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Globalisation – changing the face of the Indian labour scenario

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The advent of globalisation and the attendant liberalisation of the Indian economy have had a profound effect on the labour jurisprudence in India. Labour law in India is both unique and diverse, with a plethora of laws. In the Indian tradition, labour has been rightly revered as *Vishwakarma* – Architect of the Universe.

The last few years have witnessed many advancements in labour and employment practices in India, especially in the fields of trade unions, telecommuting and contract labour regulation among others. The growth and development of trade unions has been a major factor in changing the labour scenario and the trade union movement has leapfrogged from the periphery to the centre-stage in a remarkable manner thereby affecting the decision-making of potential investors. Similarly, the telecommuting practice, even though in its embryonic stage in India, has been rapidly gaining momentum and is definitely an example of adaptation of the ‘best from the west’. While some feel that there is still a long way to go before telecommuting is widely accepted, others believe that it has the potential of altering the pattern of urbanisation in India.

This article explores the evolution, trends and some learnings on the subjects of trade unions and teleworking in India.

Trade unions – proceed with caution

Emerging trends of the trade union movement in India

In India, trade unionism is over a century old. Although Mahatma Gandhi advocated trusteeship based trade unionism, it did not emerge that way in India – where the twin aspects of the Indian trade union movement, labour organisations for industrial bargaining and its ideological orientation, are heavily patronised by the political parties.

The first four decades in the post-independence pre-liberalisation period were marked by a social cohesion between the state and the trade unions to improve the conditions of the working class. The arm of the state was in favour of the working class.

However, the economic reform process has led to a pro-management environment, weakening the labour class. The manifestation of this new ideology can be observed in a number of ways:

The growth and development of trade unions has been a major factor in changing the labour scenario and the trade union movement has leapfrogged from the periphery to the centre-stage in a remarkable manner

- The judiciary has been pronouncing judgments hauling labour over the coals on the one hand and baptising the employer's 'hire and fire' policy on the other. The Supreme Court, in an epoch-making judgement, declared that government employees have "no fundamental, legal, moral or equitable right to go on strike". In 2001, the judiciary also reversed its own judgment on contract labour absorption in the case of Steel Authority of India Limited & Ors. v. National Union Water Front Workers & Ors.
- No effort has been made to foster any federation of unions to put up a joint front and demonstrate solidarity. Various central level unions have been pulling in different directions to suit the interests of their respective political parties. Moreover, to extend cooperation to the state when their affiliate political party is in power and have an attitude of confrontation when a rival political party is in power, has created the impression that political affiliations rather than genuine response on labour issues is the touchstone of cooperation or confrontation. Also, the instances of treachery by many union leaders are not unknown.

Based on a careful analysis... one finds several indications of common mistakes committed by companies and lessons that could be learned by them for running smooth and successful operations in India

- Employer militancy has increased in the form of lockouts, retrenchments and closures leading to shrinkage of employment in the organised sector. The share of the organised sector has declined to 6% and that of the unorganised/ informal sector has risen to 94%. The Eleventh Plan Approach Paper states: "The wage share in our organised industrial sector has halved after the 1980s and is now among the lowest in the world. One reason for this is increasing capital intensity in organised sector, another is outsourcing."
- A lot of management do not understand the real causes behind workers going on strike. In addition to reasons of trust deficit, and factoring in the interests of the workers, some management also believe in paying off unions without realising that this could cause damage to them through blackmailing.
- The state labour department does not interfere in industrial conflicts as much as it should. Further, India has ratified only 43 of the 188 ILO conventions and only four out of eight core conventions.
- More disquieting is the new avatar that labour protests have been taking in India. Labour unrest, besides strikes and lockouts, includes marches to the parliament, public interest litigations, *dharnas*, fasting and absenteeism.

Change in trend - rise in disputes

From the above, it emerges that the importance of trade unions in India descended because of negativities associated with them; but of late their activities are again gaining momentum not only in manufacturing industries but also in the service sector. The last few years have seen a sharp surge in worker protests in multinationals, especially in Gurgaon and Manesar (near Delhi), the home of the automobile industry.

The recent case at Maruti Suzuki (2011) serves as an eye opener where both tragedy and mockery occurred within the space of a few days. The tragedy was withdrawal of the strike by workers without their demands being met, and the mockery being that the union leaders were paid off by the management under the garb of a golden handshake.

In 2005, a dispute broke out at Honda Motorcycles on issues involving the recognition of trade unions and demand for an increase in wages resulting in a violent strike by agitated workers. At times the protests take brutal forms. In 2008, workers in Graziano Transmission attacked the CEO of the company, and he eventually succumbed to his injuries. In 2009, workers of Pricol brutally murdered the company's vice president. And the dispute at Rico Auto witnessed the death of a worker and 30 others being injured leading to a major backlash from striking workers.

Pilots of Jet Airways went on a strike on separate occasions in 2009. More recently, over 200 agitated Air India pilots went on strike demanding reinstatement of their sacked colleagues, re-recognition of their union (Indian Pilots Guild) and deliberation on issues concerning their career progression. As of May 31 2012, the strike is still ongoing and the workers have not budged from their stand despite the strike being declared illegal by the Delhi High Court.

These labour unrests depict that suppression and the autocracy of the state and the management have not been able to contain the might of the workers. The various forms of labour protests are classic examples of the revolutionary struggle of the proletariat against capitalism, and management cannot wish the trade unions away.

Causes and learnings

Based on a careful analysis of the above and our experience on the subject, one finds several indications of common mistakes committed by companies and lessons that could be learned by them for running smooth and successful operations in India.

Causes:

- Problems relating to managerial styles – summary suspensions and dismissals, pay cuts, poor working conditions, intolerance of any interference in their plans, insistence on written undertakings of good conduct, poor understanding of IR, and demonstrations of insensitivity to workers' sentiments. There are several examples of pseudo-participative systems where committees are formed but workers have little or no influence on decision-making.
- Inability on the part of multinationals to handle conflicts bilaterally, and taking recourse to the state administrative

machinery – multinationals are taking advantage of states' support for industrialisation and suppression of unions, but such recourse is also inviting politicisation. Multinationals have shown considerable interest in the use of contract and casual labour, the payment of significantly lower wages for some sections of labour, and the proneness of state governments to overlook many aspects of labour rights in the interests of investment.

- Increasing demand from the industry to reform labour legislation to increase efficiency and competitiveness of Indian workers to face global competition.

Learnings:

Companies may consider:

- coming out of the traditional mode of distrust and conflict which has been ruling the roost of employer-trade union relationship for too long, and forge partnerships with trade unions and workers;
- undertaking training programmes for building awareness of rights, duties and liabilities among the workers;
- implementing the legally stipulated measures of safety, health and welfare and refuse to bribe corrupt inspectors;
- constituting audit teams and employee committees to inspect and suggest means of improvement at the workplace;
- avoiding exposure of their political leanings to its workers;
- training supervisors to effectively communicate and deal with employee issues as they are on the frontline.

Teleworking: the road ahead?

In an age where companies are adopting new means and measures to woo their employees, developments in information technology have made it possible to delocalise work and advance the practice of telecommuting. So far, teleworking remains in its nascent stages in India but is expected to radically grow in the future.

Teleworking, which was until recently an option for employees with medical predicaments, pregnant women, and employees on tour frequently, for example, is now being adopted by others as well. Presently, teleworking is particularly popular with IT companies, outsourcing companies, call centres, medical transcription companies and freelancers. However, companies in other sectors are also experimenting with teleworking as a means of reducing real estate costs and overheads, as a retention tool for women employees, and to provide employees with a better work-life balance.

Teleworking and unions

Teleworking raises several labour and employment concerns. While these can be addressed by trade unions where employees work at the office site, unions are not so helpful for teleworking employees. Trade unions are principally formed to give a collective voice to employees working together at a defined site. When employees work alone from home or away from the office, the influence of unions is significantly reduced. Since the practice of teleworking is just beginning to pick up in India, it will be sometime before

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Namita Chadha is the founder partner of Chadha & Co. She is a lawyer with 19 years of experience in corporate and commercial law. She advises Fortune 500 companies, foreign SMEs and family-owned businesses on their India entry and on a diverse range of legal, regulatory, compliance and corporate governance issues relating to their Indian businesses.



Chadha & Co advises international corporations on their India entry strategy, structuring their entry, establishing Indian operations, and on legal and regulatory issues while they conduct their operations in the country. The firm has expertise in the areas of inbound investment, joint ventures, technology transfer and licensing, legal due diligence, mergers and acquisitions, project finance, corporate finance, direct and indirect taxation, labour and employment matters, international trade, information technology and outsourcing, intellectual property, real estate, corporate governance and legal and regulatory compliance. The firm also has a competent and effective dispute resolution team that handles court work as well as arbitration.

Previously, Namita Chadha served as general counsel, chief compliance officer and ombudsperson for a wholly-owned subsidiary of GE Industrial Systems in India on a non-exclusive retainer basis. She was a member of the company's India management team. During this stint, she worked extensively and closely with the Asia-Pacific and US legal team of GE counsels and compliance managers to develop general legal initiatives, improve legal work productivity, implement legal function goals and objectives, and best practice identification and sharing.

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trade unions learn to effectively address the issues and concerns of teleworkers.

Legislation and policies

While the concept of teleworking is gaining momentum in India, there is no specific or general legislation governing the same. While central and state laws are applicable to companies and employees working from home, teleworking raises new and unique issues not covered by the existing laws.

Labour laws with regard to working hours, wages, and employment benefits in India, for example, are complex. Different states have their own labour laws, which raise jurisdictional issues in teleworking. One important piece of legislation is the Shops and Establishments Act, which governs the benefit and relief that employees are entitled to. When employers and employees work in different states, there is ambiguity as to which state's labour laws would be applicable to them.

Some other legal concerns that may arise in teleworking include those pertaining to access to company information and data security, liability for job-related accidents, working conditions, and taxation issues.

In order to tackle concerns regarding company information, employers should incorporate provisions for confidentiality and data protection in employment contracts as not only is there the threat of data theft, but also of misuse of data which may lead to a third party claiming against the employer.

As regards liability for work related accidents and injuries, companies face challenges in ensuring that their teleworking employees comply with the requisite safety regulations as laid down for the

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workplace both by law and by the company. In teleworking, home is seen as an extension of the workplace and thus employers may be held liable for any accidents that the employee may suffer during the course of his work at his home.

Organisations that have adopted this practice have laid down

specific guidelines, formulated policies and entered into employment contracts with teleworking employees. Companies like Microsoft, Accenture and IBM have adopted the practice worldwide and are encouraging the same at their Indian offices as well. Indian companies like Wipro and Infosys, for example, also allow teleworking.

India has embarked upon an experimental journey in teleworking that has both risks and benefits. It will still take a while for Indian employers and employees to embrace this concept, and for the government to enact specific legislation to govern teleworking.

Conclusion

Although globalisation exacerbates the disintegration of labour in several ways, it breeds commonalities in the experience as well as aspirations of the working class worldwide, and imparts the concept of transnational labour solidarity with a new urgency. Globalisation has not only metamorphosed the Indian IR scenario, despite inertia to change archaic labour laws, but has also initiated a myriad of challenges and opportunities in the labour sector. Clearly the onus now rests upon both management and workers to replace coercion and confrontation with cooperation and consensus which has made, and will further make, India a preferred destination for investors. Therefore, the panacea for the ills that are affecting Indian industry is to radically amend the existing labour laws, provide greater flexibility to labour as well as management, strengthen worker-management relations and adopt innovative work concepts.