

Implications of Labour Reforms

Proceedings of LMA –FICCI Panel Discussion
(Lucknow June 10, 2015)



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LUCKNOW MANAGEMENT ASSOCIATION
Scientific Convention Centre
1 Shahmina Road, Opposite Budhha Park,
Chowk, Lucknow 226003
Ph/Fax: 0522-2258678, 3250334
E-mail: lmalucknow1976@gmail.com
Website: lmalucknow.in

PROLOGUE

The first National Commission on Labour was set up in December 1966 under the Chairmanship of Justice P.B. Gajendragadkar, which submitted its report in August, 1969. Important recommendations of the Labour Commission were implemented through amendments to some key labour laws. Certain new laws like Contract Labour (Regulation and Abolition) Act, 1970 were also enacted. This Commission was to make labour laws consistent with the then dominant discourse of mixed economy. India was still in the socialistic era and the commission's declared focus was on things like improving the living conditions of workers, providing legal protection to the work force, etc.

The Second National Commission on Labour (2002) was constituted after three decades in a different backdrop of liberalisation, privatisation and globalisation. Its task, though unwritten, was to free labour laws from all unwarranted remnants of pro-labour provisions so that the requirements of the liberalisation, privatisation and globalisation could be best fulfilled. The commission's objective was also formulation of an umbrella legislation to provide some minimum protection for the workers in unorganized sector. Another objective was to provide employment to huge unemployed young population.

India recorded an impressive economic growth during 2000 to 2009 but it was largely a jobless growth. In 1999-2000 with a GDP growth of 8%, the employment growth rate was just 1.25%; in 2004-05, against GDP growth of 7.05%, employment growth was 2.62% and in 2009-10, the employment growth slumped to 0.09% with GDP growth rising to a robust 8.50%. Thus, in the post liberalization period, protectionists and socialist labour laws recommended by the First National Commission on Labour failed to improve labour employment, benefiting perhaps a only miniscule proportion of labour in the organized sector. This happened, obviously, due to reluctance of industry to employ regular labour because a tight government control over exit of labour even when not needed by the industry.

Many other deficiencies like plethora of laws, some 45 Central Acts and around 100 State legislations, though largely unimplemented due to rampant corruption with inspector raj, severely inhibited industrial growth. Also, there are multiple definitions of same term in different Acts causing confusion. Thus simplification along with codification of laws which were transparent and understandable by all concerned is imperative and these issues were addressed by the Second National Commission on Labour.

There has to be a focus on IT to improve delivery. Online registration of units, managing EPF of employee better so that their EPF is transferred to the new place where he moves; providing better health care to supplement ESI which is accessible to hardly 10% of workers are some of the features of reform measures.

To *Make in India* campaign a success and for improving India's rating in *Ease of Doing Business*, radical changes in the current archaic Labour Laws are necessary. Central Government and some State Governments including Uttar Pradesh have initiated action in this direction and

several Bills are already in public domain and are expected to be placed in the Parliament soon. Predictably, the Labour Unions are set to oppose these measures.

LMA & FICCI thought that it was an appropriate time to organize an interactive session on implications of these reform interventions. Professor S.C. Srivastava Secretary General National Labour Law Association who is a well known expert in the field was invited as the key speaker. Mr Arun Sinha Principal Secretary, Labour U.P. Govt. Mr. L.K. Jhunjhunwala President FICCI U.P. State Council and several LMA members participated in this interaction.

This document is an edited transcript of these discussions. It is hoped that this will sensitize the stake-holders about the issues and help the Government with different shades of opinions to enable them to frame appropriate legislations. LMA thanks all those who participated in this interaction.

June 25, 2015

A.K. MATHUR
Secretary LMA

Mr. A.K. Mathur Secretary LMA

It is customary that before start of all LMA meetings we recite our vision and mission. I would therefore request you to please stand up and repeat with me.

Our Vision is;

A high profile vibrant body of professionals contributing to make U.P. as Uttam Pradesh

Our Mission is;

We sensitize and catalyze individuals, institutions and communities to actualize their potential

Thank you. Please sit down

Mr. L.K. Jhunjhunwala President FICCI U.P. State Council

As we all are aware that rapid economic growth and the corresponding rise in aspiration levels of people have created daunting challenges for Indian Industries and local governments. Rapid transformations stem from large public-private partnerships: Industries are at the core of India's revolution in manufacturing, services etc. and are experiencing a very fast economic growth. Several special economic zones are being planned. Peri-urban areas experience a unique industrial, service and housing development, while city centers are facing the challenge of availability of skilled labour, productivity & modernizing while retaining their cultural, social and built heritage.

Labour policy reforms in India are due for a long time, as the context in which they were framed has changed drastically. The Laws framed mainly to cater to the manufacturing sector, do not address the problems of the service sector, which today, accounts for 55 per cent of our GDP. The outdated and inflexible nature of labour laws protects a handful of say 6-7 percent of the workforce, seriously hampering employment generation capacity of the organised sector and most of the 10-12 million youth joining labour force every year are forced to join informal economy, where the working conditions are pathetic and earnings are also abysmally low.

Multiplicity of labour laws – 44 central and about 100 state laws – present operational problems in implementation and compliances that need to be looked into. Besides, using different terminologies like – employee, workman, worker to denote a worker or wages, basic wages, salary referring to the compensation, yet covering different components in each legislation, have made compliance very cumbersome multiplying litigations.

In the market economy of today, average shelf-life of a product is less than 6 months. Companies are under pressure to innovate, redesign and technologically upgrade the products to suit consumers' choices which is not possible without restructuring and rightsizing. Chapter V-B of the Industrial Disputes Act, 1947 enacted during emergency puts all these processes under Government purview which has promoted industrial sickness. Due to these serious policy flaws, India is losing investments to its neighbouring its countries.

In 1950s and 60s when manufacturing was at a very small level; it was just beginning for India, the population of working force was not very high. There were some employers who were taking extra work. In sugar mills also, which I belong to, we had 12 hour shift. So, we used to take 12 hour work from each worker and that was the general practice everywhere; and it was 30 days in a month. But the situation has completely changed now. It was 12 hr work and no holiday but now it is 8 hour work and weekly holidays. The good part is that it has brought stability and brought us to International level but the policy of "hire and fire" which is available in other countries is yet to come here. Biggest difference between India and other countries is the population. India's population is high and Government has given protection to the worker but the industry feels that if the Government doesn't protect and hire and fire is permitted then the industry is going to restrain itself. The required number of workers has to be employed anyway. So, if one or two mischief mongers or the persons who are under skilled are released, it is not going to make difference to the country but it is going to make a big difference to the profits of that unit.

Central Government has now proposed that hire and fire should be permitted up to employment level of 300. This is expected to come in the new legislation and the labour Unions have said that they would be going on strike from 23/24 November only against this. So, both the sides are vulnerable. If you want progress, industry wants that hire and fire should be there whereas the labour unions want it should not be there and the protection which is being given should be increased if required.

Rajasthan has made some changes which have been welcomed by everybody. If you want to increase the ease of doing business, then it is a must that we change our labour laws as they should be in a modern society. We can take comparison from other countries also where it is going on in a big way. China is a communist country; they are all for protection but we can see what they are doing. We need to take lessons from countries like Indonesia, Philippines etc. and implement them in India also so that anybody who invests in India feels the same whether going to India or those countries. In these circumstances, I expect that the ease of doing business is going to be very high in U.P. and if we do that we are going to get a good amount of investment from foreign countries. Since this is a concurrent subject, U.P. can take its own decisions and move fast.

I would suggest few more points for consideration:

To discourage the filing of fictitious claims, a one year time limit should be fixed for raising any disputes or filing of claims before the Authority for recovery of dues by a workman under Section 33-C (2) and no belated claims should be entertained by any authority or the court.

Voluntary arbitration must be promoted to discourage Litigation Section 10A, which has failed in its objective. Arbitration should be promoted as an alternative dispute resolution machinery to discourage litigation. A panel of expert arbitrators should be drawn up for the purpose.

There are other points and issues as well but i would leave the rest to be addressed by our august audience and the subject experts.

I am of the view that addressing the topic of labour reforms in our state of Uttar Pradesh at this stage will definitely attract fresh and incremental investments in Uttar Pradesh, even though this requires a series of consistent efforts. I would request the industry that the measures by the Government need to be supplemented by a targeted investment promotion programme for attracting investments to our state.

Professor S.C. Srivastava:

The labour reforms debate has acquired momentum under the present Government .The Government of India has recently introduced few Bills, namely, the Industrial Relations Code containing the Industrial Disputes Act, 1947, Trade Unions Act,1926 and the Industrial Employment (Standing Orders) Act,1946); Wage Code Bill (consolidating the Payment of Wages Act,1936, Minimum wages Act,1948 ,Payment of Bonus Act,1965 and Equal Remuneration Act,1976) based on the recommendations of the Second National Commission on Labour to simplify and rationalize these laws.

I would like to come straight to various reforms that have taken place in recent years both by the Central as well as by some State Governments. In 2014, as many as four/five bills had been prepared by the Government of India, Ministry of Labour and important Labour Codes namely the Industrial Relations Code and Wage Code, which have been placed on the Ministry of Labour Web site for inviting comments. As per Press reports, the Ministry is working to consolidate the Social Security Code as also Safety and working conditions Code on the lines of recommendations of the Second National Commission on Labour.

The other important Central Bills are the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, the Child Labour (Regulation and Abolition) Amendment Bill. Factories (Amendment) Bill, 2014 and the Apprentices (Amendment) Bill, 2014 which seeks to amend these Acts in order to meet the current requirements of the industry. The government has also brought back the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment Act 2014. Further, there is a proposal to amend the Contract Labour (Regulation and Abolition) Act, 1970.

Like Central Government, legislative measures have also been taken by states like Rajasthan and Madhya Pradesh; Maharashtra is yet to follow suit and in this process, they have been able to formulate some bills. Rajasthan has amended the Industrial Disputes Act, Contract Labour (Regulation and Abolition) Act, 1970 and the Factories Act, 1948.

The other measures of labour reforms, as per press reports, are Universal Account Number, Repeal of Obsolete Laws such as the Employees Liability Act, 1938; The Personal Injuries (Compensation Insurance) Act, 1963; and The Personal Injuries (Emergency Provision) Act, 1962. The remaining labour and injury compensation laws already take care of the issues covered by these laws. Online Registration in the new system proposed by the government, a

unique Labour Identification Number (LIN) will be allotted to industrial units to facilitate online registration. Compliance will also be ensured online, with the number of returns to be filed being reduced from the present 16 to just one and Labour Inspectors who are supposed to visit factors to ensure compliance with the law will no longer be free to pick-and-choose whom they choose to visit – a key cause of selective harassment leading to bribery and corruption. Instead, inspectors will now be allotted to industries through a computerized system and they have to file their reports within three days.

Let me begin with Small Factories (Regulation of Employment & Conditions of Service) Bill 2014. This Act will be applicable to those units with less than 40 workers. The major amendment proposed is that the employer is free to close the factory by just informing the Labour Commissioner that they have paid the workers their dues and request him to remove the name of the factory from the register. On being satisfied that the dues have been paid, the Labour Commissioner will remove /cancel the name from the register of factories. This will no doubt give free hand to employer and encourage the investors but there is a need also to find some alternative for those who are unemployed due to closure in terms of social security.

Another issue arising out of this bill is about unauthorized/illegal deduction and delayed payment. The present position under the Payment of Wages Act is that the Payment of Wages Authority appointed by the State Government who may be the Presiding officer of Labour Court/Industrial Tribunal, Workmen's Compensation Commissioner or officer with experience of civil court or the stipendary magistrate will decide such an issue. This bill empowers the Labour Court to decide this matter. The anomaly with the new bill is that against the order of Labour court, the appeal lies with Labour Commissioner. This provision runs contrary to the remedies available under the Constitution. As per the existing law, any person dissatisfied with this order the authority may file a writ petition in the High Court article 226/227 of the Constitution or may go to the Supreme Court in SLP under article 136 of the Constitution. Moreover, the bill creates administrative superiority over judicial/quasi judicial body which cannot be accepted and may not stand in the court of law.

The present position about payment of bonus is minimum 8.33% and maximum of 20%. In the new bill, irrespective of what the company earn, may earn in millions, but they will have to pay only the minimum 8.33%

The late coming for duty is another new feature which is coming; there is electronic system of punching which is a good thing. The Bill provides that if a worker ,after entering the factory is not found on his seating before the lunch hour, he will not be paid for the whole day. But If he is not found present on his seat after the Lunch hours, he will be paid only half the days wages. This is a welcome step and would certainly brings discipline

Coming to social security, the bill provides that both the employer and employees will have to contribute 10% and it will be regulated by Insurance Regulatory & Development Authority. As per the existing law, if a person is employed in a factory, he gets ESI benefits. The employee is

required to contribute 1.75% and the employer is required to contribute 4.75% for getting the ESI benefits. Now, this bill suggests that the worker will now have to contribute 10%.

As for the Provident Fund, there are three schemes; one is Employee Provident Fund scheme, Pension Scheme and Deposit Linked Insurance scheme. In the Deposit Linked Insurance scheme, the employer will contribute and the worker is not required to contribute. As far as the Pension Fund is concerned, a certain part (8.33%) which has been paid by the employer is diverted from the Provident Fund to the pension fund.

Another issue is what about inclusion of payment of compensation presently available under Employees' Compensation Act earlier known as Workmen's Compensation Act for which employer is liable to pay compensation if the accident arising out of and in the course of employment. But this Bill has taken away the liability from the employers and has brought it within the purview of health insurance, for which both employer and employees are required to pay 10%, as said earlier. It is difficult to understand as to why the employee will be required to contribute to the insurance fund if the employment injury takes place which arises out of and in the course of employment. This provision needs review.

Another new feature of the bill is the introduction of the concept of compounding of offence. Under this provision the employer is only required to pay 50% of maximum fine prescribed under the bill and get rid of criminal liability. This will no doubt help the employer from the fear of imprisonment but the maximum fine but the amount of maximum fine is too low. This is one area which really requires re-consideration and maximum fine must be increased.

There are some good provisions in the bill like electronic payment of wages and electronic registration; that is commendable but the provision that if the employer does the business without getting his establishment registered, and gets caught, he has just to pay 50% of registration fee and get away with this. The difficulty arises where the employer make illegal gains by not registering. This aspect requires re-examination.

Coming to the Factories Amendment Bill, the time a worker is expected to spend in the factory is 10 ½ hours. As per the Factory Bill 2014, it has been increased to 12 hours. Apparently, it looks quite simple but it means that in 12 hour spread the employer may get the work of two shifts done by one shift workers and one shift workers would be rendered useless and can be retrenched. Also, for overtime, instead of double payment, there is a provision of adjusting it against future leave. All this needs reconsideration.

In the Minimum Wages Amendment Bill, one major amendment is the introduction of National floor minimum wage which is a welcome step in the State where minimum wage lowest.

Apprentices (Amendment) Bill 2014 was passed in Lok Sabha. It aims to make apprenticeship responsive to youth and industry, increase skilled labour, ease rules for employers to recruit apprentices and allow them to undertake demand-driven courses. The amendments include dropping a provision in the existing law for arrest of employers for not adhering to the

provisions and allowing companies to add new trades including IT-enabled services in the scheme of apprenticeship without the Centre's approval. In the Apprenticeship Bill, a provision of non engineering graduates and diploma holder apprentices has been made. It was said by the Labour Minister that it was a revolutionary step as it will provide skilled people to the country. I feel this is a right step. The Bill also allows the employer to frame their own policy; I think that there should be a National policy framed by the Government and the employer can follow that line in their policy. Whatever be the National policy, it should be very clear. Then there is another concept which is very good and that is the contract workers, daily workers, casual workers can also come under this Act. This is a very good move and we should welcome it. I feel that even the retrenched workers should be brought under this because they are rendered jobless also because the industry has been closed.

This brings me to the Child Labour (Regulation & Abolition) Bill. There is all likelihood that it will be placed in the next session of the Parliament, may be in the Monsoon session. This bill is important because we have in India the worst form of Child labour. Almost all the countries have ratified the ILO Convention on Child Labour except a few including India who have not ratified the Convention.

At present, the Child labour (Regulation & Abolition) Act is applicable to children below 14 and in certain specified occupations and 65 processes. Therefore, it has limited application. In the proposed bill, there is a complete prohibition on child labour in all industries. There are however a few exceptions. A child can be employed if it is a non hazardous occupation like entertainment, TV films, advertisements, family enterprises and sport activities with a rider that the employment should be after the school hours or during holidays. The move is being opposed by some but they should not forget the poverty together with absence of social security is one of the reasons for which child labour may be allowed to work after school hours or during holidays in non-hazardous occupation for some limited activities may be as a part of learning. The bill has introduced a new concept of adolescents which was not there earlier. Those above 14 but below 18 cannot be employed in any hazardous occupation. This provision appears to have been inserted in conformity with ILO 182 Convention on child labour. The positive indication is that the punishment for violation has been increased. As per the existing law, it is 3 months imprisonment and Rs. 10, 000 to 20, 000 fine which has been increased to 6 months imprisonment and Rs. 20, 000 to Rs. 50, 000 fine. If the parents/guardians violate the law, they are not liable for punishment for the first time, but for subsequent violations they are liable to pay a fine of Rs. 10 000. Whether this fine will serve a purpose is another issue which requires attention.

Coming to the State bills, the most talked about is Rajasthan which has taken a lead in this regard. There are three Central Acts which they have amended. One is Industrial Disputes Act which has been amended because it is in the concurrent list. The other Act which they have amended is Factories Act and the third is the Contract Labour (Regulation and Abolition) Act.

Rajasthan Industrial Disputes Amendment Act -(i) deleted the definition of employer under section 2(g) (ii) In chapter VB amended section 2(k)-application of chapter VB from existing 100

workmen in an industrial establishment to 300 workmen; 25 N-Conditions Precedent to retrenchment of workmen-deleted the existing expression 'or the workmen has been paid in lieu of such notice ,wages for the period of notice 'in sub-section (a) (i);Section 25-(O) (8) –in case an undertaking is permitted to close down, the workmen shall be entitled to receive compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months +(as per amendment also 'an amount equivalent to 3 months average pay.

This limit of 100 has been raised to- 300 by amendment in Rajasthan and Madhya Pradesh on the lines suggested by the Second National Commission on Labour. This matter is under consideration in Maharashtra. A TOI report says that 95% of the industrial units may lay off their workers and shut down their units without seeking the permission of the Government and roughly 39000 of the 41000 establishments are likely to be exempted once this provision is enforced in Maharashtra. May be for this reason, Maharashtra has not taken legislative measures so far. It is learnt that similar legislative measures are under active consideration by other States also.

Another amendment made by Rajasthan is in the Contract Labour (Regulation & Abolition Act). The existing central Act is applicable where the establishment employs 20 or more workers or the contractor employs 20 or more workers. This limit of 20 has been raised to 50. Thus, if there are less than 50 workers employed in the establishment or if the contractor employs less than 50 workers, this Act will not apply. The question arises as to what would happen to those establishment employing less than 50 wherein contract labour were working or contractor employs less than 50 on the date of amendment and were receiving the benefit of Employees' State Insurance Act,1948 and the Employees' Provident Funds and Misc Provisions Act,1952 or those who have completed 5 years and thereby entitled to gratuity or are likely to complete 5 years ?

Coming to the amendment made by Rajasthan in the Factories Act it may be mentioned as per the present provisions of the (Central) Factories Act, if the power is used for running the manufacturing process, 10 or more persons must be employed and if no power is used, then 20 or more persons should be employed. This limit has been extended to 20 where power is used and 40 where power is not used.

Mr. Arun K. Sinha Principal Secretary Labour Department, U.P. Govt.

I am very happy to hear what Professor S.C. Srivastava said because nowadays nobody whether in Govt. of India or in the State likes to hear about labour, which is treated more like a nuisance and an obstacle to industrial growth. But it is a very important component of industrialization, development and growth and they have to survive with growth. Prof Srivastava has made some good points and I am happy to know that there are people who are thinking about labour because growth cannot come if you have a dissatisfied, de-motivated labour force.

In U.P., there are 6 crore workers and we are running ESI only for the labour in organized sector. Even if we take 20% of workers to be in the organized sector, it works out to 1.2 crores workers. We have only 12 lacs insured persons (IPs) in the State; thus only 10% of the workers working in organized sector are

covered by ESI. I don't have figures of EPF for U.P. because it is a Central subject but I remember that pension scheme was introduced in EPFO in 1995 and as of now we have 42 lacs pensioners in the whole country whereas the NSS figure for the number of workers is 48 crores. So, when we talk of social security, the coverage is miniscule and the labour is performing under this situation. For achieving economic growth, we require a vibrant motivated labour force and for that, it should be given its due. At present we have 45 Acts and still, when we see these examples, it becomes clear that rights of labour are not being enforced.

One of the reasons for this is that 60% posts are vacant and people are not available in the Labour department. The work has expended; earlier, the department was looking after mainly the organized sector but now with increased building and construction activities, welfare measures have also been taken up by Labour department. The Government is also thinking of doing something for workers in unorganized sector where there is lot of work for which the department requires manpower support. And of course, lot of innovation has to be done so that with less resource better delivery is possible. In that direction, many good things are happening like we are putting all the State Acts on a single portal so that things like registration, filing of returns etc can be online. That will also reduce the burden of our staff and they will be able to focus on more important things.

Govt. of India has come out with a very good evidence based inspection policy which optimizes the inspection. In U. P. has been no inspection since 1998 because of the harassment involved in inspection. However, inspection is necessary because it protects the worker; it protects the employer also. Nobody will deny the usefulness of rightful inspection but harassment should not be there. We are also working on evidence based inspection system but since there is no inspection system now, we have to push hard so that it is accepted for the benefit of labour and coverage of social equity is increased.

We are also working on the reforms and we had a committee in the Government which considered all the suggestions and initiatives taken by Rajasthan and other State Governments. We also had tripartite consultations with employers and employees where we found big divergence; there was no meeting point between what employers and employees wanted.

What came out of it was that for instance, U.P. Industrial Act, already provides that up 300 workers no permission is require for closure. There we are trying to add that for retrenchment and lay off also, this limit of 300 should be there. In the ID Act, at present, we don't have a time limit and one can file a dispute at any time. We propose a 3 years limit but courts will allow extension if there is a good justification. For contract labour we propose the increase in number from 20 to 50 but with a rider that the establishment should file a return even if it is less than 50 so that the full picture of contract labour is accounted for. In the Factory Act also, the coverage is being raised from 10 to 20 with power and from 20 to 40 without power. In overtime, 50 hour limit is proposed to be raised to 100 hours. Payment of wages through Bank account is being enforced. With *Jandhan Yojana*, there has been a lot of expansion of Bank accounts and that is a very positive development. Prof Srivastava has also welcomed this step in the Small Factory Act.

Another good thing which I should share with the august gathering here is that Govt. of India has come out with three very good instruments for social security viz. *Pradhan Mantri Suraksha Bima Yojana*, *Pradhan Mantri Jeevan Jyoti Yojana* and *Atal Pension Yojana*. For unorganized sector we had, till now, RSVY for some extent but these three new announcements have been a good development and if these are properly publicized and employers and others also take interest, then the social security aspect can be taken care of. The good thing is that it it has come without any Act. In the labour department, we

have 45 Acts for these things but these three have come without any Act. This leads us to believe that though Acts are very important but implementation is more important than the Act itself because there are more issues in implementation on both employers and employees side as well as the Government side and we should try to improve implementation. These are low hanging fruits which can give very good results.

Mr. B.B. Jindal Chartered Accountant

There is a huge labour force in Shops & Commercial establishments which is very much exploited but no changes have been noticed for last many years in those organizations. They have no voice and they are not adequately represented. They have to accept whatever is decided by the Government.

Prof S.C. Srivastava

This Act is in State list and therefore every State is empowered to make amendments in Shops & Commercial Establishment Act. I think that there is always a way for reforms. The major issue in Shops & Commercial Establishment Act is implementation. In fact this is the case with all Labour Laws-whether it is working hours, holidays, leave, health, safety and whatever provisions are there, the first things which needs to be emphasized is that we have to see that the Law should not only in the books but it should be implemented. This is a major issue and once we succeed in this mission, we will be able to resolve many issues. This is not true only about Shops and Commercial Establishments Act; that could be the starting point. My starting point would be social security and Workmen Compensation or Employees Compensation Act which has been extended to that area. I am not against the number of 300 or increasing it from 10 to 40 but we have to provide some social security to them. So, I am worried for that reason and not for anything else. I am not anti-employer; I have helped ASSOCHAM in formulation of the scheme itself. What we need to do is to maintain a balance.

There are certain points which need to remember; there should be no multiplicity of labour laws. There is multiplicity of definitions; Worker has been used in Factory Act; Workman has been used in ID Act; Employee has been used in ESI Act. Even there are different definitions of Wages in different Acts; there are different definitions of Appropriate Government. So, these normative ambiguities should be resolved. There are no disputes between Workers and Employers in many areas. So, we have to find out a common platform where there is some unanimity between Management and Trade Unions.

Mr. V.N. Channa Former Bureaucrat

Is there any law for migrant labour? In Kerala, for instance, lots of labour is going there because most of Kerala workers are working outside India; there are lots of Labour in Gujarat, people of many States are working there. In Punjab, lot of Labour from Bihar and U.P. goes to work during the harvesting season. Is there any attention being paid to this issue?

Mr. Arun K. Sinha Principal Secretary Labour

Inter State migrant worker is a very unique problem because there is a source State and there is a destination State and the migrant is neither of the source State nor the destination State. Not speaking from my U.P. experience, because this is in the concurrent list, some good steps have been taken by

some States especially where source-destination relationship exists; they have signed MOUs. Basic problems are identity, social security and a few other things, which are sorted out by both States. But right now, we don't have any platform where these things can be taken care of; it is informal arrangement if one person talks to other. MOU is one arrangement by which this can be sorted out. These issues come in bonded labour also and we are facing similar problems in child labour. I would like to share that our Labour Commissioner has conducted a study in the State and it reveals that we cut a very sorry figure in respect of child labour. U .P. is the only State in the country where numbers have gone up. There is also a menace of child trafficking; there are reports that big child trafficking is going on from Bahraich. Also, implementation of most things like minimum wages, coverage etc. is very sadly wanting.

Mr. K.L Gupta Former DG Police

The minimum wage should be the subsistence wage but the wage should be linked to productivity. Our labour is least productive; its output is among the lowest in the world. China with its cheap labour is flooding the world with its goods. China is a communist country; all communist countries have given up their socialist ideas. All our Labour Laws- ID Act, Trade Union Act are legacies of Nehru era-with communist influence. Russia and China have given them up but we are still sticking to them. Secondly, there should be no right to strike because work is their bread and butter. Like they do in Japan, they should do extra work and put on a black band as a mark of protest; the manager tries to find out their problems and worries. Further, the Trade Union leaders should be from the labour. Here we have politically affiliated unions which create all the trouble. So, the problem is more of the leadership of politicians not as much of the labour.

Prof S.C. Srivastava

This issue has already been taken care of. In the Small Factory Act, a provision has been made that whenever there is a move for strike or even a collective dispute, at least 51% of them should agree to it. So, without the consent of 51% of workers, it is not possible. Another area which is worrying me is that there is no provision of giving notice unlike the public utility services, even non public utility services, so far as the present law is concerned. The third issue is "Stay in Strike" which means that if you have entered the factory and do not work, you have no right to stay there. Go slow has been declared as a misconduct, "Stay in Strike" has not been declared as misconduct in Maruti case and this is the area which requires attention.

Mr. Anis Ansari Former Bureaucrat

I have only a few suggestions to submit. Firstly, In a discussion like this in which so many highly educated people are participating on a very sensitive issue, it would have been proper to invite the representatives of labour also. We have apex trade unions; we are discussing issues which are going to affect them vitally and we have not invited one person representing them. That is unfortunate. I had made this suggestion formally also that we should invite labour representatives.

Secondly, all the labour laws, most of about 43 or so, are for organized industry which is 7-8% of the total labour force. What about remaining 92-93%. In my experience, for most of the people in unorganized sector, the employers violate the law without any hesitation. When I was Labour Commissioner of the State, I found 15000 violations of only the minimum wages Act by the employers in

a 15 days collective raid. If the employers are not willing to pay even the minimum wage, what kind of labour laws we have?

Talking about the policy of hire and fire, which may sound very sweet to employers but the policy can be implemented only when there is social safety net for those who are thrown out. Let there be a law that you will be free to fire a worker but you will continue to pay say about 75% of wages till the person gets absorbed in an alternative job. If that kind of insurance is there, then possibly, a solution will come.

Workers are also human beings; you cannot run your factory without their active cooperation. So, don't treat them like other materials of production like cement, steel, bricks etc.; they are human beings; they have their needs. You have to be empathetic to their needs. If you think that they should not get legal support then the society will not extend the support to entrepreneurs also. I will cite one instance. Today, there are about Rs. 9500 crores of dues in the sugar industry in U.P., they owe to the farmers which they are not paying. Govt. of India is extending Rs. 6000 crores of loans to the owners of factories without interest but the same amount of loan could not be extended to the farmers without interest so that suicides which are taking place in Vidarbha and other regions could be minimized. The society has to be a balanced society where the interests of all groups are taken into account. If you keep pushing the agenda of capitalists and entrepreneurs, I can guarantee that in a democracy you will fail.

Mr. Surendra Malik Eastern Law Book Depot

I think we should look at the reforms in the right perspective. Yes- security for workers is most important; minimum wages are important; healthy and clean environment is necessary. All these concerns are right but when we say that the person should be secure and he cannot be removed, it means that he takes the job for granted. Please try and see the world of today. Our industries are in competition with China. Everything from *Holi pichkari* to Ganesh idol- anything and everything is coming from China. They have given up all the ideas which we are now trying to protect. We have not modernized and we don't want to modernize.

Secondly, what is wrong in compounding an offense? If you can compound offense in the IPC; if you can compound offense in the settlement commission in income tax and so many other Acts, then what is wrong in compounding in Labour Laws. First find the *mens rea*- the criminal intent. If there is an inadvertent mistake, it should be dealt accordingly. If you look through the entire industrial law, you would be amazed that there are punishments for simple non-compliance- for things like maintaining a record. Under the Equal Remuneration Act, if you do not maintain a record, you can be punished for 6 months. What is the logic? The offense is not proved; it is nowhere proved that you are violating the Act but merely for not keeping the record you can be punished. I am sure you will find many such provisions in the industrial law. In this democracy, the people from whom you expect to bring development, entrepreneurship, how are they treated? For every other thing, there is a punishment. This is only a legacy of British Raj. Problem with such laws is that the first thing which happens when a labour inspector comes is he shows that this is what he can do- and the law does not get implemented. I will be happy if the law is implemented but because of such provisions, it remains on paper.

Bringing in IRDA is a very positive step. Why should ESI not face competition? So much has been said in praise of ESI. How many people want to go to ESI? Please find out the figures- how many people want to use it. A man will spend the whole day there and if there is anything serious, he will be sent to Balram Pur Hospital or Medical College. There are no proper doctors; no medicines, no care and I see one particular provision which has been severely misused. As an editor of SCC I know what the Supreme

Court has said- a casual worker, a carpenter, a painter or anybody should be covered by ESI. It has not been carried forward by any Government. Suppose I hire a painter and pay him his wages today and he falls from the ladder. I have deducted the ESI amount. Can you think that if I go to ESI hospital and ask them to admit him on the basis that I have deducted the ESI amount, will they admit him? If we can have competition for LIC for medical insurance, why not permit the employee to choose the service he wants. Issue him an ESI contribution linked card, let him choose the chemist and pathologist and go to a designated hospital instead of government taking the burden it cannot manage.

Minimum wage is perhaps the best legislation; it should be publicized every six months. Minimum wage should be published in the news papers and then there should be a cell where people can complain if they are paid below this wage. This should cover every establishment. This is the simplest way to implement it.

I also want to speak for the young people. Young people don't have experience and therefore cannot get the job and they can't get experience because they don't have a job. So, there should be some way in which we can take them as apprentice. They can work as interns to gain experience, gain practical knowledge. It should be specified that per hour minimum wage shall be paid but people should be free.

Mr. M.A. Khan Advisor Idea Cellular & Jt. Secretary LMA

I must compliment our members who raised very pertinent and penetrating issues. It was an extremely lively session. The need for this programme arose because of *Make in India* campaign. This concept is forcing the hands of industry, regulators and law makers to do something about the old laws and rules as Mr. Malik and others have pointed out. These will have to be forced and only then things will happen. But it is a very delicate exercise to balance the social needs and the needs of the industry. Mr. Jhunjhunwala represents one side. His stakes are high; his money is at stake; his industry is at stake. On the other side, Mr. Anis Ansari, who has handled many reforms and official assignments in his life, has a feel for the poor. Mr. K.L. Gupta has raised very pertinent issues about labour productivity and tendency of politically affiliated trade unions to trigger strikes. All these views have to be respected but it is not very easy to find a common ground acceptable to all. Nevertheless, it was a very free and frank discussion. Professor S.C. Srivastava, the key speaker of the programme is a Pandora of knowledge and almost a final word on the subject. Tata Motors here have been looking to him to resolve their issues. He has his views and that is one side of the thinking; the other side is the industry. Mr. Arun Sinha is one of the finest officers who understand the issues of labour governance very well. He has a feel for the poor and has also to perform his official job of governance. We missed Mr. Alok Ranjan Chief Secretary and President LMA who had to chair this panel. He couldn't come due to some other pressing engagement. My colleague Mr. A.K. Mathur Secretary LMA has been organizing many LMA programmes admirably including this one. He is also the one who has to take the brunt of things not done but he takes them very well. Overall, this has been a very nice programme. Thank you all.