

The State and Labour Market Reforms: Vicissitudes of the Changing Relationship between State, Labour and Capital – An Appraisal of the Neo-Liberal Reforms in India.

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This paper examines some critical aspects of labour market reforms in general and that in India in particular. It places them in the context of the changing relationship between State, labour and capital. The first part of the paper looks at the rationale and context of the labour market reforms in general. It traces the evolution of the neo-liberal discourse and locates a significant shift that has occurred within it. The second part of the paper deals with the content and context of labour reforms in India and in turn places them in the historical trajectory of the dialectics between labour and the State.

PART I

1. Labour Reform – The Theoretical Rationale.

Historically, labour reforms in the comprehensive manner in which they are talked of today were not a central part of the theoretical discourse of the neo-liberal literature and the need for labour market reforms was often prompted by the failure of the broader reform agenda and as part of the consequent discourse where among other factors, structural rigidities in the labour market were presented as a convenient alibi. The ‘first generation’ of reforms thus consisted of those in foreign trade, the financial system and in international capital flows. Even until the late 1980s, debates within the neo-liberal school concentrated on whether the foreign trade, the domestic and external financial sectors should be liberalised simultaneously or sequentially¹. With experiences of stated objectives not being achieved, the debate shifted to “structural rigidities and distortions” in other markets that acted as an impediment to this process. The labour market came up as one of these markets, the liberalisation of which was considered essential for the success of reforms. It was accepted that the labour market, because of the necessity of a decline in wages and its impact on individual welfare, would bear the brunt of the transition from an illiberal to a liberalised economy but it was asserted that this would strictly be a temporary setback that was necessary for the success of the liberalisation programme.

In this paradigm, the role of the labour market is to permit the restructuring of existing enterprises through retrenchment of excess workforce and to allow firms to exit particular lines if they are inefficient. In policy terms, the emphasis was on evolving effective exit policy for firms where the costs of exiting from existing industries could be minimised in the interest of efficiency. The inability to do this, it was argued, would promote inefficiency and generate unemployment. However, rigid and imperfect labour markets were looked at as only one cause of unemployment, the other causes being rigidities in

¹ Choksi and Papageorgiou (1988)

capital and product markets. Even if wages fell sufficiently, these other rigidities could result in persistent unemployment. Further, it was acknowledged that a fall in real wages of labour could itself lead to unemployment through Keynesian aggregate demand effects, which might reduce output and future employment.

It was acknowledged that adjustment can lead to adverse consequences for labour in the process of transition from an illiberal to a liberal economy due to the need for wage flexibility, but these pains of transition have to be borne in the interests of moving towards a path of higher growth and efficiency in the medium and long term. In fact, it is suggested that given the possibility of income and consumption losses due to adjustment, it is necessary to gain the cooperation of trade unions and to work out 'corporatist' arrangements that help unions understand the sacrifices that are necessary in the short term in order to reap advantages in the future and also enable cooperation between capital and labour through redistributive policies that alleviate the impact of wage cuts and income losses. The provision of social safety nets to help workers cope with retrenchments was part of policies to alleviate the pains of transition.

With experiences of structural adjustment in the 1980s and early 1990s, it became apparent that transition periods following reform were becoming long and that countries that had undertaken extensive reforms in several markets appeared to experience different kinds of problems that were contrary to what the reform literature had predicted. With increasing unemployment emerging as one of these problems, the discussion started focussing more on the need to move towards low cost production of tradeables as the optimum strategy to promote both growth and efficiency. The focus thus turned to determinants of export competitiveness in developing countries with low labour costs being considered the prime determinant. The adoption of specific kinds of labour regimes in a large number of countries (export processing zones, etc) combined with the nature of export markets in globalised production systems led to pervasive use of subcontracting arrangements and informal labour processes in developing countries. The detailed arguments for labour reform in developing countries arose in this context. There was a shift from the 'costs of transition' paradigm that talked of falling wages as an adjustment mechanism to permit restructuring in the face of crisis, to keeping wages and employment costs low to enhance competitiveness and expand employment, especially in the context of labour surplus developing economies. In this perspective, it is labour market inflexibility that explains mass unemployment and the generation of flexibility necessitates the redefinition of the employment contract in all its various aspects.

The newer reform literature for the labour market argues that labour market regulations add to production costs, restrict flexibility and efficiency, stifle competition, hinder economic growth and impair urgently required market adjustments. Further, in the case of developing economies, it is argued that labour standards should be seen as being appropriate only as an output of economic development. Standards should follow improvements in economic strength and economic results as if they were a reward or "luxury" good.

Representatives of this view² argue that Third World countries face a necessary choice between meeting the needs of subsistence and enforcing "decent" labour standards and they are bound to choose the former. Following this line of reasoning, one might infer that labour standards are the prerogative of more affluent countries, although the same basic logic has applied to them as well. Along similar lines, it is argued that maintaining prevailing wage standards in the developed countries would jeopardise their competitive position vis-à-vis the developing countries. Nobody, in other words, can afford labour standards³.

Labour reform measures suggested, especially in the case of developing countries, focus on different aspects of the employment contract to define the nature of distortions that exist and the specific measures required to reform them. The reforms seek to achieve two primary objectives through changes in various aspects of 'rights' as embodied in the employment contract: first, to allow for hiring and firing at the prerogative of the firm and second, to allow for maximum flexibility in the kind of workers that can be hired. While all labour reforms seek to achieve these objectives, there is a broad distinction that can be made between two different kinds of positions taken in the literature.

The first strand, which represents the most conservative position, looks at all labour market regulation as introducing rigidities and at reforms needing to be those that ubiquitously remove obstacles to and reduce the costs of hiring and firing for employers and permit them to hire any kind of labour that they want to. This is the quintessential neo-liberal position and it arises out of the basic premise that the labour market is like any other market and should not be subject to 'distortions' of any kind.

The second strand, representing a less extreme view, argues that while the employer should have the right to decide the size and composition of his workforce, misuse should be made more difficult through higher separation benefits for workers, greater severance pay and increased social security. Further, the State should play a major role in the restructuring of enterprises by bearing a part of the costs of retrenchment through social security⁴. The onus of ensuring minimum labour standards and 'decent work' conditions for all workers in the economy, bearing the cost of training and redeployment of retrenched workers and investing in human capital should be on the State according to this paradigm. Thus there is a crucial shift away from employers to the State in bearing the burden of labour separation from firms and in investment in human capital.

² Fields (1984)

³ This aspect is criticised by Sengenberger (1990) as challenging the basic assumptions on which post-war labour regulations were formulated.

⁴ This kind of an argument comes from diverse quarters, reflecting heterogeneous concerns. On the one hand, these are those who aim towards achieving the neo-liberal ideal, but argue that such palliatives are essential in the interests of political expediency and the need to generate a 'social consensus' that will not result in a backtracking on reforms. On the other hand, there are those who argue from what is considered a perspective that is closer to that of the ILO's present stance (Acharya and Brassard 2006) that labour standards are necessary for productivity improvements and thus these should be ensured through social security and compensation packages at the same time as not putting too much pressure on firms.

Irrespective of which version of the above strands is being represented, labour reforms primarily address two specific sets of regulations: those to do with job termination regulations and those to do with flexibility in hiring. A general feature of the reform ideology is that whereas the cost of adjustment is passed on to the State, its mediatory and legislative role is sought to be severely curtailed, particularly if such a process is deemed to be against the interest of capital.

Thus the State emerges as a critical institution not just to enable the removal of distortions, but also in a redefinition of the mediatory and regulatory role that it performed in the hitherto existing labour regimes.

2. The State and Labour Rights: The Historical Context

At this point we can synoptically examine how the relationship between the State, labour and capital has evolved historically in capitalism. Labour law and the rights enjoyed by labour that have become the subject of reform came into existence historically in significant contrast to the rules that governed earlier relationships between employers and employees. In Britain, what governed the relationship was the centuries old law of master and servant according to which rules of status allowed a master to control his servant through obligations of obedience, loyalty and fidelity. Breach of obligations by the worker (but not the master) allowed a liberal use of penal sanctions that were enforceable before magistrates⁵. These rules spread in different forms through much of the British Empire in the nineteenth and early twentieth centuries. In Britain, these rules of status were abolished in 1875 and employment was brought into the framework of the general law of contract by which an employer obtained the right to control the labour of his employee in much the same way as the rules of status allowed him to do so before 1875. The law of contract that substituted for these rules also allowed the employer the exclusive right to dispose of the worker for reasons of his choosing, subject to the giving of adequate notice. In other words, the employer's prerogative was supreme in the relationship between the employer and the employee. In spite of various collective gains made by labour in the first half of the twentieth century, workers received no protection, only a week's notice before termination of employment and hardly any severance payments or State protection against dismissal before the Second World War.

It is only in the post-Second World War period that the modern employment contract emerged, in many parts of the world, particularly in the context of the rise of the ideology of social democracy and the construction of the welfare states in Europe. It primarily questioned the exercise of employer prerogative and therefore had built into it the provisions that made unfair dismissal legally and statutorily not possible and also making the State the upholder of these protective provisions. The redefinition of the employment contract was an attempt by the State to recognise the inherently unequal and asymmetrical nature of the employer-employee relationship and was predicated on the

⁵ Kerr (2004)

idea that while the contract should enable production to take place smoothly, it should do so without giving the more powerful party in the contract, the employer, the ability to excessively use his power. It built safeguards for workers' rights on this assumption and enacted legislation with regard to minimum wages, regulation of working hours, specification of remuneration in case of working beyond stipulated hours, inflation adjustment, leave, occupational health and safety, job security, trade unions rights and collective bargaining. The constitution of a tripartite arrangement that brought in the State for monitoring, adjudication and dispute resolution in case of violation of these legislations and terms of contract arose in this context.

This phase that lasted between the war and the beginning of the 1970s, often referred to as the 'golden age of capitalism', embodied to an extent an advance of the rights of labour (notwithstanding a loss of revolutionary consciousness) due to a recognition of the basic asymmetry between labour and capital and the perceived need to attempt to redress this through protective legislation. While this could be a result of the undercurrents in the realm of international politics to take the wind out of the sail of socialist forces, particularly in the face of rising strength of the labour movement, or the general consensus not to go back to the unemployment situation of the depression period and the instability of the war years, there was also a strong technological reason why capital demanded more stable labour.

3. The Shift in the Schematics of Capital Labour Relations

To treat labour as a critical resource rather than as a cost was part of a larger discourse and an evolved practice in the history of capitalism, something that came up in the context of the corporate structure of the large firm. As technology became sophisticated and less malleable, it was felt that skill formation to handle the technology is both costly and time intensive and therefore once this is achieved, there is a stake in retaining the trained labour within the same firm. Further, a substantial part of productivity gains came out of shop floor innovations that required a more conducive and frictionless corporate work atmosphere where permanence in tenure and other benefits to labour would make the harnessing of these productivity gains possible⁶.

To put it schematically, capital needed stable labour because of the following reasons.

- (a) That irrespective of the state of unemployment in the economy, the "reserve army" pool of the specific skilled labour was not high. This followed from the lack of generalised substitutability of specific skilled labour.
- (b) That skill formation was both costly and time intensive and therefore once a labourer was trained on the job there was a stake in retaining him.

⁶ This kind of a perspective with regard to labour has been the hallmark of discussions on Japanese management styles and is also seen in academic writing on 'managerial capitalism' such as Galbraith (1967).

- (c) That substantial part of productivity gains came out of shop floor innovations that required a more conducive and frictionless corporate work atmosphere where permanence in tenure and other benefits to labour would make the harnessing of these productivity gains possible.

The shift that is taking place now in demanding and practicing a flexible and insecure contract goes against the earlier observation that the stability and long tenure of labour contract was necessitated by the technological needs of capitalism. Thus the current shift towards the reversal of that requirement of stable labour must therefore imply either or some of the following tendencies:

- (a) That the reserve army pool of the specific labour it is looking for is substantial.
- (b) That the costs and time involved in skill formation are not high enough to deter such flexibility.
- (c) That the costs can be externalised or socialised without affecting the benefits, which can be privatised.
- (d) That the main sources of productivity gains do not come from shop floor innovations.
- (e) That the firms are involved in low cost production where productivity gains and its impact on the rate of profit are less crucial to the absolute volume of profit made through high volumes and low margins.

These tendencies have indeed emerged in the international organisation of production since the late 1970s, which are noted below:

First, in a range of high technology industries where increasing capital intensity has greatly reduced the labour-capital ratio, the need for specialized labour can be relatively easily met from the available pool.

Second, even in high technology areas there is an entire range of industries such as chemical technology, biotechnological applications and software where innovation is concentrated in the work of a small pool of scientists and technologists and is laboratory based. Very little innovation happens at the shop floor and thus a flexible workforce may not deter productivity improvements.

Third there has been a sectoral shift in economies from industry to services, and in a range of service activities, though skills are necessary, the costs of training people to acquire these skills are not high and once it is developed, the pool of available workers can circulate where one worker can be substituted by another similarly trained one. In such activities, labour turnover is itself not a problem for the firm and therefore there is no need for a stable workforce. Thus for each firm a substantial part of the training costs can be externalised as they have been done by other firms or by the state. This involves a number of possibilities: (i) Certain sectors of service activities most represented by call

centres and business process outsourcing need a general level of human capital formation, particularly a certain fluency of English. The basic cost of such education is borne by the State through public education and by the private expenditure on skill formation by the individual service labour. Further after their basic training and their initiation into the industry they join a general pool of substitutable service labour within that specific sector. (ii) A whole range of service activities, which were internal to the firm, can be subcontracted out to a range of different service providing firms. Though the worker may work in the premises of the subcontracting firm, he is not their employee. This process gets rid of any requirement of skill formation cost or other liabilities on part of the subcontracting firm without hampering the availability of specific skilled labour, which can now be harnessed by the subcontracted firm. The latter firm in turn does not have to bother about service tenure and such other conditions because the service worker is just on the rolls of that firm without having a de-facto presence in its premises having no claim of permanence in his relationship with his formal employer.

Fourth, there has been the emergence of an international division of labour, with developing countries competing intensely with each other in low-value adding, labour-intensive production for exports with the exclusive focus of policy being to keep labour costs low.

Fifth, in as much as all these transformations entail costs of restructuring the labour force which can both be economically and politically debilitating, the unambiguous tendency has been to socialise these costs by transferring such costs of adjustment to the State, thus keeping the impact on private profitability minimal.

These have taken place in the context of changes in the nature of demand and markets which have become increasingly differentiated as well as volatile, resulting in fundamental changes in production organisation involving a shift from mass production to flexible specialisation; a reshaping of the size and distribution of business organisation involving decentralisation of production leading to smaller units with, at the same time, a continued concentration of capital ownership; the spread of new micro-electronic information and communication technology, with a vast potential for both intra- and inter-organisational restructuring and a re-shaping of spatial organisation of production in the economy⁷. With these changes, the nature of employment has changed with a shift away from the use of full-time, regular employees to part-time workers with variable working hours and those on fixed-term contracts. In developing countries, the adoption of stabilisation and structural adjustment programmes and the accompanying dismantling of barriers in different markets, combined with the emphasis on production for exports has led to a large scale incorporation of informal sector workers and enterprises into export production under a wide variety of production and employment arrangements, such as forms of subcontracting, flexible wage arrangements and casualisation.

⁷ This refers to a distinct development with changes in the geographical configuration of industrial areas with the development of industrial clusters, industrial estates, special economic zones and so on.

So, in as much as the earlier regime of protective labour legislation was the product of a particular conjuncture synthesising the politics of the 'golden age' and the economics of advanced mass production, the shift away represents one of the advent of neo-liberal politics and the massive changes that are taking place in the economic sphere, represented by the network of global production chains and the accompanying fragmentation and flexibilities in the production process along with concentration of capital.

The current shift in the discourse and practice of State-labour relation can thus be traced in the above context. The pressure of the rising strength of trade unions and mass politics with the consolidation of social democracy forced the capitalist States to work out a compromise between labour and capital or at least accommodate certain prime interests of labour in shaping the regulative and legislative structure of industrial relations. With the waning away of social democratic ideology and in the face of neo-liberal aggression and increasing power of global capital, the State under capitalism is back to its systemic role of defending the interests of capital in an unambiguous fashion.

What is being observed as a basic premise underlying the various positions on labour reforms is to revert back from an explicit or implicit recognition of the basic asymmetry in a labour contract to one where symmetry is being premised. This is in fact a return to one of the identificatory features of capitalism, where the exploitative and unequal nature of the capital-labour relation is camouflaged by a basic obfuscation. This obfuscation lies in the automatic nature of transfer of surplus value (in contradistinction to transfer of visible surplus product in pre-capitalist systems) and its social expression in terms of formal equality in a labour contract. The widespread mobility of labour and the legal right to enter and terminate labour contracts that labour earned as the "positive freedom" camouflages the "negative freedom" from being freed from both their means of production and the claims on the product that they produce. Consequently the unequal right that the capitalist has to both control the labour process as well as the product of labour, along with the right to withdraw his capital fully or partially from the production process, is obfuscated through the formal equality of the capital-labour contract, so eloquently captured in the "equal factors of production" premise in neoclassical economic analysis. The twentieth century and particularly the post-depression and post-war political economy and its legal framework had to compromise this basic systemic articulation with an implicit (or sometimes even explicit) recognition of the fundamental asymmetry in a labour contract. With the rise of neo-liberal ideology and its base in the political economy of globalisation we are back to some of the embryonic tendencies and features of capitalism. It is no wonder that the basic camouflaging device of the claim of the formal symmetric nature of the labour contract thus has become the major premise for the new offensive on labour. It is also not surprising that the arguments for reform in the labour market are couched in the language of concern for unemployment and labour welfare.

PART II

4. The State and the Evolution of Labour Legislation in India.

The history of labour legislations in India in the context of trade unions and labour rights was shaped in the tumultuous period of late colonialism in the 1920s and in the years immediately before and after independence in 1947. The colonial State, alarmed by the growth of labour militancy and the larger political ramifications that this had in the context of the burgeoning nationalist movement, tried to rein in the situation by enacting the Trade Unions Act in 1926, which provided the framework for recognition and registration of trade unions. The decades following this up to independence saw increasing communist influence and major actions and strikes by labour. The left wing of the Indian National Congress itself was taking a clear pro-labour stance, which also reflected the popular mood and this alarmed both the Congress right wing as well as the native bourgeoisie, who were also consolidating their position in this period. The Congress constituted a National Planning Committee in 1939 to prepare a blueprint for planned development of India after independence. Its subcommittee on labour policy submitted a report that was, from the standpoint of Indian industry, a virtual charter for rights for labour⁸. The most radical part of its recommendation was that workers will be required to be given a “voice” or control in the conduct of the industrial system⁹.

The period of the Second World War was marked by substantial inflation and quick accumulation of profits by a section of the domestic business class. Hit by a decline in real wages, the immediate post war years, which also saw the emergence of independent India, were marked by an accentuation of labour militancy with increasing work stoppages and strikes. The new prime minister Jawaharlal Nehru called for a compromise between labour and capital and an “Industrial Truce Conference” was held in New Delhi exactly four months after achieving independence, with a large number of participants representing government, labour, and industry. As an immediate measure, both labour and capital agreed to bring to an end all strikes and lockouts for three years. More substantially, labour, while offering the compromise to industrial truce, could extract an agreement to a structure of greater economic security and participation in the decision making process. A resolution that was hammered out in the conference not only recognised that workers were entitled to a ‘fair wage’, but also went on to call for the prevention of excessive profits through taxation and other redistributive measures; the redistribution of excessive profits through a means of sharing such profits between labour and capital; methods for the involvement of labour "in all matters concerning industrial production," through such bodies as central, regional, and unit production committees as well as works committees¹⁰.

⁸ Its recommendations included the reduction of the working week to forty-eight hours, the implementation of a child labour law which put the minimum age for factory labour at fifteen; the implementation of health and safety regulations and the implementation of a minimum wage.

⁹ For an excellent discussion on this period see Chibber (2005)

¹⁰ Chibber (2005)

However, the agreement reached in the Truce Conference was undermined by both capital and the State. Whereas incidence of strikes declined drastically, none of the far-reaching promises to labour were implemented. This was aided by a conscious demobilization of labour, which with the benefit of hindsight, appears to have preceded the Truce conference, notwithstanding the radical political rhetoric of the Congress.

A series of legislations were enacted to increase the hold and control of the State in the industrial dispute process. The most important measure was the Industrial Disputes Act (1947), which still remains the basic framework governing industrial relations in India. It significantly reduced the scope of direct collective bargaining by the Unions. All strikes or lockouts were to be resorted to only after providing a notification of at least fourteen days. But more importantly, in the case of public utilities, the government was given the power to compel the parties to resort to an arbitrator if it saw fit. But the Act also gave state governments the power to declare any industry a public utility for a period of six months; this meant that compulsory arbitration could now be extended to virtually all sectors of industry. Further legislations were passed so that matters which are normally the objects of deliberation between labour and capital, such as conditions of employment, promotion, wage scales, safety, leave and discipline, were now regulated by the State under the Industrial Employment (Standing Orders) Act and the Factories Act.

While the law provided for compulsory arbitration, it did nothing to ensure rapid delivery of a verdict. Management was left with the ability to drag on the proceedings for years.

In this waiting game often the crucial deciding factor would be which of the parties would give in first and the management, with much greater resources at its command, would generally be in a more favourable position.

The real intention of the Congress, as the dominant party which shaped State formation in independent India, becomes clear as it complemented these legislative moves of effective demobilisation of labour by splitting the communist dominated united trade union AITUC (The All India Trade Union Congress) and forming its own labour federation INTUC (The Indian National Trade Union Congress). As a de-facto labour wing of the party, the INTUC would much easily agree with the process of undermining the strength and interest of labour that the nascent State was engineering.

The IDA was opposed by the AITUC but with the labour movement split and the Congress carrying the goodwill for democratic State-building in a newly independent nation, its ability to overturn the process was seriously circumscribed.

As a commentator observed “*What the labour movement was left with in the end was that its distributive interests were to be met through legislation laying down appropriate wage levels, to be administered through wage boards and provincial governments, and through a system of bonus payments, which would be adjudicated through labour tribunals and courts; its participative interests were now to be filtered through governmental tripartite bodies and through its input into policy through the ties between unions and parties*¹¹.”

¹¹ Chibber (2005)

The IDA shaped the future of industrial relations in India and the fortunes of labour to a large degree depended on paternalism of the Indian State. The strength of the mass movements, the prevalence of radical rhetoric and the need to build an inclusive State saw to it that the State would be accommodative about labour's interests. But any attempt to build a radical class-compromise, which had a distinct possibility of labour's interests being genuinely advanced, was negated by the manoeuvres of law, legislation and politics.

In the subsequent era of protected industrialisation, the labour movement learnt to operate within the tripartite framework and could manage, by both mobilisation and arbitration, to extract significant concessions and accommodation from the Indian State. Yet, in the ultimate analysis its fortunes depended more often than not on the Indian State's compulsions and willingness to take up the cause.

The era of globalisation, marked by significant liberalisation of the Indian economy since 1991, has altered both the compulsions and the willingness of the State to accommodate labour's interest. Thus, the major changes in the labour regime are happening not through any major departure from or redrafting of the hitherto existing laws and acts, but rather by a combination of inaction (or unfavourable action) of the arbitration process, backdoor manoeuvres by capital and provincial governments, piecemeal changes in legislation and unfavourable legal reinterpretation of the same existing acts.

5. The Rationale, Context and Content of Current Labour Reforms in India.

The analytical rationale for labour market reform in India is provided by Besley and Burgess (2004), Fallon and Lucas (1991) and Basu et al (2004). The arguments centre around two major legislations, the Industrial Disputes Act (1947) and the Contract Labour Act (1971) (CLA henceforth). One of the most contentious provisions that is sought to be reformed is Chapter V-B of the IDA, which protects workers against layoffs or retrenchment. A specific provision of the IDA¹² which requires the union to be informed of changes in technology are also considered a major obstacle and it is argued that this provision can "delay or obstruct all worthwhile change in technology, workload, manning, shiftwork, etc"¹³ and the statutory obligation to issue notice of change under this section should be removed. Further, the provisions of the CLA are sought to be changed substantially by arguing that firms need to concentrate on core competitiveness and be able to contract out non-core and peripheral activities and hire contract workers.

In fact a larger argument, that legislating in a pro-worker direction resulted in lower employment growth and informalisation and thus an increase in urban poverty, is buttressed by several empirical studies¹⁴. Precise estimates of significant employment

¹² Items 10 and 11 of the Fourth Schedule relating to Section 9A

¹³ Johri (1996)

¹⁴ The most quoted studies are Besley and Burgess (2004) and Fallon and Lucas (1991). According to the former, which is a study of manufacturing growth in India across different states (provinces) between 1958 and 1992, states which amended the Industrial Disputes Act in a pro-worker direction experienced lowered output, employment and investment in registered formal manufacturing.

loss are often provided to suggest that attempts to redress the balance of power between capital and labour can end up hurting the poor¹⁵. An alternative set of empirical studies which challenges such conclusions are, however, completely ignored in the neo-liberal discourse¹⁶.

At present, the IDA requires an establishment employing 50 or more workers, in the case of valid retrenchment, to provide the workers with thirty days' notice and 15 days' pay for every year of continuous work by the worker at the firm. In the case of closure or sale, the employer must fulfil the same conditions, unless the successor takes on these obligations. Further for an establishment employing 100 or more workers, the IDA, under chapter V-B, additionally requires prior permission from the government before firm closure or worker retrenchment¹⁷. The 'prior permission' clause and the provision requiring notification to unions before changes in technology are the most contentious issues in the IDA. Reforms seek to unequivocally abolish these clauses under the assertion that firms have the right to effect changes in the production process as well as in their workforce. The extreme view in this case¹⁸ suggests that Chapter V-B should be completely scrapped, i.e., there should be no restriction on firms to layoff and retrench workers and close down units because of 'employer's prerogative'. The Second National Commission for Labour¹⁹, in keeping with and explicitly stating this understanding, recommended the revoking of the statutory requirement by giving 'absolute flexibility', i.e., full freedom to employers to layoff or retrench workers in all establishments and to seek permission for closure only in the case of establishments employing more than 300 workers. Employers' associations were unhappy with this recommendation in spite of the fact that the basic issue of employer's prerogative was upheld by the commission because they wanted the limit to be raised to establishments employing more than 1000 workers,

¹⁵ Fallon and Lucas (1991) examines job security regulations in India and Zimbabwe and concludes that the 1976 amendment to the IDA, to introduce the chapter VB, reduced the demand for labour by 17.5% in the organised sector, increasing the pressure on the unorganised sector to absorb excess labour supply.

¹⁶ Bhattacharjea (2006) is a significant work challenging the methodology and conclusions of the neo-liberal empirical studies.

¹⁷ When first introduced, the IDA did not restrain employers from laying-off or retrenching workers or closing down unprofitable businesses provided they notified the workers and the unions of the intended changes well in advance. The provisions relating to payment of compensation for layoff and retrenchment were introduced in 1953. An amendment in 1964 standardized the compensation at 15 days' average pay for every year of continuous service, and required the employer to give the worker and the government a month's notice. The prior permission clause was introduced by an amendment in 1976. Thus as of now employers with 100 or more workers need prior permission for closure or retrenchment, those with 50-99 workers need only to notify the government, while those with less than 50 employees need not even do that to close their business.

¹⁸ Represented by Debroy (1997) and a Planning Commission Task Force on Employment Opportunities (1991), popularly known as the Ahluwalia Committee.

¹⁹ Second National Commission on Labour (2002)

as per the Budget Speech made by the then Finance Minister²⁰ and even more drastic suggestions that had been given earlier²¹.

The CLA was brought into effect to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances. A contract labourer is defined in the Act as one who is hired in connection with the work of an establishment by a principal employer through a contractor. While a contractor tries to produce the given results with the help of contract labour for the organisation, a principal employer is the person responsible for the control of the establishment. The CLA makes certain provisions for the welfare of the contract workers as a whole which include payment of minimum wages, certain health and sanitation facilities in the work premise, provident fund benefits and so on. In order to ensure that such norms are complied with, labour inspectors are engaged in supervision.

The CLA in the way in which it evolved over the years, involved regulation of the practice of using contract labour on two major counts: it attempted to prevent the use of contract labour for particular kinds of services or activities at the level of the economy as a whole and also for regular work in any firm that belonged to the factory sector. The Central Government, on the recommendations of the Central Advisory Contract Labour Board, prohibited employment of contract labour in various operations/ categories of jobs in various establishments over the years²². It came to be understood that work should be done by regular workmen and contract labour should be absorbed by the principal employer.

The reforms that are suggested aim to remove these two provisions by defining firm activities in terms of 'core' and 'non-core' operations and designating particular sectors as exceptions to the limiting of use of contract labour. Further, they also seek to shift the liability of welfare payments to contract workers away from employers to the State. However, some among the reformers²³ are opposed to the scrapping of the CLA, because this will shift the locus of adjudication away from the State to industrial tribunals, which, it is argued, might harm the interests of employers.

To sum up, the differences within the reform positions in India are the same as those that are seen at an international level, between those who believe that labour legislations are

²⁰ The minister, Yashwant Sinha, suggested that Chapter V-B would be applicable to units employing more than 1000 workers and this sparked off intense criticism even from the Bharat Mazdoor Sangh, the trade union wing of his own party, the Bharatiya Janata Party (BJP).

²¹ For example, by the Ahluwalia Committee mentioned above. The resentment of the employers was expressed by the prominent chamber of commerce, Assocham, to the newspaper Business Line (2002).

²² In 1960 and again in 1972, the Supreme Court of India ruled that if work performed by contract labour was essential to the main activity of the industry, contract labour should be abolished. For example, in the case of Standard Vacuum Refinery Company Vs. their workmen, it observed that contract labour should not be employed where (a) The work is perennial and must go on from day to day; (b) The work is incidental to and necessary for the work of the factory; (c) The work is sufficient to employ considerable number of whole time workmen; and (d) The work is being done in most concerns through regular workmen.

²³ Debroy (1997)

purely distortionary in nature and have to be removed in the interests of low costs to employers, growth and efficiency on the one hand and those who believe that while the essential rights of employers in determining the size and nature of the workforce that they employ have to be upheld, the difficulties that are likely to be encountered by workers should be offset to some extent by compensatory payments.

The quintessential reform position argues that the labour market functions like any other market and should thus be governed by the law of contracts. Thus, it is argued that aspects of industrial relations, which are governed by collective bargaining in the West, are often determined by legislation in India and the existence of exogenous rules governing employer-employee relations through legislation has relegated independent contracts to a relatively unimportant position, robbing the labour market of flexibility²⁴. The proposed reforms thus attempt to reduce the role of the State as the third party regulator of the employment contract. While this position is articulated at a general level, at the ground level, there are voices coming from within the neo-liberal position which want to retain that part of the tripartite arbitration process which de facto protects capital and in fact delays speedy redressal of grievances of labour²⁵. Further, when it comes to bearing the cost of restructuring the labour force, it is suggested that there should be a gradual move away from employer liability systems to that of state supported welfare schemes which in turn might be market oriented in terms of returns to employees. This illustrates the general tendency in neo-liberal reforms of externalising and socialising the cost of restructuring of labour force. Whereas the role of the State as a monitoring and regulatory agency under a tripartite framework is being questioned and attempted to be reduced drastically, its role in socialisation of costs of restructuring are being emphasised even more.

In spite of this wide range of opinions in official circles and business quarters to drastically amend labour laws, the actual legislative changes have indeed been rather limited. As a result of strong opposition from trade unions, the most stringent of the reform proposals have not been pushed through at the central level in India. What has taken place is a process of 'reform by stealth'²⁶ through the granting of 'exemptions' from specific labour regulations to particular activities, significant changes at the level of the states (provinces)²⁷, explicit anti-labour stands of the State controlled arbitration mechanisms and judicial reinterpretation of existing laws which have been adverse to labour, often on the premise of the prerogative of the employer.

²⁴ Basu (2004)

²⁵ Debroy's plea not to abolish the CLA altogether that has been referred to earlier is an example of this.

²⁶ Bardhan (2002)

²⁷ For example, in the state of Maharashtra, Chapter V-B of the IDA has been amended and has been made applicable only in firms employing more than 300 workers. This, in fact, is being lauded as the 'Maharashtra Solution' that other states should emulate. In the state of Andhra Pradesh, the CLA has been amended in order to allow engagement of contract labour even in core areas for temporary periods to meet market demand.

6. Concluding Observations

The historical evolution of the arbitration process in India was marked by the clear intention of the State to check the advance of labour militancy and at best to accommodate certain rights and concerns of labour. In the forty years preceding the era of liberalisation, the organized labour movement however managed to defend and advance its interests to a notable degree, using the State apparatus, through a strategy of pressure and compromise. The actual dispensation of the gains that labour made in the shape of progressive amendments to the existing legislations or through progressive judicial verdicts, however often remained slow and uncertain, caught in the web of lengthy arbitration process, where capital could often time-out labour by its longer tenacity to wait and watch. Yet, organized labour could defend some of its basic rights though, in the ultimate analysis, its fortunes depended more often than not on the Indian State's compulsions and willingness to take up the cause.

The era of globalisation, marked by significant liberalisation of the Indian economy since 1991, has altered both the compulsions and the willingness of the State to accommodate labour's interests. Thus, the major changes that have been witnessed in the labour regime happened not through any major departure from or redrafting of the hitherto existing laws and acts, but by use of the existing State (and judicial) apparatus which could now be used in a manner more hostile to labour.

Business interests however are not satisfied with this, because even though the arbitration process has clearly tilted in their favour, yet arbitrations are costly both in terms of time and money and there remains a basic uncertainty about the outcome. In the fast paced era of globalisation, when labour is on the back-foot, capital does not have the time and inclination to play the waiting game. Many of them would rather like to face labour frontally, as long as the costs of adjustments are borne by the State. Yet, there are cautious voices within them, who want to retain the legislative prerogative of the State. In a democracy, the power and ability to manoeuvre the State mechanism is perhaps the ultimate guarantee to defend one's class interest.

How should labour respond to this situation? There is a considered opinion among some pro-labour voices that, given both the history of the arbitration game as well as the explicit anti-labour stance that the State is taking, it is better to jettison the tripartite framework and move towards a direct face-off between labour and capital in a collective bargaining framework. However sound their analysis may be of the pro-capitalist bias of the Indian State, historically or in its present dispensation, such a suggestion in my opinion is fraught with danger, particularly keeping in mind the context that shapes the capital-labour relations today.

When the tripartite framework was introduced by the Congress at the eve of independence, labour had potentially the strength and the backing of mass support to force capital to pay attention to its demands. Domestic capital itself was much more tentative, asking for a protective space against foreign competition and it was prepared to compromise on an inclusive developmental agenda to gain industrial truce and the growth

of a skilled and stable labour class. In the era of globalisation, labour not only has to confront global capital (both TNCs as well as Indian monopoly capital whose interests are increasingly getting internationalised), it has to do so in a much more hostile and uncertain atmosphere marked by rampant cost cutting in the process of flexibilisation, casualisation and footloose investments. Casualisation not only prevails in the huge informal sector but the so-called formal sector is itself in a process of increasing informalisation. In such a context, to hope that a direct labour-capital confrontation can achieve a more favourable outcome for labour is indeed a strange thought to pursue. Notwithstanding the partisan nature of the State in its current dispensation, organised labour still retains a space for bargaining and accommodation, however circumscribed it may be, and it will do so, till the foundations of democracy are not totally weakened. To voluntarily give up this space in the hope of achieving something more adventurous will be wilfully walking into the trap laid by capital. It is true, that a section of capital itself wants to preserve that space in the confidence that they would be able to utilise it more than labour. Yet the precise challenge for labour is not to give up this space and try to redefine its relations with State and capital utilising this very space it has at its disposal.

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