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Modified Labor Welfare Measures for Special Economic Zone Implications

Parwez, Sazzad

Central University of Gujarat, Gandhinagar

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Modified Labor Welfare Measures for Special Economic Zone & Implications

Abstract

While labor laws are supposed to be operational in a SEZ, they are almost entirely absent in practice. This study is based mainly on secondary data through the evaluative literature review method and study of published and unpublished empirical research work. Data sources have been the reports of ministries of the Government of India and research papers in national and international journals of repute. The study suggests that there are a few companies in all the zones that abide by labor laws and recognize workers' basic rights as well as the importance of healthy industrial relations. While some fortunate, skilled employees benefit from this positive trend, thousands of others, try to earn their living in an atmosphere of unsecure employment and uncertainty, finds the author.

Introduction

India's labor policy is based mainly on labor welfare measures and legislations. The labor legislations in India after Independence owe their derivation, stimulation and strength mainly to the thoughts expressed by important nationalist leaders during the days of national freedom struggle, partly from the discussions in the Assembly, partly from the provisions of the Indian Constitution and the international labor conventions and recommendations. The labor legislations and reform policy were also affected by the important human rights, conventions, and standards that have developed over the years. These fundamental rights include right to work of one's choice, right against discrimination, prohibition of child labor, humane conditions of work, social security, reasonable wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management (Indian Labor Conference, 2003).

Labor welfare has never been defined properly, especially in the Indian context, it has never been taken to another level, it has been always been limited to welfare legislation. At present, there are over 150 state and central laws in India, which govern various aspects of labor welfare (Budhwar & Khatri, 2001; Venkata Ratnam, 1995). Unfortunately, while there is a proliferation of legislation, the implementation has been lacklustre and weak.

Under the Constitution of India, labor is a subject in the concurrent list where both the Central and state governments have the right to enact legislations. A number of labor laws have been enacted catering to different aspects of labor namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labor, contract labor, women labor and child labor, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labor, beedi workers etc (Ghosh, 2004; Babu, 2009).

As expected, the influence of labor welfare measures on the development of human resource is significant, as it helps in raising employees' standards of living, encourages workers to put more effort towards work, which enhances their productivity and nurture better industrial relations, develop organizations visibility and popularity. Although in percentage terms

unions in India are in decline, in absolute terms there is an increase in union membership. Indian labor welfare measures are now playing a more co-operative role and are less militant adverse. The strong implementation of labor welfare measures with political support workers get opportunities to develop themselves and open various kinds of employment opportunities. The educational and vocational training set-up is the important institution which influences Indian labor welfare system.

Labor Welfare & Special Economic Zone (SEZ)

In contemporary India, the structural reform lists the prevailing labor law as a serious ongoing concern. The Economic Survey (2007-08) calls for a review of labor laws citing “an imperative need to facilitate the growth of labor-intensive industries, especially by reviewing labor laws and labor market regulations”. The policy brief goes on to suggest that reforms such as the “reduction in the stringency of employment protection” would “remove an important barrier to the expansion of smaller firms and would increase employment, productivity, real wages and the number of social benefit recipients, as well as facilitating the movement of labor out of agriculture to more productive areas” but they forgot how it be implemented and realized.

Given the craving for the Special Economic Zone (SEZ) to push for labor-intensive export oriented consumer goods, the entire enterprise is probably working between the perimeter of the formal and informal sectors, attracting the workers from the informal and agricultural sectors. At this location, establishment of SEZ generates a dilemma because the workers are drawn from the informal and agricultural sectors. If this continues, it would raise perceived labor costs, which would presumably increase the price of the produce and it will lead to a negative sentiment for investment (Anant et al., 2006). Given the location of the labor involved, the solution to this dilemma has been to change enforcement of law in a manner which reduces the coverage of labor legislation without actually changing the law, a relatively smooth step, given the nature of Indian labor law as well as the framework of the law associated with SEZs (Singh, 2008) but further it will enlarge the scope of labor exploitation.

Though the Special Economic Zones Act, 2005 overrides certain other laws (particularly granting fiscal benefits to firms located in a SEZ), the Act maintains that in relation to labor, general labor laws are to continue to be operational in the SEZs premises. While there is no change in the labor laws, the implementation of labor law is shifted from the control of the Labor Commissioner to the newly created position of Development Commissioner of the

SEZ, a figure who is authorized with considerable power over all aspects of governance of the SEZ. Furthermore, the ability of workers to organize strikes is curtailed by labeling the economic activity within the premises of a SEZ as a 'public utility service'. The Indian law considers strikes in the SEZ units entirely an illegal activity. All these factors taken together render that labor laws and welfare measures, though, are supposed to be functional in a SEZ, but they are almost absent in practice.

SEZ Law & Labor

Empirical studies covering SEZs in India report a trend that trade union activity is widely discouraged and almost absent in the zones. Workers are not paid minimum wages and working durations are of longer hours to complete stringent targets as norms. Workers are being fired from the jobs without justification or compensation, denied any maternity and lactation leaves or benefits and suffer from work related illness (Madani, 1999).

Economic reforms and the explosion of Special Economic Zones are anticipated to deliver employment opportunities for millions. This employment opportunity is estimated to balance the revenue losses, use of agricultural land for industries, displacement of farmers and disparities in regional development resulting from SEZs. There is always a question mark on kind of working conditions that are actually being created in these economic zones. The Government provides huge tax concessions and financial incentives to companies to encourage them, which may lead to the creation of livelihoods to millions directly and indirectly. Literature, covering different aspects of SEZs, all over the country reports a similar pattern that unionism or trade union activity is generally discouraged and lacking in the economic zones. Most of the time workers are not even paid minimum wages or not paid in time, forced to work for longer hours to complete tough targets, are subject to being fired without justification or compensation, are also denied any maternity benefits and suffer from all kinds of work related illness.

Since industries in the zones are export oriented, the emphasis is on minimizing production costs so that prices remain competitive in the international market, to achieve that cheap labor is without any kind of welfare benefit (Sivalingam, 1994). It is the labor who suffers the brunt of tight competition in the global market by losing welfare measures. To meet production targets, they are compelled to work harder and longer until they burn out or quit. Several empirical studies reveal that labor is for 10-12 hours a day, without overtime, and get daily wages ranging between Rs 30 and Rs 70 in most of SEZ. There are a few companies in all the

zones that abide by labor laws and recognize workers' basic rights as well as the importance of healthy industrial relations (Suchitra & Rajasekhar, 2006). While some fortunate employees, particularly skilled workers benefit from this positive trend, thousands of others earn their living in an atmosphere of unsecure employment and uncertainty.

A study of female factory workers, mainly in the Madras Export Processing Zone (MEPZ), done by Swaminathan (2005) revealed that the women suffered from frequent headaches due to tension and intense concentration at work, acute back pain, joint pains, swelling in the legs, severe abdominal pains, various types of allergies, skin ailments, and piles (the result of sitting in the same position for hours on end). The majority of women working in the garment units suffered from respiratory disorders such as asthma, persistent cough and breathlessness. Studies also reveal that since some companies do not remit employers' and employees' contributions to 'the Employees State Insurance (ESI)' Scheme, many workers are denied the benefits of the scheme. This also happens in the case of the Provident Fund. The plight of workers on the lower rungs of the hierarchy is the same in most other such zones: no job security, high levels of work pressure and stress and, not surprisingly, premature burnout.

Labor Law Exemptions

The SEZ Act does not explicitly talk of labor laws. Even Section 49 of the SEZ Act, which allows individual states to modify the SEZ Act, reads thus: "Provided that nothing contained in this section shall apply to any modifications of any Central Act or any rules or regulations made there under or any notification or order issued or direction given or scheme made there under so far as such modification, rule, regulation, notification, order or direction or scheme relates to the matters relating to trade unions, industrial and labor disputes, welfare of labor, including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits applicable in any Special Economic Zones." So, unlike the fiscal laws, rules, and regulations, the labor laws apparently cannot be modified invoking the provisions of the SEZ Act. The overt statement that labor laws cannot be modified within a SEZ moderately explains the muted reaction to SEZs in relation to labor, it is hard to protest or disagree when the it says that there will be no change in the legal status quo. Even though labor laws cannot be modified, it is still open for state governments to make changes by notifications and other administrative process. In particular, state such as Gujarat, Madhya Pradesh, Haryana, West Bengal, Uttar Pradesh, Tamil Nadu and Punjab have their own rules. It must be noted that under the SEZ Act 2005, the

Development Commissioner is the highest authority to ensure implementation and maintenance of labour laws within the premises of SEZ. In effect, the powers of the Labor Commissioner (Section 12, Subsection 3) along with other functions are vested in the Development Commissioner (ILO, 2012).

The main object of government is to promote the interests of the labor class and to protect them from the exploitation of the industrialists. But SEZ Act leaves us under the apprehension that it hardly gives any space for the welfare of the labors. It is further apprehended that all the rights concerning the labor class have been tactfully withdrawn by both the central as well as the state governments (PRIA, 2000). The rights of the worker class have been exploited in this Act under Section 49(1) which strictly and categorically says: “Provided that nothing contained in this section shall apply to any modifications of any Central Act or any rules or regulations made there under or any notification or order issued or direction given or scheme made there under so far as such modification, rule, regulation, notification, order or direction or scheme relates to the matters relating to trade unions, industrial and labor disputes, welfare of labor, including conditions of work, provident funds, employers’ liability, workmen’s compensation, invalidity and old age pension and maternity benefits applicable in any Special Economic Zones”. Similarly, the right of the state government for granting exemption from the labor legislation and welfare measures has also been taken away. It is also said that SEZs are centers of immense exploitation and a state within state without any right to have say. The zones are mostly for commercial purpose but still declared to be public utility services and it leads to ban on trade unionism and application of labor laws and welfare measures (Sankaran, 2007). Provisions of minimum wages are also not implemented; employees are forced to work overtime without any extra monetary payment; safety equipment’s are not taken care of; crèches are not provided; instances of sexual harassment are very common and on rise.

Modification of Labor Law

Practically labor laws cannot be modified, but both central and state governments are authorized to recommend changes by official notifications and other administrative means. While going through the documents or orders issued by the various state governments, the labor legislations have, in effect, been modified. In particular, Gujarat, Haryana, Madhya Pradesh, West Bengal, Tamil Nadu, Uttar Pradesh, and Punjab have their own rules, amendments and recommendation on various labor based legislations.

Development Commissioner of SEZ

The SEZ Act 2005 makes the Development Commissioner the highest authority to ensure maintenance of labor laws. SEZ Act elaborates on the functions of the Development Commissioner to ensure speedy development of the Special Economic Zone and promotion of exports there from. Guiding the entrepreneurs for setting up of Units in the Special Economic Zone; at the same time to ensure and take suitable steps for effective promotion of exports from the Special Economic Zone; ensure proper co-ordination with the Central Government or state government departments concerned or agencies. Monitoring the performance of the SEZ units in a Special Economic Zone and perform other functions as may be assigned by the Central Government under SEZ Act. Singh (2009) says that the act of change in the implementing power within a SEZ enclave of labor laws from the Labor Commissioner usually in any industrial unit to the Development Commissioner generates a conflict of interest situation; there is an encouragement for the office not to privilege labor interests in relation to those of employers. But labor issues are also there to be dealt with.

Health Welfare Schemes

In effect what the SEZ Act has facilitated is a process of privatization of monitoring of labor rights, the labor and civil court does not have the jurisdiction to hear a dispute arising in the SEZs (ILO, 2012). For inspections that are mandatory in units outside SEZs, as per the Factories Act (1948) for the health and safety of workers, the Workmen's Compensation Act, and the ESI Act, the units in SEZs are permitted to obtain reports from accredited agencies notified by the state government. The ESI Act makes it mandatory for the employer to register his employees obtaining a certain level of salary under the ESI scheme. Workers covered under the ESI Act are entitled to sickness, maternity, and disablement benefits through ESI hospitals. By creating an accredited agency under the SEZ Act, the entire liability of the employer and the ESI Corporation is given a go-by as accredited agency has no binding force under the Factories Act and the ESI Act. Therefore, no legal action can be initiated against the company's owner for industrial accidents, occupational disease, or hazards (Iyer, 2008). Section 23 of the SEZ Act reduces the powers of the labor courts in SEZs.

Trade Union Act Being Amended

The Trade Union Act has also been amended, restricting the entry of union. Section 22 of the Trade Union Act, 1926, states thus: Proportion of office-bearers to be connected with the industry.—(1) Not less than one-half of the total number of the office-bearers of every

registered trade union in an unrecognized sector shall be persons actually engaged or employed in an industry with which the trade union is connected. Provided that the appropriate government may, by special or general order, declare that the provisions of this section shall not apply to any trade union or class of trade unions specified in the order (2) Save as otherwise provided in sub-section (1), all office-bearers of a registered trade union, except not more than one-third of the total number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the trade union is connected. So, essentially in a union, 50 per cent of the office bearers of the union can be people not working in the industry. This provision enabled the national trade union leadership to establish trade unions across various industries over the years. But in the case of SEZs, states (e.g., Uttar Pradesh) have claimed exemption from Section 22 of Trade Union Act, 1926, restricting/excluding outsiders from becoming office bearers of trade unions. The SEZ Act has exempted SEZ units from most of the labor laws and there is a prohibition on the formation of trade unions, as SEZ has been declared as public utility services under section 22 of Industrial Disputes Act, 1947. In Andhra Pradesh, the labor department has been dissuaded from conducting inspections in SEZs. Workers fear that those who protest will be immediately sacked. In the Noida EPZ, workers have been sacked for demanding that labor laws be implemented. Trade Union Act, 1926, and Industrial Disputes Act, 1948, legalize the right of workers to form union and bargain collectively, notwithstanding restrictions on certain employments including those in the government sector. However, in practice, SEZs restrict the right to organize.

Prohibition of Strikes & Lock-Outs

A major relaxation in labor laws in SEZ enclaves, as imposed by SEZ Act, is that the enclaves are declared as Public Utility Services. As earlier mentioned employees who are working in a public utility service are prohibited from striking, according to Section 22 of Industrial Disputes Act, 1947. They cannot go on a strike without giving a notice of strike within six weeks before striking. They cannot go on strike within fourteen days of providing the strike notice or during conciliation. Section 22 of the Industrial Disputes Act, 1947 states thus: No person employed in a public utility service shall go on strike in breach of contract— (a) without giving to the employer notice of strike, as herein- after provided, within six weeks before striking; or (b) within fourteen days of giving such notice; or (c) before the expiry of the date of strike specified in any such notice as aforesaid; or (d) during the pendency of any

conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Table 1: Trend & Pattern of Strikes in India since Economic Reforms

| Year | Number | | Person days Lost (million) | |
|-------------|---------|----------|----------------------------|----------|
| | Strikes | Lockouts | Strikes | Lockouts |
| 1990 | 528 | 403 | 10.6 | 13.5 |
| 2000 | 426 | 345 | 11.96 | 16.80 |
| 2003 | 255 | 297 | 3.21 | 27.05 |
| 2006 | 154 | 192 | 3.16 | 10.60 |
| 2010 | 262 | 168 | 5.12 | 8.18 |

Source: Labor bureau of India, GoI, 2013; Statistical yearbook India, 2012

Only 2% of all workers (9.57 million / 474 million) and 35% of ‘organized’ sector workers (9.57 million / 27.12 million) unionized (2008), yet the percentage unionization is waning because most new employment opportunities in the informal sector or non-regular are not being able to organize. As can be observed from Table 1 the declining trend and political influence are mainly due to loosening of ties with affiliating political parties. The ascendancy of ‘employer militancy’, is witnessed by the rising importance of ‘lockouts’ over ‘strikes’, within an overall decline in “industrial disputes”

Minimum Wages Act in SEZ

The SEZ Act has not mentioned anything about the applicability of the Minimum Wages Act within the SEZs premises. It does not define ‘minimum wage’ nor provide any guidelines for its quantification and calculation. It is up to the appropriate government authority to fix minimum wage rates in respect of employments specified in the schedule of the Act. It also requires the existing government to review and revise the minimum wage rates from time to time but not exceeding five years of interval. The government fixes the minimum wage in respect of those scheduled employments where the number of employees is 1,000 or more. The 15th Indian Labor Conference 1957 quantified the main components of minimum wage as: 1) A standard working-class family is three consumption units 2) Food requirements: Net intake of calories to be taken is 2,700 calories per day (as recommended by Dr Aykrod for an average Indian adult doing moderate activity). 3) Clothing requirements: Per-capita consumption of 18 yards per annum, whereby an average worker’s family of four would get a total of 72 yards 4) Housing requirements: rent corresponding to the minimum area provided for under the government, industrial housing scheme 5) Miscellaneous items of expenditure

such as fuel and lighting to constitute 20 per cent of the total minimum wage. Supreme Court, in the case of *Workmen of Reptakos Brett and Co Ltd vs. Management* (1991), added a sixth element to the criteria accepted in the 15th ILC for minimum wage – 25 per cent of the above for children's education, medical requirements, minimum recreations including festivals/ceremonies, and provisions for old age, marriage, etc. It is also important to note that more recently, based on this criterion, the Sixth Pay Commission of India decided that the minimum wage of a central government employee will not be less than Rs 10,000. However, there is no study being conducted so far to assess the applicability of these labor welfare measures in the SEZs. And the worse part has been the provision of self-certification (by employer) of compliance under the Minimum Wages Act. Madhya Pradesh has claimed exemption from Section 26 of the Payment of Wages Act, 1936, which elaborates on the display of rate of wages. The State government of Madhya Pradesh has also claimed exemption from the Employees Provident Fund Act, 1952, the Employees State Insurance Act, 1948 (in case the unit can provide an equivalent medical cover), and the Payment of Gratuity Act, 1972.

According to the policy framework for special economic zones in Andhra Pradesh, the labor framework for an SEZ includes exemption under Section 13 of Minimum Wages Act which fixes hours for normal work days. Also, Section 18 of the Minimum Wages Act is not applicable in SEZs, enabling employers not to keep any records of the working hours or records of the people employed in the units of the zone. The Maharashtra SEZ Policy exempts SEZs under the Factories Act, 1948, from Section 51 (weekly hours), Section 52 (weekly holidays), Section 54 (daily hours), and Section 56 (spread over). Provisions of the Factories Act, 1948, with regard to health and safety are undermined in the SEZs. All state governments in their legislations empower the factory inspector, who is authorized to conduct inspections in a factory to ensure compliance to the welfare legislation and safety norms, in the person/agency delegated by the Development Commissioner. The UP Government policy also states that "The Secretary, Industrial Development, Government of UP, shall have the authority to call for inspection by any external agency for the health and safety of workers of the units established in the Special Economic Zone premises."

Conclusion & Policy Implications

A reading of all the rhetoric and the formal statutory law in SEZ Act and associate law to it seems to suggest that there is a huge legal confrontation for labor legislation within and

outside the SEZs due to creation of conflicting provisions in labor law for SEZ. However, further reading of SEZ Act and government policy shows that the administration of labor governance and implementation in SEZs is oriented towards the non-implementation of the existing labor law and welfare measures. While it is a largely accepted fact that labor welfare measures are normally poorly implemented in India, and it is more so, evident from the fact that with all kind of relaxation and exemptions in relation to labor law leads to a conclusion that, the proposed labor legislation framework in SEZs has been purposefully structured to encourage the non-implementation of labor welfare laws and investment. With the SEZ Act in place, there has been a rush in the formation and development of new economic zones, which is likely to generate a large number of employment opportunities for potential manpower in the economy. Much of this will be a net addition to the labor market. These economic zones have been proven to be particularly favorable to female employment. Establishment of SEZs has opened up opportunities for wage based employment for women in the organized sector, thereby increasing their employability as well as improving their social position in the household and society. This is a significant role of zones because female employment is crucial for egalitarian and inclusive growth, but employment is highly feminized in the zones and that these women are young and prone to be exploited.

Thus the non-implementation mechanism is in tandem with the objectives that the establishment of SEZ will expand employment and wages in SEZs. Finally, it needs to be noted that SEZs are locations where the objective of employment opportunities to be achieved through 'labor flexibility' and 'reforming' labor laws. There is a definite case and requirement to reform the laws and welfare measures in a manner that both workers and employer interests are adequately protected through balanced laws that enable producers to be more flexible without compromising on general labor standard. This needs to be followed by the state and employers to ensure implementation of the laws.

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