
**Labour Law Reforms: Issues and Challenges for Indian
Apparel Export Industry**

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Objective of the Study

This survey was undertaken in order to bring out the opinions and understanding of Indian apparel exporters on labour law reforms. The study is intended to present these exporters' views and changes wanted by them in the labour laws in the context of globalization and growing international competition. The opinions and changes (amendments in the law) expressed in the survey report are solely of the apparel exporters and CSRWorld is in no way endorsing or opposing these opinions.

1. Brief History of Indian Labour Laws

Indian Labour Law is not one legislation. It is a cluster of legislations enacted and amended by the government from time to time, covering the range of issues relating to labour and employment, satisfaction and job security to the labour and to check exploitation and oppression by the employer is the essence of all these enactments.

The beginning of labour laws in India can be traced back to the 1850's when the apprentices Act was placed on the statute book, followed by Fatal Accidents Act, 1855, Factories Act, Mines Act and a series of labour legislations. The history dates back to the colonial period of British rule. The history of Indian legislation is different from other nations in the sense that it was moulded out of and affected by the British rule and legislation. After independence most of the Acts have been fine tuned to ratify various ILO conventions. Therefore India has been a front-runner in terms of forming protective governance for labour. In all, over hundred labour laws have been enacted by the Central and State Governments, many of which have been almost totally modified or even repealed or replaced.

Among the plethora of modern labour laws, the Workmen's Compensation Act, 1923 is the oldest one. Some of the other significant labour legislations are the Trade Unions Act, 1926; the Payment of Wages, 1948; the Factories Act, 1948; the Employees' State Insurance Act, 1948; the Employees' Provident Fund and Miscellaneous Provisions Act, 1952; the Payment of Bonus Act, 1965 and the

Payment of Gratuity Act, 1972. These Acts have been changed and amended from time to time to adapt to contemporary issues.

2. Labour Law Reforms (LLR) in India: A Decade of Turmoil

In 1991, the government of India introduced economic reforms in the wake of globalization making Indian economy open to the global competition. While reforms in many other critical competitiveness-enhancing areas like infrastructure, financial sector and taxation were undertaken, labour legislations were left untouched. Indian corporations demanded reforms in labour laws so that the Indian industry is made more competitive through introducing changes in the existing legal provisions. However, this demand was strongly opposed by the trade unions and workers. In addition, politicians have always been evasive on the subject of changes in labour laws as the vote bank politics can have negative impact if they tilt too much towards the right wing.

With the talks of 'second generation economic reforms', the talk about labour law reforms has emerged again. The deregulation of labour market has been thought as an important component for effective economic reforms and privatization agenda. The debate on whether the aims of poverty alleviation, creation of employment and ensuring social justice will be met by labour law reforms or not, is still on. Recently, while this survey was being conducted, the second National Labour Commission and the group of ministers on Labour submitted a 1470 page report giving positive signal to the demands of Indian business. This development suggests that Indian labour market is definitely heading towards the deregulation path.

This report examines the agenda of the Indian apparel export industry for labour law reforms.

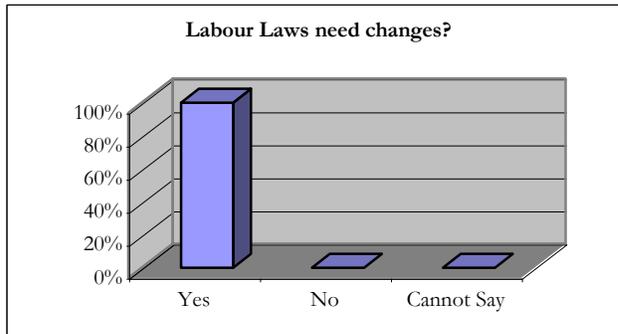
3. Introduction: Apparel Export Industry and its stake in LLR

Competitiveness in the Global Market

Exporters are the main stakeholders in Labour Law Reforms, as they have to compete in an international market. Indian apparel exporters face competition from countries like China where the labour laws are relaxed in terms of hire and fire. There might be other reasons also for low-cost production in China (like higher productivity) but Indian exporters are mainly concerned about

changes in labour laws in order to become more competitive in global competition. Indian exporters' perception is that Chinese labour law is pro-employer.

Labour Intensive Industry



Since the apparel export industry is labour intensive, the impact of any change in regulations or legislation governing labour is direct in terms of cost of production. According to the survey, 100% exporters expressed that the current labour laws need changes.

Nature of the Apparel Export Industry

The nature of the industry is another factor for their increased demand in changing the present labour laws. The industry has order-oriented production with tight lead time which makes legal compliance almost impossible in many situations like following overtime provisions of the Factories Act. Also, with the system of contract labour and piece rate work makes the export industry more complicated.

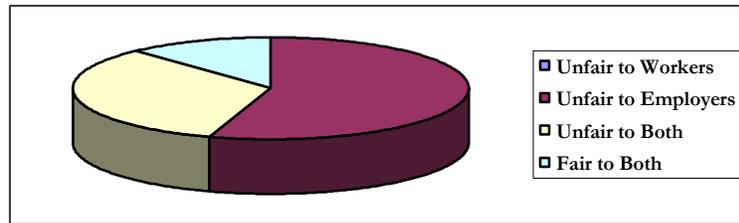
International Pressure for Legal Compliance

Additionally, the current situation is that many international buyers of these exporters demand legal compliance in their factories. Social Compliance programs of the buyers are getting stringent and their basic component is implementation of labour law provisions in the factories from where they source their merchandise. Therefore, relaxed legal provisions will make it easier for exporters to be socially compliant.

Corruption and Bribery

Corruption and bribery are prevalent in the government departments. It is quite common to find labour inspectors from different departments on the payrolls of exporters while they conduct routine visits to the factories.

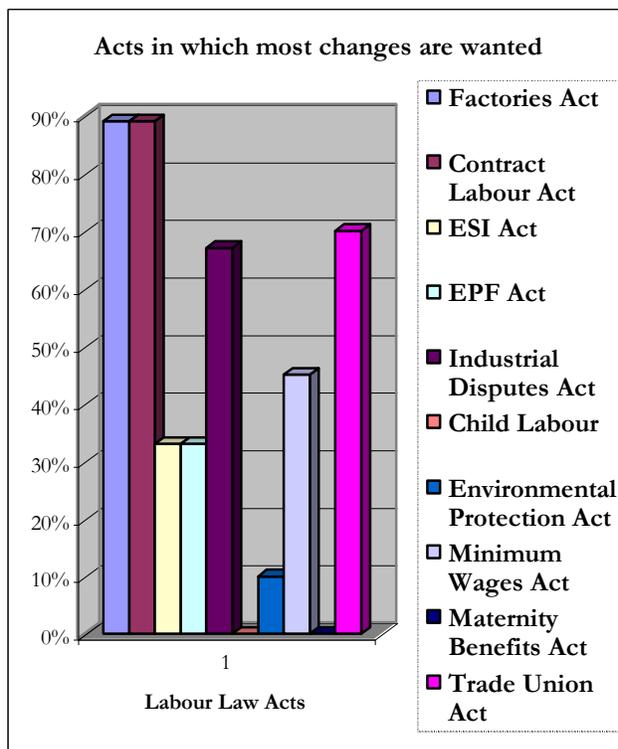
Hence, for exporters, relaxation of some key legal provisions governing labour is seen as a progressive step towards competitiveness. According to them, labour law reforms will help them to benchmark with best international norms and improve competitiveness.



The survey also shows that 55% exporters think that the current labour legislation is unfair to the employers. 34% think that it is unfair to employer as well as employee and only 11% think that it is fair to both. Exporters feel that their point of view is not taken into consideration.

4. Five most wanted amendments in Indian Labour Laws

In the opinion of Indian exporters, the most wanted changes are in **Factories Act 1948, Contract Labour Act 1970, Trade Union Act 1926, Industrial Dispute Act 1947 and Minimum Wages Act 1948** in the decreasing order.



Factories Act 1948

The main objectives of Factories Act are (i) to regulate working conditions in factories, and (ii) to ensure that basic minimum requirements for the safety, health and welfare of the factory workers are provided. Besides, the Act envisages to regulate the working hours, leave, holidays, overtime, employment of children, women and young persons, etc.

The Act was drastically amended in 1987 whereby safeguards against use and handling of hazardous substance and procedures for setting up hazardous

industries were laid down.

The main concern of exporters is the overtime provision in Factories Act. Many respondents suggest that the Overtime limit should be changed. According to them, keeping in view the present techniques and working environment, which induces less fatigue in the workman, the limitation of monthly overtime should be extended from the present limit of 16 hours. The other distress of exporters in the Factories Act is the interference of labour authorities in their day-to-day work. According to the survey Labour/Health/ESI/PF inspectors should not visit factories every quarter/ Month and the regulatory body should adopt an advisory role in giving information on following and implementing labour laws/ Factories Act. Moreover, the penalties imposed on the establishments in case of non-compliance to the statutes specifically under Factories Act 1948, are heavy and should be reconsidered.

Contract Labour (Regulation and Abolition) Act 1970

A person is said to be employed as contract labour, in or in connection with the work of an establishment, when he is hired for such work by or through a contractor, with or without the knowledge of the principal employer.

The Contract Labour (Regulation & Abolition) Act of 1970, aims at regulating employment of contract labour so as to place it at par with labour employed directly, with regard to working conditions and certain other benefits available under labour laws. The Act empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment keeping in view (i) the conditions of work and benefits provided for the contract labour in that establishment, (ii) whether the process, operation of other work is incidental to or necessary for the work of that establishment and (iii) whether it is of perennial nature.

The survey shows that the exporters want provisions under the Contract Labour Act 1970 to be flexible to accommodate hire and fire. According to the responses:

- The Contract Labour Act does not make any distinction between job contracting and labour contracting.
- Only contractors should be responsible for the worker, without involvement of principle employer.
- Employee State Insurance and Employee Provident Fund should be either optional or should be scrapped entirely for contract labourers.

- Registration and license for contractor should not be required under the law.
- Engagement of Contract Labour should be permitted in all area.

Trade Unions Act 1926

The Trade Unions Act, 1926, provides registration of trade unions (including association of employers) with a view to render lawful organisation of labour to enable collective bargaining. The Act also confers on a registered trade union certain protection and privileges.

Many exporters think that trade union and its role in the export industry should be finished. The following responses show the attitude and demands of exporters regarding the Trade Union Act 1926:

- Section 17: Union officers and members must not be exempted from criminal liability since trade union activities many times causes harassment of the employer.
- Before raising a dispute, union must ensure that 51% workers of the establishment are members of the union.
- Trade Unions should be discouraged from entering the garment export industry through provisions of the law.
- Section 4: Specifies the mode of registration of trade union (any seven or more members of a Trade Union may be subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act), should not be applicable for export units. If applicable, then consent must be of more than 75% of the total strength of the workforce.

Industrial Dispute Act 1947

The Industrial Disputes Act, 1947, was enacted to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations instead of by trial of strength through strikes and lockouts. This legislation is calculated to ensure social justice to both employers and employees and thereby promote industrial progress.

The state of Industrial Relations is reflected by the amendments exporters want in the Industrial Disputes Act 1947. The major changes suggested in this act are:

- Section 9A¹ (Schedule IV Item 10²) should be changed.
- Section 25K³ and 25M (Section prohibiting lay-offs) should be changed.
- Section 25N (Section stating conditions precedent to retrenchment of workmen): Imposes highly strict conditions for the employer.
- Section 25O (Section specifying Procedure for closing down an undertaking) warranting notice before intended closure, should be amended.
- Section 25A (Application of sections 25C to 25E- lay-off and retrenchment): Certain provisions should be simplified for export units as export is ‘a national endeavor’ and as compared this with other prevalent laws on this issue in other garment exporting countries, is much more stringent.
- Reappointment of workers with full wages should be changed
- In case of closure of establishment, the number of workers ceiling to be increased from 100 to 1000 without permission from the authority/court.

The Minimum Wages Act 1948

The Minimum Wages Act, 1948, envisages to provide minimum statutory wages for scheduled employments with a view to obviate the chances of exploitation of labour through payment of very low and sweating wages. The Act also provides for maximum daily working hours, weekly rest day and overtime. Rates fixed under Minimum Wages Act prevail over the rates fixed under award/ agreement.

Exporters think that the limits of wages under different categories set under this Act are very high. According to them, Minimum Wages should be less than present rates and should be performance oriented.

¹ No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice

² Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;

³ (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 139[one hundred] workmen were employed on an, average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate government thereon shall be final.

Changes suggested in other Acts

- *Payment of Bonus Act 1965*⁴: According to the exporters, the limit on bonus should be increased. It may be enhanced to the same limit as of ESI and PF.
- *Employee State Insurance Act 1948*⁵: ESI Act needs amendment regarding flexibility in remittance of contribution and lack of proper medical facilities at ESI hospitals. As many export firms work on seasonal basis, employer is not able to cover ESI & EPF for the employee from day one. At present there is no ‘infancy period’ for employers to cover ESI& EPF. It should be at least 3 years. The applicability of ESI Act may be exempted in export units. The workmen may be insured by the company under mediclaim policy and group personal accident policy. ESI and PF authorities need to be more transparent and accountable as all ESI & PF Departments are considered corrupt.

5. Respondents’ rationale behind the preferred amendments

General Reasons stated for reforming the labour laws

According to the respondents:

- “To make the Industry strong and viable”.
- “India can never become a force to reckon with unless we have similar laws as our competitors to push for better productivity”.
- “In the present restrictive form, labour laws have hampered the business growth and inflow of foreign investment. Therefore changes should be effected to achieve speedy and rapid economic growth”.

⁴ The Payment of Bonus Act, 1965 aims at providing for the payment of bonus (linked with profit or productivity) to the employees of certain establishments, and for matters connected therewith. The scheme of Act, broadly speaking, is four dimensional- (i) to impose statutory liability upon the employers of the establishments covered by the Act to pay bonus to employees in the establishments; (ii) to define the principles for payment of bonus according to the prescribed formula; (iii) to provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of ‘set-off’ and ‘set-on’; and (iv) to provide machinery for enforcement of the liability for payment of bonus, with a view to minimizing the disputes on this account.

⁵ The main objective of the Employees’ State Insurance Act, 1948, is to provide to the workers medical relief, sickness cash benefits, maternity benefits to women workers, pension to the dependents of deceased workers and compensation for fatal and other employment injuries including occupational diseases, in an integrated form through a contributory fund. Where a workman is covered under ESI Scheme, no compensation could be claimed from his employer under the Workmen’s Compensation Act in respect of employment injury sustained by him.

- “To give greater operational flexibility to exporters to adjust their workforce in line with export orders- to hire and fire the workforce” (refer to section 6 of the report).
- “To replicate and emulate the advantages of successful Chinese experience”.
- “To compete with global market”.
- “Export production should be made more competitive and productive”.
- “The present labour laws are not practical for small industries with less than 250 workers”.
- “Majority of legislations are outdated and need to be scrapped in light of changing environment, in order to meet global standards under globalization”.
- “Laws need revision. They should be amended as per China model”.

Reasons for specific issues

According to the respondents:

Employee State Insurance 1948: Very Poor medical facilities available with ESI operated hospitals. Often companies are approached by employees for financial help for medical treatment. Secondly, non-remittance of contribution within due date calls for disallowance as expenditure by the I.T Act. To enhance social security, health and welfare of employees.

Trade Unions Act 1926: “Trade Unions are biggest nuisance when they enter garment trade/factories. To ban strikes in export units”.

Industrial Disputes 1947: Exporters say that it is very difficult to retrench workers with more than 240 days of service. In case of continuous losses due to several issues like recession, labour unrest etc, this provision becomes cumbersome. For conciliation proceedings, laws warrant completion in 15 days but it takes years. Moreover, exporters express that this Act is risky and there must be security arrangements labour office at the time of matter related conciliation. Permissions are also not easily granted for closing down a company. The requirements are too burdensome.

Factories Act 1948: The export industry is unpredictable in terms of business. Therefore,

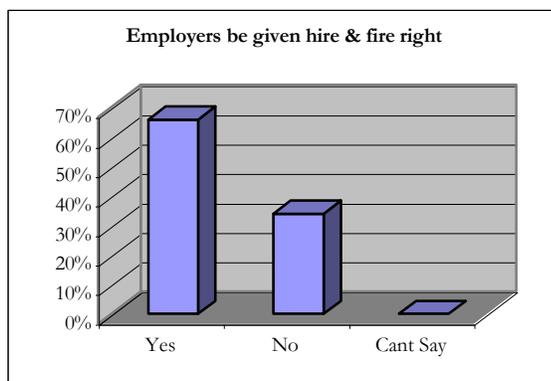
“Although it is not allowed in the law, people are doing a lot of OT. When we know it is difficult to work without OT. Law should be made accordingly so that violations can be minimized.”

overtime is required in some areas. Being in the export industry especially there are date bound shipment/deliveries. There should be an amendment to ensure that things are in tune.

Corruption: According to respondents illegal extraction of money by government officials in authority is an irritation. And no real purpose is being achieved except total corruption and blackmail.

6. Hire and Fire ?

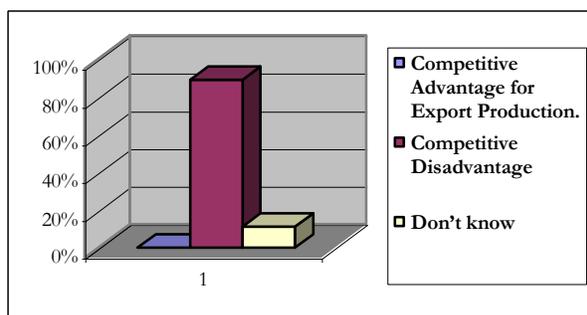
According to the respondents, the export units should be given legal right for hiring and firing its employees. 64% respondents expressed that hire and fire as is prevalent in other countries should be



given to exporters to keep their workforce flexible and to become competitive. Chinese labour policies seem to be the ideal set of legal specifications for Indian exporters. China's experience suggests that while workers in the Chinese state sector are accorded generous job guarantees, workers in the non-state sector do not receive guaranteed employment.

By contrast, in India, workers in both the public and the private sector, once employed, cannot be laid off without governmental permission. According to exporters, as a result of liberal hiring and firing policies in China, there has been rapid growth of employment, since firms can hire workers without fear of being stuck with unwanted labour in the future due to restrictions on dismissals. As is shown in the diagram in section 3, the present provisions of Industrial Disputes Act governing lay-offs and retrenchments pose problems for the export units to be flexible.

7. Current Labour Laws: Advantage or Disadvantage Indian Inc.?



The unpopularity of the labour laws among the Indian apparel exporters is visible from the fact that more than 89% respondents said that the labour laws are a competitiveness disadvantage to the industry as on this front labour markets of other countries are deregulated. China is

becoming a major force in the textile industry with 18 percent of the total global trade. This figure (US\$ 53.3 billion) comes out to be more than India's total exports of all products, which stood at US\$ 45 billion. The scattered nature of Indian industry, individualistic tactics of marketing, lack of unity, non-progressive labour laws and lack of role-playing by the state, hampers the development and growth of Indian Export Industry.

8. What is the State doing?

For the government reforming the labour law is a challenging area. However, according to the Minister of Law, Justice and company affairs, "there is an increased realization in government about the need to reform labour laws, which were designed to be employee friendly but have ended up



becoming anti-employment⁶." In 2001, the Indian government proposed changes in three important Acts- The Industrial Disputes Act, The Contract Labour Act and The Payment of Wages Act. Recently, the National commission on Labour has given its thumbs up signal to contract labor, "hire and fire" policy and closure

of units, subject to safeguards and came up with following recommendations:

- Contract Labour with safeguards such as social security net, including unemployment insurance and the provisions for medical facilities and institution of mandatory system of two contracts- one individual contract and the other, a collective with the workers' union.
- In the case of easy closure of units, the committee has recommended that instead of raising a threshold of exemption from government clearances from 100 to 1,000 employers in one go, as has been proposed so far, the limit should be raised from 100 to 300 employees.
- Retrenchment should be accompanied by adequate compensation. This compensation would be different from sick and running companies. In case of sick ones (defined as erosion of capital for three years or filing for liquidation), the retrenchment compensation should be thirty days wages per year of service.

⁶ Ten Years After the Reform: Where Do We Stand? India Economic Summit, 03.12.2001

- In case of layoff exceeding one month, units employing more than 300 employees would be required to take a post facto Central Government approval.

10. Key Points

The survey reveals that there is indeed a need for labour law reforms in India. Practical challenges faced by apparel export industry are bottlenecks in legal compliance. However, the opinions and responses given by exporters are not balanced. The labour legislations are enacted to safeguard labour against exploitation and to make industrial relations function in a smooth manner. The wish list of exporters in LLR in a nutshell is as follows:

Exporters' Wish List

- Liberal limits on overtime.
- Less frequent interference by government authorities.
- Harsh penalties to be softened.
- Permission to employ contract labour freely.
- No responsibility for the employer for social security of contract labour.
- Less cumbersome processes for registration and licenses.
- Trade Unions to be totally ousted from the export oriented sector.
- Hire and fire without government permission.
- No requirement for notices before closure.
- Minimum wages to be less than present rates

In the current scenario of global competition, Indian Labour Laws definitely need changes but with safeguards to ensure that the interests of the workers do not suffer. Therefore, if any changes are to be introduced, it should be well balanced between the objectives of making the legal requirements flexible to make Indian export industry competitive and to ensure that the race to the bottom approach is not taken and labour is not exploited. However, in broad terms this can be done by providing a well established social security network, improving the implementation of laws by cracking down on corruption and bribery and by spreading awareness in legal compliance.

APPENDIX-1

Survey Methodology

Objective

This survey was undertaken in order to bring out the opinions and understanding of Indian apparel exporters on labour law reforms. The study is intended to present the exporters' views and changes sought by them in the labour laws in the context of globalization and growing international competition.

Scope

This study focuses on Indian apparel exporters. The survey is limited to the ideas and views presented by apparel exporters about labour law reforms in anticipating the post WTO environment. The opinions and changes (amendments in the law) expressed in the survey report are solely of the apparel exporters and CSRWorld is in no way endorsing or opposing these opinions.

Sample

The sample consisted of Indian Apparel Exporters owning small, medium and big units.

Postal Survey

Questionnaires were sent by post to the Indian exporters.

APPENDIX-2

CSRWorld Information

CSRWorld is a pioneer organization in India, promoting Corporate Social Responsibility (CSR). The organization specializes in social compliance audit and monitoring, Labor law resources, training and education, CSR communications, research & advocacy. CSRWorld is also engaging in partnerships with NGOs and other similar organizations in community projects, workers' training and social accountability projects. Headquartered in New Delhi, CSRWorld is promoted and managed by experienced professionals.