required.

Once the worker is enrolled he will be given a universal account number based on which he can be traced anywhere in India, keeping in mind the migrant nature of work he is engaged into. The government is of the view that building and other construction workers are one of the most vulnerable segments of the unorganized sector workforce in the country, enduring uncertain working hours and temporary nature of the work.

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- *The Economic Times*, August 19, 2015, p.13

### **Fixing of Wage of Domestic Helps at Rs.9000/- per month**

A draft note on the policy for domestic workers was submitted to the labour minister which has the *provision for fixing wages for domestic workers at Rs.9000 per month, besides provisions against sexual harassment and bonded labour, and recommends compulsory leave for 15 days a year as also maternity leave.*

Under this new policy the workers will also be given the right to pursue education, a safe working environment, grievance redressal mechanism and a mandatory contribution from the employer towards social security.

While workers will have the right to form groups and unions, employers will have the same right to engage in collective bargaining.<sup>24</sup>

### **Steps Taken by State Governments**

Since labour is a concurrent subject, some State governments, like Rajasthan and Madhya Pradesh, have initiated many labour reforms. For

example, *Rajasthan* took the lead in bringing about dramatic changes to Central labour laws and *initiated reforms with amendments to three key laws – the Industrial Disputes Act, the Factories Act of 1948 and the Contract Labour (Regulation and Abolition) Act.* Following Rajasthan, there are efforts now by other States for similar labour reforms.<sup>25</sup> With the concerted effort towards *removing the culture of inspector raj*, the State Government is *outsourcing inspections* and approvals by the Labour Department to third-party agencies. Labour inspection restricted to *one inspection in a year.*<sup>26</sup>

Madhya Pradesh has introduced Self-Certification-cum-Voluntary Compliance Scheme (VCS) to exempt industries from multiple inspections, returns and registers. Again, the State of *Madhya Pradesh* has started *Unified returns and registers under 13 Labour Laws.*

The State of *West Bengal* has introduced *Simplified Labour Compliance* with extended time of operations, third party inspection and e-registrations.<sup>27</sup>

However, the non-cooperative attitude of the trade unions is creating a lot of problems facing opposition from the BMS, the Maharashtra government has been unable to move forward with an amendment to the Industrial Disputes Act that would allow industrial units with less than 300 staff to shut down and lay off workers without asking the government. The state was following the example of Rajasthan which rammed through such changes last year despite protests.

### **Summing up**

Though the intentions of Government of India towards labour reforms are quite obvious and it is extremely keen to bring about labour reforms its main objective being to attract foreign investment in the country. However, it should also not be forgotten that with the high cost of education and healthcare, and with no well-paying permanent jobs to back up, the vaunted talent pool would shrink in the next generation. The employment-oriented policies in independent India generated this skill pool. So, the pre-occupation with sham labour reforms targeted at lowering permanent employment and diluting labour rights would be suicidal in the long run. On the other hand, Central Federations of the workers' unions are quite adamant and united together for opposing the government moves. The unions feel that the

proposals of the Governments have been designed with anything but the workers in mind. Their feeling is that they have been ignored while formulating the proposal by the Government. Hence, 11 national trade unions jointly dug into their heels with a charter of a dozen demands, including higher minimum wages, universal social security and no unilateral amendments to labour laws. They even observed a general strike on September 2, 2015. Opposition political parties too are having a tough stand against the government. CITU has already complained in this regard to the ILO. The ILO has also asked the government to provide data required under Convention 81, something India had not done for the past couple of years.

However, all stakeholders agree that the system needs to change but not the way the Prime Minister's Office (PMO) wishes. The PMO wanted everything done quickly. It was not transparent. But now they are correcting it.<sup>28</sup>

Change will be slow. The government has sent the draft industrial relations (IR) and the wage code to the ILO for technical suggestions. The organisation has suggested revisions to the IR code that runs to 57 pages. It would still need to go through tripartite consultations - between workers, employers and government. Lack of consultation has led to intense protest in States as well.

Both trade unions and employers need to understand that in globally competitive industrial world, they can no longer afford to be adversaries. Trade unions will have to appreciate that workers can achieve their real interest on a sustainable basis only if Indian industry grows and prospers. Simultaneously, the employers will have to shoulder the responsibility for creating conditions for workers to realize this.

Unfortunately, labour laws and industrial relations in our country have been based on the assumption that the interests of employees and employers are adversarial. There is a general feeling that the employers, exceptions apart, in our country are exploitative and, therefore, it is the trade unions that have to protect the interest of workers.<sup>29</sup> With this type of confrontation between the employees and employers we cannot expect any 'labour reforms' in the right sense of the term.

It is good that the government has now softened and is holding consultations with all parties, but the process would be lengthy and consequently

reforms are likely to be delayed. Since labour is on the concurrent list of subjects under the Constitution, the Government's strategy was initially to encourage States such as Rajasthan and Madhya Pradesh to take the lead in reforming the Industrial Disputes Act and other contentious items of legislation. The Centre is now looking to take on a lead role rather than wait for more States to follow suit. Though some unions like the BMS say that they will not allow changes hostile to their interest, others are not so hopeful. "Ultimately they will get what they want. They are just doing it (consultation) for appearances. But we have to keep protesting," says DL Sachdeva, general secretary of All India Trade Union Congress.

The labour reforms will have to materialize but the process will be slow. In the meantime, the concerned stakeholder(s) should find out the answers to the following questions:

- i) Does any civilized nation envisage flexible labour markets sans functional social security?
- ii) Do trade unions believe manufacturing can thrive with rigid labour laws at odds with the dynamics of contemporary production?
- iii) But does being in accord with the dynamics of globalisation production mean workers with no toilet breaks, no security of employment and no right to improve their lot?

The challenge is to find answers to such questions that find the right balance between capital and labour.

Labour voices have been silenced over the years, trade unions have been sterilized. But without a vibrant, well-paid workforce, India will not have the domestic demand to fuel its 13 billion people economy. Deprived workers are a drag in the present, and in the future.<sup>30</sup> It is time the Centre took a holistic view and the trade unions rose above narrow politics.

## FOOTNOTES

See Sharma R.C., "Re-visiting Labour Legislation and Relevant Rules", *Haryana Recorder*, Vol.6, No.6, June 2015, pp.44-45

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*The Times of India*, July 9, 2014, p.1.

*The Economic Times*, July 24, 2014, p. 13.

*Ibid.*, November 27, 2014

*Hindustan Times*, October 17, 2014.

*Ibid.*

*The Economic Times*, November 27, 2014

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*Ibid.*

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*The Economic Times*, February 14, 2015, p.15

*The Economic Times*, May 14, 2015

*The Economic Times*, June 11, 2015

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*Ibid.*

*The Economic Times*, May 5, 2015.

*The Economic Times*, July 8, 2015, p.15

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*Hindustan Times*, July 20, 2015.

*The Economic Times*, July 22, 2015, p. 17.

*Ibid.*, p.16

*The Economic Times*, July 22, 2015, p.16.

*Hindustan Times*, August 18, 2015, p.11

*The Economic Times*, August 6, 2015, p.19

*Ibid.*, July 20, 2015, p.9

*Ibid.*

Ceen Kempier, Senior Specialist on labour Standards with the International Labour Organisation (ILO), see *The Economic Times*, July 14, 2015, p.1

Sharma, R.C., "Integrating the interest of employers and workers - the only way for ensuring appreciable industrial growth and generating employment", *GIA Bulletin*, July 2015, pp.7-8.

See, *The Economic Times*, July 27, 2015

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