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Labour Legislations in India: Tourism Industry Dimension

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Abstract

Labour laws shape industrial relations addressing the socio-economic security of the working class. The legislative framework of labour conditions the working conditions, employer-employee relations, mode of wage payments, provide social security, class and protect the interests of special categories of working class. The paper discusses various labour statutes of India that are applicable to tourism. Almost all labour laws prevailing in the country were enacted even before tourism attained industrial status. This will enable us to examine how far this prospective sector complies with labour legislations in the country. A statutory coverage for the socio-economic security of workers is a need of the hour in the wake of growing casualisation, feminisation and marginalisation of labour and growing unemployment.

Key words: labour legislation, labour laws, labour welfare, labour statutes, socio-economic security of labour.

Introduction

Labour legislation implies a cluster of labour enactments by the government from time to time covering various issues relating to labour and its employment (Garg, 2001). In the absence of proper labour adjudication working class will be subject to blatant exploitation by employers. An individual worker is socially and economically weak, which makes it difficult to bargain or negotiate for protecting individual rights. Labour legislation provides an umbrella cover against labour exploitation and bestows certain entitlements to the working class. It is based on the recognition that operations of market forces cannot be relied upon, *inter alia*, to solve some of the basic labour problems such as economic security, working conditions and labour welfare. It has preceded a realization that the community as a whole, as well as individual employers, is under obligation to protect the welfare of the workers and to secure to them their due share in the gains of economic development (Misra and Misra, 1999). Even in a developed labour market that is well provided with services of workers labour laws remain indispensable (Ichino, 1998) to protect the welfare of the working class. Studies (Saini, 1999) point out that working people are vulnerable to exploitation at the hands of seemingly more powerful employers. Tourism is more prone to labour market vulnerabilities due to seasonality, part-time

nature of works, flexible and duties, job insecurity, irregular working time, unimpressive remuneration and labour turn over.

The history of labour legislation in India can be traced back to the regime of British Colonialism. Initially labour laws were enacted and introduced in the country to protect the interests of the British employers. The Workmen's Compensation Act (1923) is known to be the first systematic and comprehensive legislative framework under the British rule that lent a compassionate look into the woes of the Indian working class. Then, after independence, India has enacted a number of labour related legislations that conform to the ILO conventions and International Standards of Labour.¹ The Government of India envisions certain Constitutional Provisions² also to the working class of the country.

Since labour is in the Concurrent list of the Indian Constitution, States of the Indian Union also have the jurisdiction and power to enact legislation relating to labour, taking into account the needs and local conditions of labour in the respective States. Therefore, we have both Central and State Acts pertaining to labour. Every Labour Act assigns powers to the respective Government to make rules in carrying out the provisions mentioned in the Act. We have a plethora of labour laws pertaining to a wide range of issues such as wage and collective bargaining, industrial relations and disputes, social security, labour welfare and conditions of work in the country. The Central Government has enacted 47 labour related statutes dealing with labour and industrial relations (Ahluwalia, 2002). Most of the Acts reviewed here are Central Government legislations. However, the State Government has enacted rules on executing them.

Almost all labour laws prevailing in the country were enacted even before tourism attained industrial status. This will enable us to examine how far this prospective sector complies with labour legislations in the country. In this paper certain labour legislations, which are relevant to tourism, are reviewed and presented chronologically.

The Workmen's Compensation Act, 1923

It is the pioneer legislative measure in India to promote socio-economic justice among the working class in the country. Under the Act a workman, in case of injury, or his dependant, in case of his death, is eligible to receive compensation in lump-sum as a valid cost of production similar to the cost of repair or replacement of a machine. The Act, thus, provides a moderate social security to workmen as well as a humanitarian measure (Kapoor, 2006). The liability devolves on the employer. However, the employer is not

liable to compensate when death or injury occurs due to the willful disobedience of the workman of a valid order or a rule framed by the employer to secure his safety or due to the workman being at the material time under the influence of alcohol or drugs. Death or injury should have occurred 'arising out of' and 'in the course of employment' in order to be entitled for compensation. Occupational diseases contracted in the course of employment are also eligible for compensation. The compensation is calculated on the basis of minimum wages prescribed by the industry or establishment at the time the casualty occurred. A casual workman was not covered by the Act. However, in the Amendment in the year 2000, the casual worker was also considered as a workman even though he is not engaged for trade or business by the employer. Hence the applicability of the Act can be extended to tourism also.

Indian Trade Unions Act, 1926

The Act intends to provide for the registration of trade unions and to define law relating to registered trade unions. According to the provisions of the Act a Trade Union means 'any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.' The Act facilitates unionisation both in the organised and in the unorganised sectors. It is through this law that the freedom of association is realised. However, the right to register a Trade Union does not mean that the employer must recognise the Union. The mandate of recognizing and allowing freedom of association of workers will empower the, especially in the unorganised sectors in any industry.

The Payment of Wages Act, 1936

The Act seeks to regulate the frequency and mode of payment of wages, levying fines, and making deductions from wages of workers. Thus it ensures the correct and timely payment of wages and proscribes unauthorised or arbitrary deductions. Wages comprise basic pay, dearness allowance, production incentive and all other allowances payable under the contract of employment. Wages are payable before the seventh or the tenth of every month accordingly as the factory or establishment. Wages payable to a dismissed or discharged employee must be paid within two days of such termination. Wages may be deducted for absence of duty, if and only if, such absence must be from employee's own

violation and not due to any act of the employer such as lay-off, lockout or closure. Thus the act duly acknowledges the contribution of labour in production process.

The Weekly Holidays Act, 1936

The objective of this enactment is to provide for weekly holidays to certain categories of employees working in restaurants, shops and theatres. The Act provides for granting one paid holiday in a week of seven days for every person employed in such establishments. No deduction of wages shall be made in respect of the weekly holiday. A person employed in a confidential capacity or in a position of management shall not be covered by the provisions of the Act. The provisions shall not apply also to any person whose total paid employment in the week, including authorized leave, is less than six days. An additional holiday of one half-day shall be granted in each week to every eligible person. The Act ensures that workers' personal life must not be suffered due to the compulsions of his work site.

Employer's Liability Act, 1938

The Act was promulgated to declare that certain defenses shall not be raised by the employer in suits for damages in respect of injuries sustained by workman. It applies to all industrial and other establishments without any classification with regard to either number of employees or their wage level. Barring certain categories of works in tourism like food and beverages production, engineering and tourist transit, it is less prone to accidents. Yet a blanket cover is felt good to feel safety and security. Hence its applicability can also be extended to tourism.

Industrial Employment (Standing Orders) Act, 1946

The Act is intended to minimize the potential industrial disputes between employers and employees, by requiring the former to make conditions of employment precise and definite for the employees from the very beginning. The legislation discourages the vagaries of the employers in stipulating working conditions and thereby prevents unfair labour practices. The Act applies to every industrial establishment where in one hundred or more workers are employed or were employed on any day of the preceding twelve months. It has detailed provisions regarding working hours, payment of wages, giving leave, termination of employment, disciplinary action for misconduct etc. Where a workman is suspended pending investigation into charges of misconduct, he shall be paid subsistence allowance at the rate of fifty percent of the wages for the first ninety days and

seventy-five percentages thereafter. Since tourism requires a personal touch, the Act is of highly significant in stipulating working conditions and labour practices.

Industrial Dispute Act, 1947

The objective of the Act is to protect employees from exploitation or whimsical directives of the employer, by developing a harmonising relationship between employer and the employee through mediation and adjudication. According to Section 2 of the Act an industry means ‘any business, trade, undertaking, manufacture or calling of employers and includes any service, employment, handicraft, or industrial occupation or a vocation or workmen.’ That is, ‘a systematic activity carried on by co-operation between employer and his workmen for the production, supply or distribution of goods or services with a view to satisfying human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) whether or (a) not any capital has been invested for the purpose of carrying on such an activity; or (b) such activity is carried on with a motive to make any gain or profit and any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include any agricultural, except where such agricultural operations carried on in an integrated manner with any other activity.’

The distinctive feature of the Act is that all factories and establishments, irrespective of being registered and regardless of the number of employees on the rolls, will come under its purview. An industrial dispute may be between employer and employee or employer and employer or employee and employee in connection with employment or non-employment or terms of employment or the conditions of labour. When an employer makes changes in the service conditions relating to matters specified in the fourth Schedule of the Act, if the proposed changes are prejudicial to the workmen, the Act necessitates 21 days of advance notice in this regard. The Act does not discourage collective bargaining so long as the industrial peace is not disturbed or normal working is not disputed (Kumar, 2001). However, with the onset of Globalization, the privileges of working class in this regard are sidelined. Though the Act mainly intends for the manufacturing sector, it can also be extended to service sector in general, and tourism sector in particular, as it commercial undertakings also.

The Minimum Wages Act, 1948

The concept of minimum wage was introduced to reduce the vulnerability of labour (Breman, 2001). The objective of the Act is to preserve minimum wage as also to ensure its constant revision so that a stage of living wage is reached throughout the country. The

Act is meant to ensure that the market forces, and the laws of demand and supply are not allowed to determine the wages of workmen in industries where workers are poor, vulnerable, unorganised and without bargaining power. Therefore, it has been enacted for the benefit of unorganised labour. The Act authorizes the respective Government to fix minimum rates of wage for labour in trade and industry and establishes machinery for the revision of such wage as it may think fit at intervals not exceeding five years.

Minimum wages do not mean wages necessary only to ensure survival for human life. It includes resources necessary to procure other primary and essential needs also. The Act delineates minimum wage as 'all remunerations, capable of being expressed in terms of money, which would, if the terms of the contract of employment, expressed or implied were fulfilled, be payable to a person employed in respect of his employment or if work done in such employment and will not include any house accommodation, medical attendance, or contribution paid by employer to provident fund or pension or gratuity or insurance scheme or travel allowance, travel concessions and payment to defray special expenses met by the employee by the nature of his employment.' It applies to any establishment that employs one or more employees in any employment listed in the Schedule given in the Act. The minimum wage is related to the cost of living index number. While fixing the minimum wage, the number of hours of work, which will constitute a normal working day, will be fixed by the appropriate Government with regard to any Scheduled employment. When an employee works on any day in excess of the number of hours fixed for it, he shall be entitled to over time wages as fixed. Where a worker performs different classes of work carrying different wage structures, he will be entitled to wages on the basis of the number of hours spent in each such class of work, subject to the minimum rate of wages fixed for it. The Act insists that 'a notice in Form IV containing the minimum rates of wages fixed together with the abstract of the Act, the rates made there under and the name and address of the inspector shall be displayed in English and in a language comprehensible to the majority of the workers.' Since tourism scatters over a wide range of economic services, and most of them are unorganised, minimum wage stipulation is the first and foremost precondition of labour legislation in tourism.

The Employees' State Insurance Act, 1948

The Act is a measure of social security through a system of insurance against sickness, disablement and death, arising out of and in the course of employment, and also a benefit

for maternity. The Act is applicable to a factory employing 10 persons using power or 20 persons without using power. It also applies to any establishment employing 20 or more persons with or without the aid of power. This is a compulsory scheme where in both the employer and the employees are required to participate through contributions. The benefits of the scheme include sickness, accident, maternity, dependants' benefit, medical, funeral and rehabilitation benefits. It is the obligation of the State concerned to ensure maximum social security to the working class. In this regard the Act is pertinent in tourism industry also.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

The Act is a social security measure for employees during their period of service and upon cessation of service, or upon death during service. It applies to establishments employing 20 or more persons. Exemption is available for an initial period of three years in other cases. Establishments are permitted to form their own scheme. They are exempted from the Act if the terms of such scheme are not less favourable than the scheme formed by the Government. The employer is required to form a pension scheme and deposit-linked insurance scheme for the employees. When the ownership of the establishment is transferred, the transferee becomes jointly liable. It will ensure the future economic security of working class.

Apprentices Act, 1961

The Act was promulgated to ensure regulated training facilities to the apprentices and protect them against exploitation. The objective of the Act is to bring training to graduate engineers and diploma holders under a formal legislation with a view to giving the practical training under factory conditions. Apprentices are categorized as graduate, technician or trade apprentices. An apprentice is a trainee and not a worker. The labour laws which apply to worker do not apply to them. However, all welfare laws will apply as specified. The Act stipulates the extent and nature of leave that an apprentice may be granted during his training. The employer is liable to pay compensation to the apprentice if the contract is terminated owing to the failure of the employer. Since tourism industry needs more and more formally trained staff, this Act is very important in the industry. The Act enables ample leverage to the employers to engage apprentice to manage variations in demand due to seasonal nature of tourism. Industry exposure is compulsory for the successful completion of many professional courses in travel and tourism related studies. Hence lots of freshers are available to manage peak-season business. As per the

provisions of the Act there is no obligation to provide job to the apprentice. And similarly an apprentice is not bound to accept employment under employer.

The Maternity Benefit Act, 1961

The objective of the Act is to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefits and certain other benefits. The Act applies to every establishment which is a factory, mine or plantation but would not apply to any establishment where the provisions of Employees' State Insurance Act (1948) apply. Women employees not covered by the ESI Act will be entitled to benefits under this Act. It is a benefit paid to a woman worker at the rate of average daily wages for the period of her actual absence for a period of six weeks immediately following actual delivery. The benefit also includes an additional paid leave of one month, medical bonus exemption from arduous work and nursing breaks. The woman should have worked for at least 160 days during the preceding 12 months for entitlement of benefits. The benefits will be terminated if death occurs during the benefit period but will continue if the child survives. The employer is prohibited from dismissing, discharging or disadvantageously altering the service conditions of a woman during benefit period. If a beneficiary woman takes up employment in any other establishment during the benefit period, she shall forfeit all benefits.

Through an amendment in 1989, the act was extended to shops, establishments and factories all over India, where ten or more persons are employed or were employed on any day preceding 12 months. Since tourism industry is wooing more women employees to reinforce hospitality flavour, its applicability is increasing.

Payment of Bonus Act, 1965

Until the Act was promulgated, bonus was linked to profits and in such cases if an establishment did not make profits in a certain year, the employer was not liable to pay bonus. But the Act makes an employer liable to pay bonus to an employee as an annual statutory payment irrespective of the existence of profits. It includes all employees, factory workers or clerical staff or executives, drawing wage or salary up to Rs.3500/- per month who perform any skilled, unskilled, manual, supervisory, managerial, administrative, technical or clerical work. To become eligible for bonus every employee must have worked in the establishment for not less than 30 working days in the relevant accounting year. Since bonus is one of the fringe benefits of an ordinary worker, it can also be extended to tourism industry.

Contract Labour (Regulation and Abolition) Act, 1970

The hospitality segment of tourism employs enormous number of contractual or casual workers to meet the peak season demand. Despite the statutory provision to prevent exploitation of this manner, still labour market in India, especially new generation jobs in the service sector; IT enabled jobs and tourism, is characterised by informal employment arrangements. The labour market vulnerability of informal workforce is not only detrimental to them, but to those in the formal sector as well. Chowdhury (2003) observes that the easy availability of lower wage workers, significantly takes away the bargaining leverage of unionized workers.

The Act aims at the abolition of contract labour in respect of such categories as may be notified by the appropriate Government and at regulating the service conditions of contract labour where abolition is not possible. When the work is intermittent or casual in nature contract labour may be appointed. The contractor shall be responsible for payment of wages to each contract worker employed by him, such amounts as wages and at such intervals as are agreed upon in the contract. It is applicable if the principal employer engages twenty or more contract workers in an establishment and also to a contractor who employs twenty or more workers in his contract. This Act is meant primarily for unorganised workers. Though child labour is not prevalent in the organized segment of tourism industry, it is still their in the form of street vendors, hawkers and child prostitutes.

Payment of Gratuity Act, 1972

Gratuity is a measure of social security available on retirement, resignation, death or disablement. An employee having been in employment uninterruptedly for a period of not less than five years and on any amount of wage is entitled to receive gratuity. The minimum period prescribed in case of death or disablement is one year of continuous service. Employee shall forfeit gratuity partially if dismissed for loss or damage caused by him wilfully or negligibly. He shall forfeit it wholly if dismissed for theft or riotous or disorderly conduct or act.

Equal Remuneration Act, 1976

It provides for equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex against women in the matter of employment and for matters connected there with or incidental there to. The Act is based on the concept of

natural justice, by which an employee who performs the work of a similar nature shall be paid remuneration at equal rates. It applies to all establishments irrespective of the number of employees on the rolls or the amount of wages paid to any employee. The main objective of the Act is to prevent discrimination against women in the matter of rates of remuneration, promotion, training and transfer on the ground of their gender. The Act equally promotes the interests of male workers as well by obliging the employer to pay a male employee at rates not lower than the rates payable to women workers performing the same work or work of a similar nature. The widespread employment of women in tourism sector necessitates the provision of this Act.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

The objective of the Act is to regulate the employment of inter-state migrant workmen and to provide for their conditions of service and for matters connected therewith. The benefits of the Act include non-discrimination in wage rates, holidays, hours of work and other conditions of work for inter-state migrant workers in relation to local workers. An inter-state migrant workman may be any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state with or without the knowledge of the Principle employer. It extends to the whole of India and applies to: (1) every establishment in which 5 or more inter-state migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months and (2) to every contractor who employed 5 or more interstate migrant workers (whether or not in addition to other workmen) on any day of the preceding twelve months.

The wage rates, holidays, hours of work and other conditions of migrant workmen shall be the same as those applicable to such other workman in the equal status and honour which shall not be less than the rate of wages paid by the principal employer to a workmen in the lowest category of workman directly employed by him in that equal status and honour or the minimum rates of wages notified by Government in any scheduled employment whichever is higher. All wages payable to an inter-state migrant workman shall be paid in the presence of an authorised representative of the principal employer who shall record under his signature a certificate stating that the amount has been paid in his presence on such date and time. It shall be the duty of the contractor to ensure the disbursement of wages done in the presence of the authorised representative.

The contractor shall pay a journey allowance of a sum not less than the fare from their place of residence of the workman to the place of work for the outward and return journeys. The Workman is also entitled to payment of wages during the period of such journeys as if he were on duty.

The Small enterprises (Employment Relations) Act, 2002

The Act aims to regulate the employment in small enterprises and it extends to the whole of India. It shall apply to all establishments or enterprises in which not more than 19 workers are employed. Hotels and restaurants, shops and other service establishments are covered by this act. The Act has provisions towards the assurance of conditions of work such as safety, welfare, working hours, holidays and annual leave, job discrimination and payment of wages, bonus and social security measures. It also deals with the formalities to be followed in case of lay-off, removal from service and settlement of disputes and closure. When the provisions of the Act are applied to tourism, the unorganized segments of tourism industry can be brought under the purview of labour legislation.

Conclusion

Labour laws shape industrial relations, determine mode of wage payments, provide social security, fix service conditions of working class and protect the interests of special categories of working class. This chapter shows that we have a good number of labour laws to protect the social and economic welfare of the cross-section of working class in India. From the above identified labour laws that are applicable to tourism, we can examine whether tourism industry in the country complies with minimum necessary labour legislative framework. All the labour laws, discussed above, prevailing in the country were enacted even before tourism attained industrial status. However, the production and service attributes of tourism bring it under the armpit of labour statutes. It has also been observed that labourers in India are being over protected through labour statutes. Gupta (2002) observes that India's labour laws deny firms the flexibility they need to operate successfully in highly competitive markets as warranted by the situation. He also points out though the basic intention behind these laws was to protect the existing employment they actually discourage the growth of new employment.

Notes

¹India has, so far, ratified 39 ILO Conventions, of which 37 are in force. Of the ILO's eight Fundamental Conventions, India has ratified four. They are Forced Labour (1930), Abolition of Forced Labour (1957), Equal Remuneration (1951) and Discrimination (Employment and

Occupation) (1958). In 1999 the ILO presented four core labour standards to address the pertinent issues of labour all over the world. They are:

- Freedom of association and the effective recognition of the right to collective bargaining
- The elimination of all forms of forced or compulsory labour
- The effective abolition of child labour
- The elimination of discrimination in respect of employment occupation

²Article 19 (1) (c) guarantees to all citizens fundamental freedom to form associations and unions. Article 38 (1) directs the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political, shall inform all institutions of the national life. Article 39a requires adequate means of livelihood. Article 41 requires that 'the state should, within the limits of its economic capacity, make effective provisions for securing the right to work, to education and to public existence in case of unemployment, old age, sickness and disablement.' Article 42 requires that the State should make provisions for securing just and human conditions of work and for maternity relief. Article 43 requires that the State shall endeavour to secure to all workers a living wage, conditions of work and ensuring a decent standard of life. Article 47 requires that the State should raise the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties.

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