EXIM BANK: RESEARCH BRIEF

Comparison of Labour Laws: Select Countries

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There have been concerns about decline in India's exports and growing imports, leading to high trade deficit, and the resultant high current account deficit. One of the reasons for growing imports has been the low level of capacities in certain sectors of Indian manufacturing. For example, import of capital goods, electronics, transport equipment, chemicals and products, and metals and products, add up to US$ 130 bn, which is nearly two-thirds of India's total trade deficit, or one-and-half times of India's current account deficit. Capacity additions in these sectors are not in proportion to the growth in demand.

On the export front, India's exports are majorly low and medium-tech oriented, and only a small portion is hi-tech oriented. According to industry sources, our peer countries like China, Malaysia, Singapore and Thailand, enjoy either cost advantage (due to the large scale of manufacturing), or technology advantage (due to hi-tech manufacturing) in select product groups. In contrast, a majority of players in the manufacturing sector in India are largely MSMEs. This fact has also been articulated in the Economic Survey (2012-13) citing that Indian manufacturing sector has a presence of large number of small-scale units in most of the manufacturing sub-segments. The low level of large-scale investments in Indian manufacturing is one of the prime reasons for the sector's share remaining stagnant at 15% to 16% of GDP for several decades.

The ceiling on investment for SMEs has also been a major constraining factor in capacity additions in the manufacturing SMEs, and the resultant low-technology orientation. Both the above-mentioned constraints – small size and low technology orientation - are revealed to be adversely affecting the ability of the firms to respond to the challenges, thereby pulling down the relative competitiveness of Indian manufacturing, as compared to other countries.

Our analysis of comparison of factory employment in select countries using UNIDO data revealed that average number of workers in an Indian firm is low at 75, in comparison to China's 191 and Indonesia's 178. Per unit employment in India is low despite the fact that India's manufacturing base is largely labour intensive. While this data speaks about the situation in organized sector, average number of workers in unorganized enterprises is revealed to be at much lower level. While the average number of factory employment in India at 75 correlates to the applicability of Industrial Disputes (ID) Act (applicable to units employing over 100), large number of enterprises are estimated to be employing less than 10 workers, even in labour intensive manufacturing (Economic Survey 2013), which remains unexplained. Low level of average factory employment in developed economies such as Germany, UK, USA and France is self-indicative of the level of technology intensiveness in these economies, which is also in contrast to the stage of industrial development in India.

There are research studies that have cited that provisions of Indian labour laws could be one of the reasons for the enterprises remaining small in size. The Economic Survey 2012-13 has also opined that outdated labour laws could be one of the reasons responsible for small size of Indian enterprises. Inflexibility in Indian labour market has also been highlighted by the Global Competitiveness Report of World Economic Forum (WEF), which ranks India at 82nd position. Survey respondents of WEF have cited restrictive labour regulations in India as reasons for negative implications to the business environment. The respondents have also cited that the regulations on hiring and firing practices in India have been one of the reasons for low ranking in labour market efficiency.

Table 1: Factory Employment in Various Countries

Countries	No of Employees (thousands)	Per unit employment	Labour Force (thousands)	No. of employees in organized manufacturing as % of labour force
China	77195	190.5	795546	9.70
Indonesia	4345.2	177.6	118023	3.68
Tanzania	107.1	157.5	21520	0.49
Malaysia*	2568.7	79.0	11549	22.24
India	10847.9	74.6	470737	2.30
Russia*	8118.3	44.4	76162	10.65
Germany*	6938.6	35.5	42698	16.25
USA*	12990	30.2	159266	8.15
UK*	2726	20.7	32066	8.50
France*	3082.2	14.6	29000	10.65

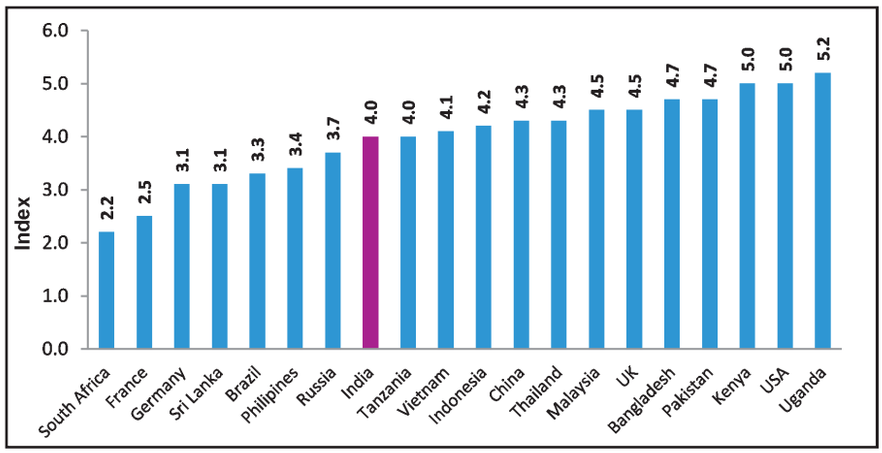
Source: UNIDO International Yearbook on Industrial Statistics 2012
* Note: Per unit factory employment is low for these countries due to technology orientation of manufacturing.

Against this background, this Study has undertaken a comparative analysis of labour laws in 20 countries under 15 broad parameters. The countries analysed for comparison and the parameters studied are given in **Table 2 and Table 3**, respectively.

More than 80 reference materials have been sourced to analyse the information and data to compare these parameters. Besides the reports brought out by the International Labour Organisation comparing some of the parameters, information has also been sourced from country level reports / studies on labour regulations, and nearly 40 statutes of select analysed countries. The list of such references is given as Annexure in the main report.

An analysis of these reference studies and statutes of the identified countries reveals that at a macro level, the degree of intent of labour protection is similar in most countries and not very different from that of India. However, the distinguishing feature is that the administrative processes which are framed under Indian labour statutes are obscure hindering flexibility in labour market. These are also discussed below:

Hiring and Firing Practices



Note: 1 = impeded by regulations and 7 = flexibly determined by employers
Source: The Global Competitiveness Report 2012-2013

Trade Unions Act (1926)

India's Trade Union Act (1926) stipulates that any seven or more members can form a trade union and apply for registration as trade union. This clause has been partially amended to avoid cropping up of multiple trade unions in an establishment. With the amendment, no trade union shall be registered in India unless at least ten percent or one hundred of the workmen, whichever is less, in an establishment are registered as members of such trade union. Further, the amendment states that no trade union shall be registered unless it has a minimum membership of seven persons. These provisions allow formation of at least ten unions in an establishment with a size of 70 workers, and upwards of ten unions if the size exceeds 1100 workers. Existence of multiple trade unions in an establishment results in union rivalry, thereby affecting industrial harmony.

In comparison, in Bangladesh, which has reformed its labour laws in 2006, a minimum membership of 30 percent of workers is required to form a trade union. In Sri Lanka, the Ordinance to provide for the Registration and Control of Trade Unions (1935) permit formation of trade unions with a minimum membership of 7 workers. However, the Industrial Disputes Act, which was amended in 1999, stipulates that at least 40 percent of the workers on whose behalf the trade union seeks to bargain with the employer should be members of such trade union. This condition demands that although several Trade Unions could be formed in an establishment, only the union with a minimum of 40% of the workers can engage in collective bargaining. Pakistan, which has amended its Industrial Relations Act in 2012, stipulates that atleast 20% of workman should be members of a Union to be entitled for the Union to be registered. However, when it comes to collective bargaining, the Act stipulates that the Union with at least one-third of workers employed in an establishment will be eligible to be the collective bargaining agent.

Table 2: Countries Analysed

Asia	Europe	Latin America	North America	Africa
Bangladesh, China, India, Indonesia, Malaysia, Pakistan, Philippines, Sri Lanka, Thailand, and Vietnam	France, Germany, Russia, and UK	Brazil	USA	Kenya, South Africa, Tanzania and Uganda

Table 3: Parameters Studied

Broad headings	Parameters for comparison
Collective Bargaining and Settlement of Industrial Disputes	• *Regulations on collective bargaining and settlement of industrial disputes*
Conditions of Employment: Contract	• *Fixed-term contracts prohibited for permanent tasks* • *Maximum length of a single fixed-term contract (months)* • *Maximum length of fixed-term contracts, including renewals (months)*
Employment Security: Termination	• *Termination of employment not at the initiative of the employer* • *Termination of employee by the employer* • *Notice and prior procedural safeguards* • *Severance pay* • *Collective dismissals*
Comparisons on Conditions of Work Hours/Leave	• *Standard workday in manufacturing (hours)* • *Minimum daily rest required by law (hours)* • *Maximum working days per week* • *Maximum overtime limit* • *Premium for overtime work over and above the normal pay* • *Paid annual leaves for employees*

As per the Trade Unions Act (1959) of Malaysia, multiple unions can be formed initially, but the Director General of Trade Unions appointed for registration of trade unions has powers to cancel the certificate of registration of all trade unions except the one that holds majority workmen in the said establishment. The Director General can also issue an order requiring all trade unions other than the trade union which has the largest number of workmen, to remove their members from the membership register, facilitating formation of a single union.

The UK, from whom we have drawn our legal framework, stipulates a minimum of 21 workers to be as members of a trade union to be recognized by the employer eligible for collective bargaining, though the Act does not explicitly state the minimum number of workmen to form a trade union. In countries such as Kenya and Russia, though there could be multiple labour unions, only the single largest union is empowered to engage in collective bargaining. In countries such as China, Malaysia, Vietnam and Uganda, only national centric trade unions can engage in collective bargaining.

With the apprehension of cropping up of multiple trade unions, Indian entrepreneurs especially in the unorganized sector, limit their size of operations and resort to engaging informal employment.

The Indian Trade Union Act was enacted in the colonial period, during which our focus on the industrial development was different from what is being propagated now. Most of our peers have modified the statutes to suit the changing conditions. India also needs to modify its regulations to match with its requirements, and with what peer group countries have done.

Contract Labour (Regulation and Abolition) Act (1970)

Research studies have opined that contract labour is becoming the prominent form of employment in various economies including India. However, in developed countries, contract employment is the preferred course for both employers as well as employees. In fact, enterprises in several countries practice contract employment to retain talent. Workers, especially the skilled ones, also find contract employment with better perquisites beneficial to them.

Comparative analysis of contract labour regulations revealed that countries such as Bangladesh, Indonesia, Pakistan, the Philippines and Thailand prohibit engagement of contract workers for permanent tasks. Countries such as India, China, Malaysia and Sri Lanka permit engagement of contract workers for permanent tasks.

Although Indian regulations allow engagement of contract workers for permanent tasks, central and state governments can notify prohibition of contract workers in any industry or even in a single establishment. In addition, inspection and administrative hurdles make the enterprises taking the course of informal employment. Besides, central or state governments can also impose ban on fresh recruitment of permanent workers where contract workers are engaged.

In general, industrially active countries are encouraging contract form of employment to retain talent, while contract workers are not widely prevalent in industrially weak economies. With moderate level of industrial development and contract labour regulations, most of the employed workforce in India is in the informal sector. The Working Group on Labour Laws for the Twelfth Five Year Plan has highlighted that about 96 percent of the employed workforce is in the informal sector. Research studies undertaken by institutions such as Institute of Applied Manpower Research, Institute for Social and Economic Change, Working Group Report of Planning Commission, infer that the provisions of Indian contract labour regulations are regressive to employment growth in the formal sector.

India needs to encourage contract employment, with adequate safeguard measures, including provision of social security measures; this would generate formal employment in the manufacturing sector. Contract employment with higher compensation package, than the normal employment, could also be encouraged to bring in talent. This has been the practice in developed nations, in several professional streams.

Industrial Disputes Act (1947)

Termination of employment by the employer is one of the most sensitive issues in labour laws today. Research studies undertaken by organisations such as Rajiv Gandhi Institute for Contemporary Studies, New Delhi; Delhi School of Economics; and Planning Commission, Government of India; have opined that strict regulations with regard to closure of a unit or retrenchment of workers are hampering the ability of an enterprise to respond to the changing business dynamics. Studies have also cited this situation as one of the reasons for high informal employment in India. It is argued that since permission is difficult to obtain for closure of a unit or termination of employees, employers are reluctant to hire workers (even in temporary or on contractual basis) whom they cannot easily layoff; labour regulations, thus, with the intention of protecting the workers in the organized sector, are unintentionally preventing the expansion of industrial employment that could benefit the mass of workers.

This study compared and analysed this feature and found that enterprises in India, who have employed more than 100 workers[1] are covered under the ID Act, are required to undertake prior consultations, notify to the public administration as well as to the workers' representatives, and get the approval from the public administration (for which consent of workers' representation may be required), before undertaking collective dismissal.

As per Section 25 N (2) of the Industrial Disputes Act, 1947, an application for permission has to be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of this application has to be served simultaneously to the workmen. The Appropriate Government then hears both the sides – employer and workmen – and based on this may grant permission for retrenchment as outlined under Section 25 N (3) of ID Act. As per Section 25 N (4), if the Government does not refuse to grant permission to the retrenchment application within 60 days from the date of application, the permission applied for, shall deemed to have been granted on the expiration of the said period of 60 days. Since retrenchment is a sensitive issue, the consent of workmen, thus, becomes an important factor for the application to get a favourable decision, though it is not mandated by the Act. Besides, enterprises in India have obligations to consider alternatives prior to considering dismissal.

Of the 20 countries analysed in this Study:

- only two countries (Pakistan and Sri Lanka) along with India require approval by public administration; and
- only Vietnam along with India require consent of workers representatives prior to collective dismissal.

[1]The ID Act was amended in 1953 and introduced Chapter V-A to regulate lay-off, retrenchment, transfer and closure of industrial undertaking with less than 50 workers in the preceding calendar month. Further in 1976, when chapter V-B was added, the threshold limit was increased to 300 or more workmen. It was reduced to 100 by the amendment in 1982.

Table 4: Labour Laws Provisions Related to Consultations and Notifications Prior to Collective Dismissal: Comparison in Select Countries

Country	Prior consultat-ions with trade unions required	Notification to the public administr-ation required	Notification to the workers' represen-tative required	Approval by public admini-stration or judicial bodies required	Consent of workers' represent-atives required	Employers obligations to consider alternatives to dismissal required
ASIA						
Bangladesh	No	Yes	Yes	No	No	No
China	Yes	Yes	Yes	No	No	Yes
India	Yes	Yes	Yes	Yes	Yes*	Yes
Indonesia	Yes	No	Yes	No	No	Yes
Pakistan	-	-	Yes	Yes	-	-
Philippines	No	Yes	No	No	No	No
Malaysia	No	Yes	No	No	No	No
Sri Lanka	No	Yes	No	Yes	No	No
Thailand	No	Yes	No	No	No	No
Vietnam	Yes	Yes	Yes	No	Yes	Yes
EUROPE						
France	Yes	Yes	Yes	No	No	Yes
Germany	Yes	Yes	Yes	No	No	Yes
Russia	Yes	Yes	Yes	No	No	Yes
UK	Yes	Yes	Yes	No	No	Yes
NORTH AMERICA						
USA	No	Yes	Yes	No	No	No
AFRICA						
South Africa	Yes	No	Yes	No	No	Yes
Tanzania	Yes	No	Yes	No	No	Yes
Uganda	No	Yes	Yes	No	No	No

Source: International Labour Organisation; Industrial Disputes Act for India (1947) for India; Exim Research

* Section 25N of ID Act states that the appropriate Government or the Specified Authority may grant or refuse permission after giving a reasonable opportunity of being heard to the employer, the workmen, and the persons interested in such retrenchment, which implies that without the consent of the Workers' Union it would be difficult to get the permission granted.

Besides, enterprises in India have obligations to consider alternatives prior to considering dismissal. Thus, India is the only country in which the procedures mandate fulfillment of all requirements prior to collective dismissal. Even countries such as Bangladesh (manufacturing-GDP ratio 18%), Philippines (21%), and Malaysia (24%), which have restrictive labour regulations, do not have requirements of prior consultations and approval by trade unions. In these countries, employers also do not have obligations to consider alternatives to dismissal.

Another major challenge with dispute settlement in India is the time taken to resolve labour disputes. The process of conciliation is invariably time consuming. For example, while in India, workers can take conciliation at four levels prior to arbitration, in Indonesia and USA, there is only one level of mediation, which helps in reducing the time to resolve disputes. Though we do not have details on dispute resolution mechanism for other countries, informal reports indicate that in most of the countries, the conciliation levels are either one or two.

In Sum

While the labour regulations in India are made with the objective of protecting the interests of employees, they give a sense of neglecting the interests of employers who are investors. To cite an example, no employer would be interested in laying-off productive employees in a profitably running business. The employers, in such a situation, would like to adopt competitive practices to retain talent. Our analyses, thus, reveal that labour related statutes in India are claimed to be often well above the spirit with which the statutes were enacted.

While there could be several other reasons, such as infrastructural bottlenecks, low ranking in doing business index etc, inflexible labour market regulations also are believed to be hindering large-scale investments, technology absorption, productivity enhancement and high employment growth in Indian manufacturing. Inflexible labour market could also be one of the reasons for the share of manufacturing in Gross Domestic Capital Formation (GDCF) hovering around 30% since 1970s, and growth in share of services sector in GDCF from 39% in 1970 to 51% in 2010.

This fact has been realized by some of the Indian states, which have made the labour-related administrative regulations investor-friendly, as has been reported by TeamLease (a HR Consultancy & Services company). Such states have also progressed well in crucial economic parameters. Based on the ranking of States by TeamLease and the analysis of select parameters, it could be inferred that States like Maharashtra, Andhra Pradesh, Karnataka, Gujarat, Madhya Pradesh and Tamil Nadu scored well in the labour law reform index, as also progressed in industrial development, as compared to States like Uttar Pradesh, Assam, Bihar, Jammu & Kashmir and West Bengal, which are ranked low in the index.

With favourable demographic dividend, India needs to align its policies to match with those of our competitors so that the implications of FTAs/PTAs that have been signed or intended to be signed are favourable to Indian business. Indian manufacturing sector would be in a position to attract large-scale investments, contributing to industrialization, export development and economic growth of the country.

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