

The Labor Law: Issues and Perspective

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Abstract

Recently on fake slogan of liberalization, privatization, globalization the Indian government neutralized the labour laws and Indian Constitution. The judiciary made a tool in the hands of political party. Not only ruling party is reluctant in implementing the laws in favour of beneficiaries but again trying to make the people powerless, worthless and knowledgeable i.e a bare animal existence. So that they will be free to abuse and to exploit the labours. Therefore it is the need of hour to accelerate the process against this illusion and struggle with working class. So that entire labour class should get minimum human rights which are conferred by Indian Constitution.

Introduction

This is initialed with the superficial object to make Indian economy more efficient and competitive at the international level and overcome the crisis of internal and external public debt. The hidden (interior) motive of government is reveled as it makes a significant departure again in existing welfare (?) state system by showing fake cherished principles of growth with justice, social responsibility and accountability, equity and self reliance as it has been rendered obsolete with the new slogan of liberalization, privatization and globalization¹.

Ideology of neo liberalization were experienced with number of issues by the Indian people in terms of inflation, deindustrialization, acquisition of labour, unemployment, worsening food

security, gnawing inequality, destruction of environment and agriculture, suppression of democratic right, pollution of culture and most importantly its indigenous fall in terms of fascist, fundamentalist and obscurantist programme of Hindutva. The Constitution of India had a definite mitigating measure in it but the globalization has severally neutralized them and exposed the labour sector to brute market forces. An attempt has been made in this paper to analyze new issues in labour law with above perspectives.

Effect of Neo Liberalism

Effect on Labors

The Concept and structure of labour and employment have been thoroughly influenced by globalization. The range of employee, right from the top executive of

multinational company to the wage labour in our country side has been affected by neo liberalization. These changes as being felt by millions, are posing threat to security, availability and continuity of employment. The social division of society into many classes has been replaced by a new wave of just two unequal classes as elite, rich, upper class and a poor, working, lower class. The gap between these two classes is very vast, recently 15-20% of first class and 80-85% of second class and is still fast widening². The new labour policies lead to worst hit of laborers. The millions of people have been evicted of their own source of production and forced to make just laborers. The medium size or small size cottage industries owned by many, have either been absorbed by the huge firms or washed away in the sever competition³. This leads to awful hike in the number of jobless. There is heavy decline in the employment opportunities due to sporadic technological advancement and stringent labour policies.

Effect on Middle Class

The general tendency of Indian people is to have a job and pleasant life. Due to adoption of new labour policies the middle class professionals are often the first to be squeezed as employee strength curtailed. Generally, in a middle class family where a father works and supports the entire family but due to changed labour policy this new issue rose which cause adversely on existing system.

Child Labour

The new labour policy also enhance the issue of child labor, because as the family income goes down. The child labour forced to strengthen the economic stability of family, which has very low income.

Other Social Issues

Effect on the family

Social development organization comments that more and more families are under pressure to push their girl children to sex work. Not only the number of child sex workers is alarming increasing but also the age of entering the trade comes down⁴. The tragedy of women and girl children voluntarily selling their body for survival is exploited and enjoyed by the elites of the society. Devastation of employment opportunities give rise very serious other several social problems like men turn to dacoit, theft, violence, looting and deception for a living. The morality and decency of life replaced a different order there.

Suicide penalty

There is a psychological trauma and mental agony of millions of employees and their family members, who have lost their jobs unexpectedly and have considerable decline in the income of family. The situation is depressing as well as painful which will result themselves to end their lives.

Neutralization of labour laws

Due to neo liberalization, new liberal laws are passed like SEZ's, FDI, Retail Marketing, Privation etc. Those

laws are not within the purview of Indian constitution⁵. They apply ignoring the principles of the law of lands. For examples the territory acquired for SEZ's is outside the ambit of law of land that is no labor laws, land laws, or any other laws applied but the SEZ's will operate on their own laws as land under SEZ shall be treated as foreign territory i.e. part of India is sold out in name of industrial revolution so the nations have adopted lassiez fair system.

Issue of Judicial Response

After the commencement of the Indian Constitution the concept of social justice is introduced. It is expected by the framers the Indian Constitution that the judiciary should act positively regarding the issues of labors such as wages, minimum wages, fair wages, employment security, social security etc. Some efforts have been made in Express Newspaper case⁶. Between 1970 and 1980 the definition of industry was widened; employment security was given to workman as of right. The workers right to strike was declared as legitimate weapon for collective bargaining. Till 1980's the labour laws were interpreted to suit the interest of working class but remain unimplemented. Now recent judgments show that the judiciary has taken U-turn. In the SAIL case, the court denied the workman the right of permanent employment while in the famous Tamil Nadu case the right to strike was called morally and legally incorrect. Then in U.P. State Corporation case it has been laid down that if the workman continues to be on strike then the employer can

declare that he has voluntarily abandoned his service. So judiciary also contributed as there is no fundamental right to strike⁷.

Since 1980, the burden of proof was on the party filing case against the worker. But in Faridabad Municipal Corporation case⁸, the burden of proof has been cast on the worker. If the worker has retrenched, still he has to prove that he worked for 240 days, while the attendance records are with the employer. In recent case of Uma Devi, the court remarked that the worker does not have any right to service even if he worked for 10-20 years as millions are waiting for employment. When it is declared that by striking a workman can lose his job and the right to protest is lost.

After centuries of struggle, by commencement of the Indian Constitution, the working class got the security of employment and right for fair opportunity and enquiry but it is nullified by the judiciary. As it was held that in case of dispute between the management workers, the management could prove the workers guilty; the order of dismissal will be from the date when the labor court has passed⁹. But now in Punjab National case, it is laid down that if the charge is proved against the worker in labor court then the order will date back to the day of dismissal by the management¹⁰. The practical impact of this decision is an employer can hire and fire any workman any time without any inquiry and without any opportunity of hearing. The Supreme Court in one of the recent judgment stated that the management is the best judge to decide about conduct of an

employee and such decision should not be made subject to judicial review.

Trade Union

Actually, to struggle and stop such type of tendency of the government and judiciary the concept of trade union has been incorporated in labour law. Unfortunately, most of the trade unions have been grasped by so called different political parties to create a vote bank and others are scattered and weak. Instead of struggling for the workers on the street, most of their time spent in the courts. It is nothing but betrayal of working class movement.

Conclusion

In this age on the fake slogan of privatization, globalization and liberalization the ruling government neutralized the labour laws. The judiciary becomes a tool in the hands of ruling classes as it interprets labour legislations in a favor government and capitalist. Ruling party is again trying to make the people in India powerless, worthless and knowledgeless i.e. a bare animal. So it is the need of hour to hasten the process of coming out of this illusion and struggle with the working class.

Foot Notes :

1. Pathy 1995-11-12
2. Arjun Sengupta Report, 2009
3. James Petras and Henry Veltmeyer
4. UNICEFS Report 1995
5. The Indian constitution, Art. 13
6. (1961) ILLJ 339 at 364 (SC)
7. Kameshwar Prasad v. State of Bihar

8. (2004)8 SCC 195,(2004) III LLJ 760
9. Gujarat Steel Tubes Ltd. V.Gujarat Steel Tube Majadoor Sabha
10. Panjab National Bank v.Workmen

