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Labour Problems: Recent Developments in India

India's trade unions are not a spent force, but the prospects of tripartite negotiations between employers, the state and unions to address the dysfunctionality of the country's current labour legislation, for both capital and labour, are probably dim.

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India has a 'labour problem', no doubt. But just what the problem is differs according to the perspective of the observer. From the point of view of most businessmen and of the academic protagonists of economic reform, the labour problem has to do with the complexities of India's labour laws and the inflexibility of labour markets. The difficulties involved in hiring and firing labour, and of closing down even operations that have become uneconomic, seem to constitute a major barrier to the realisation of the objectives of 'Make in India' combined with the generation of productive employment. The findings of the economists Besley and Burgess of the London School of Economics are often cited. They

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concluded from comparison across Indian states that “those which amended the Industrial Disputes Act in a pro-worker direction experienced lowered output, employment, investment and productivity in registered or formal manufacturing” (2004: 91). Even the University of California Berkeley economist, Pranab Bardhan, who is generally supportive of social-democratically inclined policy, concedes that while in his “empirical judgement stringent labour laws that are aimed at ensuring job security in large industrial firms may not be the most important constraint on Indian industrial growth ... that they constitute a constraint cannot be denied” (2011: 40).

Though this is more or less common-sense knowledge, it should be noted that, according to one recent study, China’s laws on the dismissal of workers are actually stricter than India’s, and that the current determination of the Government of India to make dismissals easier apparently goes against the general trend in middle-income countries (Deakin and Halder 2015).

And on the other hand, according to the Annual Global Rights Index, published by the International Trade Union Confederation, which rates 141 countries on 97 indicators derived from International Labour Office standards, democratic India is included in a category that denotes ‘no guarantee of rights’, alongside such autocratic regimes as Saudi Arabia. India refuses to ratify four of the eight core ILO Conventions against forced labour, including C87 which refers to the Freedom of Association and Protection of Right to Organise, and C98 on the Right to Organise and Collective Bargaining (Sampath 2016). India’s labour legislation can be held, therefore, to be dysfunctional, both from the perspective of business people and from the point of view of labour.

The present National Democratic Alliance government, headed by the Bharatiya Janata Party, is committed to bringing about change, in the interests of business, following the example set by the BJP-led Government of Rajasthan, headed by Vasundhara Raje, in 2014. Essentially what the Raje Government did was to make it easier for companies to lay off workers; to deregulate many more small factories; and to make it more difficult for trade unions to be officially recognised as representing the workers in a unit. It achieved

these objectives by: (i) changing the Industrial Disputes Act so as to allow companies employing up to 300 workers to lay off employees or close down without taking prior government approval, whereas previously only those with up to 100 workers were allowed to do so; (ii) modifying the Factories Act to apply to factories with 40 workers if operating without electricity, or 20 workers if with electricity, where the previous limits had been 20 and 10 respectively (and so denying many more workers some elementary rights regarding occupational safety, health and welfare); and (iii) allowing the recognition of a trade union only if it gets 30 per cent of the workers in a company as members, as compared with 15 per cent previously.

The moves, under way at this writing, for comparable legislative amendments at the Centre are intended to integrate 44 existing central government labour laws into four labour codes – one of them on industrial relations, one on wages, another on social security and the last of them on safety. The aim, it is said, is to create a ‘more friendly’ atmosphere between industry and labour (*Economic Times* 17 December 2015). The Labour Code on Industrial Relations Bill 2015 integrates the existing Trade Unions Act, Industrial Disputes Act and Industrial Employment (Standing Orders) Act into a single code. Its provisions include the statement that employers with up to 300 employees should not require government’s permission to lay off workers or to close the unit. As regards the registration of trade unions, the bill mentions that a trade union can be registered if its membership includes ten per cent of the workers in an industry or 100 workers, whichever is less, and a minimum of seven workers is required to make an application. Though the trade unions have expressed strong opposition to this, the section of the bill in question does not depart substantially from the Trade Union Act 1926; an aspect of the bill that is positive from a labour perspective is that it states that in the unorganised sector, where there is no employer-employee relationship, or it is unclear, the ten per cent requirement shall not apply. But in general the provisions of the bill are strongly supportive of the rights of employers, whilst proposing such severe penalties for workers and trade unions, even for seemingly minor violations (like non-submission of returns by trade unions), as to “deter them from raising issues against employers or putting up any form of resistance that could be declared illegal” (Bhowmik 2015:17).

How have India's trade unions responded to the proposed new legislation, which seems to have been drawn up in a manner quite contrary to the ILO-mandated norm of tripartite consultations between employers, the state and unions? The effectiveness of trade unions in India is commonly said to have been vitiated by the party-political affiliations of the unions, which hamper unity, and may lead to the marginalisation of workers' interests compared to those of the political parties, and by the bureaucratic mentality of their leaders. Yet the unions were fairly successful in opposing the employer-friendly reforms proposed by the Second National Labour Commission which reported to the earlier National Democratic Alliance Government in 2002. It is striking, too, that trade unions in India have experienced significant growth in their memberships over the years since economic liberalisation began – in contrast with the decline observed in many other countries (Lambert and Gillan 2013: 189). It is true that the frequency of work stoppages has declined but their duration and size has increased, at least until recently. Data from the International Labour Office for the period 2005–2008 show that India is amongst the top five countries in the world for number of workdays lost per 1000 employees. Of course it is true that the share of contract labour in total employment in the organised factory sector has increased considerably, and this is commonly said to be one of the consequences of India's inflexible labour laws. Tensions over the employment of contract workers – who now make up more than one-third of those employed in the organised factory sector – have led to some of the worst labour unrest in India's recent history, such as at the Maruti Suzuki plant at Manesar in July 2012. This was over the formation of a union and the regularising of contract employees. Such struggles have “rocked industrial relations in many firms” in the recent past (Shyam Sundar 2015: 47).

India's trade unions are not a spent force, therefore. And eleven central trade union organisations had come together to call for a massive general strike on 2 September 2015 in protest against the proposed new industrial legislation, and the government's unwillingness to consider unions' demands. In the event, the Rashtriya Swayamsevak Sangh (RSS)-affiliated Bharatiya Mazdoor Sangh (BMS) pulled out at the last minute, not wishing to cause embarrassment to the ruling party. But the strike took place, marking “the

first time trade unions sought to challenge the NDA government”, according to the *Economic Times* (‘Labour strike hits normal life in parts of the country’, 3 September 2015). The newspaper reported that 15 crores of workers were involved but that “the response was mixed and evident only in pockets”. A later report, however, says that the strike is estimated to have cost the national economy as much as Rs 25 000 crores (Sampath 2016).

Subsequently the central trade union organisations have protested vigorously against what they claim to have been “government indifference” to a fifteen-point charter of demands that they submitted to the Union Finance Minister in January 2016. These embrace a call for ‘ratification [by India] of ILO C87 and C98’ (referred to earlier) and for “stoppage of pro-employer labour law amendments”, as well as “stoppage of disinvestment in central and state public sector units” and “stoppage of FDI [foreign direct investment] in railways, insurance and defence”, in addition to demands about wages, pensions and social security. The BMS joined this time with the other central trade union organisations in calling for an All-India Protest Day that took place on 10 March 2016. On this occasion the event was not widely reported in the national English language dailies. But a convention on labour policies is expected to take place before the end of March 2016. It seems likely that the trade union organisations do have the strength to resist the new labour legislation – though the prospects of tripartite negotiations that will address the dysfunctionality of India’s present labour legislation for both capital *and* labour, are probably dim.

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