**Response of NHRC India to the Questionnaire on the Labour Rights in the context of Structural Adjustment and Fiscal Consolidation Policies**

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Q1. During the last two decades, has your Government implemented fiscal consolidation measures or a structural reform programme that included any of the following labour related measures:

 [a]labour market reforms (flexibilisations);

 [b]changes to the national labour law;

 [c]changes to the system of collective bargaining;

[d]freezing of salary increases for public service workers and civil servants;

[e]reduction of the number of persons employed in public service;

[f]freezing or reduction of minimum wage;

[g]privatization of state-owned or controlled businesses and services;

[h]reform of system of unemployment and/or social security benefits.

**Response:**

It may be noted that that India has not faced any sovereign debt crisis during last **two decades**.Hence there has been no need to take any stringent measure relating to structural adjustment and fiscal consolidation in this context which could have adversely impacted labour rights as envisaged in international human rights law. Nevertheless, India has joined the process of globalization and getting increasingly integrated into the global economy. Hence certain countervailing measures are required to be taken as and when they are required especially to overcome downslides, as it happened during the global economic slowdown during 2008-2009. This may be construed as approximating structural adjustment and fiscal consolidation measures, though substantially diluted. Certain important measures taken to improve the resilience of the Indian economy to combat last global economic slowdown were the following:

* Implementation of various flagship schemes of the Government, namely, the Bharat Nirman for building infrastructure and providing basic amenities in rural areas, the Mahatma Gandhi National Rural Employment Guarantee Scheme with the objective of providing 100 days of guaranteed unskilled wage employment to each rural household opting for it and Jawaharlal Nehru National Urban Renewal Mission to provide basic services to the urban poor and integrated houses to slum dwellers etc.
* Implementation of various other Employment Generation Schemes both in rural and urban areas.
* Farm loan waiver and increase in minimum support prices of important agricultural products.
* Allocation of funds for development of infrastructural projects.
* Announcement and implementation of three stimulus packages.
* Monetary measures taken by the Reserve Bank of India for enhancing the availability of credit at lower cost for financing the economic activities.

These measures proved beneficial to all segment of the Indian economy including labour. Against this background, specific issues specified in the questionnaire are examined in the Indian context as under:

[a] In India it is felt that a dynamic labour market environment is a pre-requisite for pursuing active labour market policy for which interventions are required on two important fronts: (i) creating a facilitating environment for generating employment, if necessary by changing certain labour laws (demand side); and (ii) developing skilled manpower through effective vocational training (supply side). Simultaneously, social security has to be provided. While flexibility (in terms of size and type of workforce, duration of work and location of work place) is required by the employers to adjust to the changing market conditions, the workers need to be provided with basic security (in terms of statutory compensation in the event of closure, unemployment allowance, retraining and redeployment facilities, provision of skill development including on the job training, assistance for job search and access to social security benefits). It is perceived that ushering in labour reforms by way of flexi-security as indicated above may at times lead to conflicts as the interests might collide. In order to avoid such a situation, ‘stability’ in employer-employee relationship is being insisted upon. Therefore, India’s endeavour has been to bring about labour reforms by following consensual approach through a process of tripartite consultation with stakeholders and to maintain harmonious industrial relations situation through effective intervention of Industrial Relations Machineries.

 In the context of providing labour flexibility short of hire and fire, the perception is that plethora of labour laws and rigidity in some cases [like obtaining permission under Chapter VB of the Industrial Disputes Act, 1947 for effecting retrenchment, layoff and closure in larger establishments and prohibition of employment of contract labour under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970] discourage hiring and create in-built bias for capital intensive technology. According to the National Commission for Enterprises in the Unorganized Sector (NCEUS) Report on ‘The Challenge of Employment in India: An Informal Economy Perspective’, while thereis no statistical evidence about this perception, it is possible to undertake rationalization and consolidation of labour laws by preparing an Indian Labour Code or having category-wise consolidation of labour laws and improve labour law administration. While the latter is a continuous process, it has been decidedrelating to the former to amalgamate the Central labour laws into four separate Codes dealing with (i) wages, (ii) industrial relations, (iii) social security and (iv) welfare and working conditions, in respect of which work is under way.

[b] ‘Labour’ figures in the Concurrent list of the Concurrent list of the Constitution. Thus, both the Centre and the States can legislate in this area. There are 44 labour related statutes enacted by the Central Government dealing with wages, social security, labour welfare, occupational safety and health and industrial relations etc. Review/updation of labour laws is a continuous process in order to bring them in tune with the emerging needs of the economy.

 Over the last **two decades**certain important legislative measures have been taken. A**new Act**, namely, the Unorganized Workers’ Social Security Act, 2008 has been enacted to provide social security to workers in the unorganized sector. The salient features of the Act include formulation of welfare schemes for different sections of the unorganized sector workers on matters relating to: (a) life and disability cover, (b) health and maternity benefits, (c) old age protection, and (d) any other benefit that may be decided by the Central Government. Besides, following important **amendments**have been carried out in Central labour laws:

* The Maternity Benefit Act, 1961 was amended to enhance the medical bonus from INR 250/- to 1000/- and also empowering the Central Government to increase it from time to time before every three years, by way of notification subject to maximum of INR 20,000/-.
* The Workmen’s Compensation Act, 1923 was amended to make the nomenclature gender-neutral. The Act will now be called ‘the Employees’ Compensation Act, 1923’.Besides, the compensation under the Act has been enhanced from INR 80,000/- to 1,20,000 in case of death, from INR 90,000/- to 1,40,000/- in case of disablement and from INR 2,500/- to 5,000/-towards funeral expense. The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment without any ceiling. Anew Section 25A has been added for the Commissioner to dispose the matter relating to compensation under this Act within a period of three months from the date of reference.
* The payment of Gratuity Act, 1972 was amended twice to cover teachers in educational institutions and for enhancing the ceiling from INR 0.35 to 1 million.
* The Plantation Labour Act, 1951 was amended to provide safety and occupational health care to plantation workers.
* The Employees’ State Insurance Act, 1948 was amended to improve the quality of delivery of benefits under the scheme and also to enable ESI infrastructure to be used to provide health care to workers of the unorganized sector.
* The Industrial Disputes Act, 1947 was amended to amplify the term ‘appropriate government’, enhance the wage ceiling from INR 1,600/- to 10,000/- per month to cover workmen working in supervising capacity, provide direct access for the workmen to the Labour Court or Tribunal in case of disputes arising out of Section 2(A) of the Act, expand the scope of qualification of Presiding Officers of Labour Courts or Tribunals, establish Grievance Redressal Machinery and empowering the Labour Court or Tribunal to execute the awards etc.
* The Apprentices Act, 1961 was amended twice to provide reservation for other Backward Classes, enhance stipend and facilitate employment of trained apprentices.
* The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 was amended to define ‘small establishment’ from one employing ‘10 to 40’ workers as against ‘10 to 19’ provided earlier, to expand coverage of the labour laws under this Act from 9 to 16, to simplify the forms of registers and returns prescribed under various labour laws and to provide for maintenance of registers and submission of returns electronically.
* Recently, Parliament has passed amendment to the Child Labour (Prohibition and Regulation) Act, 1986 prohibiting employment of child labour up to 14 years of age except that such children can help in family enterprises after school hours.

[c] In India, in the unorganized sector, wages are determined by the interplay of demand and supply forces for labour. In the organized sector these are determined by collective bargaining (eg. in banks), Statutory Wage Boards (eg. for Journalists and non-Journalists) and Commissions (eg. Pay Commission for Central Government employees). The Employees’ organizations get opportunities to represent their viewpoints in these fora. The minimum wages prescribed by the appropriate Governments under the Minimum Wages Act, 1948 in respect of scheduled employments are, however, applicable to both organized and unorganized sector. There has been no change in the system.

[d] No.

[e] While some segmental adjustments do take place, there is no overall reduction.

[f] No.

[g] While disinvestment has taken place in some Central and State Public Sector Undertakings, it can not be construed as any major privatization initiative.

[h] Unemployment allowance for insured persons under Rajiv Gandhi Shramik KalyanYojana @ about 50% wages and medical facilities from the Employees’ State Insurance Corporation (ESIC) is made available for a period of one year. All benefits provided by the ESIC and the Employees’ Provident Fund organization (EPFO) amount to provision of social security in the organized sector.

 Various schemes have been taken to provide social security to unorganized sector workers. These include Rashtriya Swasthya BimaYojana (RSBY) providing for smart card based cashless health insurance cover to Below Poverty Line (BPL) families, Aam Admi BimaYojana (AABY) providing for insurance against accidental death and partial/ permanent disability to the head of the family of rural landless households, Indira Gandhi National Old Age Pension Scheme (IGNOAP) providing pension to all citizens living below the poverty line and above the age of 65 etc.

Q2. Please explain if the above mentioned reforms were implemented at the Government’s own initiative, or if they were part of conditionalities for emergency lending or other financial assistance from an international financial institution (IMF, ESM etc.) or responded to other factors?

**Response:**

Implemented at the Government’s own initiative.

Q3. What kind of mechanisms for consultation with trade unions, business associations and civil society organizations were used during the design and implementation of the above reforms? Could you provide a brief overview of the consultative process that accompanied the reform process?

**Response:**

In all labour initiatives, legislative or otherwise, while initial design is framed by the Government, tripartite consultation invariably takes place. Proposals are also placed in the website for wider dissemination. Afterwards, the proposals are deliberated and modified as required. Legislative proposals are thoroughly discussed in Parliamentary fora.In case of non-labour initiatives, sometimes administrative decisions are taken.

Q4. Can you describe how your Government has reviewed proposed structural adjustment and fiscal consolidation in relation to their impact on economic and social rights? What are the results of the Government’s monitoring and evaluation of the programme’s impact on economic and social rights? Could you explain the methodologies used and share any impact assessment or evaluation reports?

**Response:**

 As explained above, no structural adjustment and fiscal adjustment proposal was either under consideration in India during last two decades or is presently under consideration.

Q5. To what extent did the reforms have a positive or negative impact on the following rights contained in international human rights treaties:

(a) Freedom of association – workers have the right to form and join, without prior authorization, organizations of their own choosing for the defense of their occupational and industrial interests.[[1]](#footnote-1)

 (b) Right to collective bargaining[[2]](#footnote-2)

 (c) Right to strike in conformity with domestic laws[[3]](#footnote-3)

 (d) Right to just and favourable conditions of work (fair and decent living wages for workers and their families; safe and healthy working conditions; rest, leisure and reasonable limitation of working hours; etc.) [[4]](#footnote-4)

 (e) Right to social security, including social insurance[[5]](#footnote-5)

 (f) Prohibition of all forms of forced labour[[6]](#footnote-6) and of harmful child labour[[7]](#footnote-7)

 (g) Non-discrimination in employment (equal pay for equal work; equality of opportunity and treatment, etc.)

**Response:**

 Being a democracy, India believes in honouring all human rights contained in international treaties. Hence reform measures undertaken in India had a positive and benign impact on catering to human right obligations. For instance, the passage of the amendments in the Child Labour (Prohibition and Regulation) Act, 1986 in the Parliament is expected to help India in ratifying ILO conventions No.138 and 182 relating to minimum age of work and elimination of worst forms of child labour respectively.

Q6. Please explain changes/impacts caused by the reforms in the following areas:

(a)levels of unemployment

(b) poverty(including the number of people considered as working poor),

(c) involuntarytemporary employment,

(d) non-standard work contracts,

(e) irregular and/or informal work arrangements or

 (f) thepercentage of people contributing to or receiving benefits from unemployment social security or public health insurance?

**Response:**

Even though the overall impact of reform measures is benign, the result in quantitative terms appears somewhat indeterminate. For instance, according to ILO estimates, the Usual Status unemployment rate in India was 2.3%, 2.0% and 2.1% during 2012-13, 2013-14 and 2014-15 respectively. But the working poverty rate (<US$ 1.90 per day) has declined continuously being 35.3%, 28.4% and 17.9% respectively in these three years. There is no specific information relating to other parameters.

Q7. How did the reforms affect the inclusion/exclusion of the following groups in the labour market: young persons, older persons, persons with disabilities, migrant workers, and members of ethnic or religious minorities?

**Response:**

The reform process has been inclusive. For example, to encourage employment of persons with disabilities in the formal sector drawing monthly wage up to INR 25,000/-,the government reimburses the ESIC and EPFO contribution for a period of three years.

Q8. How did the reforms affect the inclusion/exclusion of women in the labour market? Had the reforms any impacton the gender-related wage gap, and women’s right to enjoy the same rights in employment on an equal basis with men (for example, the right to maternity leave with pay or comparable social benefits; the right to protection from dismissal on the grounds of pregnancy, maternity leave or marital status, etc.)[[8]](#footnote-8)?

**Response:**

The reforms process aims at protecting women’s rights. For instance, benefits conferred under the Maternity Benefit Act, 1961 are being increased periodically. The wages notified under the Minimum Wages Act, 1948 are the same for men and women workers. The nomenclature of different Acts are also being changed to sound them gender-neutral.

Q9. Could you provide information whether the reforms result in an increase in the activity of organized labour, including strikes and publicdemonstrations? Could you describe possible human rights concerns related to the treatment or safety of labour representatives, workers, or individuals who participated in trade union work, strikes or public demonstrations or were affected by them, that have been brought to your attention?

**Response:**

 From time to time there are demonstrations by workers organizations against some reform measures perceives as anti-labour by them. But the safety of their members is never compromised.

Q10. Please explain a particular successful measureor good practice by your Government that had a positive impact on the enjoyment of labour rightsor economic and social rights in your country? This can include successful measures to mitigate adverse impacts of a financial crisis or adjustment programme. If possible, please provide a reference or link to an academic article, independent evaluation, or report providing more details.

**Response:**

Continuous tripartite consultations being held by the Government before moving any legislative amendment proposal may be considered as a successful good practice. When amendments are carried through, they result in enhancement of labour as well as economic and social rights in the country.

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1. See International Covenant on Civil and Political Rights (ICCPR), art. 22; International Covenant on Economic, Social and Cultural Rights (ICESCR), art.8; International Labour Organisation (ILO) Convention 87. [↑](#footnote-ref-1)
2. See ICCPR, art. 22; ILO Convention 98. [↑](#footnote-ref-2)
3. See ICCPR, art. 22; ILO Convention 98. [↑](#footnote-ref-3)
4. See ICCPR, art. 22; ILO Convention 98. [↑](#footnote-ref-4)
5. See ICCPR, art. 22; ILO Convention 98. [↑](#footnote-ref-5)
6. See ICCPR, art. 22; ILO Convention 98. [↑](#footnote-ref-6)
7. See ICCPR, art. 22; ILO Convention 98. [↑](#footnote-ref-7)
8. See Convention on the Elimination of All Forms of Discrimination against Women, art. 11. [↑](#footnote-ref-8)