

CHAPTER - 4

IMPLEMENTATION OF LABOUR LAWS

4.1 Introduction

Labour Laws constitute a major vehicle of state intervention in the social and economic arena in general and labour market in particular. Labour market is a social institution. There are three key actors- workers, employers and the government – interacting among themselves to set the web of rules at the workplace. The labour market balances the power among the two major stakeholders in the employment relations, employers and their association, on the one hand, and workers and their union, on the other.

The prevailing conditions of labour is strongly related to the effectiveness of laws designed to protect labour. Corporate codes were initiated to ensure minimum labour standards and often intended to overcome the lacunae of labour legislation. The scope of intervention in the Indian Labour market cannot be discussed without reference to existing labour laws and the efficiency of its implementation. Labour legislation is a subject in the concurrent list of the constitution.

It has been a tradition in India that the Central Government enacts legislation and the state government assumes responsibility for implementation, though states are also authorized to enact laws on all aspects of labour. This dual structure of labour law administration prevents the creation of a unified labour policy. It also results in multiplicity of labour laws, non-uniformity in definitions and standards and centre-state disputes on labour legislation, all of which add to the complexity and ineffectiveness of labour legislation.

It is interesting to note that a large number of labour laws were enacted in independent India to operationalise the constitutional vision. The labour bureaucracy was entrusted the role of ensuring compliance of these laws. In India, the state has reserved for itself tremendous discretionary powers in certain aspects of labour-justice dispensation, especially on the area of labour relations' law. The Indian judiciary, has, undoubtedly, played a salutary role in progressive articulation and interpretation of the scope of these laws.¹

Premised in the frame work of the directive principles, the four main branches of labour laws in the country provide a large number of Central (federal) labour statutes. These laws can be classified into: labour relations; wages; social security; and conditions of work. Central and state labour enactments in the country add up to more than 200. Infact, India can be viewed as a society where labour is overprotected through law. Despite that, there is widespread flagrant violation of labour laws. Looking at the working conditions of the Unorganized labourers, it is apparent that hardly any labour law exists for unorganised employment.

However, it is also pertinent to mention that there are important challenges that labour law is facing throughout the world and more so in the developing economy like India. These challenges relate to the existence of a significant number of workers who fall outside its scope either *de jure* or *de facto* and who are deprived of protection in terms of rights, working conditions and economic security. Changing patterns of production and work, weakening regulatory role of national state over the socio-economic sphere and diminishing capacity of collective representation of trade unions have been identified as major challenges to labour law today. (International Institute for Labour Studies, Geneva, 2006)²

¹ 'Voluntary Self-regulation versus Mandatory Legislative Schemes for Implementing Labour Standards' -An Issues Paper on the New Regulatory Regime, (2003) CUTS, Jaipur.

² ILS, Geneva (2006), ILS Research Conference, *Decent Work, Social Policy and Development*, Nov-Dec. 2006, Geneva

Core labour standards have been enshrined in seven conventions set out by the ILO. These standards are considered to be fundamental labour standards, which guarantee basic human rights of labour and protect labour from exploitation by employers and suppression by state. Broadly, the core standards include Freedom of association and right to collective bargaining, the abolition of forced and slave labour, equal remuneration for equal work, non-discrimination at work and prohibition of child labour.

The Indian legal framework on labour appears to have been significantly influenced by the recommendations and conventions of ILO. India has ratified three of the seven core standards: those pertaining to forced labour, equal remuneration and non-discrimination in employment and occupation. The ILO conventions that constitute core standards and corresponding legislation in India are summarized below.

1) Freedom of Association and Protection of the Right to Organise (C-87)

C-87 states that workers and employers may freely exercise their right to form associations or affiliate with existing ones for furthering and defending their interests. Freedom of association is guaranteed as a fundamental right under the Indian Constitution. The Indian Trade Unions Act, 1926, grants both workers and employers freedom to form associations. Under the Act, any seven or more workers of an establishment are permitted to form and register a trade union. The act includes provisions relating to rights and obligations of unions.

2) Right to Organise and Collective Bargaining Convention (C-98)

This Convention has two aspects: right to organise and collective bargaining. The first is concerned with protecting workers and their employment against acts of anti-union discrimination, and the second with mechanisms for developing

agreements between workers and employers on the basis of collective bargaining. The former is covered by the Trade Unions Act, 1926, but there is no legislation in respect of the latter.

Under The Trade Unions Act, 1926, a registered trade union can claim protection and file a civil suit for any discrimination arising due to bonafide trade union activities. (Section 17/18). Thus the right to organise is supposed to be protected by law. However, in reality, incidence of unfair labour practices by employers is high and employees are often terminated for participation in union activities.

In respect of collective bargaining, no legislation has been created in India to promote collective agreements between employers' and workers' organisations with a view to regulate terms and conditions of employment. The enactment of the Industrial Disputes Act, 1947 effectively terminated the development of collective bargaining mechanism in India. Under the IDA, the dispute settlement mechanism consists of Joint committees of labour and management (Works Committee), conciliation officers who are from the Government and labour courts and tribunals, which are adjudicatory bodies. All industrial disputes are channeled towards the courts, rather than towards a bargaining procedure. When a dispute is raised, the conciliation officer intervenes for its settlement.

3) Forced Labour Convention (C-29)

C-29 defines forced labour as work extracted from any person under the menace of any penalty and for which the person has not offered himself voluntarily. India has ratified this Convention abolishing forced labour. In India, a different kind of forced labour, namely 'bonded' labour has been abolished under The Bonded Labour System (Abolition) Act, 1976.

However, bonded labour continues to exist in some parts of rural India, largely due to widespread poverty, ignorance of law and age-old social and economic superiority of landlords. The absence of proper and sustained supervision prevents this law from attaining its objectives.

4) Abolition of Forced Labour Convention 9C-105)

C-105 focuses on forced labour as a means of political coercion or education or as punishment for holding or expressing political views. India has not ratified this convention. There is no specific legislation against forced labour as defined in C-105, though Article 23 of the Indian Constitution prohibits traffic in human beings, beggary and other similar forms of forced labour.

5) Equal Remuneration Convention (C-100)

The purpose of this Convention is to eliminate gender discrimination in remuneration and provide equal pay to men and women for work of equal value. India has ratified this Convention and the Indian Constitution upholds the principle of gender equality. Article 39(d) of the Directive Principles of State Policy in the Constitution directs states towards a policy of equal pay for equal work for men and women. The Equal Remuneration Act, 1976 stipulates that equal wages should be paid to men and women for the same value of work. In principle, the ERA is a comprehensive act that covers organised and unorganised sectors, domestic and multinational enterprises, and regular, temporary and casual workers.

But in reality, the concept of work equality is loosely defined, allowing the payment of low wages to women workers. Further, the ERA excludes self-employed persons and home based workers, leaving large number of women workers outside the purview of the act³.

³ Heggade, Odeyar D., International Labour Standards and India-The case of women labour, *The Indian Journal of Labour Economics*, Vol. 41, No 4, 1998

Further, the labour inspection system is weak and corrupt and is unable to enforce compliance with ERA. Availability of a large pool of non-unionized female labour, particularly in unorganised sectors make it easy for employers to flout gender equality in wages.

6) Discrimination (Employment and Occupation) Convention (C-111)

This convention defines discrimination as any distinct, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or reducing equality of opportunity in employment or occupation. However, the Convention permits special measures of protection for persons who are in the need of such assistance.

There is no single legislation in India dealing with discrimination, although discrimination on specific grounds is covered by separate laws. In general, Article 16 of the Constitution of India upholds equality of opportunity in matters of public employment as a fundamental right, while giving the state the right to make special provisions for backward or disadvantaged sections of society.

7) Minimum Age Convention (C-138)

This Convention provides that the minimum age for employment should be 14 years for general work, and 18 years for hazardous work. The Government has taken several steps to reduce child labour in India. Article 24 of the Constitution of India recognizes Right against exploitation to be a fundamental right of every child; it prohibits employment of children below the age of 14 years in factories, mines or any hazardous employment. The Factories Act, 1948 prohibits the employment of a child below the age of 14 years in any factory. The Child Labour (Prohibition and Regulation) Act, 1986 bans employment of children less than 14 years in specified occupations and processes.

In addition to the above core standards, the ILO prescribes standards that improve the quality of the work environment. The most important of these relate to occupational safety and wages.

8) The Occupational Safety and Health Convention (C-155)

This Convention aims to prevent accidents and injury at work places. At present, there is no comprehensive national law covering occupational safety and health. However, there are specific laws for specific sectors. The Factories Act, 1948 lays down minimum standards for ensuring the safety, health and welfare of factory workers. The provisions under the above act are comprehensive and cover many aspects of labour welfare like working hours, rest intervals, weekly holidays, leave benefits, health and safety norms and employment of women and children. The Workmen's Compensation Act, 1923 stipulates that an employer is liable to pay compensation to a worker for any injury or occupational illness arising out of or in the course of work.

Creation of good working conditions is impeded by socio-economic compulsions of employees that allow employers to neglect even basic labour standards. Lack of awareness of basic workers' rights and low unionization, coupled with poverty and absence of immediate alternate sources of livelihood allows employers to flout labour laws.

9) The Minimum Wage Fixing Convention (C-131)

This Convention provides for establishing a system of setting minimum wages and revising it from time to time. This wage is expected to be set on the basis of the needs of workers, cost of living, social security benefits, level of economic development and productivity. Minimum wage setting in India is regulated by the Minimum Wages Act, 1948. The Act provides for fixation, revision and also

enforcement of minimum wages for scheduled employments. Once a minimum wage has been notified, the employer is obliged to meet this wage level.

4.2 Hard Law

Hard Law as a concept in International Law context means, the binding obligation by its very nature. Hard Law encompasses enforcement either by force and sanctions, thereby creating an environment of fear and possible threat by the enforcement agencies. Businesses regard Labour Laws having the nature of Hard Law, in the sense that they are inflexible and any violations attracts penal provisions including imprisonment, which creates certain restrictions for business to grow and flourish in such an atmosphere. Thus there is always an outrage against any kind of labour inspections, and call for restrictions of inspections and prosecutions.

Hard law subjects parties to procedural rules that regulate the ways that they can make arguments and justify their actions. Procedural rules, rather than bare self-interest or the exercise of power, determine outcomes.

Although there is no precise definition of 'hard law,' here it refers to the coercive role of the state to make a rule as law, and then to apply sanctions should the law not be obeyed. This model is also sometimes referred to as command and control. In fact after, gaining Independence and when we adopted the Mahalanobis model of growth through Five Year Plans, India opted for command and control mode of development, with emphasis in Public Enterprises. It is since the opening of the Economy, and liberalization policies that the public-private partnership and private entrepreneurship grew.

Hard Law instruments better permit states to monitor and enforce their commitments, including through the use of dispute-settlement bodies such as conciliation machineries and courts.

However, it was during the last two decades that the soft law approach seems to have been caught up with many theorists and also its applicability in many areas including labour and environmental policy and implementation in the globalised business.

Defenders of soft law argue that soft-law instruments offer significant offsetting advantages over hard law. They find, in particular that:

- Soft-law instruments are easier and less costly to negotiate.
- Soft-law instruments impose lower “sovereignty costs” on states in sensitive areas.
- Soft-law instruments provide greater flexibility for states to cope with uncertainty and learn over time.
- Soft-law instruments allow states to be more ambitious and engage in ‘deeper’ cooperation that they would if they had to worry about enforcement.
- Soft-law instruments cope better with diversity.
- Soft-law instruments are directly available to non-state actors, like business associations and nongovernmental organizations. (Shaffer and Pollack, 2010)

However, Soft law, in the form of codes of conduct, certification schemes, etc., has become prominent in regulation—in developing countries as a means of filling regulatory gaps; and in many developed countries, where state regulatory systems are being cut back or eliminated in favor of self-regulation.

Soft law has an important role to play in regulation of enterprises; however, not all soft law is of equal value. Furthermore, there are inherent risks in over-

reliance on soft law approaches: the proliferation of standards, leading to confusion about what is expected of companies; weakening of standards for protecting workers, communities and the environment; erosion of democratic processes for collectively expressing community expectations of corporate behavior; governments devolving their responsibilities onto the private sector and substituting regulation of CSR for public regulation of the workplace, community health and well-being and environment; and the inability of isolated private initiatives to develop complementary sectoral and national institutions, such as industrial relations systems which are critical for further defining workers' rights and providing a credible system of redress for violations of workers' rights. There is also the real risk of international organizations themselves being co-opted, through public-private partnerships with companies, and no longer able to act as an honest broker in helping to empower workers and communities.

Thus, in the context of regulation of working conditions in garment sector, it is the appropriate and intelligent admixture of both *Hard and Soft Law* that can really ensure better and safe working conditions of garment workers. The research undertaken, believes and strongly argues that Labour laws are treated as *Hard Law* and requires modifications, amendments and sometimes demands non-implementation, whereas the corporate codes of conduct is termed as *Soft Law*, because of its non-binding characteristics and lackluster enforcement tools.

4.3 Labour Regulation

The campaign for Labour legislation to regulate employment conditions and welfare of workers started in a major way soon after the First World War, when agitations by workers against severe forms of exploitation and unfair actions by employers gained momentum on a widespread scale, especially in developed

industrialized countries. The Russian Revolution in 1917 also ignited the workers' struggle for fair treatment and protection. Establishment of International Labour Organization (ILO) in 1919 was a landmark event in the annals of labour history internationally mandating the necessity of labour legislations to protect the interests of workers. It has developed conventions and recommendations on labour standards for facilitating improvements in labour conditions which have been adopted by its member countries including India. Along with the birth of ILO, the All India Trade Unions Congress also came into existence in India in 1920, which spearheaded the movement for legislation to alleviate the conditions of workers. The emergence of labour regulations in India can be traced back to the period of British rule in India. But a spate of labour laws governing various aspects of work were passed in quick succession of each other after Independence. And there was a complete change in the approach to labour legislation after the attainment of independence in 1947. The basic philosophy itself underwent a change and the ideas of social justice and welfare state as enshrined in the Constitution of India became the guiding principles for the formulation of labour regulations.

Overall Objectives of Labour Laws:

Each law has its own specific objectives. But, overall, the different labour legislations together aim at protecting the interest of workmen in terms of employment security, social security, conditions of employment and wages, by laying down provisions relating to:

- ❖ To protect and safeguard the interest of labourers against arbitrary and unilateral actions of employers
- ❖ To regulate and improve upon the working conditions of workers employed in different factories and establishments by stipulating measures to protect and promote their health, safety and welfare.

- ❖ Fixation, payment and periodic revision of need based minimum wages of workers in industries and unorganized sector
- ❖ To ensure the timely payment of wages and authorized deduction from the wages of workers
- ❖ To ensure the service conditions and the mutual rights and obligations of workmen and employers
- ❖ To provide freedom to the workers to form or join the trade unions and promote their welfare through collective bargaining and collective action.
- ❖ To promote industrial peace by providing for an elaborate machinery for the prevention and settlement of industrial disputes
- ❖ To ensure social security and benefits to workers in the unwanted eventualities such as sickness, maternity, disablement and death.
- ❖ To undertake the provision for the regular training of a certain number of apprentices in different trades.
- ❖ To regulate the employment and service conditions of contract labour and provide for the abolition of contract labour
- ❖ To provide for regular and periodic furnishing of statistics by industrial and commercial enterprises on specific labour matters (T S Papola et al, 2008)⁴

In general parlance we often use the word “statutory regulation”, or “statutory labour laws” or even “statutory compliance”, interchangeably. Statutory regulations are rules, procedures and institutions established by laws or decrees designed to set parameters of acceptable behavior. They may be *pro-collective* or *pro-individualistic*, in that laws may give incentives to collective institutions or may set out to limit or control them. In labour market terms, statutory regulations come in five forms:

⁴ Papola, T.S, Mehta, G.S and Abraham, Vinoj (2008), *Labour Regulation and Its Impact: A Review of Studies and Documents*, Institute for Studies for Industrial Development(ISID), European Union(EU), International Institute for Labour Studies (IILS), and Bookwell, New Delhi.

- *Protective regulations*: rules and procedures to protect workers, and/ or to prevent those in strong positions from abusing those in weak positions;
- *Fiscal regulations*: taxes and subsidies to encourage certain forms of activity and/or discourage other forms;
- *Repressive regulations*: rules and mechanism to prevent something that the state, or a dominant interest, does not wish to occur;
- *Promotional regulations*: rules and mechanism (other than taxes) designed to promote certain developments;
- *Facilitating regulations*: rules and procedures that permit activities to take place, if there is a desire to do so.

The potential advantages of statutory regulations are that they are, in principle, *predictable, transparent and equitable*. Statutory regulations provide clear *monitoring* mechanism. They have been justified as a *corrective for market failure*, notably that due to a lack of information among workers or employers.

The potential disadvantages of statutory regulations are a tendency to *rigidity*, in that no law or regulation can cover every contingency; a tendency to excessive *legalism; complexity*, because of the numerous situations that have to be covered in any regulatory framework; and *bureaucracy*, which comes from having to operate any such system. (Guy Standing, 1999)⁵

Labour Administration system in our country is a part of the system of public governance. Despite the fact that the labour administration system has an enormous responsibility of ensuring the effective administration of a plethora of labour laws,

⁵ Standing, Guy (1999), *Global Labour Flexibility Seeking Distributive Justice*, Macmillan, London.

and indeed has a pertinent role in the lives of working people everywhere, we still have very little published work on the functioning of the system.

Labour inspections have been viewed as an important way of ensuring that labour standards enshrined in The International Labour Organization (ILO) Conventions and corresponding national law are maintained. India ratified the ILO convention on labour inspection in industry as early as the 1940s but continuing violations of labour law have led to widespread disillusionment with the process, to the extent that various other actors, including journalists, NGOs and human rights organizations, have taken on the role of inspectors.

Now, once again, interest in labour inspections has grown – in 2006 the ILO proposed a new series of measures, designed to ‘reinvigorate’, modernise and strengthen labour inspectorates worldwide. However, tensions remain at the policy level, both internationally and within India. Labour market policy is highly contested: on the one hand is the neoclassical school of thought, calling for deregulation of labour markets to make them more efficient, and on the other is the interventionist approach, arguing for protective legislation for a poor and vulnerable workforce. (Priya Deshingkar, 2009)⁶

Labour regulation performs four vital functions, viz. to protect workers and prevent exploitation by employers; regulate employers’ decisions and actions affecting labour; provide a set of rights to and obligations on workers and their associations; and create ‘rules’ to govern the interaction between these two parties in the Labour market. Institutions and processes are created to achieve these objectives and in the process the exercise is often overdone, owing to misplaced or over

⁶ Deshingkar, Priya (2009), *Extending Labour Inspections to the Informal Sector and Agriculture*, Working Paper, No. 154, Overseas Development Institute, London. Assessed at http://www.chronicpoverty.org/uploads/publication_files/WP/154%20Deshingkar.pdf. Last visited 26.2.2010.

enthusiasm. As a result, over-regulation prevails, which leads to bad outcomes. It (a) introduces rigidities, (b) restricts the freedom of employers, (c) hurts competitiveness of firms, (d) affects productivity, (e) inflates cost of operations, (f) takes away precious time and resources of employers, (g) results in delays, high cost of operations and corruption, and (h) increases transaction costs. (K R Shyam Sundar, 2008)⁷

However, there are several instances in several States in India, which have attempted at de-regulating the market and curbing the Inspections through various Executive Orders and Government Orders. These orders may be in response to the hue and cry raised by the Industry and Chamber of Commerce what they often call that there exists 'Inspector Raj', meaning the onslaught of unexpected and invited guests in the form of Inspectors, whose duty is just rent seeking and not that of the legal regulation or improving the conditions of labour.

Reddy (2008)⁸ documents them and call them 'Non-legal Modifications to Legal Provisions: State Government Orders'. As a part of the strategy of making the state more attractive for investment by unmaking the labour regulations, the state government, beginning with 2001, resorted to mere executive order or the so-called 'GOs' in exempting the industry from compliance with the labour laws. In 2001, the state government¹ invented 'Self-Certification' as a method of compliance with labour regulation.

Further there was liberalization of labour regulation through yet another executive order on the modalities of inspections. It provides that annual inspection of

⁷ Shyam Sundar, K R. (2008), *Impact of Labour Regulation on Industrial Development and Employment: A Study of Maharashtra*, Institute for Studies for Industrial Development (ISID), European Union (EU), International Institute for Labour Studies (IILS), and Bookwell, New Delhi.

⁸ Reddy D, Narasimha (2008), *Labour Regulation, Industrial Growth and Employment: A study of Recent Trends in Andhra Pradesh*, Institute for Studies for Industrial Development (ISID), European Union (EU), International Institute for Labour Studies (IILS), and Bookwell, New Delhi.

factories be confined only to hazardous factories and factories employing more than 150 workers. Tiny, small-scale, non-hazardous factories shall be inspected only in case of occurrence of accident or on receipt of complaint. In all other cases, factories shall be inspected not more than once in a period of two years. There shall be no surprise inspections. Inspections shall be joint, involving the concerned departments like Factories, Labour, Pollution Control Board, ESI, and EPFO.

Government of Karnataka went one step ahead and passed legislation in favour of de-regulation and in the name of attracting investments. The Karnataka Industries (Facilitation) Act, 2002, received the assent of the President of India on the 27th of October 2003. The preamble to the Act reads: An Act to provide for the promotion of industrial development and facilitation of new investments to simplify the regulatory framework by reducing procedural requirements and rationalizing documents and to provide for an investor friendly environment in the State of Karnataka.

Apart from setting up the State High Level Clearance Committee, State Level Single Window Clearance Committee and District Level Single Window Clearance Committee the Act also provided for setting up of Nodal Agency and Combined Application Forms for the use of entrepreneurs whose projects are approved either by the State High Level Clearance Committee or the District Level Single Window Clearance Committee in lieu of existing forms prescribed under applicable Central or State Acts except the application for licensing of a Factory as provided in Section 41-A of the Factories Act, 1948.

Section 15 of the Industries (Facilitation) Act, 2002 provides for Certification. Every entrepreneur shall furnish a 'Self-certification' at the time of submitting the duly completed Combined Application Form and thereafter once in a year to the

Nodal Agency undertaking that he shall comply with the applicable provisions of the relevant Acts and the rules made there under. The undertaking shall be furnished in such form as may be prescribed. The Self-certification furnished by the entrepreneur shall be accepted by the departments and authorities for the purpose of issuing and granting clearance and giving other benefits to the entrepreneur.

Rationalisation of Inspections under the Act

Inspections under the provisions of applicable Acts or rules by different levels of authorities, shall be conducted jointly with the Office of the Labour Commissioner, Chief Inspector of Factories and Boilers representatives of the ESIC and the EPFO and Karnataka State Pollution Control Board once in a year. Such inspections shall be based on random selection. However, inspections against specific complaints may be conducted with the authorization by the heads of the departments or authority.

However, what is not missing in the Act is the Sanction or the Penal provisions. Heavy penalty is levied under the Act if any entrepreneur fails to comply with the conditions or undertaking in the self-certification given to the Nodal Agency or other department or authorities. On conviction he shall be punishable with fine which may extend to five thousand rupees for the first offence and for the second or subsequent offence with fine which may extend to ten thousand rupees. It is to be noted that there is no imprisonment provision, which is found in most of the labour law legislations.

Role of Trade Unions

Trade unions in the meantime have turned weak. Their familiar membership base shrank, and the drive to enroll more members in newer areas did not get off the ground. Their capacity to protect and promote workers' interest turned ineffective.

Employers bargaining power grew and they started asserting. This is evident from (a) more man-days lost due to lockouts than strikes, (b) increasing incidence of closure, (c) voluntary, often, in fact, coercive, retirement schemes, (d) manipulation of muster rolls at the margin to avoid application of different labour laws, (e) increasing default in payment of statutory employers' contribution to provident fund, (f) non-payment and delayed payment of wage and arrears to workers, and (g) a vigorous effort to seek flexibility in labour matters through new or amended labour laws. (C P Thakur, 2008)⁹

Role and Importance of Labour Inspectors

Labour Inspectors are perhaps the only 'outside agents' that could have legal and unquestionable access to the workplace and thus could perform several important functions. Labour inspectors have direct and immediate access by virtue of laws and judicial regulation to the places of production. They are 'field officers' who provide a 'bridge' to the codes and laws and the work place actors like producers and workers and trade unions. They can ensure that the labour policies of the government and the laws and regulations are implemented at the workplaces. They in fact provide the crucial link between conception and realization of government policies and social vision. By ensuring the effective implementation of standards they promote the welfare of millions of workers. To that extent, they serve as instruments of social justice. They not only promote the welfare of workers, but also contribute to the enhancement of the competitiveness of the establishments via the effective implementation of labour standards. The Labour inspectors transmit back to the government the shortcomings of the law, the problems faced by workers and

⁹ Thakur, C P (2008), *Labour Policy and Legal Framework in India: A Review*, Institute for Studies for Industrial Development(ISID), European Union(EU), International Institute for Labour Studies (IILS), and Bookwell, New Delhi.

employers in implementing the regulations and the gaps between conception and practical and ground level realities. They also provide confidence to the entrants to the labour market that there is a mechanism to protect their interests. Regulations on occupational safety and health (OSH) have implications not only for workers inside the factory but also to the immediate environment. Inspectors are the ‘watch dogs’ of the safety of not only workers but also consumers, society and even the environment. These interventions surely influence the outcomes in the society and economy and as a result a ‘fair industrial society’ is created.

A fair industrial society and a process of fair globalization require special attention to vulnerable groups of workers. International labour standards and other instruments of vision documents and strategies like the ‘decent work strategy’ and ‘fair globalization strategy’ stress the role of the labour standards in promoting social protection for workers and enhancing productivity for the firms. These emphasize the implementation of its labour standards in general and core labour standards in particular. Thus, labour inspectors promote core labour standards of the ILO, while paying special attention to the problems faced by the vulnerable sections of the society. Thus, there is a direct link between what the global agencies such as the ILO thinks and acts and what happens at the micro level. They not only police the implementation of laws and regulations and policies but also provide almost free of cost technical information, advice, and mediation on labour disputes. They are the only legally recognized agents for monitoring the work places. (K R Shyam Sundar, 2010)¹⁰

¹⁰ Shyam Sundar, K R (2010), *Labour Reforms and Decent Work in India. A study of Labour Inspection in India*, Bookwell, New Delhi.

4.4 Labour Law Reforms Debate

Labour law reforms debate has been the hot topic of discussion both within India and in most of the international institutes like the World Bank, ILO etc. Government of India also initiated such a dialogue through its National Commission for Labour and its Reports which went into details regarding the labour laws reforms and simplification of labour laws to suit the present business environment and also to meet the ever growing demands and pressures of the business to de-regulate the business climate.

An important institution, which contributed immensely to the ongoing Labour reforms debate in India was anchored none other than the World Bank. The lead orchestration of the ideology that labour regulation impacts investments, employment and informal sector workers negatively is done by the international multilateral financial institutions of which World Bank is the primary force. The following observation sums up its approach: 'Regulation of labour markets is usually intended to help workers, but can also be a significant constraint on firms...It is considered regulations can discourage firms from creating more jobs and contribute to a swelling of the informal economy. When this is the case, some workers may benefit, but the unemployed, the low-skilled, and those in the informal economy will not be among them' (World Bank 2005:136 qtd in D Narasimha Reddy, 2008)

To make this perception the basis for national policy, the World Bank is aware it requires pressure from the employers within the country, and the employers are only too willing to oblige. The Bank has been conducting what is called 'investment climate surveys' in India and elsewhere. Labour Regulation is one of the indicators on which investors' opinion is sought. The Confederation of Indian Industry is much more aggressive in advocating dismantling of labour regulation when it observes: 'It

is now recognized that guaranteeing life time employment in industry is no more sustainable. This is simply because the life of the enterprise is getting shortened due to competition and other factors. Thus, the State governments should be proactive in shedding a protectionist labour policy.

The debate on Labour law reforms emerges from different perspectives about the way in which regulation and implementation is practiced in the country. The debate on labour regulation often revolves around employment laws. Labour regulation obviously includes more than just restrictions on employment and termination of jobs of workers. It is also about other issues like multiplicity and complexity of labour laws. Provision of incentives to some industries and so on. It is pointed out that there are presently more than 55 Central Labour laws and more than 100 State labour laws. Employers demand some meaningful merger and consolidation of labour laws, and adoption of common legal definitions. (FICCI-AIOE 2005, qtd in K R Shyam Sundar, 2008)

The debate on labour law reforms also revolves around the law enforcement system and the problems surrounding it. Employers complain that labour inspection system has proved to be 'harassment; to them and they need to be freed from it. They point out that (a) the inspectors possess enormous power- they have the power to imprison the employers, seal the establishment or stop its operations, and (b) *too many* inspectors visit the factories *too many* times. Employers also complain that the legal and official data collection system requires them to adopt a lot of procedures like filing of periodical returns, posting of abstracts of laws or selected provisions of laws, maintenance of multiple registers (in physical and not in electronic form) and so on. These result in the wastage of precious time and energy and are badly in need of simplification. Labour reforms thus would achieve the following objectives: (a)

enhance competitiveness of firms, (b) reduce labour and transaction costs, (c) increase exports, (d) attract foreign capital, (e) generate jobs, and (f) ensure better compliance of laws.

Opponents of deregulation argue that the three-pronged forces of liberalization, privatization and globalization (LPG) have created a sense of insecurity among workers. Workers require *more* protection and hence greater regulation is required in the system. The laws should not be diluted; in fact they should be strengthened. They demand universal coverage, covering all the establishments irrespective of the number of workers they employ and the nature of the undertaking and all workers irrespective of salary limits. Trade unions desire stricter monitoring of law enforcement and more stringent punitive measures for lapses. Thus there are two views expressed by each of the interest groups to the debate on labour law reforms. K R Shyam Sundar (2008) concludes that, labour regulation goes beyond labour flexibility and covers wider issues. There is a need to widen the scope of studies on labour regulation to include issues related not only to flexibility, but also coverage of labour laws, enforcement of laws, etc.

What should be the form, content and implementation mechanism of labour laws in India, so as to balance the two views mentioned in the earlier paragraph. The regulatory framework for labour in Indian industry should and can be more friendly towards both industry and labour. For that, it is necessary that the realities of the Indian labour market are more clearly understood and kept in view in the debate on labour reforms. Chapter V-B of the Industrial Disputes Act needs to be removed as it has not served the interest either of the industry or labour and certain changes in Contract Labour Act may be necessary to meet the requirements of the new global production system.

There is no doubt that the system of labour regulation in Indian industry requires a change. A change is needed not only to facilitate a smooth process of labour use and adjustment to meet the requirements of competitive efficiency in the wake of economic liberalization and globalization, but primarily because many of the premises and assumptions underlying the existing regulations have changed, as a result of sweeping changes in technologies and production systems and character and composition of entrepreneurial and working classes. The existing regulations have left most of the Indian workers outside their purview, besides not being very effective in providing the stipulated benefits even to those covered by them. Provision of high degree of protection to a few co-exists with lack of protection to many. (T S Papola, et al., 2008)¹¹

4.5. Impact on the Working conditions

Labour Regulation should ameliorate working conditions. The impact of labour regulation is felt in varying degrees, because of the existence of dual character of labour market and changes in the production process and structure of global capital.

Given the changes in production process within the factory and changes in the industrial structure due to technological innovations, international spatial division of labour, and global capital mobility, the production relations between the employer and the employee has undergone tremendous changes across the globe in a relatively short span of time. In India it is widely held that the policy changes towards liberalization have intensified such changes in the production relations and the demand for flexibility in the labour market has been escalating. The labour legislative

¹¹ Papola, T.S, Pais, Jesim and Sahu, Partha Pratim (2008), *Labour Regulation In Indian Industry: Towards a Rational and Equitable Framework*, Institute for Studies for Industrial Development(ISID), European Union(EU), International Institute for Labour Studies (IILS), and Bookwell, New Delhi.

structure in India, intended at imparting judicious conditions of labour and employment along with efficient production is found to have many lacunae in the wake of these rapid changes. Debate on this issue is centered on two broad and countering views. One, globalization would in the long run benefit both the worker and the employer as it is essentially a process of efficient resource allocation, made possible by technological advancements and new management practices. Two, the flexible nature of employment brought in by globalization would aggravate insecurities, worsen conditions of work and wages, and, in short, deteriorate the quality of work life. (T S Papola, et al., (2008)¹²

Some of the earlier studies which had documented the working conditions in the garment sector present a very dim picture of the women working. Study by Swaminathan (2006)¹³ brings out the poor working conditions of women workers in the garment manufacturing units of the Madras Export Processing Zone (MEPZ). Most of the workers have to undertake compulsory overtime in their workplaces. Many of the married women workers restrained themselves from joining quality stringent workplace as they would not be able to withstand the stress. There was no formal contract of employment between the employer and the employee, which, made it easy for the employer to hire and fire at will.

The inspection of 48 units in the Noida Export Processing Zone (NEPZ) conducted by the Indian Labour Conference revealed that 1148 of the 8085 workers were not on the rolls (Mazumdar, 2006)¹⁴. Women worked overtime late night at half the prescribed overtime wage rates. Even highly successful units in the NEPZ are

¹² Papola, T.S, Mehta, G.S and Abraham, Vinoj (2008), *Labour Regulation and Its Impact: A Review of Studies and Documents*, Institute for Studies for Industrial Development(ISID), European Union(EU), International Institute for Labour Studies (IILS), and Bookwell, New Delhi.

¹³ Swaminathan (2006), 'Workers in Urban India : Challenges in Gender Segregation of Occupation, 1983-2000', *The Indian Journal of Labour Economics*, Vol. 49, No. 2, pp-283-299

¹⁴ Mazumdar, Indrani. (2006), *Women Workers and Globalization: Emergent Contradictions in India*, STREE, Kolkata.

regularly flouting the labour regulations. Work was extremely strenuous due to the very high production targets. Workers in the garment units complained of doubling targets without any additional labour saving machinery.

4.6 Limitations

Labour inspections could, in theory, improve labour standards and help countries move towards decent work goals and the elimination of chronic poverty. But, in practice, inspections are either not conducted or do not result in penalties for those who break the law.

The frequency and rigour of inspection by the labour department for compliance of legal provisions has become relaxed. Reporting requirements on compliance of labour law provision have been made lenient. Non-compliance and even conscious violation of provisions has grown to the detriment of workers' interests. In fact, one witnessed an inter-state competition in offering investment-friendly policy, including the offer of relaxation and a period of holiday from the enforcement of labour laws, among other incentives.

The implementing machinery, however, is fraught with limitations such as shortage of staff, rigid mindset, outmoded attitudes and lack of modern tools and knowledge, which are coming in its way to reach a wider section of enterprises and their workers and work in an enterprise and worker-friendly manner.

A major limitation of the regulatory provision is their narrow coverage, first, because of large number of enterprises and workers are formally kept out of their purview and second, not all expected to be covered also do not get into the net, for the reasons of limitations of the capacity of implementation agency as well as the enterprises efforts to evade the law.

Out of over 44 million enterprises in the non-agricultural sector in the country, only about 3 lakh enterprises are registered under Factories Act. Most of them do not qualify to be a 'factory' in legal sense, some also succeed in hiding their identify as factory. Provident Fund has only 40 million subscribers (spread over 3,70,000 establishments) and ESI, about eight million insurers, out of a total of over 400 million working people in the country.

Second, the machinery generally has a reactive rather than a pro-active approach in implementation of the regulatory provisions. Third, the unpleasant experiences of enterprises in completing the complicated procedures of different regulations act as disincentive to comply and encourage them to explore ways of non-compliance. Fourth, multiple agencies, each confining to a particular aspect of a legislation, sometimes in overlapping manner, comes in the way of effective implementation of different regulations. (V N Prasad, 2008)¹⁵

However, keeping in view these limitations faced by the enforcement agencies and also the liberty that they are lacking due to administrative control, the judiciary has come to the rescue in this regard. The Honorable High Court of Karnataka, in its recent judgment Justice Huluvadi G Ramesh has opined that: "Liberty is given to the enforcement officer to re-inspect and verify whether there is compliance of the provisions of the Act and to take action in accordance with law."ⁱⁱ

4.7 Conclusion

Meenu Tewari (2006)¹⁶ in her article demonstrates through her own field visits and concludes that improved labour conditions in domestic firms is a reality. In

¹⁵ Prasad, V N. (2008), *Labour Regulation in Small Enterprises: Coverage and Impact*, Institute for Studies for Industrial Development(ISID), European Union(EU), International Institute for Labour Studies (IILS), and Bookwell, New Delhi.

¹⁶ Tewari, Meenu, 'Targeting Global Supply Chains: Innovations in Labor Organising in the Indian Garment Industries'. Article assessed at <http://stephen.mahost.org/TewariGlobalSupplychains.pdf>. Last visited on 26.2.2010.

contrast to the general sense that firms are more likely to improve their working conditions in the face of external pressures from foreign buyers, codes of conduct or export competition, it was surprising to find better or equally good working conditions and work organization in several plants producing for the domestic market.

In some cases the improved labour conditions- such as better lighting, ventilation, temperature control, less noise, the presence of a canteen, crèche, or health clinic and health insurance and social security benefits began in the export units of firms that also produced for the domestic market.

Further improvements in the work organization of domestic units has resulted from the rapid growth and transformation of the large domestic Indian market. For example in the past decade as Malls have sprung across large and small towns, and as demand for readymade, designer clothing from the young workers employed in the nation's booming IT and BPO Sectors has grown, so has the competition among domestic chains to carve out and corner market share in this new organized retail space and branded wear that has become the new battleground for garment producers. Some of the best known, largest firms cater exclusively to the domestic market (e.g., Pantaloon), and most major exporters are launching brands in the domestic market (Tewari, 2006).

Quasi-hyper-markets such as Big Bazaar and Shoppers Stop are putting in place extremely intricate and tight domestic supply chains for the production of a range of goods, including designer wear for the domestic market. Given the importance of cost and timeliness in the workings of these new supply chains, domestic firms are as likely as exporters to work to retain their workforce. This has

led to the improvement of a large number of domestic enterprises despite the absence of export pressures.

The compliance by the garment industry with respect to labour laws that are applicable to them is not satisfactory; there are several gaps in the statutory compliance and no uniformity of enforcement or best practices adopted by the industry. The following selected themes based on the primary data are taken up for justifying the arguments and a case is made that Human Resource Department of these industries should try to rectify the drawbacks and adopt ethical practices in their compliance.

Wage slips

There are three types of wage slips provided for analysis.

Type A: Reasonably better wage slip

Type B: Good wage slip

Type C: Bad wage slip/illegal wage slip

Type A: Reasonably better wage slip

RANGER APPAREL EXPORT PRIVATE LIMITED					
Pay Slip for the month of Jul 2007					
Name	UMEERA	ESI A/c No	19195545	Emp No	734
Dept	BIG PARTS	PF A/c No	655	Total Days	26
Designation	BATCH HELPER	A/c No			
DDJ	16/08/2008			PD.Days	26.00
Earnings	Std. Amt	Amount	Deductions		Amount
Basic	2,306.00	2,306.00	PF - Employee Cont		346.00
Dearness Allowance	575.00	575.00	Professional Tax		60.00
House Rent Allowance	0.00	0.00	ESI		94.00
Conveyance Allowance	369.00	369.00	VPF		0.00
Attendance Incentive		200.00	IT		0.00
Medical Reimbursement	0.00	0.00	Advance		500.00
Production Incentive		1,406.00	Loan		0.00
OverTime		500.00	LWF		0.00
Others		0.00			
Total Earnings	3,250.00	5,356.00	Total Deductions		1,000.00
Loan Balance	0.00				
Four Thousand Three Hundred Fifty Six Only				Net Salary	4,356.00

This is a wage slip of an employee for the month of March 2010. It shows the name of the Garment Industry and also its address. A brief look at the wage slip provides much of the information regarding the workmen. It includes Employee No, his name, department, designation, bank and account number; PF number, ESI number, number of worked days, leave days, Lay-off days, wages payable for number of days worked, overtime hours are depicted in the wage slip. Further, in the earnings column Basic wage, DA, HRA, Conveyance, Other Allowance, tea allowance, Additional Attendance bonus, attendance bonus, and overtime is shown. In the earning column, the basic and DA, Conveyance earned by the employee for the number of days worked (24) is shown. In the deductions column, deduction towards PF, ESI, PT, LIC, IT/LWF, Loan and advance is shown. The wage slip is more or less informative and provides all the necessary data regarding the employees' total earnings and deductions. What is the most significant information in the wage slip is the "Lay-off days". This information provides enough evidence that the garment industry very often lay-off their employees and that compensation package is worked out. According to a garment worker who was interviewed, the compensation for the lay-off days include half day wages for every day laid off and monthly attendance bonus paid in the following month. However, the blatant violation committed by the garment units while laying off such workers is that they have not taken the permission of the appropriate government before laying off the employees.

Type B: Good wage slip

ADORE APPARELS BANGALORE PVT. LTD
 27/28, CHAMUNDI NAGAR
 BANGALORE - 560 032

SL. NO. 125

PAYSLIP FOR THE MONTH OF MARCH 2010		ಕರ್ನಾಟಕ ವೇತನ ಪತ್ರ 2010	
EMP. NO. 10727	EMPLOYEE'S NAME IMRAN KHAN. A.	DEPARTMENT SEWING - JNIT - I	DESIGNATION TAILOR
PF No. 3191	ESI No. 3191	Worked days 24.00	Leave days 0.00
Bank PUNJAB		A/c No. 156700130000142	
Days Payable 24.00		OT Hrs 0.00	
EARNINGS		DEDUCTIONS	
BASIC	2,400.00	EARNED	2,215.40
DA	1,000.00		823.08
HRA		PF	377.00
CONV	200.00	ESI	59.00
O. ALLOWAN		PT	
TEA		LIC	
Other Allowance		IT	
Tea Allowance		Loan	
Adl. Attn. Bonus		Advance	
Att. Bonus			
Over Time			
Other Time			
TOTAL	3,600.00		436.00
NET SALARY		2,887.13	
AMOUNT IN WORDS : RUPEES TWO THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND			

The wage slip depicts the name of garment industry, and also the name of the employee, the department, designation, employee number, ESI/PF account number, total days he has worked. However the Date of Joining is mentioned, which is a important piece of information. In the earnings column Basic, DA, HRA, CA, attendance incentive, medical reimbursement, production incentive, overtime and others is mentioned. In the deductions column, PF/ESI/PT, Voluntary PF/IT, advance, Loan, and Labour Welfare Fund is mentioned. It is evident from the sample wage slip that the employee has earned during the month production incentive to the tune of Rs 1406, and also Overtime earnings of Rs 500. Both put together is almost equivalent to his Basic. This proves the fact that the production targets and also the quantum of orders is perennial, and that garment manufacturers always lures the workers by giving higher production incentives. The employee in the wage slip has also earned overtime of Rs 500, but what is not shown is the overtime hours that he

has put in. This also confirms the fact that workers are willing to work that extra hour in order to earn more through such types of incentives which includes attendance incentive and production incentive which is clearly depicted in the wage slip. However, unlike the Type A wage slip, which is also shown in the local language, type B wage slip is in English, which may not be understood properly by the workers, who are not well educated and also migrant workers from the rural areas.

Type C: Bad wage slip/illegal wage slip

BATCH HELPER WAGES FOR THE MONTH OF OCTOBER 2009

Sl. No.	Names	Per Day	No Days	Attn Bonus	Gross Amoun	Dedu	Net Amoun	O.T HRS	1.50	O.T AMT	TOTAL
460	Monisha Sharma	85	25	0	2125	5	2120	9.00	13.50	124	2244

Type C is an illegal wage slip and not in conformity with the wage slip that is statutorily prescribed. This is the sample wage slip collected during the sample survey in one of the garment industry in urban Bangalore. The name of the garment industry and its address is not mentioned. The assumed wage slip is just the cover in which monthly wages was paid to the concerned employee. The name of the employee and the number of days that he has worked is mentioned. Except for the gross amount, no other columns are mentioned. Further, there are no statutory deductions made which is illegal and clear violations of the social security legislations like the ESI and EPF Act. Overtime hours is mentioned and also the overtime amount paid, however, it is clear from the wage slip that wages for overtime which is double the wages for every hour worked is not paid. Instead only 1.50 wages is calculated and paid to the worker, in violation of the Factories Act and the Minimum wages Act. The openness in which such a violation is committed in black and white which is printed and given to the worker, shows the attitude that the garment industry is having towards the dutiful responsibility and ethical practice that they are supposed to observe in the export oriented garment unit.

Health, Welfare and Safety

Workers in the garment industry are facing various occupational hazards and stress due to excess targets and other pressures both at the workplace and outside the workplace. Managements of the garment units are not taking any measures to see that the workers' health, both physical health and mental status and their general health conditions are periodical checked and well-being improved. Canteen facility is a statutory requirement if the factory employs more than 250 workers and a canteen committee has to be constituted according to the Factories Act. Safe drinking water should be supplied to all the workers at appropriate places. However, all these statutory norms are not strictly observed and the health and safety of workers are taken for granted. The example of hundreds of garment workers falling sick after showing symptoms of food poisoning like nausea, giddiness and vomiting and been admitted to hospitals has been reported in the press. The Human Rights Commission in Karnataka took up a suo-motto enquiry and ordered a thorough enquiry into the matter. After the enquiry the garment unit puts its Action Plan and stated that it has taken all necessary steps to ensure the health and safety of the workers in the factories that it operates. The Action Plan is provided below.



Action Plan.

After the unfortunate incident of employees fainting on 01.01.2010 inside the factory, you are aware about the care taken right from:

1. The factory has remained shut as of 01.01.2010 to 06.01.2010 and wages has been paid for our employees.
 2. Shifting ill employee to the nearest reputed hospitals.
 3. Rendered medical support to all employees within factory & within the hospitals.
 4. Stopped immediately present Caterer supply food, and arrange new caterer with all required norms. Soon planning to start kitchen monitored & controlled by company.
 5. Stopped immediately present Potable (Drinking) Water Supplier & mode of facility and arranged new supplier & provided packaged mineral water for drinking to all employees.
 6. Ensure Good Hygiene Standards in the Drinking Water with good no. of checks in related areas.
 7. Ensure Good Hygiene Standards in Food Supply & Canteen Maintenance with good no. of checks in related areas.
1. Re-constitute Health & Safety Committee for better care.
 2. Re-constitute Canteen Committee for better care.
 3. Ensure periodical audits on all above measures by other Team with a check-list and suggestions there on with action plan with implementation as per the norms of FS &SAI.



We M/s. Page Industries Ltd having around 7250 employees in total working in multiple production centers in & around Bangalore would appeal the authorities, that the company ensure implementation of all above points of Action Plan and ensure good Health & Safety Standards in future not giving scope of for such incidents in future.

Thanking You,

For, PAGE INDUSTRIES LTD., UNIT-III.


Manager - HR,
Chandra Gowda.

 PAGE INDUSTRIES LTD. UNIT - 3

No. 10A, Hennasagar Industrial Area, Bangalore - 560019
Ph : 080 41704000 Fax : 080 41704011

Head Office : Athankholey Industrial Area, Jockey Grounds, 37 & 38, Hegarwada, Bellary Road, Bangalore - 560 025.
E-mail : page@pageindustries.com hr@pageindustries.com sa@pageindustries.com

 PAGE INDUSTRIES LTD. UNIT - 3

No. 10A, Hennasagar Industrial Area, Bangalore - 560019
Ph : 080 41704000 Fax : 080 41704011

Notes :

- i The state that is referred is state of Andhra Pradesh
- ii Writ petition Nos. 20595-20597/2009 (L-RES) Sri Krishna Mikkilineni & others vs. State of Karnataka represented by its Sr. Labour Inspector, 18th Circle, Bangalore