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GUESS PAPER SERIES

SESSION - 11

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Labour Reform and Issue

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Page | 1

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Background

Democratic developing countries always have challenge of development which should benefit impoverished masses by way of providing employment and decent standard of living .Universal adult Franchise which is landmark of democracy gives voice to labor which is strong in numbers. These countries can't ignore interest of labor in favor of industry and capital. Developed countries on the other hand extended voting power to workmen

only after long period of industrial development. During this period capitalists of the country amassed wealth and in latter period, mainly after numerous labor movements, workers getting voting rights, activism of International Labor Organization and New Deal of Roosevelt , western governments took up responsibility of wealth redistribution. India at time of independence took up dual of wealth creation and redistribution simultaneously.

For this they need investment which has to compete with developed countries. Investment whether domestic or foreign will come, given there is low cost advantage. In the starting phase this low cost advantage is derived through relative lower wages of workers as there is surplus labor. As a result industries start mushrooming and results in shortage adequate skilled labor and at same time there is rise of trade unionism. By this time low cost advantage starts waning and governments struggle to maintain balance between workers' rights and industrial growth by legislation. After this government tries to maintain low cost advantages by easing Infrastructure bottlenecks, Tax concessions etc. This is quite evident form developments in Chinese economy over last two decades.

Trade unions (like Bhartiya Majdoor Sangha or Centre for Indian trade Union) are pressure groups which aim to protect interests of labor through 'collective bargaining'. As individual worker doesn't have much influence, they need to get together to deal with capitalists. They bargain constantly for higher wages, safety at work, social security, job security etc. For this they organize demonstration, strikes and petitions to higher authorities. 1st organized strike

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Page | 2

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in India was in Great Indian Peninsular Railways in 1899. Sometimes some of them indulge in violence, as it was seen recently A jute Mill in West Bengal and Maruti udyog Ltd. They also constitute a separate class and vote bank and political parties tries woo them before elections. But in last decade frequency of strikes, lockouts and Man days lost have reduced significantly, so is their behavior as separate vote bank. This indicates toward growing cordial relations.

To deal with trade unions and to present their consolidated viewpoint employers too got organized and 1st such organization was All India Organization of Employers, formed in 1932.

There are three parties in this cooperation 1) Government 2) Employer 3) Trade Union. This is generally called Tripartite Cooperation System. Here government acts as mediator between other two who generally have conflicting interests. But in reality all three parties have a common interest that is industrial growth and are dependent upon each other.

Legal

Status

Our constitution has many articles directed toward their interests for eg. Article 23 forbids forced labor, 24 forbids child labor (in factories, mines and other hazardous occupations) below age of 14 years. Further, Article 43A was inserted by 42nd amendment – directing state to take steps to ensure worker’s participation in management of industries. (Gandhi ji said that employers are trustees of interests of workers and they must ensure their welfare.)

Labor laws are under concurrent list. There are approx. 144 central and state laws, most or all of which seek compliance from industries.

Important laws related to Industrial relations are –

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1. Employee state insurance Act – ESI card is issued, insuring worker against any accident at work. There's also ESI corporation
2. Employees Provident Fund and Miscellaneous provisions Act – Provident fund is one in which employee pays part of his wage (12 % in most cases) and equal contribution by employer. This is mandatory for establishment employing more than 20 people
3. Factories Act ,1948
4. Child Labor (prohibition and regulation) Act – prohibits children below age of 14 to work in hazardous jobs. There are demands for complete ban on child employment
5. Industrial Disputes Act – One important provision – Industries employing more than 100 people can not terminate employment before approval of government. There is strong demand from industry to revise this limit, to facilitate easy entry and exit.
6. Minimum Wages Act
7. Bonded Labor system (Abolition) Act – System in which onetime payment was made by employer to supplier or leader of group and whole season's or year's services of labor was taken. Still rampant in some businesses like Brick Kilns
8. Contract Labor (Regulation and Abolition) Act, 1970 – Contract labor is indirectly employed by an establishment through a contractor or agency. So their relation with principal organization becomes ambiguous. They are generally discriminated against direct employees in terms of wages, job security, status etc. This act attempts to abolish it in certain circumstances and to bring them at par with direct employees.
9. Apprentices Act, 1961

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Institutions

Ministry of Labor is there at Centre with 4 attached offices, 10 subordinate offices, 4 autonomous organizations and adjudication bodies and Arbitration body.

Important ones are –

1. **Office of Chief Labor Commissioner** – It is an attached office. It's also known as 'Central Industrial Relation Machinery'. Is responsible for handling Industrial Disputes, Implementation of laws for which ministry is responsible, Settlements and awards, verification of membership of Trade Unions etc
2. **Labor Bureau** – attached office –Collection, compilation and dissemination of labor statistics, construction and maintenance of working class consumer price index numbers(WC-CPI) for selected centers and all India basis for industrial workers, construction of CPI numbers for agricultural and rural workers, maintenance of up to date data relating to working conditions of industrial workers, undertaking research into specific problems concerning labor with a view to supplying date and information needed for the formulation of labor policy, publishing reports, pamphlets and brochures on various aspects of labor
3. **Employee State Insurance Corporation** – Autonomous Statutory Organization – The organization administers various benefits under the ESI Act, for instance, sickness benefit, maternity benefit, dependents' expenses, funeral benefit, which are cash benefits, and medical benefit. The medical benefit has been made available to the family members of the insured employees.

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Page | 5

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4. **Employee Provident Fund Organization** – Autonomous Statutory Organization – Administers various schemes under Employees Provident Fund and Miscellaneous provisions Act. There are schemes like – Employee provident fund scheme, Employee Deposit linked Insurance Scheme, Pension scheme etc.
5. Several 'Industrial Tribunal Cum labor courts' are operating to adjudicate under Industrial Disputes Act
6. Board of Arbitration – is there to mediate between central government and its employees

International

Labor

Organization

Founded in 1919 as result of Treaty of Versailles, it became first specialized agency under United Nations in 1945. Its vision is to secure humane working conditions for workers and to attain social justice for them universally. In short it carries 'Decent Work Agenda'. It has produced about 189 legally binding conventions on member countries and more than 200 non-binding recommendations. It is also global center for research and study on work and labor.

It also gave 4 core standards on labor which are part of general human rights as per UN declarations. These are –

1. Freedom of Association, Right to organize and Right to Collective Bargaining
2. Abolition of forced labor
3. Minimum age of employment and abolition of child labor
4. Prohibition on workplace discrimination and Equal pay for men and women for work of equal value

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Issues

Labor protection legislation is one of the basic features of welfare state and aims at providing social justice. The main aim of such laws should be to create more, safer, and rewarding jobs for the labor. This includes standards on minimum wages, working conditions, overtime controls, right against unjustified retrenchment, strengthening of Labor unions, Right of worker to compensation in case of accident at work place, post-retirement benefits, Personal progress, skill development, Social security and Dignified and respectful job etc. Issues which arise from point of workers and industries

1. Simplification of procedures

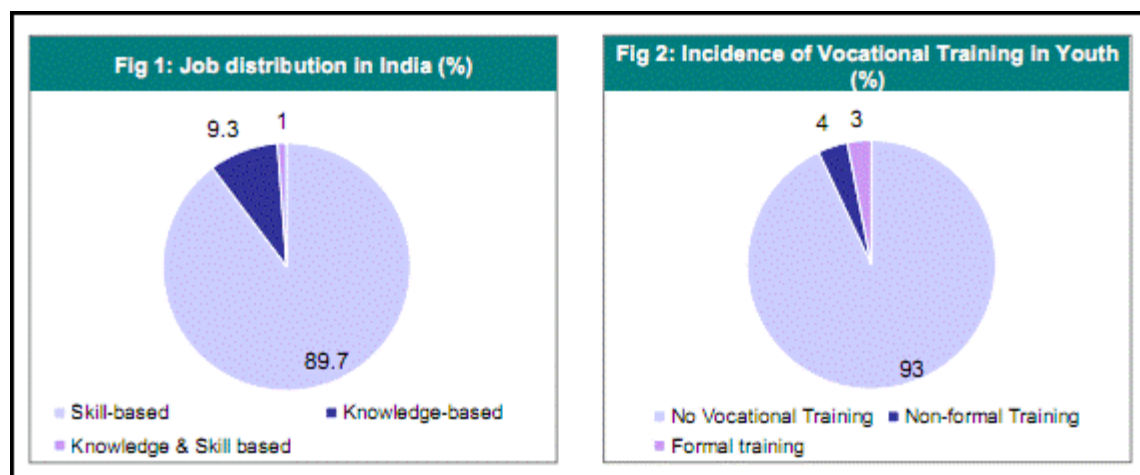
For the fulfillment of above needs, there are numerous overlapping, rigid and isolated acts (about 145), which are applicable to firms at any point of time. This gives immense powers to public officials and results in harassment of employers. It leaves room for corruption and increases compliance costs in terms of money and time. This type of policy runs counter to above stated desirable objectives. This makes our firms uncompetitive to foreign firms. It is quite apparent from the perpetual dismal performance of Indian manufacturing sector.

2. Huge Informal Sector

India have about 85 -90 % of the workforce employed in informal sector on which these laws are not applicable. These are micro firms employing as low as 5-10 persons. These employers are discouraged to expand their businesses, by such huge number of regressive laws. Neither they have understanding of laws to that level and services of Lawyers to ensure compliance is much expensive. Further, huge majority of workforce get no formal training. This results in

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low productivity and low value addition



3. Entry and exit Barriers for firms and Job security for workers

This issue is of retrenchment, Law for this provides that government approval should be taken before retrenchment of the workers (in case industrial dispute act apply). As a rule for good economic environment, there should least entry and exit barriers for Firms in any business. But in addition, social security of the workers is indispensable. It should be notice that a businessmen will scale down his operations almost only in face of losses or in drive of modernization.

In first case Supreme Court in various cases has held that when choice is in between Retrenchment and closure, then former should be preferred. In case of Modernization, Industries should strive to increase numerator of the production, instead of reducing denominator. For example If 1000 workers are to be displaced by new technology, then company should attempt to increase production by incrementally adding technology. So it

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could exploit economies of scale while retaining same labor force.

Modernization is most of the time good for workers in long term. In case of Telecom Revolution, few thousands lost jobs while shifting from manual landline networks to digitized cellular. But now telecom sector is one of the biggest employer in India with decent pays. There was similar backlash from employees while introduction of computers in department and PSUs.

If they are forced to retain disproportionately large workers, anyway they will go out of business gradually. This will hinder the whole economy when it affects large number of firms and investor will include costs of these exigencies in his calculations and result in turn is preference for capital intensive production or lower production, lower employment and higher prices. If on the other hand there is easy entry and exit, there will be burgeoning Manufacturing firms, with more investment, more no. of factories, more employment and lower costs. This overtime will result in a robust manufacturing sector which will have capacity to absorb any retrenched employees in productive employment.

Initiatives of Central Government

Legislative Initiatives

- Under **Payment of Bonus Amendment Act**, eligibility limit for payment of bonus enhanced from Rs 10000/- to Rs. 21000/- per month and the Calculation Ceiling from Rs. 3500/- to Rs. 7000/- or the minimum wages.
- **Payment of Wages (Amendment) Act, 2017** enabling payment of Wages to employees by Cash or Cheque or crediting it to their bank account.
- **Child Labour (Prohibition and Regulation) Amendment Act, 2016** provides for complete ban on employment of children below 14 years in any occupation or process.
- **Maternity Benefit Amendment Act, 2017**, increases the paid maternity leave from 12 weeks to 26 weeks.
- **The Employee Compensation (Amendment) Act**, seeks to rationalize penalties and strengthen the rights of the workers under the Act.

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Page | 9

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- **The Payment Of Gratuity (Amendment) Act, 2018**, provides flexibility to the Central Government firstly to increase the ceiling limit of gratuity to such amount as may be notified from time to time and secondly to enhance the calculation of continuous service for the purpose of gratuity in case of female employees who are on maternity leave to such period as may be notified from time to time. **Vide Notification dated 29th March, 2018**, the ceiling limit of gratuity has been increased from Rs. 10 Lakh to 20 Lakh and this period of maternity leave for calculation purpose has been enhanced from 12 weeks to 26 weeks.

Governance Reforms

- Ministry has notified "**Ease of Compliance to maintain Registers under various Labour Laws Rules, 2017**" on 21st February 2017 which has in effect replaced the 56 Registers/Forms under 9 Central Labour Laws and Rules made there under in to 5 common Registers/Forms. This will save efforts, costs and lessen the compliance burden by various establishments.
- A **Model Shops and Establishments (RE&CS) Bill, 2016** has been circulated to all States/UTs for adoption with appropriate modification. The said Bill inter alia provides for freedom to operate an Establishment for 365 days in a year without any restriction on opening/closing time and enables employment of women during night shifts if adequate safety provisions exist.
- Under Industrial Employment (Standing Orders) Act, 1946, the category i.e. **Fixed Term Employment, with all Statutory Benefits**, has been extended to all Sectors to impart flexibility to an establishment to employ people to meet the fluctuating demands, **vide the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018**.
- Ministry has also notified **Rationalization of Forms and Reports under Certain Labour Laws Rules, 2017** on 28.03.2017 for reduction of number of Forms / Returns under 3 Central Acts / Rules from 36 to 12 by reviewing redundant and overlapping fields.
- **UNIFIED ANNUAL RETURN** - "Unified Annual Return returns have been made mandatory in respect of the these Central Labour Acts [the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965, the Industrial Disputes Act, 1947] on the Shram Suvidha Portal".

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NITI Aayog pitches for labour reforms in its 'Strategy for New India @75' document.

What does it recommend?

- **Codifying labour laws** - In 2016, there were 44 labour laws under the statute of the Central government.
- More than 100 laws fall under the jurisdiction of state governments.
- Thus, the government should quickly finish codifying India's labour laws, while simplifying or modifying those that apply to the formal sector.
- The National Policy for Domestic Workers should also be brought in at the earliest.
- **Keeping women in the workforce** - The government should ensure that employers adhere to the Maternity Benefit (Amendment) Act, 2017, and the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act.
- It is also important to implement these legislations in the informal sector, and make sure that skills training programmes and apprenticeships include women.
- **Employment data** - Data collection for the Periodic Labour Force Survey (PFLS) of households must be completed on schedule and data is disseminated by 2019.
- The government should conduct an annual enterprise survey using the GST Network (GSTN) as the sample frame for this.
- Along with it, administrative data from EPFO, ESIC and the NPS could be used, to track regularly the state of employment while adjusting for the formalisation of the workforce.
- **Workers' welfare** - The government must mandatorily comply with the national floor-level minimum wage.
- Also, the Minimum Wages Act, 1948 should be expanded to cover all jobs, besides enforcing the payment of wages through cheque or Aadhaar-enabled payments for all.
- **Social security and working conditions** – There must be a compulsory registration of all establishments to ensure better monitoring of occupational safety.
- A comprehensive occupational health and safety legislation based on risk assessment and employer-worker cooperation should be enacted.

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- Labour inspection system should be made transparent by allowing online complaints and putting in place a standardised mechanism.
- Also, labour dispute resolution system should be overhauled, by strengthening labour courts or tribunals to help resolve disputes quickly and fairly.
- **Skills and apprenticeships** - According to the India Skill Report 2018, only 47% of those coming out of higher educational institutions are employable.
- Thus, forming the Labour Market Information System (LMIS) is important for identifying skill shortages, training needs and new employment opportunities.
- Through LMIS, the government should ensure the wider use of apprenticeship programmes by all enterprises, which may require enhancing the government stipend.

What are the concerns?

- NITI Aayog is stuck on a misguided notion that labour flexibility will boost investment, thereby ignoring skilling and other factors.
- The mere amendments in labour laws have neither succeeded in attracting big investments, boost to industrialisation or to job creation.
- According to the Ease of Doing Business Index (2014), only a little over one-tenth of the respondent firms in India perceived labour regulations as a major constraint.
- Hence, rapid industrialisation, growth in investments and job creation would ultimately depend on –
 1. Development of infrastructure
 2. Stable law and order
 3. Availability of skilled manpower
 4. Boost in skill upgradation
- Also, extension of maternity benefit to 26 weeks under the amended Maternity Benefit Act has adversely affected employment prospects.
- This is because the employers hesitate to hire female workforce, especially in the case of start-ups.
- To overcome this, the government has recently proposed to subsidise wages of female workers earning less than Rs. 15,000.

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Page | 12

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- However, it has little to say on the gender composition of committees and institutions created under the labour laws to enforce the measure.
- Also, trade union recognition law is still absent in most States and at the national level.
- Thus, the NITI Aayog needs to really retool itself to be able to come up with a balanced and conceptually consistent labour market and industrial relations strategy, to deliver quality jobs and inclusive growth.

5 contentious issues holding up India's labour law reforms

Labour is in the concurrent list and more than 40 central laws and more than 100 state laws govern the subject. The central government is keen to consolidate the central laws into four codes - relating to wages, industrial relations, social security and welfare and occupational safety, health and working conditions - and bring about reforms to ensure ease of business.

Contentious labour reform proposals

The government ran into trouble during the previous Lok Sabha because of strong opposition from trade unions of all persuasions to a large number of reforms proposed in the four codes.

The key contentious reforms are as follows:-

Membership and composition of trade unions: The Industrial Relations Code of 2017 provided that a minimum of 10% of workers or 100 workers employed in an establishment or industry would be needed - from seven at present - to register a trade union. It also restricted outsiders to an establishment/industry from becoming a member to two and prohibited a minister or a person holding an office of profit (outside of establishment) from becoming a member or office bearer.

The trade unions are opposed to these. Both the RSS-affiliated Bharatiya Mazdoor Sangh (BMS) and the Left-backed Centre of Indian Trade Unions (CITU) say there should be no such changes. The BMS president CK Sajinarayanan says that it is for the trade union to decide

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who should be a member or leader of the union, adding that "the government has no business deciding this".

The CITU general secretary Tapan Sen too holds a similar view and says it is particularly difficult to gather such a large number of members in private sector with no union to protect them from vindictive actions. He cites the case of an automobile unit in the NCR which required the Parliament's intervention for forming a union.

The industry has a different take. MS Unnikrishnan, chairman of the CII National Committee on Industrial Relations, says the industry would prefer to increase the limit further, to have only one trade union in an establishment and stop political affiliation for these bodies as that hinders conciliation.

Hire and fire: The Industrial Relations Code of 2017 further sought to increase the limit for prior permission of the government for lay-off, retrenchment and closure to 300 workers, up from 100 at present. This has been the most controversial provision.

The trade unions strongly protest against such a change. The BMS says a company which earlier needed 100 workers can now operate with just 20 to 30 due to mechanisation and so, the limit should be brought down. The CITU thinks if the hire and fire policy is further liberalised, there is a bigger risk of a worker being thrown out for demanding even legitimate rights.

The industry begs to differ. Unnikrishnan says the industry should not be "compelled" to run unviable units and that this is not about a hire and fire policy but prudent business policy. "We want the limit to go further up (more than 300)", he says.

Ban on strikes: The Industrial Relations Code of 2017 also restricted strike by (a) requiring prior notice of 14 days and striking within two months of such notice (now prior notice is required only for essential services), (b) but banning strikes during the pendency of the conciliation process which starts from the day of the notice and (c) increasing fine up to Rs 50,000 in addition to one month's imprisonment for violations.

The trade unions think these provisions amount to a virtual ban on strike and oppose it. Sajinarayanan says it is "totally against the basic right of workers", a strike being the last resort for enforcement of workers' rights.

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The industry does not think so. Rituparna Chakraborty of Teamlease Services, a leading human resources company, says strike does not help anyone. Instead, the focus should be on creating an environment to address issues and remove lack of trust in collective bargaining. Unnikrishnan supports the idea and bats for attitudinal changes to conflict management.

Single social security authority: Another contentious issue is a single mechanism, under the Social Security and Welfare Code of 2017, to govern pension, provident fund, medical benefit etc. for all kinds of workers, including part-time, casual, fixed term, domestic and home-based workers. It sought to club 15 central laws together.

The trade unions have their reservations. While welcoming the attempt to provide social security cover to all kinds of workers, Sajinarayanan fears that the merger of organisations and funds for organised (EPFO, ESIC) with that of the unorganised sectors would lead to "cross subsidisation" and harm the interest of the former.

He suggests a separate body for the unorganised sector workers. Sen fears that the merger would cause a mess and prove detrimental to those which are working well. He also fears that it would be easier for the government to use a single fund for speculative purpose.

The industry has no such apprehensions. Chakraborty says that including all kinds of workers in one group would end many of the complexities that lead to a higher cost of compliance, informalisation of work and exploitations in the unorganised sector. Unnikrishnan says that the fears could be easily addressed by ensuring that the regulatory body is professionally run. He dismisses fear of investing in stock markets, saying that this is a globally accepted norm for decent returns.

Redefining factories: The government proposes several amendments in the Factories Act of 1948 to ensure adequate safety measures and promote health and welfare of the workers. One of these relates to redefining factories from a minimum of 10 workers in an establishment (if power is used) to 20 and from 20 (if power is not used) to 40 workers.

The CITU thinks this would push out a large number of units in the organised sector. The BMS is in favour of removing all thresholds, including ones for applicability of EPF and other laws too. Sajinarayanan says labour law should be applicable to all factories, even if there is one worker.

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While it remains to be seen how far the government accommodates the trade unions' wishes, many of the reform proposals are actually borrowed from Rajasthan - like increase in the thresholds for trade unions, expanding the size for lay-offs/closure and redefining a factory - which the Economic Survey of 2018-19 says has produced good results.

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Page | 16