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The Transforming Nature of Employment Relations in India: A Socio-Political Analysis of Labour Law and Policy Reforms

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Abstract—*This paper attempts to explore the conceptual construct of the changes in the employment relationship in India with respect to changes in the law and regulatory framework. The Indian state is making efforts to bring in labour law reforms through multiple institutional and regulatory transformations. The main theme of this paper is to provide a holistic socio-political analysis of the legislative and regulatory changes taking place in terms of codification of Labour Laws 'Ease of doing business' approach in the backdrop of the current era of neo-liberalism backed deregulation. The aim is to understand the language of legal domain, regulatory scaffold and the policy-governance framework while defining through existing Acts, pending parliamentary bills and conceptual framework analyses.*

Keywords*: Labour code, regulation, reform, policy-governance framework.*

1. INTRODUCTION

Labour law and policy reform has come on the political agenda in India, particularly in the wake of change of government in 2014. India's labour laws are old and are said to suffer from rigidities that hold back economic development. Worker-protective labour laws, it is argued, are deterring investment and stalling the growth of formal employment. Critics claim that present law and policy framework enterprises for regulation, discourages the growth of firms, and contributes to labour informality. In a neo-liberal regime, at the face of the apparent powerlessness of national legal systems to restrain the dominance of global capital, the critical question is; if one could focus hopes on reforming the law, regulation and policy with the only trust on employers to harness the potential of international or transnational labour regulations to perform this role? In the Indian case, there are talks of the benefits of 'reforming' labour rights and social rights through a complete reshuffle by dismantling existing laws and bringing out centralized Labour Codes. As the part of legislative and policy reforms, the Indian state has started the process of codification and amalgamation of 44 central labour laws into four codes in order to simplify them. The socio-political analysis as to how the employment relation in the Indian context shall turn out to be while the regulatory governance is undergoing rapid change is the emergent academic need. India has gradually started supporting the retrenching of protectionist labour laws in national constitutional narrative and argues that the questions of rights and equalities can be addressed by more lucid, flexible codified tools. The justification of such argument mostly relies on the existing and emerging instrument of Labour Code and also transplantation of transnational labour regulation such as the ILO Decent Work notification, Fundamental Principles and Rights at Work (ILO 1998) and related Conventions. Occupational Safety and Health Convention (ILO Convention 155) etc. In the next sections, I would attempt to explore the causal aspects of the changing nature of work and employment relations through the recent changes taking place in the country.

Labour Reforms: Contextual Aspects

It is widely recognized that the processes of liberalization of market have resulted into numerous changes and posed multiple challenges to the employment relations (Banerjee and Tolbert 2012). Wherever economic and legal conditions are perceived to constitute barriers to the maximization of profit, globalization means that capital is free to relocate. As a consequence of the mobility of capital, pressure grows for nation states to tailor their economies so as to attract and retain capital investment. Meanwhile, arguments against protective labour laws, against collective representation and collective regulatory mechanisms gain strength. The proponents of this theory argue- it makes a strong case to tailor labour laws to serve the needs of business so that the profitability grows at the global stage and in the due process they generate better and bigger employment opportunities. The proponents of this idea envisage a system of minimalistic legal and regulatory enforceability in governing employment relationships and nature of work in the labour market. It is further argued if both employee and the employer are granted a set non-restrictive, legally enforceable, constitutionally guaranteed claims, their

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respective positions are safeguarded in the market economy and the employee shall be better placed to demand and obtain fair and equal treatment at work irrespective of partial or even complete absence of collective worker security and protection mechanisms such as worker groups or unions.

An imbalance of power between capital and labour was inherent in the capitalist mode of production. An economic constitution was required to adjust this imbalance in favour of labour, to put an end to the subordination of labour to capital, so that labour might participate in managerial decision making on a parity basis with capital. At that point of time, in the post-independence era, the constitutionalization of industry meant state's intervention in allowing the creation of worker collectivities - trade unions and works councils - and for the legal guarantee to these bodies of rights to participate with employers, as equals, in the autonomous regulation of the economy. The use of the term 'collective bargaining' implied both the substitution of workplace democracy for workplace despotism (economic democracy for economic despotism), and the role of the state in facilitating and setting the limits to the exercise of regulatory power by employers and employers' associations, trade unions and works councils, through the grant of constitutional and legal rights and duties (Sinzheimer 1945).

The Indian socio-political and economic milieu in the present times witnessed the conjuncture of two major economic events: the financialization of global capitalism and the entry of this new, highly mobile capitalism that made way to the regulatory governance structure of the country as well. The rapid allowance to unprecedented inward foreign direct investment (FDI) along with the facilitative state policy towards the indigenous corporations have allowed them to take advantage of skilled but low-cost labour supply or to position themselves to take advantage of opportunities (Hacker 2004) to access rapidly growing local markets. The spectacular growth of corporations led the economies restructure dramatically away from heavy industry and agriculture towards services and industries based on medium- or high-level technologies; much existing manufacturing was modernized and extensive technology transfers took place on a massive scale (Kirk et al. 2011).

The massive operations of the corporations towards the transition and subsequent changes in the state's attitude stimulates a considerable debate about the employment relations and the changing nature of work in India. The academic pursuit at this juncture requires a focused analysis on why employment relations and nature of work are undergoing metamorphosis and what are the pertinent transformations that would shape the future of world of work contemporary scenario. At the international level, one has to assess the role of the regulatory discourse and institutions while attempting to draw the disappearing, existing and emerging social models of employment relationship and the nature of work. The study attempts to answer the reason behind existence of a country specific labour market and employment framework that is normative in nature.

Despite of many multinationals having their uniform codes of conduct pertaining to labour and employment relationships; it has been widely observed that they are keen on adhering to relatively new and potentially malleable employments systems and institutions. In the due course, what is being observed is that the corporations have made breakthrough to influence the regulatory mechanisms and policy frameworks in the Indian context. The academic research in the field of law, regulation and employment relations must have the potential to answer the effects of such influence on social models governing employment relations and nature of work. More specifically, the pressing need is to gauge the reality of the employment conundrum that are abounding with the doctrine of world of work thronged with the aspects of informality, precariousness, non-standard employments, invisibility among many more.

The neo-corporatist regime in India is said to have evolved with the advent of globalization. According to Philippe Schmitter (1974), the preponderant view is that corporatism is a form of interest representation rivaling other means of group politics such as the traditional pluralist view of interest groups. Schmitter prefers the term "interest intermediation" over interest representation because he questions whether formal interest associations transmit the preferences of their members and whether such representation is the major task of these groups. For him and many others the focus is on the mode of structuring such efforts at the "representation" of functional interests in an industrial society. Some extend this notion of corporatism as a form of interest representation to a more extensive system of political participation where citizens delegate their participatory rights to the leaders of established and centralized groups.

Another school of corporate theory has a still broader phenomenon in mind than simply a form of representation. For these theorists, western corporatism is a form of policy making. Gerhard Lehmbruch (2003) stipulates that liberal corporatism is an institutionalized pattern of policy formation. Its alternatives are not other forms of participation or interest representation but other policy making models such as party government. It features a high degree of collaboration among organized and centralized groups in shaping and implementing public policy, especially public economic policy. While there may be some overlap between the representation notion of neo-corporatism and the policy making version, they are not intrinsically linked. Some even contend that in certain countries the representational form of neo-corporatism is undeveloped but that one can nevertheless find substantial evidence of neo- corporatist policymaking.

Understanding the Indian form of Neo-corporatism, there is existing broader view of contemporary times that Indian corporatism is viewed as an "economic system in which the state directs and controls predominantly privately owned

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business" (Lehmbruch 2003) Corporatism refers to an economic system with a bureaucratized interventionist state. In some of these economic versions of neo-corporatism, the main feature is the manipulation of groups within the system by the state and/or business interests. It is interesting to assess the Indian model of neo-corporatism positioning how it impacts the employment relationship and vice versa. Through the research vested in this paper, I argue that the neo-corporatist model in Indian case is far more nuanced than what it appears to be. The question of state's control over the private businesses in a bureaucratized interventionist framework is not completely correct. The state's facilitative posture towards the private market actors could be easily assessed in the form of legal transformations and regulatory metamorphosis which is clearly visible in the case of labour and employment relations.

Two important approaches to employment relations transformation are the *theory of diffusion* (of the model from the MNC country of origin to the host country) and the *theory of adaptation* (to already existing practices in the host country). Following Mueller et.al.(1994), the concept of a 'hybridization' process has been developed. The Indian *host-country* influence is expressed in an employment relations system that was created clearly in the post globalization era and may be described as an emerging model of Indian neo-corporatist regime. It is based on organizations of employees and employers wherein the law and the regulatory regime facilitates the smooth interplay of market actors to help sustainable profit generation and in the due course, the focus is put on liberalizing labour law often with the justification that they are more restrictive for the employees than the employers. This has been done at two levels. First, the state shares the same perspective with the employer that the existing laws have made industry uncompetitive thus there is a need of rationalization of prevailing labour laws in the formal sector. Second, state acknowledges the existence of large informal sector and in-terms the malpractices pertaining to wages, social security and equality is pushed under the garb of the inability of the to map the levels and extent of informality. The mechanism to underplay the massive non-compliances practiced in the informal sector has been through the introduction of the umbrella legislation that claims to ensure the minimum level of social protection to the workers. Unfortunately, by the changes in the policies and narrative facilitating winding up for establishments and smoother hiring and firing of workers; the state does not look from the perspective of justice and rights but from that of globalizing of economy. The economy is likely to transform the labour law system of the old welfarism and the new paradigm, the new labour law system, is likely to be characterized by innate conflict. To put the modest reach of my argument in perspective, several points must be restated. First, changes in labour law are not autonomous: they derive from changes in our political economy, although they also help to hasten or reinforce, and occasionally retard, those changes. Second, parts of the new changes will continue to look pretty much like the old. There, Fordist modes of production and management are likely to persist; familiar statutes may well remain on the books; there may be no dramatic rupture in patterns of social behaviour and legal regulation. And third, since some of the distinctive legal institutions of the new economy are being shaped by non-state agencies which tend to favour stability over disorder – even global corporations may so perceive their interests, in certain circumstances - continuities as well as discontinuities may characterize the new paradigm of labour law. With these threshold reservations, what remains is to explore two particular institutional settings in which the labour law of the new regulatory mechanism might be shaped. The Commission on Global Governance, suggests that the interests of capitalism itself may generate support institutional arrangements which enhance stability and predictability the world economic system. It is also argued, stability and predictability can be achieved by means of a single regulatory regime, or a network of sectoral institutions. However, in this view, some effort must be to re-create something resembling state intervention at a level higher that of the nation state, a level more nearly commensurate regional and global markets within which key corporate decisions might be made.

The justification of the neo-corporatist regime pertaining to the labour law and employment relationships attempts to build a case on transnational labour regulation, that shall take care of the conditions governing employment. Regulating labour conditions and practices on a transnational basis, however desirable, are problematic both conceptually and in practical terms. Transnational labour standards cannot be 'one size fits all'. It has also been claimed that such regulations are form of disguised protectionism designed to preserve jobs in the advanced countries, as a device to prevent developing countries from industrializing, even as an attempt to force labour standards down to a lower transnational norm in those countries which exceed it. In practical terms, given the difficulty of setting and enforcing labour standards in a domestic context, it is hard to imagine that regulation could be accomplished transnationally. Nonetheless, the need is to understand the socio-political and economic dynamics behind the push towards transnational labour standards, and a good deal of research with the production of law within transnational labour market institutions (Adelle and Trebilcock 2015).

The Socio-Political Analysis of Labour Law Reform in India

The Government of India is working towards amalgamating close to 38 Act into codes at present. This step is said to rationalize and bring in simplicity in the employment relations in the country. The three Labour Codes namely- The Wage Code Bill, The Social Security Code Bill and The Industrial Relations Code Bill have already been introduced in the parliament.

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The Finance Minister, Arun Jaitly, expressed: "We are keen on fostering a conducive labour environment wherein labour rights are protected and harmonious labour relations lead to higher productivity," (The Indian Express, May 2017). One has to understand the impact of the Labour Codes on the employment relations of overall workforce where close to 93 per cent of the workforce is in the unorganized sector; their working condition, wages and social security cover is not as attractive as those in the formal sector eventhough they are engaged in similar jobs. The government claims to formalize such informal workers through activation of UAN (Universal Account Number).The key highlights of the Draft Code become imperative to assess at this juncture in order to understand the transformation in the work relationship. Under the Draft Code, an Employer in its grammatical connotations used means the employer of any entity that employs an employee oremployees, either directly or through contractors. An Employee means person who is employed for wages by the entity in accordance with the terms of contract of employment, whether written or oral and whether expressed or implied, in or in connection with the work of the entity.

The code applies to workers that are employed by any entity;Worker who may also be the owner or the proprietor of an entity or a self-employed unit; International workers; andIndian citizen, working outside the territory of India, who opts to become a member of social security schemes under this Code.The Draft code covers the workers from Organized as well as Unorganized Sectors of Employment. It proposes to constitute a National Social Security Council of India to for reviewing and monitoring the implementation of the Draft Code, advising the central and the State Governments in the matter of Social Security Administration etc. The Draft Code proposes to provide a unique Aadhar-based registration service for registration of workers and provide a portable Social Security account, to be named as Vishwakarma Karmik Suraksha Khata (VIKAS), which will be linked to Aadhar Number of the worker.The Draft Code proposes for the registration of the establishments and entities if the establishment or entity:Has, at any point of time during the year preceding the commencement of this Code, employed number of workers more than or equal to threshold; Has, at any point of time during the current year employed number of workers more than or equal to threshold; Is required to deduct contribution at source.; Is a contractor or placement agency.

The Draft Code proposes allowing the benefits even when the Employer (including Principal Employer) fails or neglects to pay any contribution which under this Code he is liable to pay in respect of any employee. It proposes that if an employer has entered into a contract with any insurers in respect of any liability to any employee, then, in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the employee and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer. It also provides that unless an employer is registered under the Draft Code, once enforced, it cannot employ any workers, after the expiry of such period as may be stipulated from the date on which the entity was liable to be registered.

Labour law reform has come on the political agenda in India, particularly in the wake of the elections in May 2014 of the Narendra Modi-led government at the centre. India's labour laws are decades old and are said to suffer from rigidities which are holding back economic development. Worker-protective labour laws, it is argued, are deterring investment and stalling the growth of formal employment. Simon Deakin (2015) argues, India's labour laws are set at an inappropriately high level for a developing economy, which would otherwise be in a position to use low-cost labour as a source of comparative advantage. For example, strict regulation of employment terminations ("retrenchments") in Part V B of the Industrial Disputes Act (IDA) 1947 (as amended in 1976) has been a particular focus of criticism. Critics of this law argue that as it targets larger plants and enterprises for regulation, it discourages the growth of firms, and contributes to labour informality.

Viewed in a comparative perspective, India's recent focus on labour law reform is not unique: other middle-income countries have been having similar debates about the form and content of labour regulation. While these debates sometimes lead to deregulation, there is no worldwide trend towards the weakening of worker-protective labour laws (Adams and Deakin 2015). Although the discourse of the World Bank and other international financial institutions remains focused on the need for flexibility in labour markets, there is an emerging view at the country level that labour flexibility is not a sufficient condition for economic development, and perhaps not even a necessary one. Instead the focus is increasingly on how to build institutions for managing labour market risks in the transition to a formal economy (Marshall and Fenwick 2015).

Similarly, the future of employment relations in India in the context of global trends, as seen through the lens of recent theoretical and empirical contributions to the study of labour regulation, and in relation to India's own experiments in regulatory reforms has many other examples such as The Factories (Amendment) Bill, 2016, the Small Factories (Regulation of Employment and Conditions of Services) Bill, the Shops and Establishments (Amendment) Bill, and Employees Provident Fund and Miscellaneous Provisions (Amendment) Bill along with the recent Labour Law reforms in the states of Rajasthan and Madhya Pradesh etc. Such shift shows the movement of labour market theory away from equilibrium-based models, with their emphasis on labour law

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as a distortion of competition, towards an evolutionary understanding of labour market institutions, which takes a more nuanced view of their efficiency effects.

Beginning in the 1980s and gathering strength during the years of the "Washington Consensus", the economic critique of labour law was part of a wider case against regulation, which saw state interference as the source of distortions and inefficiencies in the operation of markets. This argument depended critically on the validity of its main premise, which is that markets, if unregulated, will move naturally or spontaneously to an equilibrium state. Neoclassical economics, which is the foundation of this view, has been highly effective in describing, and mathematically modelling, a state of the world in which, through perfect competition, supply and demand are equalized, and the aggregate wealth (or, in some versions, well-being) of market actors is thereby maximized. In such a world, any outside interference with free exchange will, by definition, have negative effects on economic welfare. This follows axiomatically from the assumptions of individual rationality and market equilibrium which underlie neoclassical models (Becker 1976). It is one thing to model pure competition as a possible state of the world, and another to assume that it is the norm. Since the mathematical formalization of the competitive market economy reached its apogee in the middle decades of the 20th century (Arrow and Hahn 1971), economic theory has directed its attention towards understanding how market exchange comes to be established in the first place, as a different question. This research agenda has gradually coalesced around the idea that perfect competition is a highly unusual state of affairs that it is not often, if indeed ever, replicated in real-life market economies (Coase 1988). Meanwhile, the processes by which markets are instituted and sustained are still poorly understood, with historical research pointing to a range of causally relevant institutions (North 2005).

Law and Policy Reforms and the Impact on Employment Relations

To sum up the argument, what we observed in case of law and regulatory reforms in India, shows the operation of spontaneous order within labour markets being a complex process, involving the interaction of a number of forces on the supply-side and demand-sides of the exchange.The future of employment relations in India, not only depends on the legislative dimensions but the intertwined social and institutional aspects pertaining to the change in the employment relations i.e. from being more structured to being more fragmented and nature of work, i.e. being more unilateral to more diverse.

One possible means of inclusion of more entrants into labour market with even non-standard forms of employments is to expand the definitions pertaining to work and employment. For e.g. the number of individuals covered by employment law is to use the broader definition of 'worker' in preference to that of 'employee' as a basis for determining the scope of protective legislation. The new regime on Labour Code in India envisages that it would have an all-encompassing positive effect on aspects of employment such as wages, social security and health and safety and shall work towards formalization of informal work. The in-depth analysis of the legislative and institutional domains of the Labour Codes and allied changes shows though the claims look a bit utopian, nevertheless, there is a need to assess the implementation aspect of the same in future.

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