



## COMPATIBILITY OF LEGAL REGIME ON CLOSURE OF AN INDUSTRY WITH PRESENT ECONOMIC POLICIES IN INDIA: SOME REFLECTIONS

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### ABSTRACT:

*In the mid 90s in India then government brought about reforms in the industrial sector, freeing it from the shackles of legal procedures that had created over the years. The dynamism that was clearly visible in different sector of the economy, and which was harnessed by the succeeding governments. But, there were some grey areas which were not seen the light of these changes that are the legal regime on closure of an industry contained in the Industrial Disputes Act 1947, which was inserted section 25-O by way of amendment in the year 1976.*

**KEYWORDS:** process of leading , policy resolution , Indian economy.

### INTRODUCTION:

That Section 25-O makes it mandatory for the employer's to make an application to the appropriate government seeking its approval to the proposed action of closure of an industrial undertaking. Thus, appropriate governments have been entrusted with the duty to examine and address the various issues involved in the process of leading to the decision to close down an industrial undertaking. It needs, however, at this juncture to remember that because of continuance of the said legal regime in the statue more than two decades after economic reforms introduced in the year 1990s, which make it difficult to realign productive resources according to the business needs of the entrepreneur.<sup>1</sup> In this paper the researcher has attempted to examine the compatibility between the present economic policy in India and legal regime on closure of an industrial undertaking under Industrial disputes Act 1947. The researcher has hypothesized that the law relating to closure of an industrial undertaking as contained in the Industrial Disputes Act 14 of 1947 which evolved in the period of 70s and 80s in India when India embraced 'socialism' by amending the Constitution in 1976 fits uneasily after the government of India adopted the policy of liberal economy through the various policy resolution though without amending the Constitution suitably. There is, therefore, no harmony between the policy statement of the government and the law of closure of an industrial undertaking. The present research paper is divided into 5 parts. The first part is an introduction. The second part deals with the present economic policies. The third part deals with the law of closure of an

industrial undertaking under industrial disputes Act 1947. The fourth part deals with compatibility between the present economic policies and law of closure of an industrial undertaking and in the fifth and the last part drawing conclusions on the basis of the discussion made in the earlier parts and made attempt to provide certain suggestions for strengthening the legislation.



<sup>11</sup>GhoseBhaskar 'Legion Strikes', Frontline, Feb 10, 2012, at p. 87-88.

## 2. PRESENT ECONOMIC POLICIES

Till mid 1990 the government followed a policy of self reliance and economic activities were restricted for foreign investment in its capital market to protect the domestic industries. However, with change of government policy after 1991, which enabled: The Indian economy to integrate with the world economy, 2) at national level the policy allowed decontrolled business, free market forces, deregulated its licensing policy. The reforms process included permitting foreign capital investment in different sectors; importing world class technology, encourage investment in infrastructure, reduced tariffs and reforms tax structure. The new economic policy opened up the economy to a greater degree of international participation and investments, to promote our industries and create level playing field for domestic industries to compete with global economic changes. In contrast in the pre-liberalization period, the Indian labour policy focused on the protection of existing roles with view to promote the socialism, which led to inefficient labour force, which make the industry profitably unviable.<sup>2</sup>

It is evident that liberalized marketplace is dynamic and is influenced by a matrix of ever-changing factors stemming out of social, political and economic environment. The invention and innovation not only in one sector but also in society at large also influence the direction of the market. Hence, the regulatory framework at all times has to be evolutionary. The regulators have to anticipate the onset of events and their eventual impact on the behavior of the economic agents as well as the dynamics of the marketplace and reorients the framework efficaciously deal with the new order. Since 1991 the Indian government begins to tread seriously the path of liberalization. It started to open up the economy, discuss the privatization of the public sector, invite foreign investment and reform the labour market.<sup>3</sup>

One must remember that limited freedom to organize the business is a sine qua non for the world of free market economy where doctrine of demand and supply plays the crucial role. The theory of laissez faire is expected to operate in full force in a free market where at one end of the scale, one has perfect competition and at the other monopoly. Irrespective of the variations in the market structure any intervention from outside (here referred as Govt. agencies) is wholly unwelcome in free market economy. But social, economic and political necessities invite State intervention at times for the welfare of the large section of beneficiaries (here referred as workers and other stake holders in the industry) of free market. And at times it becomes unavoidable. Therefore, we all live in restricted free market economy.<sup>4</sup> However, the employer have to anticipate the onset of events and their eventual impact on the behavior of the economic agents as well as the dynamics of the marketplace and reorients the business efficaciously deal with the new order and changed in business may necessitated the closure of an industry and the industry is not immune from this changes.<sup>5</sup>

Therefore, in the modern economies, companies has to restructure swiftly, close down businesses that no longer make commercial sense, sell assets or parts of the business if the situation so demands. Speedy redeployment of in production of assets- lands, physical and human capital – locked up in unviable units is essential for and economy's efficiency. Unfortunately, even today, restructuring and closure of industries in India is near impossible, given the slow pace of judicial decision-making and societal aversion, conservative statutory provisions to closure of any undertaking or enterprise. Thus, in the backdrop of this it is necessary for the orderly development of the market and ensuring therewith that the economic agents do not overwhelm market forces and distort the progress, growth and functioning of the sector warrants creation of an independent and empowered regulatory body. The regulatory body is expected to promulgate frame work/s, lay down ground rules and specify the boundaries within which the economic agents and the market forces have to function and flourish. However, in the new economic market order it may not be possible for some enterprises to continue and meet the economic consequences of competition. In such a

<sup>2</sup> Memoria CB, Dynamic of Industrial Relations, Himalaya Publishing House, Nagpur Fifth Edn., 2009 p. 177.

<sup>3</sup> Bajpai G.N., Economic Times of India, December 2010

<sup>4</sup> Chatterjee B L (2012) PL January S-37

<sup>5</sup> BAJPAI G N, Economic Times of India, December 2010.

case one cannot compel a non-viable industrial undertaking to bear the financial burden that has to be borne to keep concern going.<sup>6</sup>

The Closure of an industrial units and bankruptcies are a normal feature in the developing economies all over the world. However, developed economies with their well-established social security system, easily take care of workers displaced by such closures. Developing economies, with their limited investable resources and relatively limited alternative employment opportunities, however, cannot, easily afford their productive assets and labour force turning non-operational. Industrial sickness and its resultant consequences have, therefore, to be handled carefully to see that its adverse impacts should not fall on worker and on society.<sup>7</sup> Industrial activity is a social activity undertaken to meet the needs of the society. All economic activity is the result of interdependent interests, and co-operation among the various factors that together constitute the cycle of economic activity. In the present competitive regime every industrialist has to acquire and retain sufficient competitiveness to be able to survive and prosper in world markets. This competitiveness cannot be acquired without harmonious relations or at least peaceful relation in industry. In the present liberalized economic policies of the government, it is imperative on the government to let the market forces decide their business strategies. But still it is visible that the government interferes in the businesses, which lead to blocking of precious production resources for considerable period? In other words it's impede the free flow of capital and other productive resource and also attack on growth of capital and also counterproductive as entry of capital, which is sine qua non for the liberalized economy and to meet the competition in the open globalize market.

### 3. STATUTORY FRAME WORK REGARDING CLOSURE OF AN INDUSTRY

The year 1970 was possibly the most tumultuous in terms of industrial unrest since independence. The rising tide of industrial closures, lockouts and lay-offs resulted in growing unrest amongst worker. The law & order problem that resulted from industrial action forced the government to act, even if only symbolically. The government, by virtue of having provided vital infrastructure for many industrial facilities, had a direct stake in the industries and therefore could not remain a silent spectator as employer's closed shops at will.<sup>8</sup>

There are several provisions in the Industrial Disputes Act which have bearing upon the issue of closure of an industrial undertaking. Section 25-FFA provides for sixty days' notice to be given by the employer to the appropriate government. There are certain industrial undertakings which are exempted from the purview of this provision. Section 25-FFF provides for payment of compensation to the workmen, satisfying the conditions laid down therein. In addition to these general provisions special provisions regarding, inter- alia, closure have come to be inserted in the Industrial Disputes Act 1947 vide the amendment Act 32 of 1976. By this amendment an entirely new chapter i.e. Chapter V-B containing provisions from section 25-K to 25-S have been inserted in the Act. Relevant for our present discussion are the provisions of Sections 25-O, 25-P and 25-R. Section 25-O lays down the detail procedure to be followed by an employer desiring to close down an undertaking of the industrial establishment. The employer has to apply, at least ninety days before the date on which the closure is to become effective, to the appropriate Government. The employer has to state the reasons for the proposed closure.<sup>9</sup> The appropriate Government has to decide, by giving hearing to various persons stated in the section, whether to grant or refuse to grant permission for closure of an undertaking.<sup>10</sup> It is true that the provisions of Chapter V-B are attracted, wherever it is applicable, only if the establishment in question employees more than 100 workmen.<sup>11</sup> In view of these provisions the inescapable conclusion which emerges is this that industrial establishments of larger size employing 100 or more workers and are of permanent nature are not allowed to be closed down simply because their owners have decided to do so. They are required to obtain prior permission from the appropriate governments. The appropriate governments have been made the custodian of the various

<sup>6</sup>Memoria C B, Dynamic of Industrial Relations, Himalaya Publishing House, Fifth Edn. (2009) P. 177.

<sup>7</sup>Govt. of India 2002, Second National Commission on Labour Ch- IV, para 4.326,29 p 29)

interests to whom it has to give the hearing. The cursory glance at the provisions of section 25-O is enough to give us an idea that the law makers were alive to the complexity of the issue regarding closure of an industrial establishment and that the issue does not lie in the exclusive domain of the will of an employer. The issue involves conflict and competition between various interests of various stakeholders; therefore, the law makers have made the appropriate governments the custodian of the various interests.

#### **4. COMPATIBILITY BETWEEN THE PRESENT ECONOMIC POLICIES AND LAW OF CLOSURE OF AN INDUSTRIAL UNDERTAKING.**

It is an overstatement to say that labour, or labour laws are the only cause of our unsatisfactory economic development. There are other factors that affect the efficiency of industry like management skill, integrity and honesty, efficient and reliable infrastructure, government policy, globalize competition, etc. if there are many causes, and one deals only with one, and ignores all others, one cannot overcome the disease or hope for cure. All these reasons make it necessary for us to place labour laws in perspective in general and law of closure in particular, as part of what we have to look at.<sup>8</sup> The concept of closure taken to its logical conclusion by Constitution Bench of the Court is an attempt to translate into reality the Constitutional values of security in the event of involuntary unemployment of workers. The court has found it difficult to truncate the remarkably wide language used in the section 25-O of the Industrial Disputes Act, in social welfare legislation with an economic justice bias. In the absence of meaningful social security system in India, the court by delivering justice based on pragmatic humanism to the worker and his family, has followed the right canons of statutory construction. It is refreshing to note that considerations of protecting existing employment. Checking growth of unemployment and maintaining high tempo of production and productivity by preserving industrial peace and harmony have greatly influenced the court in holding restrictions envisaged under section 25-O at the Act as reasonable restrictions on the right of the employer to carry on his business. The court had no hesitation in holding that section 25-O seek to give effect to the mandate contained in the directive principles of the Constitution viz. Articles 38, 39, 41 and 43. This approach is a step forward in so far as the court had in the later set of cases also read in the closure provisions Constitutional, values of the right to work and security in the event of the unemployment.

The Chapter V-B of the Industrial Disputes Act 1947 has aroused intense debate. This question has to be seen from the point of view of all the stake holder of the society. The answer lies in finding a fine balance, because industrial efficiency is essential for social progress in general and industrial stake holder in particular, and the protection and generation of employment also imperative for social justice and social progress.

In new circumstances of global competition, it may not be possible for some enterprise to continue and meet the economic consequences of competition. In such cases one cannot compel non-viable undertaking to continue to bear the financial burden that has to be borne to keep the concern going. They should, therefore, have the option to close down. It would be good; if there can be a prior scrutiny of the grounds on which the closure is sought. Precisely it is for this reasons that the provision for prior permission was incorporated. But experience has shown that governments do not want to give quick decisions, even though they know that delay in taking decisions only adds to the burdens that such enterprises are force to carry. Permission for closure are kept pending for months and year and employers kept waiting, sometimes management try to seek some such subterfuges to close enterprise and disappear from the scene without paying compensation, dues, etc. to workers. In these circumstances the best and more honest and equitable course will be to allow closure, provide for adequate compensation to workers, and in the event of an appeal, leave it to the Labour Relations Commission to find ways of redressal: through arbitration or adjudication.

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<sup>8</sup>Ibid Ch- V, para 5.2, 3,5, p 31).

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## CONCLUSION & SUGGESTION

In the changed economic scenario and emergence of the global market, which is highly competitive economic environment, where the very existence of the business has shaken by different external forces, which are beyond the control of employer. Hence we need to take a more holistic, pragmatic and realistic approach to meet the requirement of both parties. Hence, it is imperative for federal government to intervene in the matter and brought the appropriate changes in the present legal regime of the closure to meet requirement of the present competitive economic environment. Thus, the government has to change the approach of resolving the issue of closure of an undertaking, in co-operative manner by allowing participation of workers, through independent body, mutual negotiation, improving trust levels between the employer and employees and introducing mutual efforts for survival, growth in the fierce competitive environment and work as facilitators or umpire and not as a active agent of the workers are the need of the time. There is an urgent need to fill present legislative vacuum by providing the illustrative list of reasons in the present section, which make the law more clear, so that the authority may determine the 'genuineness and adequacy of reasons'. Similarly the present law regulating the closure is not in consonance with the present economic policy and address the other conflicting public interest. To put it in a nutshell, the section is not in the nature of a fetter on the exercise of the right, but a provision which empowers government to put a shutter on the exercise of the right, irrespective of the fact that the reasons to close down the industry are adequate, genuine and valid and may be even beyond the control of the employer. Therefore, the present legal regime on closure is required to fit in to the new economic thinking as spelt out in the Industrial Policy Resolution of 1991 and also the other policy documents of the federal government in India which have bearing on the economic activities including the industrial activities. The researcher is of the opinion that cap of 100 workers should be removed must be raised to 500. In the humble opinion of the researcher that there is no need to seek the prior approval of the government for closure of an industry only the formal intimation shall be given, would culminated into the automatic deemed approval of the government. The decision of the closure has to left to the wisdom of the employer and law may be played a role of an umpire that those who are sufferers of the closure must get his due and legitimate compensation.