LABOUR LAW: OVERVIEW OF THE INDUSTRIAL DISPUTE ACT, 1947

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INTRODUCTION

Labor law also known as the law of employment is the branch of administrative law which oversees the restrictions on, and the legal rights of the working people and their organizations[i]. Labor laws function as intermediaries between trade unions, employers and employees. Generally, Labor laws defines the rights and obligations of both parties.

Labor Law, generally administrates Industrial relation, which are labor-management relations by providing a platform of collective bargaining by certification of unions. Secondly, Workplace health and safety by setting employment standards, proving for general holidays, annual leave and working hours. Thirdly, it reduces unfair practices by the employers by regulating dismissals, minimum wage, layoff procedures and severance pay. Thereby Labor Law administrates two fields, Collective bargaining and Individual rights.

Labor Law of India is one of the most rigid policy in the world and is often cited as the source of lack of foreign investment in Industrial Indian. The origin of labor law is rooted in British India, the objective of labor law then was to protect the interest of the British traders, naturally the British political economy were paramount, hence the early laws, Factories Act, shaped Indian Labor laws. This meant very little protection of laborers, which led to an inherent distrust between the labor class and their employers. Therefore, in 1947 the newly formed Indian Government passed the Industrial Dispute Act 1947, which is the flagship act for Labor protection and regulation in India.

With an inherent distrust between the bourgeoisies by the proletariat and vice versa, strikes and lockouts were rampant. The colonial legislation required major modification, the postcolonial legislation aimed to create a partnership between the labor and capital. Thus, the tripartite conference in December 1947, passed a major feature to the Act was to provide for a dispute

resolution platform for both the proletariat and the industrialist in order to insure a smooth functioning industry. Therefore, the primary aim of Labor Law was to insure absolute obedience by the proletariat by insuring their rights and regulating the powers of the industry thus maintaining industrial peace and promoting the welfare of labor.

Labor law are covered by various Acts which deal with the niche aspects of the field, such as the Apprentices Act, 1961, which deals with training of the Employee or the Workmen's Compensation Act , 1923 which insure fair pay. However, for this study, the focus of the legislative review will be primarily around the administration of the Industrial Disputes Act, 1947 and related acts, to see the effect on the workers and employee. This paper will focus primarily on the "Workers" of labor law and not the industry or what constitutes an Industry.

MECHANISM OF DISPUTES SETTLEMENT

Collective bargaining and Mediation and Conciliation

Collective bargaining is a voluntarily settlement technique which is used for disputes resolution between the employee and the employment, this is a means to amicably, peacefully resolve deputes between unions and managements. Settlement is arrived at in course of the conciliation before a competent authority. they are binding on the member of the union but also on non-members and present and future employees of the management. however if the settlement is not arrived at in the course of conciliation proceedings then settlement binds only members who are signatory or party to the settlement.[ii]

Investigation

Under section 6 of the IDA, the government can constitute a court of inquiry, for inquiring into any matter pertaining to an Industrial Dispute. although the findings are not binding, they can be used to furthers the conciliation of adjudication or arbitration

Arbitration

Voluntary arbitration are basic feature of IDA. Under section 10 of the IDA, arbitration which is successful and leads to a final award is a binding award.

Adjudication

Adjudication is a mandatory settlement in any Industrial Disputes by competent labor courts, Industrial Tribunals or National Tribunals under the IDA or by any other competent authorities under state statutes. The adjudicatory authority resolves the Industrial Dispute by passing an award, which is binding on all the parties. There is no provision for appeal against the adjudication and can only be challenged by way of writ under Articles 226 and 227 of the Constitution of India before the High Court or before the Supreme. The Adjudicating authority is competent to adjudicate matters of dispute between, employer-employers, employer-workman and workman- workman, whose subject matter is a matter of employment or non-employment, terms of employment, or in regards to the condition of labor.[iii]

EVOLUTION OF LABOR LAW UNDER INDUSTRIAL DISPUTE ACT, 1947

Workers

Who are workers, according to section 2(s) of IDA, workers are, "*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, terms of employment be express or implied and includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute. Except those Navy, Police, Air Force, Army. those who are managerial or administrative, are in a supervisory capacity and drawing wages of more than sixty five thousand rupees."*[iv]

However , Section 2(s) does not identify the position of supervisory and managerial workers, who are they, the status of unskilled and skilled manual and operational work, and Part Time and Full Time workman. there for the Courts have enlarged scope of the definition under Section 2(s) through case law and laid down characteristic of a workman. To know whether a person is a workman or not, there needs to be Master-Servant relationship,[v] Secondly a person is a workman if the characteristics and the nature of their work is in relation to the function of their employment.[vi] Thirdly, Section 2(s) is an exhaustive definition and a workman, is not merely a workman if they don't fall within the exception to section 2(s).[vii] lastly, source of

employment, designation, terms and conditions of employment, method of recruitment, wages and the mode of payment are not factors which should be taken into consideration while determining whether a is a "workman." under section 2(s)[viii]

The definition was still contentious, as it required further clarification as to what is supervisory and managerial. The courts have determined that the exclusion is primarily for those performing managerial work and employed in supervisory capacity, thereby, those employed in a supervisory capacity, and draw more than sixty five thousand in wages; and primarily perform the functions of managerial nature are non-workers. A managerial power is an implied power which includes powers related to grant of leave to employees , hiring and firing of employees, and there is actual participation in the policy of the business. Merely title is not sufficient to, it is the substantial work that you perform that determines if you are a manager or worker.[ix]

Unskilled workers

Who are unskilled workers, and manual workers, the courts have yet not made a distinction as to who constitutes a manual workers and an operational worker, but the assumption is, that those who are physical labors are manual workers, the courts have exempted those forms of workers who work with an imaginative or creative quotient. The Courts have usually followed the struck definition of skilled workers. Those who are trained in a certain filed, are deemed to be skilled workers, however the courts have in some cases diverted from this definition and have considered sales man, or those who use vocational skills to convince the consumer they will be considered as workman as there is no creative or imaginative skilled involved.[x] The amount of working hours doesn't not determine who is worker, the only thing which is required is a master servant relationship[xi] as the IDA does not differentiate between workers based on hours[xii].

Organized vs. Unorganized

With various Labor laws in places, the organized sector of labors is well protected form capitalist abuse, however in India the majority if the work force is unorganized. An unorganized sector, is defined as a work force which has been unable to organize itself in pursuit of a common objective. The reasons can vary, the unorganized sector has various

constraints such as casual nature work , superior strength of the employer, illiteracy or ignorance. this sector consists of primarily manual workers such as construction workers, , handloom/power loom workers, labor employed in cottage industry , sweepers and scavengers, roadside sellers etc. This sector , is unaided by the legislation or trade Unions and is often marked by low incomes and unstable employment. It is estimated, nearly 93% of the Indian labor force is unorganized[xiii]. The contribution of the unorganized sector is 60% of the national income, which is derived form the labor sector. Under this category are laws like the Interstate Migrant Workers Act 1979, Building and Construction Workers Act 1996, The Dock Workers Act 1986, the Bonded Labor System (Abolition) Act 1976, The Child Labor (Prohibition and Regulation) Act 1986, etc.[xiv] In India, it is estimated that only 8% of workers are actually benefited from the coverage available under various labor Acts, the reaming 92% works are either from the unorganized sector or they are not eligible for coverage, or these Acts are not applicable to them. [xv]

The reason, behind the non-aplicablity of the Act is, Labor law in Indian in context of IDA and various other acts are only applicable when there exists a employee- employer relationship. IDA provides coverage under employee- employer, employee- employee, and union-employer

The original intention of creating a the labor laws was in lieu of labor protection, it was intended to provide socio economic stability to the labor class, however the situation has not much changed since 1929, majority of the labor class is still in turmoil. However, currently unorganized sector has minimal economical stability and zero social security. For most of the daily wage earners their meager incomes is exhausted in daily life, so in cases of contingencies such as illness and education, in retirement they are helpless.

The problem arises from the fact that most of the workers in the unorganized sectors are either self-employed or they do not satisfy the employee-employer relationship. Up to 50% of the workers in India are deemed to be self employed,[xvi] most are farmers, street vendors and artisans, others work as workers for independent contractors, therefore workers such as freelance labor in the domestic, agricultural and commercial field have no protection as "workers" under Indian labor law. Second major factor which prevents this sector's workers for demanding equal rights and protecting from the employer, is the inherent lack of bargaining power caused by a lack of collective mindset, hence individually, the workers are powerless even laws which exist are in there favor.

A lack of a social security system which can provide for the most basis right, doesn't exist. However if such laws excited the inherent difficulties in applying such a policy would be monumental, Government bureaucracy neither has the manpower nor the knowledge which reach the scattered workers force which numbers in the crores . The Unorganized Workers' Social Security Act of 2008, was formulated to tackle this issue, the Acts purpose is to build a social security system for this sector, this is achieved by tackling the major issues. Firstly, the definition of workers now includes worker who not only have a fixed form of employment but workers who are self-employed workers, as well as casual workers or contract workers. Secondly, provide a social security number that can identify each worker, which in terms can be used to offer a variety of benefits to the unorganized worker such as health insurance, pension, and maternity benefit. The object is to gain the trust of the workers and increase participation in order to expand the scope of the benefits proved to include, skill training, children's education, housing, etc. It binds the Central Government to providing a minimum amount of benefits and funds. It creates a structure on the already existing civil society, government and semi-government organizations and it encourages the unorganized workers to organize.

The Structure, which the legislation proposes is a "Worker Facilitation Centers" system. Rather than central government facilitating the training and education of workers, Fa[xvii]cilitating Agencies will be delegated the powers to provide training in the their respective field of labor so as to provide skill up-gradation , provide employment and marketing opportunities, Training and assisting workers to form, unions, federations. Provide for employment exchanges for unorganized sector. Create public awareness etc. These facilities will be the agencies of reputed governmental, semi governmental or private organizations. However, the provisions of the Act will be executed through a Central Social Security Authority, which is constitute of a board Central and State Government representatives.

Restrictive labor laws

India has one of the most restrictive labor regulations in the world, which has made it difficult for firms to adopt the 200 labor law regulation, which has created a change in demand, thereby introducing labor market rigidities. Due to an inherent distrust of capital, the labor laws have formed in such a manner, that all the flexibility, which a firm requires to function has been severely limited. Simple tasks such as reshuffling of work force require governmental approval,

any firm which employees 100+ workers is required by law to seek permission if it wants to do retrenching or lay off workers[xviii]. therefore, to avoid the sanctions of IDA most Indian firms remain small, as to not attract these laws, therefore firms often opt for smaller-scale of production techniques or product types of goods which is optimal for a small employment work force.

Current research has showmen that a regressive labor law is responsible for the slow growth of the labor-intensive industry and that is also restricts the size of an average firm[xix]. India lacks labor intensive industries, with a comparative analysis of its south Asian neighbors and china we can see why. India has not been able to capitalize the global labor market, the primary reason being highly restrictive laws. The restrictiveness of the policy causes the techniques of production to be less labor efficient in turn, it causes a capital-intensive industry, despite the labor abundance. A large majority of manufacturing industries in India, such as leather and plastics, paper and printing etc, uses techniques which are largely capital-intensive unlike China, this is due to the legal burden placed on Indian employers. Thereby, India has not been successful in developing its domestic industry, nor has it succeed in gaining international trade[xx].

Thereby it stands to reason the decision of the Centre and the Rajasthan government to raise the threshold of employment from 100 to 300 might to attract IDA[xxi]. However the steps taken by the government in tackling the issue are incorrect, by raising the limit to attract IDA you are simply bandaging the problem and not solving it. the problem is Chapter V of the IDA, which is often the focus of commentators. there needs to be a redrafting of the chapter where all the out dated labor laws constraining are removed, the employers must be given freedom of flexibility, there by Indian governments intervention needs to be minimized. Sundar (2005) opines that a

"excessive institutional interventions markets do not clear and make wages 'sticky' which affects the freedom of employers to adjust the quantities of resources leading to unemployment." He says that flexibility in the labor markets needs to be an implied feature of the industry. As the growing economic liberalization and competition for production across borders as increased the organized must also suit the changing market conditions.

This would a means to promote economic growth and generate jobs in India. citing the Second National Commission on Labor , the need for flexibility in the labor required to promote

'competitiveness' and 'efficiency' in a globalized world where there is rapid technological progress.

With the aim of organizing the unorganized sector under the 2008 act, the government at the same time needs to attract more firms to invest in this sector and allow for existing firsts to expand their scale of production by reducing the burden of capital investment.

CONCLUSION

India's labor laws have been drafted in such a manner in which the protection of the worker was paramount to the capitalist interests, however in its time it was a necessary evil. In the current ear of globalization does the Industrial dispute act, acts a barrier for labor production in India, will improving the status of the organized sector lead to a more prosperous labor industry, the research suggests so. However would the improvements in the organized sector even priority, it is evident that the unorganized sector is where a large majority of the unfair practice occurs and it constitutes a 93% of Indian labor force. The Labor laws in India are inherent problematic form an administrative stand point, because the Unorganized sector which makes up the majority of the work force is to large, scattered an uninformed to regulate.

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