

The Labour Code on Industrial Relations Bill 2015: Tough times ahead for labour in India

By Sharit Bhowmik

Headed by Prime Minister Narendra Modi, as of May 2014, the right-wing government has been in talks of increasing jobs by restricting workers' rights. The government has categorically stated that, in the past, too much protection was given to workers in the formal sector. Subsequently, this is the main hurdle for expanding employment. If job protection is removed, job creation (it was argued) will peak when the employers have the power of hiring and firing. In keeping with its objectives, the government has decided to amend and amalgamate the existing laws that provide protection to labour. The Factories Act has been redefined to exclude all manufacturing units that employ less than 40 workers. In other words, nearly 75% of factories in the country will be exempted from regulating working conditions. Similarly four acts relating to wages and bonuses have been merged in one code. However the approval of parliament will be required before they become laws.

The latest bill is the Labour Code on Industrial Relations that merges two major acts, namely, Industrial Disputes Act and Trade Unions Act into a code. This bill is likely to be introduced in parliament in the oncoming monsoon session (July-August 2015), unless the trade unions are able to thwart it. This bill has been opposed by all trade unions; including Bharatiya Mazdur Sangh (BMS) (Indian Labour Council). The BMS has the largest membership, around 8 million and among the existing 12 central federations, this union has close relations to the ruling party. The BMS has been very vocal in opposing this bill and has joined the alliance of other federations to oppose the anti-working class moves of the government. This bill has very serious effects on trade unions and the working class movement in the country. Though it deals with a gamut of activities, we will focus on its repercussion for trade unions and workers.

Strikes and lockouts

The chapter on Strikes and Lockouts (Chapter 5) starts with the presumption that they are illegal, mainly because the first section in the chapter (Section 71) is titled, "Prohibition of Strikes and Lockouts". In both cases, the

concerned parties must give the other side six weeks' notice before striking or having a lockout (or after 15 days of giving the notice). Moreover, there are conditions that both sides must follow before declaring a strike or lockout. It is indicated that there will be no strike or lockout when conciliation proceedings are in progress. Management cannot declare lockout when a strike is on. Similarly a strike cannot be declared during lockout.

Penalties for illegal strikes and lockouts

When examining the bill we find that the most important sections are those on penalties and fines. Chapter 12, Section 103 details the fines and penalties to be imposed for violating the provisions of this bill.

The penalties for illegal strikes and lockouts are the same but in both cases the workers bear the brunt. Sub-sections 14 to 17 of Section 103 deal with penalties for illegal strikes and lockouts. Out of the four sub-sections, only one covers punishment for lockouts. Sub-section 15 notes that "Any employer who commences, continues, or otherwise acts in furtherance of a lock-out that is illegal under this Code, shall be punished with a fine which shall not be less than rupees twenty thousand (US \$ 333) but which may be extended to rupees fifty thousand or with imprisonment of one month or both." However no relief is provided to the workers who are deprived of their wages during the duration of the lockout.

The punishment for an illegal strike is the same. In addition, Sub-section 14 says that all workers who participate in a strike that is declared illegal will get the same punishment (rupees 20,000 to 50,000 plus imprisonment of one month). The employer however is treated as one entity and will pay the penalties if the lockout is illegal. In other words there will be a single fine imposed on the company in case of an illegal lock out but there will be multiple fines on the workers if their strike is declared as illegal. Besides this, Sub-section 16 states that any person instigating or inciting others to take part in strikes will face the same

punishment. This has obvious reference to trade union leaders who are not workers in the industry.

Sub-section 17 states that the same nature of penalty will be imposed on any person who lends monetary support to an illegal strike or lockout. It is doubtful if monetary support will be provided to a company for helping an illegal lockout, but the same does not apply to workers and illegal strikes. The sub-section basically says that when workers are engaged in a strike that is declared illegal, they should not be provided any monetary or other support from outside. Let them starve! Would this include spouses, kinsfolk, friends and other workers who lend monetary support to striking workers? In letter the sub-section includes them.

Penalties on Trade Unions

The anti-worker/ union approach of the bill can be seen in another sub-section, namely Section 103, Sub-section 7. This relates to non-submission of returns to the Registrar by trade unions. This reads: "If default is made on the part of any registered trade union in giving any notice or sending any statement or other document as required by or under any provisions of this Code, *every office-bearer or other person bound by the rules of the trade union to give or send the same, or, if there is no such office bearer or person, every member of the executive of the trade union, shall be punished with a fine which shall not be less than rupees ten thousand but which may be extended to rupees fifty thousand.* The continuing default would attract an additional penalty of rupees one hundred per day so long as the default continues." (emphasis added).

The next sub-section (8), mentions that if any false entry is made in the returns submitted by a trade union or a rule is altered, the person will be fined rupees five thousand. Sub-section 9 states that any person who tries to deceive a member of a trade union by giving her/him false information or tries to convince workers that an unregistered trade union is registered will be punished by paying a fine up to rupees twenty five thousand. The bill does not specify what the term 'false information' means. This ambiguity can be another handle to kerb trade unions by branding any information provided by them as false information.

The above penalties relate to the section on filing returns of trade unions (Section 33). The offences are not very significant but the penalties imposed are disproportionately high. The prescribed fines are higher than the aver-

age monthly wage of a worker in formal employment and several times higher for those in informal employment.

In all cases involving workers, fines are imposed on individuals but in the case of lapses by the employer the fine is imposed on the collective entity. For example, Sub-section 8 imposes a fine on each member of the executive of a trade union; whereas in the case of the employer the fine is imposed on the company and not on each director or other officials. This shows the bias of the bill.

As mentioned earlier, all trade unions have opposed the bill. The central (national) trade unions met on 26 May 2015 in Delhi decided to have a nation-wide strike to protest against this bill. However, so far, the resistance from trade unions hover around registration of unions. Newspaper reports convey that trade unions have opposed the minimum number for registering a union. They have protested that having 10% membership or minimum of 100 members was too high and would restrict formation of unions in many industries. These are minor criticisms against the bill. If one looks at the chapter on registration of trade unions one will find that it is more or less similar to the existing rules and laws. The main problem lies in the stiff penalties imposed on trade unions and workers for violating even seemingly minor aberrations.

Trade unions in most countries are facing hostility from their respective governments. This is more so in developing countries that have adopted liberalisation and the market economy. The governments are backing private sector and corporates as the main means of developing their economies. The rights of labour on the other hand are trampled. All too often the demands of labour and trade unions, for decent working conditions, are viewed as impediments to development and economic growth. However, in India, under this new regime, has surpassed most of these countries by adopting an aggressive stand in depriving the working class of its rights by violating most of the ILO conventions. It will be seen during the next few months if trade unions are united in fighting this proposed anti-working class bill. Only a united and sustained working class movement can challenge the government's anti-working class decisions.

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