The Myth of Tough Labour Laws

In the post-reform period no opportunity has been missed out by the employers, the critics of labour regulation and the government in describing the labour laws in denouncing manner, viz. archaic, numerous, draconian, etc. No opportunity has been missed on calling out for reform of these existing laws and regulations. Nonetheless, the argument against rigidity of archaic laws begets questioning. The case in point is the Industrial Disputes Act (1947) which has been portrayed as bottleneck to growth in manufacturing.

K. R. Shyam Sundar

Human Resource Management, Xavier School of Management (XLRI), Jamshedpur

Email: krshyams@xlri.ac.in

In view of these descriptions, it naturally follows that no opportunity has been missed out either to call for reform of these laws and regulations. In general these labour laws are held to be tough which harass the employers unduly and a source of rigidity which constrains the employers from responding freely to the market forces and dynamics. However, the question is the labour laws so tough?

Take for instance, the Industrial Disputes Act, 1947 which has been singled out by some commentators and employers alike as representing the worst possible labour law which is causing disorder in India's progress and hurting the competitiveness of the enterprise. To some extent and in some clauses, there does exist reason for anger by the employers and the critics. But on closer scrutiny the ID Act does not appear to be as rigid as portrayed.

The Act applies to "industrial establishments" employing not less than one hundred workmen in the preceding twelve months. But nobody talks about the exclusions and the limited coverage of this provision. It does not apply to establishments of seasonal nature or in which work is intermittent. For example, many aerated drink company could claim seasonality, which determination lies with the government – the rent seeking (corruption) argument of the critics could favour "out of the purview" probability for an industrial establishment in this case! An industrial establishment covers a factory registered under section 2 (m) of the Factories Act, 1948, (which has its own exclusions), mines under the Mines Act, 1952 and plantations under the Plantations Labour Act, 1951. It is well known that there are non-registered factories and the poorly equipped inspectorate could not be faulted for missing them out, though "big" factories are more likely to be "visible" in the enforcement radar; still, under counting is possible.

According to the Economic Census, 2005 Chapter V-B of the Act would cover only 23.47 percent of the total non-agricultural establishments with hired workers in mining and quarrying and manufacturing. So a firm employing more than 99 workers in the retail sector or in airlines or the service sector could declare closure or retrench workers without the much dreaded

procedural bottlenecks which include government permission. Within the factory sector, according to the Annual Survey of Industries data for 2008-09, the provision applies to 15.63 percent of total factories (likely to be less as electricity, gas and water supply and other industries are also covered in the factory sector under the Survey) and these employ 72.31 percent of workers. The enterprise coverage ratio is *more* relevant here as we are concerned with "decision base" with regard to the legal provision concerned and not about "welfare base"; in the latter case the workers covered would be relevant. We should here factor in under-reporting of employment data with or without the involvement of the government agency concerned.

It has been argued that permissions for retrenchment and closure are withheld by the government for pacifying the electorate and the ID Act includes legal rigidness. But a study of government permissions for closures for Maharashtra shows that the proportion of applications for closures (sanction rate) increased from 13.64% in 1988-92 to 19.35% in 1996-2000 and to 51.56% in 2001-05. During 2004-08, the sanction rate was 55.81%. The sanction rate is significantly high enough to question the "rigidity argument" of the critics.

It is repeated *ad nausea* that permissions for retrenchments and closure are not granted by the government for electoral reasons and hence Chapter V-B constitutes a terrible source of rigidity. It *was* true, perhaps true to some extent in the post-reform period also. But absolute case of repetition ignores some cases which do not endorse this "sentiment". This must be considered in the light of several acts of by-passing, threatening, violating, and acts with connivance resorted to by the employers to escape Chapter V-B. Of course, the legislation provides an escape route by offering only "soft regulations" on the "transfer of undertaking" by merely providing for compensation for the affected workers. Further, long lockouts, mere "suspensions" of operations or failure to pay power and water supply tariffs are maneuvers to escape the law. Employers resort to numerous devious ways of "crossing the threshold"*via* coercive voluntary retirement schemes, dubious promotions to workers and so on.

Let us for a moment forget by-passing, etc. which involve transaction and monetary costs such as consultancy fees, penalty to the public utilities, dealing with government agency, etc. The establishment covered by Chapter V-B *can* simply "contravene" the regulatory clauses and pay the penalties. The penalties for contravening provisions regarding lay-off and retrenchment mean imprisonment which may extend to one month or a fine which may extend to INR 1,000 or both; the contravention with respect to clauses relating to closure will attract an imprisonment which may extend to six months or a fine which may extend toINR 5,000 or both. If an employer contravenes the government order refusing closures, s/he will invite punishment in the form of imprisonment which may extend to one year or a fine which may extend to INR 5,000 or both This applies to closures *only* and not for lay-offs and retrenchments.

Whereas *mere* instigation for participation in an illegal strike will attract punishment of imprisonment which may extend to six months or a fine which may extend toINR 1,000 or both. It is well-known that legal strikes (lockouts) are nearly impossible in the public utilities, though

strikes (lockouts) do occur frequently. Further establishments in the special economic zone or in the information technology industry are also declared as public utilities to prevent workers from striking.More pertinent is the point that the penalty for loss of jobs is as much as the so-called illegal striking. Strike, legal or illegal need not necessarily mean loss of welfare or salary or production, while a job loss due to contravention of law means meager penalties for the employer and life-long battle for the worker(s) concerned. These provisions concerning the employers are pretty *soft.* That brings us to the discussion of penalties prescribed under various labour laws.

A detailed analysis of the penalties under various labour laws reveals some major characteristics which are described here. Firstly, the monetary penalties are low. The Minimum Wages Act, 1948 is a socio-economic legislation with the avowed objective of protecting the interests of the vulnerably placed workers and to prevent exploitation. The penalty for non-payment of the stipulated minimum wages is imprisonment which may extend to six months or a fine which may extend to INR 500 or both. Similarly, the penalty for non-submission of annual returns by a trade union is five rupees and for repeated contraventions fifty rupees secondly, they are not inflation-indexed. They have remained mostly the same as enacted originally – the penalty mentioned under the Trade Unions Act, 1926 is an example of it. Thirdly, the combo-punitive clauses (providing for both imprisonment and fine) do not get implemented often; trade unions argue that imprisonment clause is a paper-tiger. Fourthly, the penal provisions provide a range by the wording "may extend to" and in many cases actual range of minimum and maximum penalties is prescribed in the law – then it is not difficult to imagine the absence of strict or of honest penal regime. Fifth, there is no logic in the application of determining the penalty. The penalties for contravention of laws concerning vulnerable section of workers like the unorganized workers, women and child workers must be more severe than others, which is not the case. Sixth, the penalty regime is not severe for repeated offenders. It is another question whether the state agencies are well equipped to prosecute the offenders and prepare sound cases for conviction of offenders. The enforcement regime in these senses is not even a paper-tiger.

Considering the structure of the law and its toothless feature which leaves enough room for the corporate to exploit and wriggle workers, the argument of rigidity weakens in face of it. We then need to give due thought to the existing bias before replacing archaic laws with a new regime.