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IS LABOUR LAW A HINDRANCE IN INDIA'S PUBLIC ENTERPRISES REFORMS?

Summary

With a growing dependency on the private participation across the globe, India also implemented the economic reforms process but these reforms have not been supported by any major amendments in the labour Laws though privatization of public enterprises, is one of the key issues in the ongoing economic reforms and India has a major workforce employed in the PEs. Global experiences in privatization appear to suggest that there should be a clear-cut privatization law, which will sustain the logic of what to privatize, how to privatize and for whom to privatize, but till today India has not even considered enacting such a law. The presence of old labour laws and the absence of a privatization law present a complex situation at the time of the second generation of economic reforms undertaken by India. This paper tries to investigate how the Indian Labour law is helpless in helping the labour and in protecting the larger interest of the PE's reforms.

Key words: Nationalization, privatization, labour law, reforms

JEL: E02, E69, F62, H00, H10, H11, H20, H80, J01, J08, J28, J45, J51, J53, J65, K00, K31, L39, L52

1. Introduction

World is moving fast with less government intervention in industry and business. Last few decades have shown Market as a new driver of industry and business. World has seen a new state-market platform in last few decades, where the state is a facilitator than a producer. This is a more a new type of state-market interaction, which is in full swing not only in Asia but also in Europe, Latin American – Caribbean Economy, African economy and in other parts of the world. India being one of the pioneer practitioners of state run system until the 1980s has primarily gone through a new phase of economic reforms after 1991 when dependency on private sector is gradually increasing. Privatization of PEs is one of the complementary steps in this direction.

This paper highlights how being one of the large employers of workers in PEs, India is still enactive in implementing the labour law reforms or establishing a privatization law, which will complement the entire process of privatization.

2. India: The Notion of Nationalization

PEs were given due importance in the growth of the country since independence (in 1947). The Industrial Policy Resolution of 1948 stressed the active role of the State in development of industries. This philosophy was also enshrined in the Directive Principles of State Policy in the Indian Constitution. In December 1954, the Indian Parliament passed a resolution proclaiming that the 'socialist pattern of society' was the objective of the State. The Industrial Policy Resolution of 1956 stated that the "adoption of the socialist pattern of society as the national objective, as well as the need for planned and rapid development require that all industries of basic and strategic importance or in the nature of public utility services should be in the public enterprises. Apart from that, the other crucial industries, which require large-scale investments for which only the State can provide, have been kept under the public enterprises. Hence, the State bears the unequivocal obligation for the development of the industries in future" [*Industrial Policy Statement*, 1956].

Greater preference has been assigned to the industrialization in the public enterprises by the Five Year Plans in accordance with the policy. PEs has been seen as channels of socializing the mechanism of production in the areas of crucial importance in the successive Industrial Policy Resolutions (IPRs) of 1977 as well as 1980. Moreover, since the IPR of 1948, industries were categorised into the three groups:

- first set related to defence, heavy industry, mining, aircraft, air and rail transport, communications and power - these would remain in the public sector;
- second grouping consisted of a group, which would be unfasten to both the public as well as private sectors;
- third faction consisted of those which were left to the private sector in areas such as consumer goods etc.

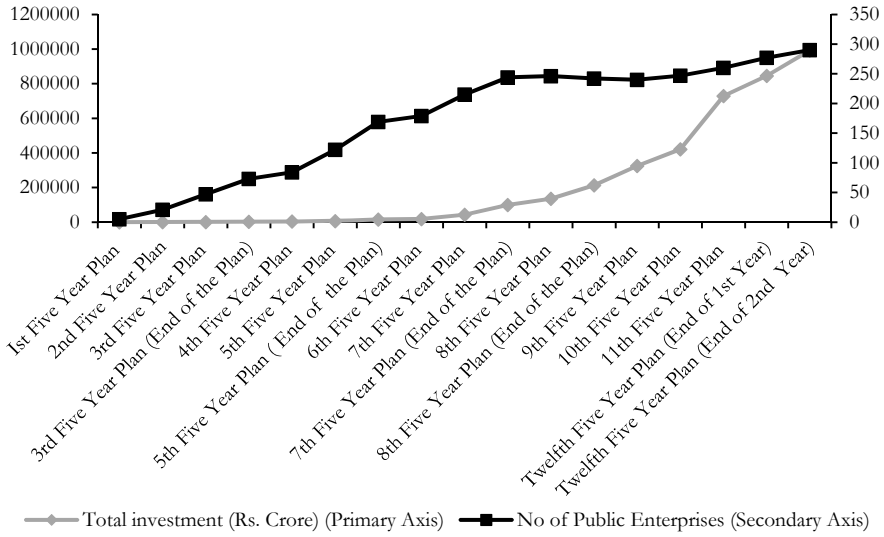
However, public sectors were confined to the consumer goods and hotels and tourism, etc. Besides, public sector matured to such a large size that it became mostly unable to manage; especially when private sick industries were took over.

3. Redefining the Role of PEs in India

It was only in 1991 that a serious review of the performance of public enterprises was undertaken. The Industrial Policy Resolution of July 1991 was a landmark policy statement, which redefined the role of the public sector and the direction of future growth. It took note of the problems faced by the public sector such as surplus labour, lack of technological up-gradation, inadequate attention to research and development, and low return on investment. It stated that the priority areas of growth would henceforth be in essential infrastructure, goods and services, exploration and exploitation of oil and natural

resources, technological development and building of manufacturing capacities in areas which are crucial for the long-term development of the economy and where private sector investment is inadequate, and manufacture of products where strategic considerations predominate, such as defence equipments. It is also decided to offer the mutual funds, financial institutions, general public and workers, a part of the government's shareholding in the public enterprises, in order to augment resources and to boost extensive public involvement.

FIGURE 1.
Movement in Growth of Financial Investment in India's Pes



Source: [*Public Enterprises Survey*, 2013-2014].

Since 1991, India has followed a policy of liberalization of the economy. Trade and Industry were unshackled from bureaucratic tangles and red tapes. Industrial licensing was abolished for all projects, except for some industries, which were related to security and strategic importance, hazardous chemicals and products of elitist consumption. Boards of public enterprises were made more professional and were given greater powers. Importance was given to Memorandum of Understanding (MOU) entered into by the public enterprises with government departments, which would set out performance indicators every year and to which both parties would be accountable [*Industrial Policy Statement*, 1991].

However, the impact of these measures has not been up to the expectations. About 119 enterprises out of a total of 230 operating enterprises were in losses to the tune of Rs.10, 387 crores as of March, 2002. Cumulative losses of public enterprises were a massive Rs.69, 932 crores. Overall rate of return on capital employed (i.e. net profit to capital employed) in public enterprises was only 6.67% in 2001-02. During 2004-2014, the no. of sick Central Public Sector Enterprises (CPSEs) and their losses have been shown in table 1. These losses have continuously increased .Although, the no. of sick

units (registered with BIFR) has decreased to half, the losses have increased more than three times during 2004-05 to 2012-13.

TABLE 1.

Sick and loss making CPSEs

Year	No. of Sick CPSEs*	Accumulated Losses of Sick CPSEs (Rs crore)*	No. of Sick CPSEs**	No. of loss Making CPSEs during the Year	Loss of Loss Making CPSEs (Rs. crore)
2004-05	90	82 352	81	73	9 003
2005-06	81	83 554	75	63	6 845
2006-07	74	89 064	83	61	8 526
2007-08	46	72 820	78	54	10 303
2008-09	46	68 577	73	55	14 621
2009-10	46	62 828	69	60	16 231
2010-11	45	65 146	63	62	21 816
2011-12	45	65 642	63	64	27 683
2012-13	45	70 918	61	78	28 562
2013-14	45	56 845	58	71	20 055

* Operating CPSEs as registered with Board for Industrial and Financial Reconstruction (BIFR)

** CPSEs as per the definition of Board for Reconstruction of Public Sector Enterprises (BRPSE)

Source: [*Public Enterprises Survey*, 2013-2014].

Despite huge investments in the public enterprises, the Government is required to provide more funds every year to the public enterprises by means of loans and grants, subsidies etc. Table 2 gives the recent picture of subsidies received by 14 CPSEs during 2010-2014. These subsidies are in the form of product/service, cash, interest and others. Total subsidies were 45 407.40 crores in 2010-11, which increased to 173 578.00 crores in 2013-14. Thus, there is fourfold increase in subsidies received by these CPSEs.

TABLE 2.

Subsidies Received by CPSEs (in crore)

Subsidies	2010-11	2011-12	2012-13	2013-14
Product/Service	34 579.84	59 968.88	148 733.20	137 334.50
Cash	10 429.41	20 605.59	22 921.81	34 567.38
Interest	3.5	44.95	49.44	50.84
Other	394.62	409.37	1 031.53	1 625.68
Total	45 407.40	81 028.80	172 736.00	173 578.00

Source: [*Public Enterprises Survey*, 2013-2014].

In order to improve the performance of the public enterprises, the Government instituted the concept of Memorandum of Understanding (MOU) in 1986. However, it has been found that these yearly agreements become a ritual and do not result in improvement of the performance of the enterprises nor reduce the control that government departments have in the running of the enterprises. The Rangarajan Committee on Disinvestment of Public Sector Enterprises (1993) recommended that in all units reserved for the public sector, the target ownership of government should be 51% to enable control over management; a target ownership of 26% may be considered in exceptional cases. In other cases, the target ownership could be zero. The Disinvestment Commission set up in 1996 to counsel the modality and level of sale of equity of public enterprises suggested that strategic sale should be, generally, the means of sale of government equity [*Disinvestment Commission*, Report No 1, 1997]. It made detailed recommendations on PEs by the time it was wound up in 2004. It also made general recommendations regarding corporate governance in PEs and machinery for expediting disinvestment of the government equity.

Until now, the government has carried out disinvestment in three phases. The first phase viz from 1992 to 1999 saw small percentages of government equity in selected enterprises being bundled and sold to financial institutions; the second phase from 2000 to 2004 saw strategic sale of public enterprises and the third phase is the partial disinvestment of PEs after 2004.

Table 3. gives the comparative details of number of companies disinvested, equity sold, realization etc. As evident from Table 3, during the first phase of disinvestment (1992-1999), the government succeeded in partially disinvesting its stake (worth Rs.2793 crores) in more than 39 enterprises and obtaining Rs.19,573 crores. In contrast, in the second phase (2000 – 2004), the government sold 51% or more equity (worth Rs.894 crores) through the strategic sale method in 36 enterprises and obtained Rs.11344 crores. Since 2004, however, there has been a rethink on the strategic sale method of disinvestment and only small percentages of equity have been disinvested in selected companies. With the advent of the United Progressive Alliance (UPA) Government in 2004 as a part of third phase, privatization has been given up while disinvestment has been planned only for selected enterprises, as it is evident from Table 3.

It is clear, therefore, that Government has viewed disinvestment as a source of revenue rather than for improving the governance and profitability of the public enterprises. This amounts to selling the family silver to pay the butler! Government appears to have abandoned privatization of public enterprises; instead it appears keen to disinvest minor shareholding in them for short term revenue needs. In such an exercise, profitability of public enterprises through private participation in management does not appear to be even remotely considered. There is a limit to what can be achieved through continued government majority ownership of public enterprises. Ultimately, government would have to resort to privatization of those CPSEs which do not have to remain in government's majority ownership on account of national interests.

TABLE 3.
Summary of receipts from disinvestment and methodology: 1991 to March 2014

Years	Budgeted receipt (Rs. crore)	Total receipts (Rs. crore)	Transaction Methodology
1991-92	2 500	3 037.74	Minority shares sold in Dec, 1991 and Feb, 1992 by auction method in bundles of "very good", "good" and "average" companies
1992-93	2 500	1 912.51	Shares sold separately for each company by auction method.
1993-94	3 500	–	Equity of 6 companies sold by auction method but proceeds received in 94-95.
1994-95	4 000	4 843.10	Shares sold by auction method.
1995-96	7 000	168.48	Shares sold by auction method.
1996-97	5 000	379.67	GDR(Global Depository Receipt) - Videsh Sanchar Nigam Limited (VSNL)
1997-98	4 800	910	GDR –Mahanagar Telephone Nigam Limited (MTNL)
1998-99	5 000	5 371.11*	GDR-VSNL; Domestic offerings of Container Corporation of India Ltd (CONCOR) and Gas Authority of India Limited (GAIL); Cross purchase by 3 Oil sector companies i.e. GAIL, OIL and Natural Gas Corporation (ONGC) and Indian Oil Corporation (IOC).
1999-00	10 000	1 860.14	GDR-GAIL; Domestic offering of VSNL; capital reduction and dividend from Bharat Aluminium Company Ltd (BALCO); Strategic sale of Modern Food Industries (India) Ltd (MFIL).
2000-01	10 000	1 871.26	Strategic sale
2001-02	12 000	5 657.69	Strategic sale
2002-03	12 000	3 347.98	Strategic sale
2003-04	14 500	15 547.41	Strategic sale
2004-05	4 000	2 764.87	sale of residual shareholding in disinvested CPSEs /companies
2005-06	No target fixed	1 569.68	No disinvestment
2006-07	No target fixed	–	sale of minority shareholding in CPSEs
2007-08	No target fixed	4 181.39	No disinvestment
2008-09	No target fixed	–	sale of minority shareholding in Central Public Sector Enterprises (CPSEs)
2009-10	No target fixed	4 259.90	sale of minority shareholding in CPSEs
2010-11	40 000.00	22 144.21	sale of minority shareholding in CPSEs
2011-12	40 000.00	13 894.05	sale of minority shareholding in CPSEs
2012-13	30 000.00	23 956.06	sale of minority shareholding in CPSEs
2013-14	40 000.00	15 819.45	sale of minority shareholding in (CPSEs)
Total		152 789.72	

* Out of Rs. 5371.11, Rs.4184 crore constitutes receipt from cross purchase of shares of ONGC, GAIL and IOC.

** Out of Rs. 1479.27 Rs.459.27 crore constitute receipt from cross purchase of shares of ONGC, GAIL and IOC.

Source: [*Annual Report*, 2001-02; *Department of Disinvestment*…, 2014].

The next part of the discussion explores the state of Labour in CPSEs, the protection afforded to them under existing laws and the need to have a privatization law.

4. Labour in India's Public Enterprises

As per National Sample Survey Organization (NSSO) 1997 estimates, the total workforce in India was around 355 million of which 269 million was in the rural areas and 86 million was in the urban areas. Total workforce in the organized sector was 27 million, of which 20 million was in the government and 7 million in the private sector. Absolute workforce in the central public sector undertakings was under 2 million. However, primarily due to the economic tensions and voluntary retirements, the workforce diminished to 1.3 million amid the most recent ten years, without any privatization or strategic disinvestments. Moreover, the decline in the labour intensity of production and low growth in agriculture partially induced a fall in the employment growth from 2.7 percent on yearly basis in 1983-94 to 1.07 percent in 1994-2000. Costs were cut and the workforce was rationalized by the corporate India due to increased domestic and foreign competition. Growth in employment in the public sector has been negative in the aftermath of liberalization.

TABLE 4.

Employment in CPSEs

Year	Employees (in lakh)*
2006-07	16.14
2007-08	15.65
2008-09	15.33
2009-10	14.9
2010-11	14.4
2011-12	14.5
2012-13	14.02
2013-14	13.51

*excluding contract workers

Source: [*Public Enterprises Survey*, 2013-2014].

Various reports such as the Report of the Fifth Central Pay Commission (1997), Reports of the Task Forces headed by Geetha Krishnan (2001), Rakesh Mohan (2001) and Montek Singh Ahluwalia (2001) on Government employment, Railways and Employment Policy respectively, have pointed out the need to reduce redundant workforce. During disinvestment of public enterprises, most private bidders have sought rationalization of the workforce. However, Government of India has so far been insisting on assurances of job security for one year from the date of privatization and on liberal compensation for voluntary retirement.In India, PSUs are still one of the most important providers of jobs.

As on 31.3.2014, the 290 CPSEs employed over 13.51 lakh people (excluding contract workers) and the outgo on salaries and wages amounted to Rs 1,21,038 crores with per capita salary, wages and employees expenses amounted to Rs.8,88,305. This is compared

to 16.14 lakh workers employed in 2006-07 and outgo on salaries and wages of Rs 52586 crores and per capita salary, wages and employees expenses of Rs.325869 (Table 4.).

It will be evident from this Table that the total number of employees in CPSEs is declining every year since 2006-07, except in 2011-12 while on the other hand, per capita emoluments has been increasing. About 30% of the manpower in CPSEs belongs to managerial and supervisory cadres.

CPSEs now operate under dynamic market conditions. Many of them face shortage of staff. The Voluntary Retirement Scheme (VRS) has made limited impact on reduction of surplus staff. About 6.17 lakh employees opted for VRS from 1988 to 2014. Details of VRS availed during the last 3 years is given in the following Table 6.

TABLE 5.

VRS in CPSES (in numbers)

Years	Managerial/ Executive	Supervisory	Workers	Total
2011	429	136	1331	1896
2012	227	75	1032	1334
2013	360	176	1350	1886

Source: [*Public Enterprise Survey*, 2013-14, Vol. 1].

In the context of restructuring CPSEs, rationalization of manpower has become a necessity. Government established the National Renewal Fund (NRF) in February 1992 to cover both the expense of VRS and the expenditure on retraining of retrenched workers. The NRF was abolished in February 2000 and the scheme of Counselling, Retraining and Redeployment (CRR) is being implemented by the Department of Public Enterprises since 2001-02. The CRR Scheme was notified in November 2007 to widen its scope and coverage. An evaluation of the usefulness of the scheme is yet to be undertaken.

5. Roots in Labour Laws in India

Middle of the nineteenth century witnessed the emergence of new areas of employment in the sub-continent with the advancement of factories and industries. This resulted in the steady migration of the workforce to the urban areas where factories and mills were mostly situated. Around then, without any state control or association of the labours, the employers were less worried about the requirements of their workers; the hours of work were too long, wage rates much low the subsistence level, and the conditions of the employment were unacceptable.

The situation led to the enactment of a number of legislations beginning from the year 1881. Various governments in South Asia decided to keep in force most of the pre-independence laws with some modifications and amendments thereof, in the form of administrative rules, to meet the changing needs. Almost the same governmental

decision to allow most of these laws to remain in force were taken in liberated India. These include *interalia*, the Factories Act (1881), Workmen's Compensation Act (1923), Trade Unions Act (1926), Trade Disputes Act (1929), Payment of Wages Act (1936), Maternity Benefit Act (1939), and the Employment of Children Act (1938).

'Labour laws'[1] in India were introduced with the advent of colonial industrialization. These were established through many enactments relating to industrial and labour issues. Just after the independence in India it was found that without proper labour laws it would be difficult to solve workers' problems in a democratic manner. However, at various critical junctures in public enterprises, these laws have been used as instruments to protect the interest of the workers. Since privatization has rapidly spread across the boundaries of various nations, the old labour laws in public enterprises are being revealed as grossly inadequate. The interrelationship between these laws and privatization is brought out in the following discussion.

5.1. Employee Protection under labour law

Different labour laws provide various securities to the workers. These labour laws are appropriate to the organization regardless of whether it is in the Public Sector or in the Private Sector. Other than this, workers' assurance can be guaranteed by consolidating suitable provisions in the Shareholders' Agreement.

5.1.1. Applicability of Industrial Disputes Act 1947

The arrangements under the Industrial Disputes Act 1947 are admissible to an organization even after the disinvestment. Under the Industrial Disputes Act, which have characterized "Industrial establishment or undertaking" under Section 2 (Ka) as indicated by an "Industrial establishment or undertaking" implies a foundation or undertaking in which any industry is continued to:

a) An industry is considered an industry if any unit of such organization holding a few activity, is severable from the other entity or entities of such enterprise or undertaking such, unit shall be believed to be an independent industrial enterprises or undertaking;
b) If the prime action griped n in such firm / enterprise / any entity thereof is an industry and the other activity or each of the other activities griped by such firm or enterprise or any entity thereof is not severable from and is, for the reason of holding on, or supporting the holding on of, such prime action/actions, the entire firm or enterprise or, as the case may be, unit thereof shall be considered to be an industrial firm or enterprise.

[1] Labour Law regulates matters, such as, labour employment, remunerations, and conditions of work, trade unions, and labour management relations. It also include social laws regulating such aspects as compensation for accident caused to a worker at work, fixation of minimum wages, maternity benefits, sharing of the company's profit by the workers, and so on. Most of these legal instruments regulate rights and responsibilities of the working people.

In perspective of the above definition, the organization will persist to be an industrial establishment even after the disinvestment and all the arrangements of the Industrial Disputes Act will naturally apply to the company. The major fallacy is the presumption of the trade unions that the workers of a PSU are more protected under the law compared to the private sector. However, in fact, as long as the enterprise is the "Industrial establishment", regardless of it being in the public or the private sector, the provisions of the Industrial Disputes Act are equally applicable.

5.1.2 Provisions governing service conditions

The companies normally have "Certified Standing Orders" for their workmen. The Standing Orders have been certified under the Industrial Employment (Standing Orders) Act, 1946. The service conditions of the workmen of the company are normally governed by the said "Certified Standing Orders". If, after disinvestment, the prospective buyer proposes to make any change in the service conditions applicable to the workmen, he has to give a notice in the prescribed manner under Section 9-A of the Industrial Disputes Act. Section 9-A of the Industrial Disputes Act reads as follows:

No employer, who proposes to affect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall affect 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 change proposed to be affected; or
b) Within twenty-one days of giving such notice

Provided that no notice shall be required for affecting any such change –

a) Where the change is affected in pursuance of any settlement or award; or
b) Where the workmen likely to be affected by the change are persons to whom the Fundamental and supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Service (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules, or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply.

'The Fourth Schedule' as mentioned in the above definition is being reproduced below:

Condition of service for change of which notice is given:

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit or the workmen under any law for the time being in force;
3. Compensatory and other allowance;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;

6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration in existing rules, except inn so far as they are provided in standing orders;
10. Rationalization, standardization or improvement or plant or technique, which is likely to lead to retrenchment or workmen;
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or processes or department of shift (not occasioned by circumstances over which the employer has no control).

In this way, under the arrangements of the Industrial Disputes Act 1947, read along the provisions of the Industrial Employment (Standing Orders) Act, 1946, any adjustment in the duty conditions of the workers will be administered by the arrangements of the law, must be adhered to as relevant in the organization preceding the disinvestment. This is not to imply that Certified Standing Orders were unable to change, even before the disinvestment by the management of the company. In any case, as law recommends, a notification must be given by the administration to the workers, which does not inexorably imply that just by giving a notification, duty conditions might be changed in a way unfavourable to the benefits of the workers. In the event that the workers find the notification conceives change in working conditions adverse to their intrigues, they can quickly raise an "Industrial Dispute" in front of the Competent Authorities designated under the Act.

The *Industrial Dispute* has been defined under Section 2K of the Industrial Disputes Act, which reads as follows:

Industrial Dispute means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person

Moreover, Authorities under the Act are dealt in Chapter II of the Industrial Disputes Act, while successive chapters outline the processes of the rectification of the Industrial Disputes. Therefore, the interests of the workmen will remain protected, as protected at present, under the current provisions of Industrial Disputes Act, 1947.

Bipartite/tripartite Agreements administer the matters related to job security, wages, perks, welfare etc. of the workers in an organized sector. Under the Section 2, these agreements are in the nature of "settlement" and are protected under various arrangements of the Act. There will be requirement that the management of the company will enter into the bipartite/tripartite agreements with the workers through the Unions yet after the disinvestment. The provisions of the agreement would be always administered by the collective bargaining practices and procedures. Mutual consent would be the basis for such agreement between two or more parties. In a nutshell, meeting the timely productivity and production targets by the workers induce the management to decide the better service conditions, etc. on a regular basis.

5.1.3 Protection against arbitrary/closure of an undertaking

Regarding protection against arbitrary closure of any establishment of the Company, it may be mentioned that "closure" of an Industrial Establishment is governed by Section 25(O) of the Industrial Dispute Act. Section 25(O) reads as follows:

1. An employer who intends to close down an undertaking of an industrial establishment to which this chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such applications shall also be served simultaneously on the representatives of the workmen in the prescribed manner:
   Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.
2. Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it things fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the person interested in such closure may, having regard to the genuineness' and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such other order shall be communicated to the employer and the workmen.
3. Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for, shall be deemed to have been granted on the expiration of the said period of sixty days.
4. An order of the appropriate Government granting or refusing to grant permission shall, subject to the provision of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.
5. The appropriate Government may, either on its own motion or on the application made by the employer, or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.
6. Where no application for permission under sub-section (1) is made within a period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if undertaking had not been closed down.
7. Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional

circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

8. Where an undertaking is permitted to be closed down under sub section (2) or where permission for closure is deemed to be granted under sub-section (3) every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

From the above definition, it is clear that the company management before or after disinvestment is not free to close down any part of the company at their sweet will. The closure is governed by the law of land and so for the existing provisions of Industrial Disputes Act are concerned, "genuineness and adequacy of the reasons stated by the employer" and "the interests of the general public and all other relevant factors", have to be examined by the appropriate Government and, for doing that the Government has to give a reasonable opportunity of hearing to the employer and workmen and the persons interested in such closure. Disinvestment does not empower the management of the company to shut down any undertaking unless the government allows for the same. Thus, the Act provides protection against any arbitrary shutdown of the company undertaking even after the disinvestment.

Occasionally, some trade unions demand confirmations regarding external development previously enjoyed by the villages adjacent to the plant in the post-disinvestment period. Likewise, the contract workers too request regularization of their employments prior to the disinvestment. Investment in peripheral development cannot be forced to any employer under the law. In any case, as a judicious administrative convention, bigger companies invest generously in the advancement of the areas surrounding the establishment.

So far the regularization of contract labour is concerned, PE or no PE, an industrial undertaking in this regard is governed by the provisions of Contract Labour (Regulation and Prohibition) Act, 1970 and Rules made there under. Hence, the contract labourers and unions representing their interest may take recourse to the said Act and Rules after the disinvestment and may pursue the matter in furtherance of their demand.

5.1.4. Provisions in the Shareholders' Agreement

Shareholders' Agreement generally incorporates the concerns of the Government regarding employee protection. Normally, the following clauses are kept in the Shareholders' Agreement:

1. The parties envision that all employees of the company on the date hereof shall continue in the employment of the company.
2. The Company shall not retrench any part of its labour force for a stipulated period from the closing date other than any dismissal or termination of

employees of the Company from their employment in accordance with the applicable staff regulations and standing orders of the Company or applicable Law.

3. Typically the agreements include a recital stating that the strategic partner recognizes that the Government in relation to its employment policies follows certain principles for the benefit of the members of the Scheduled Caste/ Scheduled Tribes, Physically Handicapped persons and other socially disadvantaged sections of the society and that the strategic partner shall use its best efforts to cause the company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the employees of the company, the strategic partner shall use its efforts to ensure that the physically handicapped persons are retrenched at the end.
4. Subject to the above Clauses, any restructuring of the labour force of the Company shall be implemented in the manner recommended by the Board any in accordance with all applicable laws. The strategic partner in the event of any reduction of the strength of its employees shall, ensure that the Company offer its employees an option to voluntarily retire on terms that are in any manner, less favourable than the voluntary retirement scheme offered by the Company on the date of the agreement [*Disinvestment Policy& Procedures*, 2001].

5.2. Extent of Redundancy

It is true that PSEs are overstaffed. One could, however, differ on the extent of redundancy. Various methodologies have been adopted for estimating redundancy. These have placed redundancy between 18% to 25% [Gupta, 1998]. Industrial sickness prompting redundancy of the workers inflicts severe difficulties to the government in formulating plans that will improve the socio-economic issues of the displaced workers. Social balance is severely disturbed due to the retrenchment of the workers. The social fabric of the country could be in danger precisely due to the dissatisfaction rising out of the employment scenario. In order to guarantee the future redeployment of the displaced workers, the government is best suggested to fortify the social security system, and likewise make sufficient retraining offices in that situation. Industrial restructuring can only succeed by retraining the workers.

5.3 Labour Laws and Privatization in India

The protection given to labour and employees under the Industrial Relations Act has affected the pace of privatization programme in India. Even in a few cases where privatization has been accomplished, the Government obtained a much lesser price for its stake due to its insistence on labour retention agreements for a specified period; even by law, no person can be retrenched without his consent in India. Buyers of public enterprises have consciously over estimated the price of retention and its effect on

productivity; also on the compensation that will be ultimately have to be paid to get rid of the excess labour through Voluntary Retirement Schemes (VRS). The Government has postponed the negative effects of labour restructuring for maybe a couple of years at the most; this ultimately catches up with them after the period of retention is over. Even during the retention period, the managements of privatized enterprises have been reportedly making conditions difficult for those they want to retrench and usually succeed in such persons applying for voluntary retirement. When appeals are made to the Government, they are informed that the existing redressal machinery should take care of such complaints.

Naib [2004] presented post disinvestment employment position in nine divested PSEs, 12 disinvested ITDC hotels and a unit of Hotel Corporation of India; show that from initial employee strength of 43 433 at the time of disinvestment, 4 390 employee separation has taken place. During the same period, 1 050 fresh appointments have also taken place resulting in a net reduction in work force by 3 340, which is around 7.69 per cent of the employees' strength at the time of disinvestment.

These changes in employment have to be viewed in light of the fact that there has been a uniform decline in employment amongst all SOEs irrespective of whether they have been divested or not. Apparently, decline in employment was also due to the fact that SOEs were facing competition. A study by Naib [2003] on the impact of market structure on employment divided the disinvested PSEs till 1999-2000 into two groups: those which are functioning in competitive environment (25 enterprises) and those which are operating in monopoly environment (13 enterprises). It was found that the employment declined in the post-divestiture period for the complete sample of 38 enterprises, as well as for the enterprises operating in competitive environment. As post-liberalization pressure increased on the PSEs, a number of them resorted to restructure labour strength through VRS. The unpredictable result was that there was a rise in the mean employment in the monopoly enterprises amid this period.

The managements of privatized enterprises have resorted to payment of handsome compensations to induce labour to opt for VRS. They have no responsibility to provide any non-monetary safety net for retrenched workers, such as training in entrepreneurship, assistance in job search etc. Recent privatizations have thrown up innumerable problems for retrenched labour of privatized enterprises. Some of them have been forced to literal penury through unemployment and family exploitation for gaining compensation money.

It may, therefore, be desirable that the Government does the labour restructuring in a systematic manner prior to privatization not only by providing for monetary compensation but also through non-monetary safety nets such as retraining, redeployment, entrepreneurship development and job assistance. This would ensure that the Government obtains a proper price for its stake during privatization and at the same time take care of workers' interests.

Overstaffing and labour restructuring are some of the prominent issues that have to be faced in the run up to privatization. It is an essential duty of the government to restructure labour prior to privatization. The example of Sri Lanka was well cited in an earlier Ganesh [2001], Bharti and Ganesh [2004] argued that labour restructuring

in India is seldom attempted prior to sale, and agreements entered into with the prospective buyers have merely guaranteed employment for a certain period, whereas Sri Lanka, which undertook labour/employment restructuring prior to the privatization, could possibly be a model for India.

The link between disinvestment proceeds and expenditure on social sector schemes will become apparent to members of the public only through a Disinvestment Fund.

Most of the governments are balancing economic reform with labour reform. From the first report of DC, it became a great concern for the government to take note of redundancy of labour force in SOEs. This is the reason behind the idea of creating a Disinvestment Fund.

In its Second Report the Disinvestment Commission had recommended that government announce a stable VRS policy with reference to its terms and conditions and provide adequate funds for its implementation by different PSUs. However, in practice, the Commission had come across instances where PSUs who have implemented the VRS scheme have not been able to secure funding support from the Government. The Commission felt that the future of several PSUs and the value of shares sold would change for the better if surplus employees were provided acceptable VRS terms. The following steps were recommended:

1. For finalizing the terms of VRS on a stable and long-term basis providing individual management to have autonomy to have a range within which they may deviate from the set terms for different age groups, different categories of employees and different industrial sectors.
2. Prompt funding for implementing the VRS scheme.
3. Suitable publicity measures for VRS scheme must be adopted for brought into the knowledge of the employees .
4. As there is danger of a one-time lumpsum payment being frittered away by the employees or drained out by unscrupulous middlemen, a special scheme may be drawn up through commercial banks, UTI or LIC, wherein the VRS benefits are invested on behalf of individual employees to provide long-term benefits and some measure of social security.

The Fourth Report by the DC also discussed VRS extensively. The studies on PSUs carried out by the Commission before making its recommendations reveal that several PSUs, including the profit-making ones, have staffing levels well in excess of the comparable competing units in the domestic and international markets. DC advised that given the need to become in a globally competitive, it is imperative to review staffing levels in PSUs and balancing the size of workforce.

The Fifth Report of the Disinvest Commission has advised the government to create a Disinvestments Fund from where employers could get benefit of Voluntary Retirement Scheme (VRS). Disinvestment Commission in its fifth report stated the receipts of disinvestment be placed separately in a Disinvestment Fund (DF) and also advised to merge the National Renewal Fund (NRF) with DF. It further argued that the revenue collected through disinvestment and kept in DF may be utilized for helping the loss incurring PEs for the purpose of restructuring before disinvestment. After a long time National Investment Fund (NIF) was established in November 2005 for the

purpose of channelizing the proceds from disinvestment of CPSEs. But disinvestment proceeds received during April 2009-March 2012 were also utilized for selected social sector schemes allocated for by Planning Commission/ Department of Expenditure due to crisis situation caused by the global slowdown of 2008-09 and a severe drought in 2009-10. In 2013 government of India has further approved restructuring of the NIF and finalized that the disinvestment proceeds with effect from financial year 2013-14 will be deposited to the existing 'Public Account' under the head NIF and it will remain in that account till further investment/ withdrawn for the approved purpose.

The Government in initial phase of the post reforms (1991-2004) period has not shown great concern for these recommendations. Economic reforms and labour reforms were in two different directions. In fact the restructuring of PEs were not even a priority as a part of economic reforms. On the labour union front, one of the former trade union general secretary considered the entire struggle as a lost game as he pointed out in 2003.

The division within the ranks of the trade union movement has weakened the workers struggle against privatization. The picture is like this – whenever the movement is strong, we are able to stop the drift towards privatization; but whenever it is weak, the government has been successful. (Frontline, 2003.)

A country that has mounting unemployment problem Privatization has not improved employment over the short term. In, This is really a cause of concern [Hindu, 2002]. Naib [2003] argued that in India, the most important shock of privatization is on the labour as employment levels dropped after divestiture. As post-liberalization pressure increased on public enterprises a number of them restored to VRS. Drop in employment in 25 enterprises out of 38 surveyed, is statistically significant. In other 13 enterprises also the drop is not statistically proved. Since most of the Indian PEs are labour intensive, labour is bound to be one of the crucial issues in Indian privatization.

In India, labour law does not provide any guidelines for the share holding by the workers at the time of privatization. Indian Courts are unable to make any decision in favour of the workers which has a large population in the PEs. In absence of privatization law which includes a separate section on labour law, precedeing the process of privatization swiftly looks difficult. Empirical evidence in India's privatization programme appears to suggest that workers have very little opportunity of protection during and after privatization. The old labour laws are not enough to make enough impact on workers' welfare in a dynamic changing economy. The workers' welfare is weakening due to current way of privatization of PEs. There are certain emerging gaps due to the presence of labour laws and the absence of a privatization law. It is high time that India started to work on a new law of Privatization .The matter of privatization law is more important than privatization because 'only the legal framework can decide basic safeguards guaranteeing the integrity and efficiency of the privatization process [Guislain, 1992]'. More recently, the Labour ministry of government of India (The Economic Times, 31 October and 17 December 2015) has started the process of rationalizing the provision of 44 labour law by converting them into four labour codes such as codes on wages, codes on industrial relations (which includes Industrial Dispute act 1947, The Trade

Union Act 1926 and The Industrial Employment standing orders Act, 1946)[2], codes on social security and welfare and codes on safety and working conditions.

6. The Need for Privatization Law

India has undertaken massive reform in various economic fields. Privatization as a part of the economic reform had been targeted by the government's coalition partners and status quo seekers and it is evident that privatization/disinvestment is now in the 'stop go' phenomenon. There was a demand by the BALCO workers to become share holders in the BALCO privatization process through Management Employees Buy Outs (MEBOs). This was not agreed to by the government. In a recent landmark judgment, the Supreme Court of India had stated that workers cannot have a say in who should own the enterprise. This has arisen because there is no Privatization law which will enable workers will get ownership rights or share in the process of privatization. Workers' interests are almost the last concern for the government.

International experiences in privatization suggest that there should be a comprehensive law related to the workers' rights under privatization law. For instance, in Jordan, the Privatization Law no. 25/2000, issued in July 2000, provided the necessary legal and institutional framework for the workers. Article 18 of the Privatization Law in Jordan states that

Each and every employee or consultant working at the Commission must inform the Chairman of the Commission in writing, at the commencement of the execution of any privatization transaction, of any benefit that he/she, his/her spouse, predecessors or descendents to the third degree or siblings may accrue, directly or indirectly, in return for services rendered to any party which is directly or indirectly connected to the privatization transaction in question. The Chairman of the Commission shall decide on the impact of such benefits on the impartiality of such an employee, consultant or expert involved in the privatization transaction and, accordingly, and in any event, shall have the right to discharge such an employee, consultant or expert from working at the Commission or on the transaction in question.

The French Privatization Law of 1986 also provided for specific shareholding by employees including special advantages such as discounts or payment terms or both. This Law was amended in 1993 to supplement the statutes adopted in 1986 and one of the objectives of this amendment was to encourage retail and employee shareholding [*The French Privatization Law*, 1986]. Employee Ownership in Privatization has been a feature in the countries of the former Soviet Union. In most of these countries, workers are preferred buyers of former State Owned enterprises [Gates, Saghir, 1995]. Frydman [1998] an advisor to groups that support privatization and entrepreneurship in Central

[2] The main proviso of the draft code will allow firms /undertaking/enterprises employing up-to three hundred workers to dismiss workers with no government authorization compared to 100 workers at present. This proposal was collectively rejected by the trade unions of India.

and Eastern Europe, is categorical that Privatization must be accompanied by a proper legal framework in order to be successful.

But in India in the absence of privatization law the Supreme Court of India, in its decision on BALCO privatization, stated that

In a democracy; it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. It is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. Here the policy was tested and the Motion defeated in the Lok Sabha on 1st March, 2001.Thus, apart from the fact that the policy of disinvestment cannot be questioned as such, the facts herein show that fair, just and equitable procedure has been followed in carrying out this disinvestment. In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself.

In a different decision on HPCL/BPCL privatization, the Supreme Court has discussed the international experiences in privatization law saying that apart from United Kingdom, there have been privatization programmes in France and Italy in Europe. Similarly massive programme has been carried out in Argentina, Mexico and Brazil. In these countries, Privatization Acts have been enacted and numerous routes are adopted to achieve privatization.

In India such legal framework for further privatization is an essential requirement because past privatization practices and judgments on privatization has made it clear that labour laws themselves as they stand are not in a position to decide the stake of the workers in Privatization.

7. Conclusions

India had undertaken partial divestiture of its public sector enterprises since 1991. From the year 2000, however, India boldly shifted from partial divestiture to full divestiture (privatization). Though, the Government has apparently given up any idea of privatisation of the public sector entrerprises for the present, privatisation as a state policy could be adopted by future governments, if they were to take a long term view on the viability of running such enterprises which are not of national importance. Admittedly, there would be many difficulties in the process of implementing this shift in policy. In the last few judgments on divestiture of public sector Units, the Supreme Court of India came out strongly in favour of the government's policy on privatisation. For instance, in the landmark judgment on BALCO, the Supreme Court held that the workers had no say in the ownership of the company. These judgments had the effect of ignoring workers' interests in the name of competition and growth. While India's labour laws had protected workers in the past, the wave of globalization and the imperatives of economic growth

had forced the Government to embark on economic reforms. These reforms are being supported by four new labour law codes. It is suspected that these laws will really allow firms to retrench labours and allow many firms to join the economy but hardly protect the agenda of workers' participation in share ownership during privatization of CPSEs which has happened in many Central and Eastern Europe. The trickledown effect of such privatization will be also on India's many PEs which exits at state level. Future amendments in the labour Laws and its relations with privatization of PEs is one of the key issues in the ongoing economic reform when India has a major workforce employed in the PEs. International experiences in privatization appear to suggest that there should be a transparent privatization law, but till today India has not even considered enacting such a law. Rethinking on a new approach to the workers in privatization, Law is not only required for the success of privatization process, but it is equally required for the Indian State, which has constitutional obligation to protect the interest of the welfare of the citizens. State should be very much concerned about policies which have long run impact for the Public sector workers. The presence of old labour laws and the absence of a privatization law present a complex situation at the time of the second generation of economic reforms undertaken by India. It is clear that if the labour laws of India are not conducive to privatization, then nothing tangible can be achieved in the attempt to privatize the public sector units. The solution to this dilemma is to enact a combination of effective and reformed labour law will help achieve privatization while taking due care of workers' interests. Reforming Labour laws and implementing privatization law in India will be an important message for economies which have concern to proceed further on the market driven economic model.

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