Will the Recent Changes in Labour Laws Usher in *'Acche Din'* for the Working Class?*

Anamitra Roychowdhury**

The clear continuity in economic policies between the United Progressive Alliance (UPA) government and the National Democratic Alliance (NDA) government is discernible to any observer of the Indian economy. Finance Ministers (FM) of both the governments being deficit hawks walk the path of strict fiscal consolidation. For example, the UPA FM, Mr. P. Chidambaram in his interim budget set the target of Fiscal Deficit at 4.1 % of Gross Domestic Product (GDP) in 2014-15; this target has actually been achieved by the present FM of NDA government (see the budget speech of 2015-16). In fact, in order to meet the fiscal deficit target for 2014-15, the Modi government implemented a savage cut in social sector spending – curtailing the actual expenditure on health and education by Rs. 6,691crore and Rs. 12,266 crore respectively (Revised Estimate), than what was allocated in the full budget of 2014-15 (see Expenditure Budget, Volume1). Similarly, deregulation of petrol prices by the UPA government has been carried forward by the present government in form of complete withdrawal of subsidy for determining diesel prices. Their attitude towards the material condition of the working class is no different. This is clearly reflected in their labour policies, which we shall discuss here in the context of the recently changed labour laws brought about by the Union government.

The UPA government unveiled a National Manufacturing Policy in 2011, where it envisaged creating 100 million jobs in the manufacturing sector along with increasing the sector's share in Gross Domestic Product to 25% by 2022 (from its current level of 15%). One of the major policy instruments through which this was sought to be achieved is by changing the labour laws. The Modi government in order to ensure its "Make in India" campaign a success has proposed far reaching amendments to the Factories Act, 1948; Apprentices Act, 1961 and the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988. The Factories Act, 1948 has been introduced in the Lok Sabha for discussion. As regards to the amendment Bills pertaining to the next two acts, these have indeed been passed in the Rajya Sabha and are only awaiting the consent of the President for turning into law. Let us see the likely impact of these changes on the constituency of labour.

Factories Act, 1948

In the proposed amendment to the Factories Act the eligibility of paid leave for workers has been reduced from 240 days to 90 days; also establishments liable to provide restrooms or shelters has been reduced from 150 workers to 75 workers and are positive developments. Similarly, the Bill enhances safety measures for workers exposed to

** The author teaches at St. Stephen's College, University of Delhi. Email: rcanamitra@gmail.com

hazardous processes and increased penalties for contravention of certain offences. But the moot question is how far these provisions will be implemented, when the inspection standards relating to labour and industrial regulations in the factory sector are recorded to be abysmal? There is evidence of sharp drop in inspection rates in the factories in the recent past (Table1).

Table1

Inspection Rates under Factories Act, 1948	
Year	Inspection Rates (in %)
1986	63.05
1987	60.67
1988	50.34
1990	64.69
1991	75.64
1994	74.72
1995	54.78
1996	59.44
1997	68.12
1998	54.92
1999	46.7
2000	57.31
2001	56.41
2002	47.63
2003	39.86
2004	31.56
2005	35.13
2006	37.92
2007	12.71
2008	17.88
Source: Sood, Atul *et.al*., 2014	

Moreover, the Bill also allows women workers to work in night shifts (7pm-6am), of course with proper safety measures. Now, whether adequate safety measures are adopted or not remains to be seen. However, it would certainly help firms in cutting down on wage cost through substitution of men by women workers, since women workers' wage is typically half of their male counterpart even in the organised manufacturing sector (Table2). A third major change has been the increase in the limit of overtime work across the board. Overtime limit for shift workers has been raised from 50 to 100 hours per quarter (i.e., per three months period). The same has been raised for typical workers from 75 to 115 hours per quarter (and up to 125 hours per quarter for public utilities). This move would definitely elongate working hours (thereby thwarting fresh job creation) and further help firms in depressing labour costs as 'overtime wages' would not include allowances which are complimentary in nature (otherwise to be paid to new workers) such as house rent allowance, transport and small family allowance.

Table2

Proportion of Female to Male Workers' Wage

Year	Male Wage (in Rs.)	Female Wage (in Rs.)	Share of Female to Male Wages (%)
2000-01	180.02	78.45	43.6
2001-02	187.84	79.13	42.1
2002-03	197.85	82.17	41.5
2003-04	207.72	87.33	42.0
2004-05	212.3	91	42.9
2005-06	219.68	99.59	45.3
2006-07	233.14	108.73	46.6
2007-08	255.19	122.06	47.8
2008-09	258.04	131.23	50.9
2009-10	288.14	145.63	50.5
2010-11	337.81	176.02	52.1
2011-12	382.17	195.26	51.1

Source: Annual Survey of Industries, various years

Apprentices Act, 1961

There is a view that the employability of the youth can be increased through imparting proper set of skills, normally demanded by the industry. Consequently, apprentices are provided on-the-job training for imparting requisite skills to match the requirements of the industry. On the basis of the argument that, the vast magnitude of open involuntary youth unemployment and under-employment in India is primarily due to skill mismatch and the Apprentice Training Scheme (ATS) is not performing satisfactorily (typically around 30% of sanctioned apprentices seats remain vacant), far reaching changes have been introduced in the Apprentices Act. However, if skill mismatch was the main problem then we would have seen tightness in some segments (typically requiring unskilled labour) of the labour market, of which there is no evidence.

In the amended Apprentices Act the definition of workers has been changed to *include* workers employed through a contractor (contractual workers). Earlier workers with only regular contracts (regular workers) were considered for determining the number of workers in an enterprise. However, this restricted the number of apprentices an enterprise could appoint, as it has to maintain a fixed worker to apprentice ratio prescribed by the government. Thus, making the definition of workers more inclusive would help firms in increasing the number of apprentices they can hire[i]. Moreover, to ensure that the firms do not face any difficulty in hiring someone for apprenticeship training the eligibility qualification for undergoing apprenticeship training has been broadened to include students from non-engineering background. In fact, to further provide flexibility to employers with respect to the *areas* of deployment of apprentices, new categories of economic activity (to be *solely* decided by the employers under the name of "optional trade") have been allowed to use apprentices.

Further, until now daily (and weekly) hours of work an apprentice has to put in an enterprise was decided according to the norms prescribed by the Central Apprenticeship Council. In the recent amendment employers have been given the power to *unilaterally* decide on the daily (and weekly) working hours of an apprentice. Thus, working hours of apprentices would now depend upon the vagaries of employers. Similarly, under the existing rules, there was no obligation on employers to offer job to an apprentice successfully completing training; however, there was an option that if such an agreement was mentioned in the contract of an apprentice at the time of joining training then the firm was bound to offer employment (in fact this is a strategy to attract and retain apprentices) at remunerations effectively decided by the Apprenticeship Adviser (appointed by the government). This has been drastically changed with the employers now being given *full freedom to formulate their own policies* regarding recruitment of apprentices. This move is clearly going to increase the discretionary power of employers in recruiting apprentices.

However, the most important change in the current amendment is with respect to the penalty meted out to firms failing to comply with the provisions of the Act. Earlier, offending employers either failing to employ the minimum number of apprentices prescribed in the Act (which of course vary across firms) or not complying with the terms and conditions mentioned in the contract of an apprentice (including employing the

apprentice overtime without prior approval or to any work unconnected with training, among others) were liable to pay monetary penalty or/and jailed. With the current amendment any employer contravening the Act is only liable to pay monetary penalty and cannot be put behind the bar under any circumstances. All these changes are unambiguously in favour of employers.

The Labour Laws Act, 1988

This piece of legislation was first proposed to be amended by the UPA government. Towards that a bill was introduced under the name of Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment and Miscellaneous Provisions Bill, 2005 in the Parliament. The Bill was referred to the Standing Committee on labour (SCL), which advised its withdrawal observing that the proposed amendments were overwhelmingly in favour of employers. It was reintroduced in 2011 with some changes but met the same fate with the SCL noting, "The Committee strongly feels that the amendments proposed need to be revisited to secure the rights and welfare of labour" (21st SCL Report, 15th Lok Sabha). Notwithstanding the reservation of successive Standing Committees, the 2011 Amendment Bill was tabled by the Modi government and now has been passed in the Rajya Sabha. Question arises, how does it affect the working class?

In order to answer this we need to understand the changes that have been introduced. The Labour Laws Act, 1988 in its original form exempted "very small establishments" (employing up to 9 workers) and "small establishments" (employing 10 to 19 workers) from maintaining registers and filing returns *individually/separately* for nine labour laws (about meeting the prescribed norms/standards), if these establishments provided a *consolidated* account for the same. *The basic reason for such exemption is to facilitate business by curtailing transaction/compliance costs.*

Now the recent amendment has changed the definition of "small establishments" and allowed consolidated submission of returns for seven additional labour legislations. The threshold for determining "small establishments" has been increased from 19 to 40 workers. This is clearly a business friendly move since larger set of firms would now come under the Act; additionally, they would now be exempted from separately furnishing information for sixteen labour laws (as against nine) subsumed under the Act[ii].

In fact, the Ministry of Labour and Employment noted the consequence of increasing workers' threshold in defining "small establishments" as follows – "If the number is 40, then almost the entire MSME [Micro, Small and Medium Enterprises] sector is covered. The purpose was to reduce the administrative cost of compliance of labour laws" (21st SCL Report 15th Lok Sabha); and provided the following justification for such a move "What we found in the field was that because the number was 19 [workers], many industries that were employing more than 19 but were showing only 19 so that they can take the advantage of this Bill" (ibid.). Therefore, the ministry admits violation of law at present and proposes to tackle it by broadening the definition of "small establishments".

Question arises do we have adequate enforcement machinery to counter future violations? The Ministry does not think so. "It is mandatory for the [small] establishments to compile information for filing returns and maintaining registers. However, all establishments cannot be inspected given their large numbers vis-a-vis labour inspection machinery. This may lead to laxity in maintenance of records and furnishing them on demand" (ibid.).

Precisely due to this reason the Standing Committee (15th Lok Sabha) recommended withdrawal of the Bill observing the following: "The Committee find that there is shortage of man-power for regular monitoring of the implementation of labour laws. During their study visits to some establishments across the country, the Committee observed that there was acute shortage of human resources with the Labour Commissioner entrusted with the responsibility of enforcing the plethora of labour laws. The Committee are of the considered view that strengthening of enforcement machinery is an imperative need of the hour and therefore the field staff needs to be augmented urgently and adequately so as to facilitate regular inspection of the establishments and strict enforcement of labour laws … Committee are apprehensive that there would be total mess as hundreds of new establishments [following the rise in workers' threshold] would come under the ambit of the Bill, if enacted" (ibid.). From the foregoing discussion it is clear that the recent amendment, without addressing the concern raised by the Committee, would potentially lead to pervasive violation of labour laws – compromising workers' welfare due to weak enforcement machinery.

Conclusion

From the above analysis it is clear that the recent labour law changes at the level of the Union government are overwhelmingly in favour of the employers and detrimental to the cause of the working class. These changes are primarily aimed at improving India's rank in the "Ease of Doing Business" index, which actually slipped from 140 to 142 in 2014-15 (out of 189 countries). Mr. Modi, by his own admission noted that, "Ease of business is the first and foremost requirement if Make in India has to be made successful" (17 October 2014, The Indian Express). It appears then – the Modi government is more concerned with improving India's "doing business" ranking, even at the cost of diluting workers' right and deteriorating material well-being.

Reference

Sood, Atul; Paritosh Nath and Sangeeta Ghosh (2014), "Deregulating Capital, Regulating Labour: The Dynamics in the Manufacturing Sector in India", *Economic and Political Weekly*,Vol. XLIX, No.26, 28 June.

Endnotes

[i] Typically, for the same work apprentices are paid less than workers. For example, Inter Ministerial Group constituted to finalize the recommendation of changes in Apprentices Act, 1961 proposed that the stipend to apprentices should be 70% of minimum wages of semi-skilled workers in the first year (50% of which would be subsidized by the government). It should be 80% and 90% of minimum wages of semi-skilled workers in the second and third year, respectively. It is easy to see that by increasing the number of apprentices, firms can cut down on labour cost.

[ii] The sixteen labour laws for which consolidated returns is granted is available in the 21st SCL Report,15thLokSabha (http://www.prsindia.org/uploads/media/Labour%20Laws/SCR%20Labour%20Laws%20Bill%202011.pdf)
(accessed 20/03/2014)

* **This article was originally published in the Mainstream Weekly on 12 April, 2015.**