

ATLMRI DISCUSSION PAPER

**Contemporary Issues on Labour Law
Reform in India: *An Overview***

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Abstract

In spite of labour laws been widely studied for almost a decade and various recommendations to re-invent/evolve labour laws in the current leg of globalization, the issues pertaining to welfare of labour and flexibility of the firms to grow in sync with market conditions for better industrial relations, persists even today. For the past six to seven years it has been argued (especially by employers) that labour laws in India are excessively pro-worker in the organized sector and this has led to serious rigidities that has resulted in adverse consequences in terms of performance of this sector as well as the operation of the labour markets. There have been recommendations by the government to reform labour laws in India by highlighting the need for flexibility in Indian labour laws that would give appropriate flexibility to the industry that is essential to compete in international markets. But the attitude has mainly been towards skill enhancement and focus on flexible labour markets rather than assessment of proper enforcement of the laws, assessment of the situation of different categories of employers and coverage of the social protection system. This paper makes an attempt to present an overview of existing literature pertaining to this issue and brings forth some major concerns that ought to need attention before any alternate framing of labour laws.

INTRODUCTION

For the past six to seven years it has been argued (especially by employers) that labour laws in India are excessively pro-worker in the organized sector and this has led to serious rigidities that has resulted in adverse consequences in terms of performance of this sector as well as the operation of the labour markets. There have been recommendations by the government to reform labour laws in India by highlighting the need for flexibility in Indian labour laws that would give appropriate flexibility to the industry that is essential to compete in international markets. The main issue has been slow employment growth despite increasing GDP growth termed as 'jobless growth' the arguments for which are that the existing labour laws are less employment friendly and biased towards the organized labour force, they protect employment and do not encourage employment or employability, they give scope for illegitimate demands of the Trade Unions and are a major cause for greater acceptance of capital-intensive methods in the organized sector and affect the sector's long run demand for labour. It has been argued that due to inflexibility in the labour laws the opportunity to expand employment in the organized manufacturing sector has been denied since there is a lack of consensus between the employer's side and the worker's side. The employer's view flexibility in labour markets as a pre-requisite for promoting economic growth and generating jobs, whereas, the trade unionists view flexibilisation in labour markets as a strategy for profit maximizing of the firms and reducing their bargaining power without generating sufficient employment opportunities as has been said. For them insecurity has been the major cause of concern. In the wake of labour market flexibility post economic liberalization, which is believed to enhance competitiveness in an environment of rapidly changing markets and technologies, the government is in a dilemma as most of the labour laws and social protection laws has been labour friendly. But in order to introduce reforms in the labour market, the government has to respond to the requirements of the various stakeholders (employers, workers, multinational firms and international financial agencies). The urgency for the need to reform labour laws was brought into front after the

recent spat in Gurgaon (Honda Motorcycle and Scooter India case)¹. It is considered to be a watershed event that turned all eyes towards the urgency to delve into the matter seriously. Yet the labour and the management communities differ in their opinion in what reforms can actually be done to the laws. The employees are of the opinion that the central and the state labour laws have been flouted continuously, whereas, the employers are of the opinion that the 'labour laws in the country seek employment at the cost of employability' (Business Standard, August 6, 2005).

The three main labour laws that are the major point of debate in this regard are the Industrial Disputes Act (1947), the Contract Labour Act (1970) and the Trade Union Act (1926). But though on one hand we have the accusation on the rigid labour laws, on the other hand this argument has been contested on grounds that there are weak linkages between labour regulations and industrial outcomes. Some of these studies found that neither employment growth nor fixed capital investments of firms were constrained by labour laws. So, in this context of current debates related to rigidity of labour laws and hence the impediments to employment generation in this sector, it becomes extremely important to understand firstly the jobless growth in organized manufacturing since 1980's and especially in the post reform period; secondly the need for flexible markets and skill development in the country; thirdly the labour laws that are the current concern; fourthly the task force and SNCL recommendations and the objections to those recommendations and lastly the need for safety nets and social security for labour in the current wake of flexible labour markets.

¹ In the Honda Motorcycle and Scooter India case, the differences between the management and the labour started in December 2004 and eccalated in April 2005. It had turned severe in the next two months that led to a riot in Gurgaon where the workers and the protesters were mercilessly lathicharged by the police. The workers had demnded to take back suspended and dismissed workers. It was settled two months later in July when four of the employeeswho were suspended were taken back but the production loss to the company was amounted to Rs 120 cr. (Business Standard, 2005).

NEED FOR FLEXIBILITY IN LABOUR MARKETS AND LABOUR LAWS

Eyck (2003) states three basic theories for perceived need for flexibility in labour markets. The first one emphasizes on the need for labour force to change according to the market fluctuations which happens because of increase in specialized products that requires firms to quickly change the size, composition, and at times the location of the workforce. The second emphasizes on lowering the labour costs and increasing productivity because of rising competitiveness. The third is the political economy perspective which advocates free markets where there would be no government intervention and interference of trade unionism. He says that this kind of new employment relations and occupations have the potential to generate more employment and also make available a range of opportunities to both workers and employers. So in for any state to achieve this kind of flexibility would depend on the how it will be introduced through legislative reforms. He also mentions that “in those countries where labour market rigidities are caused by excessive legislative regulation, flexibility tends to focus on how national legislative reform may grant greater freedom for individual employers or social partners to negotiate the terms of flexibility”.

The basic idea behind flexible labour markets was ‘market fundamentalism’ put forward by Stiglitz (2002) as stated by Sharma (2006):

“...free market forces are efficient and Pareto optimal. The free play of market forces results in employment of resources at the market clearing prices; this leads to both efficiency (as almost all resources are employed) and equity (all are rewarded according to their marginal contribution). Regulation of the market by state leads to deviation from full employment of resources. Hence, attempts should be made to remove as many of these imperfections as possible so as to achieve full employment of resources and optimal social welfare. In the case of labour market, trade unions and protective labour legislations are said to be market distorting agents, which curtail the free operation of the market forces to ensure full employment of labour.”

Sharma (2006) states that there is a ‘strong’ argument for labour market regulation to enhance investment and employment which would bring about equality in the labour

market and provide for flexibility in free entry and exit. He says that because of 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. Hence, in order to protect the existing employees, potential employees (even retrenched workers) remain unemployed or enter the unorganized sector with no social security or political power.

Sundar (2005) opines that employers view flexibility in the labour markets as essential because in this era of economic liberalization and growing competition between firms and countries, production should be organized to suit the changing market conditions. This would promote economic growth and also generate jobs. He mentions that the Second National Commission on Labour also advocates the need for flexibility in the labour markets saying that it would promote 'competitiveness' and 'efficiency' in the current wake of globalization and rapid technological progress.

According to Dr. Rangarajan (2006), in order to achieve faster growth rate emphasis should be laid on labour intensive sectors by skill development of the labour force and flexibility of labour laws. He also stressed on the fact that flexibility is not just related to 'hire and fire strategy' and that business units will have to function under legitimate restrictions. Flexibility in labour laws has also been advocated by the Planning Commission Deputy Chairman Mr. Montek Singh Ahluwalia. According to him flexibility in labour laws would attract more investment and would be able to create more jobs albeit ruling out the hire and fire policy (The Hindu Business Line, 2006). Debroy (2001) mentions that labour market flexibility varies from state to state and labour laws contribute to these disparities between states.

LABOUR LAWS THAT ARE OF CURRENT CONCERN

As we have seen above, bringing in flexibility in the labour market and hence flexibility in labour laws is therefore, an important matter in any agenda on structural reforms. The main accusation against the labour laws is that in the absence of flexible labour markets

in the organized sector growth in output is not leading to a proportionate growth in employment hence the employers are going for more capital intensive production processes because of labour becoming a fixed input. Hence though the labour laws are meant to protect the jobs of the workers, the scope for creation of more job opportunities in future is being lost. Therefore India's comparative advantage of enormous labour abundance is not being adequately utilized because of the high wage lands created by the labour legislation in the organized sector (Debroy, 2001). There is a lack of consensus amongst the employers and workers which is being an impediment to any proposed changes in the labour laws. To understand this, we first begin with a brief description of the labour legislation and then move on to the particular laws that are the major causes of concern.

Under Article 246 of the Indian constitution, issues related to labour and labour welfare come under List –III that is the Concurrent List². Exceptional matters related to labour and safety in mines and oilfields and industrial disputes concerning union employees come under Central List. In all there are 47 central labour laws and 200 state labour laws. The three main acts that are the cause of contention are the Industrial Disputes Act (1947), the Contract Labour (Regulation and Abolition) Act (1970) and the Trade Union Act (1926).

Industrial Disputes Act (1947)³

² Various items of legislation have been enumerated under three lists: The Union List, The State List and The Concurrent List. These lists are enumerated in the Seventh Schedule in the Constitution of India. The constitution in all has 12 schedules. Article 246 of Constitution of India has provision for the Seventh Schedule.

³ This act was promulgated in 1947 and was a descent of two laws that existed prior to it, the Trades Dispute Act (1929) and the Defence of India Rules No. 81-A which prohibited strikes and lockouts in public utilities and which used to provide for investigation and settlement of trade disputes and for certain other connected matters. A court of enquiry consisted of an independent chairman and one or more independent persons appointed by the prescribed authority. To overcome the difficulties in the Act of 1929 some provisions were made in the Defence of India Rules, 1939 for adjudication of disputes between employers and their workers. This process continued till the expiry of the said Rules on 31 March 1947 specified the process of adjudication by the establishment of a board of conciliation or a court of enquiry and introduced the system of compulsory adjudication and enforcement of awards by the adjudicators.

The Industrial Disputes Act provides for machinery and procedure for investigation and settlement of industrial disputes and applies to all industries irrespective of size. Apart from this it has conditions for lay offs, retrenchment and closure of an industry. It has 40 sections with five chapters and five schedules. Various amendments to the act were made since 1947. The main amendments were as follows: 1972- any industrial establishment employing more than 50 persons would have to give 60 days notice to the appropriate government before the closure of the industry stating reasons for the closure, 1976- a special chapter (Chapter V-B) was introduced which made compulsory prior approval of the appropriate government necessary in the case of lay offs, retrenchment and closure in industrial establishments employing more than 300 workers, again in 1982- lowered the limit of the employment size to 100 for mandatory permission before closure and increased the number of days of notice to 90 days. In 1984, this amendment was again redrafted and lay offs, retrenchments and closures in establishments having more than 100 employees had to follow the same procedures for seeking permission from the government.

The inclusion of Chapter V-B and its consecutive amendments is construed as causing rigidity in the labour market. This provision means that if establishments employing more than 100 workers may need to lay off some workers, they have to seek permission from the government. An example cited by Nagaraj (2007) best explains how stringent are the rules of this clause and hence how it forms the heart of the current dispute on labour market rigidity. He says that according to this provision, employers and employees are expected to inform the labour commissioner in case of any dispute. Hence, in order to retrench a single worker, the employer has to seek the permission of the labour commissioner (in case of factories employing more than 100 workers) (Anant, et al, 2006). Besley and Burgess (2004) in their study found that the amendments of this act by states taking in the interests of the workers lowered their output and employment levels which also led to poverty. They also experienced reduced investment in their organized manufacturing. Bhattacharya (2006) however, has a different opinion. In his article on the review of papers relating labour relation to industrial performance, he criticizes Besley and Burgess (2004) saying that though there were two approaches to understand the

effect of amendments of the ID Act (1947) on manufacturing performance, the first approach gives conflicting results and the second approach which studied the variations in the state level amendments to the ID Act was based on a 'flawed' index of regulation. But still he advocates for reforming labour laws by rationalizing them, avoiding inconsistencies and making compliance less arduous. He also raises an important point saying that where organized manufacturing sector comprises of only 6 per cent of the total labour force, the rest 94 per cent being in the unorganized sector, where chapter V-B is applied to the smaller figure, whether reforming labour laws would make any difference to the national employment situation in spite of labour flexibility creating employment in this small portion of the sector.

Section 9 A of the act has also been a cause of concern. It lays down conditions for service rules, according to which employees should be given at least 21 days notice before modifying wages and other allowances, hours of work rest intervals and leave. It has been said that this could cause problems when employees have to be redeployed quickly to meet certain time bound targets and also could constrain industrial restructuring and technological upgrading.

An important negative effect of the Chapter V-B is that foreign investors who are keen on investing in labour intensive countries are deterred from investing in India, whereas other labour intensive countries that have a strong export orientation has benefitted in terms of more foreign investment in their countries and creation of high quality employment based on exports (Report of Task Force, Planning Commission, 2001).

Contract Labour (Regulation and Prohibition) Act (1970)⁴

There is a cry amongst workers that the Contract Labour act is being flouted by employers. They say that in the event of contract workers being abolished in a firm, they should be absorbed by the firm (Sundar, 2005). It is said that contract labour allows flexibility and permits outsourcing but provisions of the Contract Labour Act was never meant to protect contract labour. First in 1960 and then again in 1972, there was a ruling by SC that if the work done by a contract labour is essential to the main activity of any industry, then contract labour in that industry should be abolished. It was this ruling that affected flexibility. In different judgement in different years, there was a need for clarification whether after abolition of contract labour whether they should be absorbed as permanent labour in the industry or not. There was an argument about whether Contract Labour Act should be done away with. But the problem lies in the fact that decisions on abolition would then slip back to industrial tribunals from government (Debroy, 2001).

The workers say that if the government changes the definition under the Act from 'perennial and permanent jobs' to 'core and peripheral jobs', then the employers would take the benefit of it to engage contract workers in only peripheral jobs as these kind of jobs constitute the most. According to them it would finally result in employers employing only contract workers and would 'sack' all regular workers. Hence, instead of generation of more jobs as promised by the employers, it would lead to more exploitation and poorer working conditions. But the employers have a different opinion. They say that more emphasis should be laid on core activities and peripheral activities should be contracted out as that would be more efficient and would lead to lesser costs and for that they should have greater freedom to employ contract workers. So employers are of the opinion that the Act should be scrapped (Sundar, 2005).

⁴ This act regulates for the employment and abolition of contract labour in certain establishments. It applies to establishments employing at least 20 workmen as contract labour on any day of the preceding 12 months 20 or more workmen. It does not apply to establishments where the work performed is of intermittent or casual nature. The Act also applies to establishments of the Government and local authorities as well.

But trade unions are of a different opinion. For instance, in the 41st Indian labour Conference held in New Delhi on April 2007 (see Sen, 2007), members of CITU had proposed amendments to the Act which not only says that they are for it but also looking forward to strengthening it. The following was a list of amendments suggested by them:

“1) Redefining employment relationship on the basis of the linkage between the final recipients of the gains of production, i.e., the principal employer, vis-à-vis the producer at the lowest rung of the production process deployed through various decentralised agencies. 2) Outsourcing should be treated as contract and should be covered by Contract Labour-Legislation. 3) Reiterating the equal pay for same and similar work both for regular and contract/temporary workers in the main body of the legislation (at present similar provision is there in the rules framed under the present statute. 4) Regularisation of contract workers deployed in permanent/perennial jobs in the permanent roll of the company and stringent punishment (This is required to negate the pernicious impact of the Supreme Court Judgments on rights of the contract workers) 5) Payment of the minimum wage prevalent in the company/establishment to the contract workers of the said company if it is higher than the statutory-Minimum-wage 6) All contractors must obtain license from the appropriate authority for running its operations. 7) Even if contractor changes, the contract workers engaged by previous contractor should continue to be deployed without any interruption and change in service conditions: this provision should be incorporated as a condition in the tender for appointment of contractor. 8) The Annual Return on employment to be submitted to labour department by the principal employer should compulsorily include details of the contract workers including the contractors and their licence-details. 9) In case of death owing to accident or otherwise in course of employment, contract workers should be paid same compensation as the regular-workers 10) The Principal employer should be held responsible for implementation of all labour laws for the contract workers including maintenance of employment register, submission of annual returns to labour department, PF, ESI and other social security measures and workmen's compensation any violation of those laws should attract stringent punishment on the principal employers as well. 11) A separate inspectorate with adequate manpower has to be established in all states only for

the purpose for inspection of the contract-employment-related-matters. 12) Contract labour monitoring board must be constituted in all states and central level with the representatives of unions, employers and government to monitor implementation of labour laws in respect of contract workers. etc. 13) Appropriate legislation to negate the pernicious impact of the Supreme Court judgment in setting aside its own judgment (Air India case) in the case Vs SAIL”.

Regarding the issue of minimum wages, a chairman of an automotive component maker had said that there is a need to liberate labour laws so that it brings greater space for contract labour which is just not about hire and fire but which will have tenure of three years or so and more temporary workers. He also added that if the minimum wages are low then the government must take initiative to raise the level of minimum wages (Business Standard, August 6, 2005). In a situation where permanent workers are almost impossible to be removed according to the employers and contract workers are seen as a ‘necessary evil’ and an easier option, one needs to pay attention to the growing grievances of the contract workers in the industries. There have been recent cases of agitation by the contract workers in certain organizations including the Hyundai Motors case in May 2007 and the NTPC-Simhadri case in January 2007 where contract workers in the first case had been agitating for pay hikes and in the second case they went on for a strike demanding for increase in allowances.

Trade Union Act (1926)⁵

Firstly, it should be mentioned that there is no nationwide law that recognizes trade union and also there is no compulsion for the employers to enter into a collective bargaining so even though there is a right to form an association or form a trade union, it is not mandatory for an employer to recognize it (Anant et al, 2006). Secondly, it allows

⁵ Trade Union Act was introduced in 1926 which legalized trade unions. It allows any seven workers to form a union and seek registration to take part in collective bargaining negotiations. It also allows unionization in both organized as well as unorganized sectors. There was an amendment in 2001 which raised the minimum number of workers to 100 or more, to form a union. Out of which one-third or five officers, whichever is less, are permitted to be outsiders in the organized sector.

outsiders to be office bearers and members of unions. So workers who are not directly employed under a particular employer also stand against that employer in the event of any dispute. The whole idea of outsiders intervening in disputes between the workers and employers of a particular organization does not exist in other countries (Nath, 2006). Citing an example of Trade Union Act in Singapore, Nath (2006) says that while trade union policies in Singapore aim at promoting country's productivity and economic growth, India's policies restrict productivity and economic growth. Thirdly, Nath (2006) points out the lack of democracy in trade unions in India which leads to inexplicable behaviour of the unions and their office bearers. He says that while countries like UK and Japan follow a democratic way of electing their members by letting the unions consult members through a process of secret ballot, laws in India follow a different strategy. There is no representativeness through secret ballots and they also do not hold any strike ballot before any strike.

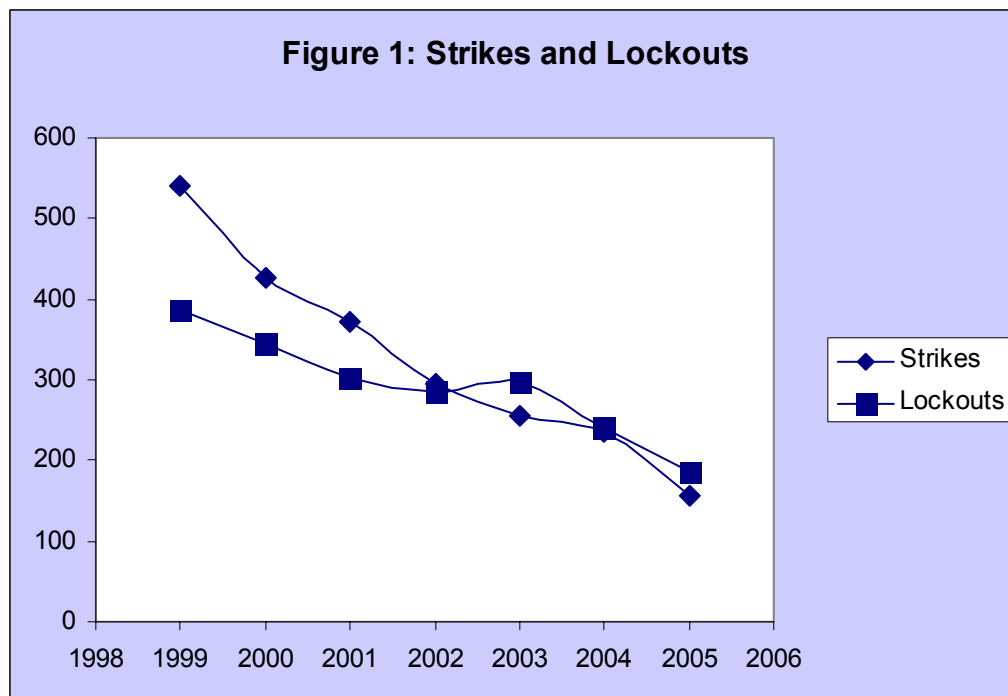
It has been said that there has been a long term trend in India of losing number of persondays because of strikes and lockouts. Though it is said to have decreased since 1985 yet compared to other countries it shows a greater loss of persondays. The average annual loss of person days due to strikes and lockouts in India is said to be the second highest in the world (Nath, 2006). An example would be the strike at Uttarpara's (Near Kolkata) Hind Motor plant by one of the five registered trade unions protesting against the alleged non-payment of wages for the past two months. This plant produces ambassador cars. The strike continued for over a month. First the management calls the five trade unions for talks then calls off the meeting when the unions do not respond to their invitation. The management stated that the strike was unlawful whereas the president of one of the 5 trade unions says that according to the high court verdict their strike was a lawful trade union activity. This resulted in a supply crunch of ambassador cars. According to an official of a car distributor company instead of selling 100 ambassador cars in a month in the month of March 2007 when the unrest took place, he was able to sell only 70 cars because the purchase orders were not met because of the lack of supply (The Hindu Business Line, 2007). So one can imagine the amount of loss incurred due to such strikes. The Economic Survey (2005-2006) though says that even if

the number of strikes had come down since 1990's but there was a sharp decline in strikes compared to lockouts. It gives a comparison of strikes and lockouts since 1999 to 2005.

Table 1: Strikes and Lockouts in Years 1999-2005

Year	Strikes		Lockouts	
	No.	Mandays lost	No.	Mandays lost
1999	540	10.62	387	16.16
2000	426	11.96	345	16.80
2001	372	5.56	302	18.20
2002	295	9.66	284	16.92
2003	255	3.21	297	27.05
2004	236	4.83	241	19.04
2005 (till Sept)	155	2.83	185	4.47

Source: Economic Survey (2005-2006) Table 7.21 pg-150



Source: Economic Survey (2005-2006).

The above table shows that overall there has been a reduction in the number of strikes and lockouts in the industries since 1999 to 2005. But an important feature that is noticeable is that there has been a greater reduction in the number of strikes compared to the number of lockouts over the years. The number of strikes came down from 540 in 1999 to 155 in 2005 but the number of lockouts came down to 185 in 2005 from 387 in 1999. The loss in mandays was also more in the case of lockouts. Figure 1 above shows the trend of strikes and lockouts. We see that after 2002 there has been a decrease in the number of strikes compared to that of lockouts.

GOVERNMENT AND OTHER RECOMMENDATIONS

In the prolonged situation of ‘jobless growth’ and current wake of labour unrest, the government had come up with certain recommendations to reform labour laws, first in 2001 in its Report on Task Force on Employment Opportunities, by the Planning Commission of India and again in 2002 when the Second National Commission on Labour (SNCL) had come up with its recommendations. The task force points out the various problem areas in the labour legislation where immediate reforms were needed. It focuses on the three main Acts and their features and suggests changes. Other than Chapter V-B in the Industrial disputes Act which is a major cause of concern, another main area where it emphasizes was Section 9A which concerns the job content and the area and nature of work of an employee. It says that in case the job content or the nature of work needed to be changed of an employee or group of employees, a 21 day notice has to be given to the employee and in practice also required the consent of the employee. This proves to be a serious impediment in case of a firm trying to introduce a new technology where some workers need to be retrenched. If the employers want to redeploy the workers, it becomes virtually impossible if the employee or employees do not give their consent. Had the process of retrenchment been easier to be implemented, the workers would have been willing to accept redeployment in order to avoid retrenchment. Apart from retrenchment the task force also points out another problem of dismissal of any worker. It says that though in case of dismissal no prior government approval is needed, yet in practice it is

difficult because of unions which lead to protracted litigation. It mentions that this inflexibility proves to be severe for smaller establishments that are more labour intensive and other establishments with large number of workers because the transactions cost involved in such cases are too high.

Though the SNCL had come up with certain recommendations taking into broader interests of the employers and the workers into consideration, its recommendation to use contract labour in non-core activities and also to some extent in core activities first of all creating a distinction between core and non-core activities instead of perennial and non-perennial activities was vehemently opposed by trade unionists and also employers to a smaller extent. First of all the trade unionists do not believe that greater flexibility in the labour market would lead to employment generation, they are of the opinion that even if jobs are created they will be of poorer quality. Their greatest threat is the freedom of 'hire and fire' that will be given to the employers would be a threat to their income security and also would lead to greater unemployment in the long run instead of more employment opportunities as promised. They fear that it would also affect their bargaining power in the organized sector. The employers, on the other side have also expressed their disagreements with some of the recommendations. They were dissatisfied with the commission not raised the cut off limit for closure permission to establishments with 1000 and more workers that was earlier indicated to them (Sundar, 2005). Though they have been satisfied with other recommendations and want them to be implemented.

Another major issue put forward by many economists and policy makers is the multiplicity of labour laws. Unification and harmonization of the labour laws has been highly recommended by Debroy (2001, 2005). He says that apart from the seventh schedule there are separate statutes for cine workers, dock workers, motor transport workers, sales promotion employees, plantation labour, working journalists and workers in mines. There are varied definitions on child, contract labour, wages, employee, workman, factory, industry, etc. In the Case Law⁶, under the ID Act; a lot of things come

⁶ Case Law: Case laws are those cases which had been adjudicated before a Court of law at one time or the other and had been decided upon on its merits giving a specific interpretation of law or law point. The cases

under the categorization of industry. So, there is a suggestion to unify all the definitions to give way for a Uniform Labour Code where for instance, all provisions related to social security or wage can come under single statutes respectively. Debroy (2001) also points out excessive state intervention in areas other than industrial relations. He gives an instance of Section 10 of factories Act where there are provisions regarding number of spittoons, Section 43 where there are rules regarding space for keeping clothes that are not worn during working hours, etc. he says that there are numerous such provisions where state intervention is generally not required.

ENFORCEMENT OF LABOUR LAWS IN THE COUNTRY

An important function of the Central Industrial Relations Machinery (CIRM) is the enforcement of labour laws. The machinery enforces various labour laws including Minimum Wages Act, 1948, Payment of Wages Act, 1936, Contract Labour Act, 1970, Inter-State Migrant Workmen Act, 1979. According to the Annual report, 2005-06 of Ministry of Labour, there are 1.5 lakh establishments in the central sphere. The inspection officers of the CIRM inspect these establishments under different labour enactments through routine inspections and prosecute the persistent defaulters in respect of major violations. The following table shows the number of inspections, number of prosecutions and number of convictions that have taken place over the years.

Table 2: Enforcement of Various Labour Laws

Year	No. of Inspections	No. of Prosecutions	No. of Convictions
2004-05	38250	10264	6738
2005-06	40306	13457	8105
2006-07	30834	10681	10152

Source: Annual Report, Ministry of Labour (Various Issues).

decided upon by the various High Courts and Supreme Courts are often relied upon which are quoted in various Law Journals. The judgments of these Courts are binding upon the lower Courts. The Judges of the Lower Courts and even the High Courts do not usually differ from the interpretation done by the Supreme Court and the High Courts. However the Supreme Court and High Courts, at most times, reverses its own interpretation and judgments.

From Table 2 above, we see that the number of inspections in 2006-07 has gone down compared to the previous year and also correspondingly the number of prosecutions. Even though the number of convictions in 2006-07 is more than the previous years of 2004-2005 and 2005-06, yet instead of an increase in inspections and prosecutions, a decrease is evident.

The CIRM is supposed to be giving special emphasis on the enforcement of certain acts like Minimum Wages Act, 1948 and the Contract Labour Act, 1970. the following table gives the figures for inspections, prosecutions and convictions for the Minimum wages Act, 1948 over the years 1985-86 to 2006-07.

Table 3: Enforcement of Minimum Wages Act, 1948

Year	No. of Inspections	No. of Prosecutions	No. of Convictions
1985-86	9217	5956	-
2001-02	13222	3903	2019
2003-04	15212	5260	3904
2004-05	18587	8838	5599
2005-06	19815	8906	5801
2006-07	12392	4620	4616

Source: Annual Report, Ministry of Labour (Various Issues). Figures for 1985-86 were obtained from Anant et al, 2006.

The table above shows that though there was an increase in the number of inspections over the years since 1985, year 2006-07 again shows a decline in the number of inspections. The prosecutions and convictions on the other hand have been quite tardy.

THE SOCIAL SECURITY CONCERNS

In the wake of international competitiveness and the need for flexibility in labour markets, it becomes increasingly essential to accommodate social security concerns in reform movements. Extension of the social security benefits to cover majority who had been excluded, is perhaps the greatest challenge facing the developing countries today. In fact Ghai (2002) points out to a certain correlation between the degree of economic progress in a country and the development of its national security system wherein those countries with a higher per capita income and larger proportion of working population in the formal sector had more social security due to state subsidized schemes. Though the schemes had varying degrees of effectiveness depending on countries and systems are social security are hence, very complex in these countries. In the developing world, majority of the population is bereft of even basic social security. For instance in India, social security covers only 6 per cent of the workforce that belongs to the organized sector. The remaining 94 per cent that is in the unorganized sector and those who are self employed has very limited social security. The social security system in India is indeed dualistic in nature where only a very small proportion of the workforce which is in the organized sector are in a relatively privileged position to have access to protective social security benefits whereas the remaining majority remains unprotected due to not being able to organize themselves (Datta, 2001). In the organized sector the main social security programmes include Workmen's Compensation Act, 1923 for accidents in the place of work, Employees' State Insurance Act, 1948 for health benefits, Maternity Benefit Act, 1961 for expectant women workers and retirement benefits like Payment of Gratuity Act, 1972 and Employees' Provident Fund Act, 1952. But inspite of a wide coverage the schemes lack appropriate planning, inappropriate coverage, the applicability depends on wage ceilings, number of employees in an establishment, type of establishment, etc. The five year plans of government do not deal with the social security

issues (Anant et al, 2006). On the other hand on the unorganized sector whatever minimum level of social security exists, they have not been implemented appropriately⁷.

Sharma and Mamgain (2001) opine that Indian Labour Market cannot be called rigid since they attribute the decline in employment in manufacturing to the structural and technological characteristics of the industrial growth. Although they say that stringent job security measures in the organized manufacturing may be one of the reasons but according to them it cannot be the sole reason for the decline. Hence irrespective of the impact of 'rigid' labour legislation to employment, they opine that a degree of protection to labour would lead to inflexibility of labour adjustment that is required for restructuring of the enterprises to adjust to competitiveness. This leads to slow and tardy process of adjustment of the firms. Hence, several issues regarding social security comes into picture that need attention. The concept of social security also hence, needs to be widened to encompass the changing patterns of employment keeping in mind the various types and groups of workers and social security programmes made accordingly. Ginneken (1998) emphasizes on the need to improve the existing systems. Guhan (1998) points out that the existing formal security system not only has structural problems but also has administrative problems hence the reform agenda cannot be confined only to 'piecemeal improvements to individual enactments' but should also include 'radical restructuring of the entire framework along with legal and administrative reforms'.

From the table below, we can see that Singapore ranks first in terms of regular employment protection whereas India ranks 69th in terms of regular employment protection. So any measures to enhance the growth of employment and productivity in the country must take into consideration the social security issues of the workers. The SNCL report also advocates for a well defined social security package that would benefit workers in both organized as well as unorganized sectors (Sethuraman, 2002).

⁷ Ministry of labour had backed a draft bill for social security of workers in the unorganized sector in March 2003. Workers had to register in designated worker facilitation centres in order to qualify for health benefits, old age pension and accident benefits. But due to change in government in the following year when the implementation began, full implementation of the bill was no more possible (Anant et al, 2006).

Table 4: Regular Employment Protection Index of Select Countries

Country	Regular employment protection index	Rank
Singapore	0.11	1
Bangladesh	0.38	39
India	0.51	69
Pakistan	0.57	72

Source: Edited from Economic and Social Survey of Asia and the Pacific, 2006 (Table: III.7)

CONCLUSION

In the context of above discussions, there are many things needed to be looked upon. The first is that of the whole question of whether improving the status of the organized sector manufacturing by reforming the labour laws would practically make a difference to the growth of employment considering that labour in the organized sector forms only 6 per cent of the total labour force the rest being in the unorganized sector. Secondly, whole debate on whether rigidity of the labour laws is hindering growth of the manufacturing sector and hence employment generation in this sector seems vague if large scale flouting or violations of labour laws are taken into consideration. Again, even though steps involving greater flexibility in labour laws making it easier to implement greater flexibility in the labour market are taken leading to creation of greater employment opportunities, one need to know whether this would lead to long term generation of employment creation or would it result in just a short term planning. And above all any step should take into account the interests of both the employers and the workers with greater emphasis on social protection of workers. Because labour in the new industries would face different types of insecurities like job security in the wake of contractual

work, lack of minimum wages legislation, housing and health facilities and most importantly old age benefits. Emphasis should first and foremost be laid on decent work practices along with proper implementation of minimum wages in both formal and informal sectors which call for commitment from the employer's side as well. For instance, if a small level trader in the informal sector hires a handful of workers we do not know whether the trader himself is capable enough to provide minimum wages to its handful of employees. Another instance cited by Datta (2001) where he points out the fact that in Mumbai since the *Mathadis*⁸ did not have an employer and because their work did not fall under any 'Scheduled Employment', they were bereft of the benefits of the Minimum Wages Act. Another important issue is the enforcement of labour laws which is of particular concern. So any alternative framing of labour laws need to reconsider and assess these aspects before moving forward with the conception of 'rigid labour laws and its hindrance to employment growth'.

⁸ Mathadis are workers who carry load on their head, back, neck, or shoulders.

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