



TRADE & COMMERCE

Assessment of the Delhi Shops and Establishments Act, 1954

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EXECUTIVE SUMMARY

One of the main problems faced in the field of trade and commerce in Delhi is the stringent labour regime that governs it. This study analyses the relationship between labour laws and the ease of doing business in Delhi by examining the Delhi Shops and Establishments Act, 1954, and presents key findings from interviews conducted with the two main stakeholders of the sector: officials from the Office of the Labour Commissioner of Delhi, and shop-owners. Finally, it explores alternative models of organising worker-employee relationships.

On the whole, the study identifies a strong case for the repeal, or significant amendment of the Delhi Shops and Establishments Act, and argues that the Model Shops and Establishments Act, 2015 is an insufficient improvement. The study suggests that moving to a more flexible and pertinent labour regime can be achieved by adopting a labour welfare system based on contract law.

KEY FINDINGS

1. A key purpose of the Act is to collect data on the number of shops and establishments in Delhi, yet the information currently available with the government is inconsistent and unreliable. As per Economic Census of 2013, 8.93 lakh establishments were found to be operating in Delhi, which is in conflict with the figure obtained from the Labour Commissioner's office in Delhi which claimed that only 340,000 shops and establishments are registered under the Delhi Shops and Establishments Act 1954.
2. There is close to little awareness about the existence and provisions of the Delhi Shops and Establishments Act amongst shopkeepers interviewed. Despite this, there is a high degree of self-regulation amongst shopkeepers with regards to maintenance of registers, provision of workers' rights, etc.
3. A large majority of the shopkeepers interviewed claimed that they would not like to keep their shops open till late or open their shops on Sunday even if they were allowed to do so under law.
4. All provisions of the Act are covered by central laws governing employment, mainly the Minimum Wages Act and the Industrial Disputes Act, thereby rendering it redundant.
5. Certain provisions of the Act are excessively cumbersome and unnecessary, and therefore unenforceable. For instance, occupiers of establishments are required to notify the Chief Inspector in case of any change in the information that was provided in the registration form within 30 days of such change and give three days of advance intimation to the inspector when an employee is required to work overtime.

Introduction

Trade and commerce are the drivers of the modern international economy. They are essential, not only for growth and prosperity, but also for the mere survival of a society. These blanket terms include



everything from the local *kirana* store and *paanwala* to countries negotiating free trade agreements. In light of the prominence of this sector, the Government of India and the Delhi government have taken several initiatives to improve the ease of doing business in India. The need for these measures were highlighted by India's ranking as 142nd in the World Bank's *Doing Business Report 2015*, which examines the ease of doing business in 189 economies.

Businesses and traders in Delhi face several obstacles that limit their economic freedom, reduce the ease of doing business, and prevent them from expanding their capacities. Reforming India's business environment to make it easier and more attractive for firms to operate here is a priority for the government. In order to achieve this, it is imperative that there is an overhaul of the country's labour regulations.

Labour laws affect employment generation, productivity, profitability, and labour rights, and therefore have a significant role to play in a country's economic and social development. The anachronism of the static labour legislations in India becomes all the more evident when it is juxtaposed with the changes that have emerged in the nature of the workplace. The prevalence of part-time, temporary, home-based work, and self-employment; the shift to longer and unconventional working hours; and a decline of the regular working week are some of the phenomena that necessitate a review of the current approach to regulating work. Labour laws should no longer be viewed merely as a negative restraint on the employers' powers, but as an enabling medium of achieving worker and business

efficiency and supporting the development of a competitive and successful economy (Mitchell 2007).

Labour Regulation in India

Indian labour laws have been characterised by three main features: they are numerous, over-lapping, and ineffective. According to a report by FICCI (Note on Labour Policy Reforms 2014), there are around 44 central and 100 state laws governing labour in India. The abundance of labour laws can partly be attributed to the fact that the constitution lists labour under the concurrent section, which means that both the state and central governments have the power to legislate on it. Both levels of government have used this power extensively, which has resulted in a “maze of overlapping rules, regulations, compliance requirements and regulatory authorities” (Arvind 2014, 3). A second reason for this multiplicity is the piecemeal way in which these regulations were formulated. Each new law came up in response to some specific need for regulation. Since these laws were drafted independently of each other, not only did labour regulation proliferate, but also provided various, and often contradictory definitions of the same terms (The Challenge of Employment in India 2009). This behemoth of regulations is undesirable and has several repercussions for both firms and employees.

The Firms

Over-regulation of business can stifle growth, as firms get caught in keeping track of various laws and obligations—a task that costs them time and money. The existence of very specific and trivial obligations also

increases the probability that firms will end up not fulfilling some requirement or the other, albeit unintentionally. This makes businesses more vulnerable to harassment and extortion by inspectors (Pachauri 2014). Combined, these factors incentivise firms to restrict expansion and function in the informal sector in order to circumvent over-regulation, a fact that has been proven by Besley and Burgess (2004) in their study on the relation between state-level labour regulations and employment in the formal manufacturing sector.

The Workers

The rigidity and abundance of labour laws has led to the increasing informality of the labour market—94% of Indians work in the informal sector—countervailing the very purpose of the laws. According to the World Bank, labour regulations that are too strict or too loose can be counterproductive as they could lead to losses of employment. A 2013 study by Hasan, Mitra and Sundaram shows that, “India uses more capital-intensive techniques of production than predicted by its level of development” (Hasan et al 2016, 22). Conversely, another study finds that labour reforms leading to more flexible labour requirements could increase employment in Indian retail stores by 22% of the current level for an average store (Amin 2015).

Given these factors, it is certain that labour reforms will benefit both firms and workers in India.

The Central government has already taken heed of the situation described above and initiated the process of simplifying the

labour laws of the country. The table below enlists some of the reforms that have been proposed by the government so far. As emphasized by Department of Industrial

Policy and Promotion Secretary Amitabh Kant however, “the big ticket labour changes are still due” (PTI 2015, 29).

Reforms in India’s labour laws

ACT	PROPOSED AMENDMENTS
Labour Code on Industrial Relations Bill, 2015	Integrates three laws- Trade Unions Act, 1926; Industrial Employment (Standing Orders) Act, 1946 and Industrial Disputes Act, 1947;
	Employers with up to 300 workers would not require government permission for retrenchment, layoffs, closure;
	30% of workers required to sign for creation of labour union against current requirement of 10%.
Labour Code on Wages Bill, 2015	Integrates four laws- Payment of Wages Act, 1936; Payment of Bonus Act, 1965; Minimum Wages Act, 1948; Equal Remuneration Act, 1976.
The Small Factories (Regulation of Employment and Conditions of Service) Bill, 2014	Exempts small factories with up to 40 workers from 14 labour laws including Factories Act, Industrial Disputes Act, Shops and Establishments Act.
Child Labour (Protection and Regulation) Amendment Bill, 2012	Children below 14 years of age are allowed to work in family enterprises.
Contract Labour Act	Exempts companies employing less than 50 workers from provisions of the Act.
Employees Provident Fund and Miscellaneous Provisions (Amendment) Bill	Positions National Pension System as alternative to Employees’ Provident Fund.
Payment of Bonus (Amendment) Bill, 2015	Raises salary ceiling for bonus payments to ₹ 21,000 per month.
Maternity Benefits Act, 1961	Increases maternity leave to 28 weeks from current 12 weeks.
Arbitration and Conciliation (Amendment) Bill, 2015	Sets 12 month time-limit for arbitrators to rule on disputes
Model Shops and Establishments Act, 2015	Allows shops to stay open 24x7

Delhi Shops and Establishments Act (DSEA), 1954

Of the laws that have been listed in the table above, only the Shops and Establishments Act is a state law. The purpose of the act is to regulate the conditions of service of employees in shops and establishments, with the Act defining what qualifies as a shop or establishment.

The main provisions laid down under the Act pertain to the following categories:

- i) Registration of establishments
- ii) Maximum working hours
- iii) Conditions of payment of wages
- iv) Payment of overtime wages
- v) Intervals for rest and meals
- vi) Procedure for dismissal of workers
- vii) Restrictions on employment of women and young persons (defined under the Act as those aged between 12-18 years)
- viii) Opening and closing hours of establishments
- ix) Compulsory weekly close day
- x) Maintenance of records listing out details of employees as well as their conditions of employment
- xi) Cleanliness, lighting, ventilation and precautions against fire in the workplace

Section 4 of the Act gives the State Government power to exempt an establishment or a category of establishments from some or all provisions of the Act, a power that has been used liberally. Schedule 1 of the law lists the establishments that have obtained exemption under the Act, the obligations from which they are exempted

and the validity of this exemption.

The enforcement of the Act is the responsibility of the Chief Inspector of Shops and Establishments, an office that is usually ascribed to a Deputy Labour Commissioner of Delhi, according to the System Analyst of the Office of the Labour Commissioner, Delhi. In addition, nine district inspectors are appointed under the Act, who are accountable to the Deputy or Assistant Labour Commissioner of their respective district (Government of NCT of Delhi 2014).

The Delhi Shops and Establishments Act contains most of the flaws that characterise India's labour regime in general. The Act, which was passed in 1954, has not been amended since and has therefore lost much of its relevance in the prevailing environment. Moreover, it allows for little flexibility in deciding the conditions of work. And finally, several provisions of the Act overlap with or contradict similar provisions in other laws. The following section seeks to examine these deficiencies in greater detail. The section is based primarily on insights gained from an interview with a former Deputy Labour Commissioner of Delhi.

The DSEA derived its relevance from three main provisions:

1. Opening and Closing Hours:

Section 15 of the law provides for compulsory opening and closing hours for shops and establishments. According to the former

Commissioner, these timings became a way for the government to deal with the power shortages in Delhi. Shops were required to shut down around the time that people came home from work, so that demand could be controlled and scarce electricity could be supplied to households.

2. Compulsory Close Day:

The DSEA was the only Act that mandates a compulsory close day for establishments under Section 16. However, with shopping malls being allowed to stay open all seven days of the week and the rise of e-commerce firms, these provisions increasingly disadvantage traditional shops against their new competitors. Interestingly, most of the exemptions granted by the government under the Act relate to Sections 15 and 16, which is in itself an indicator of the impracticality of these provisions.

3. Registration:

The Act prescribes the registration with the Chief Inspector of Shops and Establishments under Section 5. The provision was included primarily to meet the government's need for data on the number of shops in Delhi and the number of people employed there. Since 2009, registration has been shifted online. However, there was never any procedure for verification of the information provided via the registration form, which means that a registration certificate can be obtained even with fictitious or false information. This has led to several discrepancies over the years.

Relevance

Originally, registration under the Act was to be renewed every year, but the validity of the certificate was continuously extended, given the tediousness of renewal, and stands at 21 years today. According to the former Commissioner, registration certificates issued under the act were misused by people, especially in the Chandni Chowk and Mori Gate areas of Delhi, to attain commercial status for their residential properties. This led the government to keep the requirement of registration under abeyance in November 1989. But the need for data resurfaced and the government decided to make registration mandatory once again. Unfortunately, the concerns about authenticity persisted, a fact that came up in our interview with the System Analyst at the Office of the Labour Commissioner of Delhi. He informed us that 340,000 shops were currently registered, but there was no way to be sure the data was reliable. Even assuming the number to be genuine, he admitted that it was a gross under-estimation of the actual number of establishments in Delhi. Therefore, it is safe to say that the data collection purpose of the Act has been largely unsuccessful.

Overlap and Redundancy

Brown (1994) defines “overlap” as a situation where we have more than one government operating in the same policy

domain. Such overlap is quite evident in the case of the DSEA and results in redundancy, which means that the involvement of an additional level of government is of no benefit at all. Apart from those mentioned above, all provisions of the Act are covered by central laws governing employment, mainly the Minimum Wages Act and the Industrial Disputes Act.

Minimum Wages Act, 1948

- Article 13 of the Act provides for fixing the maximum number of working hours in a day, inclusive of specified intervals of rest, and for a compulsory day of rest in every period of seven days. Rule 24 of Minimum Wages (Central) Rules, 1950, sets the maximum working hours at nine hours for adults.
- Article 14 of the Act provides for the payment of overtime wages, while Rule 25 of Minimum Wages (Central) Rules, 1950, states that overtime is to be given at double the rate of ordinary rate of wages.
- Article 18 of the Act provides for the maintenance of registers enlisting the particulars and conditions of work of employees.

Industrial Disputes Act, 1947

- The Act provides for compensation of workers in case of lay-offs or retrenchment and also provides an institutional mechanism to resolve disputes arising between employers and employees.

Furthermore, several laws, such as the

Factories Act, 1948, the Shops and Establishments Act and the Payment of Wages Act, 1936 provide for nearly the same rights but for different classes of workers. This is indicative of the piecemeal nature of Indian labour legislation. Integration of these several laws under a common comprehensive law would simplify the labour regime and make enforcement easier.

Unenforceability

Finally, certain provisions of the Act are excessively cumbersome and unnecessary. For instance, occupiers of establishments are required to notify the Chief Inspector in case of any change in the information that was provided in the registration form within 30 days of such change, and give three days of advance intimation to the inspector when an employee is required to work overtime. Thus, it is not only inevitable but also desirable that the Act remain unenforced, for if these obligations were to be fulfilled, they would suffocate business.

The impracticability of the laws has been recognised by the government itself and has prompted it to largely do away with inspections required under the law and move to complaint-based enforcement instead.

The Central Government has also responded to the irrelevance of the Act by introducing the Model Shops and Establishments Act, 2015, the provisions of which have been examined in the box below.

THE MODEL SHOPS & ESTABLISHMENTS ACT

The Model Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2015 was formulated by the Ministry of Labour after three-way consultations between the government, trade unions and employers' associations (AK 2016). It was approved by the Cabinet on 29 June 2016 and will function as a recommendation to all states, which can choose to adopt the law as it is, or amend it. So far, states like Rajasthan, Maharashtra and Gujarat have moved towards aligning their respective Shops and Establishments Acts with the Model Act.

The Model Act has done away with some of the superfluous and irrelevant aspects that exist in the Delhi Shops and Establishments Act:

- Registration under all labour laws integrated by the introduction of the *Shram Suvidha Portal*, which requires firms to obtain a unique Labour Identification Number.
- Women have been allowed to work night shifts i.e. between 9 pm and 6 am on the conditions that the employer provides a rest room, a night crèche, a ladies toilet and transportation from place of work to the female employee's residence.

- Has allowed for work to be organised in shifts.
- Allows shops to remain open on all days of the week.
- Requires that the workplace provide drinking water, urinals and latrines, crèches, canteens and first aid.
- Has replaced inspectors with facilitators.

While these are definitely steps in the right direction, the Model Act has not gone far enough. It continues to dictate the terms of work as well as the nature of the relationship between employers and employees to a large extent. It sets down the maximum working hours as well as the permissible amount of overtime; it continues to require the maintenance of registers and records, and explicitly details the leaves that workers have a right to. In the last section of this paper, we investigate whether it is possible to have a labour regime wherein employers and employees have the flexibility to negotiate on all the terms of work, while also ensuring that workers' rights are protected.

Comparison of the Delhi Shops and Establishments Act and the Model Shops and Establishments Act

SECTION	PROVISION	OVERLAP WITH	MODEL SHOPS & ESTABLISHMENTS ACT
Section 5	Registration	Registration required under DVAT Act, 2014	Common online registration on <i>Shram Suvidha Portal</i> to obtain Labour Identification Number
Section 8	Hours of Work	Minimum Wages Act, 1948	Same as DSEA, 1954
Section 8	Overtime Wages	Minimum Wages Act, 1948	Same as DSEA, 1954
Section 10	Intervals for rest and meals	Similar provisions in the Factories Act, 1948, but covers only workers in factories, not those in shops and establishments	No provisions
Section 14	Restrictions on work of young persons & women	None	Women allowed to work in night shift provided certain conditions are fulfilled by the employer
Section 15	Opening and Closing hours	None	No provisions
Section 16	Close Day	None	Shops and establishments allowed to stay open on all days of the week
Section 17	Weekly Holiday	Minimum Wages Act, 1948	Same as DSEA, 1954
Section 19, 20, 21	Payment of wages and related claims	Minimum Wages Act, 1948, Payment of Wages Act 1936 (does not cover workers in shops and establishments) & Industrial Disputes Act, 1947	No provisions
Section 22, 23	Leave	Similar provisions in Factories Act, 1948	Same as DSEA, 1954
Section 25, 26, 27, 28	Basic conditions of work	None	Adds provisions for drinking water, latrines and urinals, crèches, first aid and canteens, but no specifications for fire safety, lighting and ventilation as these have been replaced by a general obligation to protect the health and safety of workers
Section 30	Dismissal	Industrial Disputes Act, 1947	No provisions
Section 33	Maintenance of Records	Minimum Wages Act, 1947	Gives state governments the power to prescribe maintenance of registers & records

Exploring the Field: Methodology, Assumptions and Limitations

With an objective to assess the degree of efficiency of the Act, a field study was conducted on the basis of the following premises:

- 1 Awareness and the extent of enforcement of the Act with respect to
 - i) Registration and renewal of registration of shops and establishments under the Act.
 - ii) Prominent display of certificate of registration in the premises of the shop or establishment.
 - iii) Maintenance of records and registers as prescribed under Section 33 of the Act by the occupier of shop or establishment.
 - iv) Opening and closing hours dictated by the government.
 - v) Compulsory close day for certain shops and establishments and.
 - vi) Inspections of shops and establishments conducted by labour inspectors appointed under the Act.
- 2 The extent to which following the provisions of the Act confine the ease of doing business for owners of shops and establishments in Delhi.

For the purpose of collecting primary data, in-depth personal and email interviews were conducted of owners of shops and establishments in Delhi as well as government officials at the

Labour Commissioner's office. Secondary information was collected from sources available online such as the Economic Survey of Delhi 2014-15.

25 owners of different shops and establishments were interviewed to gauge the present-day situation and get an array of opinion (Questionnaire attached in Appendix 1). The shopkeepers interviewed were based in four areas: Chandni Chowk, Connaught Place, Sadar Bazaar and Rajouri Garden. The areas were not selected randomly and are therefore not statistically representative of the shops and establishments in Delhi. The aim of the field research was to get a qualitative idea of the current situation in Delhi, which is why shopkeepers in the central trading districts of Delhi were chosen. The field study is not quantitative in nature.

The **limitations** of this paper could include:

- 1 The possibility that information shared by shopkeepers in personal interviews was not accurate.
- 2 The conversational nature of the interviews which did not follow a strict structure. Therefore, there was not a high degree of uniformity in the way questions were posed in the personal interviews.
- 3 In some cases, sensitive questions were posed in an indirect manner to shopkeepers. Consequently, we had to deduce the answers on the basis of responses to indirect questions.

Findings and Analysis

- As per Economic Census of 2013, 8.93 lakh establishments were found to be operating in Delhi. These exclude the 911,697 unincorporated trade and service sector enterprises. This is in conflict with the figure obtained from the Labour Commissioner's office in Delhi. As per the Senior System Analyst at the office, only 340,000 shops and establishments are registered under the Delhi Shops and Establishments Act 1954. Since the online registration process introduced in 2009 lacks any mechanism to attest the information provided during registration, the database lacks authenticity and validity.
- 9 out of the 25 shop owners interviewed said they did not get their shops registered under the Delhi Shops and Establishments Act 1954 since it was not mandatory according to them.
- Out of the 16 shop owners who said they had gotten their shops registered under the Act, only 4 said that they had displayed the registration certificate in their shops since it was compulsory for them to do so under the law.
- The Act requires shops and commercial establishments to apply for renewal of applications every 21 years since the validity of the registration certificate expires after that period. However, although 20 shop owners alleged that they have been running their shops for over 21 years and 16 confirmed that they had registered their shops under the Act, only 2 admitted to have applied for renewal of registration certificate.
- When asked whether they would open their shops for longer hours if the government no longer dictates the opening and closing hours of shops and commercial establishments, only 3 of the shop owners interviewed said that they would. Those who said they would not do so reasoned that since the entire market closes down at the same time, it would not be profitable for them to keep their shop open till late.
- Majority of the shop owners keep their shops closed on one day of the week. All these shop owners claimed that they take a day off because of personal reasons and not because they are bound to, by law.
- More than half of the total shop owners maintain daily records and registers as prescribed under Section 33 of the Act. All of them do so because they feel it simplifies the process of keeping track of their workers and hence it is beneficial and not because it is a mere obligation.
- While the Act provides for appointment of one Labour Inspector in each of the nine districts of Delhi, 16 shop owners confirmed that no Labour Inspector visited their shop to conduct an inspection. Information obtained from the government officials at the Labour Commissioner's office revealed that inspections are conducted only when a complaint is filed by a worker.

These findings lead to the following deductions:

a) Lack of awareness

There is little to no awareness about the existence and provisions of the Act amongst shop owners interviewed. A lot of shop owners do not comply with the provisions of the Act and those who do, do so because it is in their best interest.

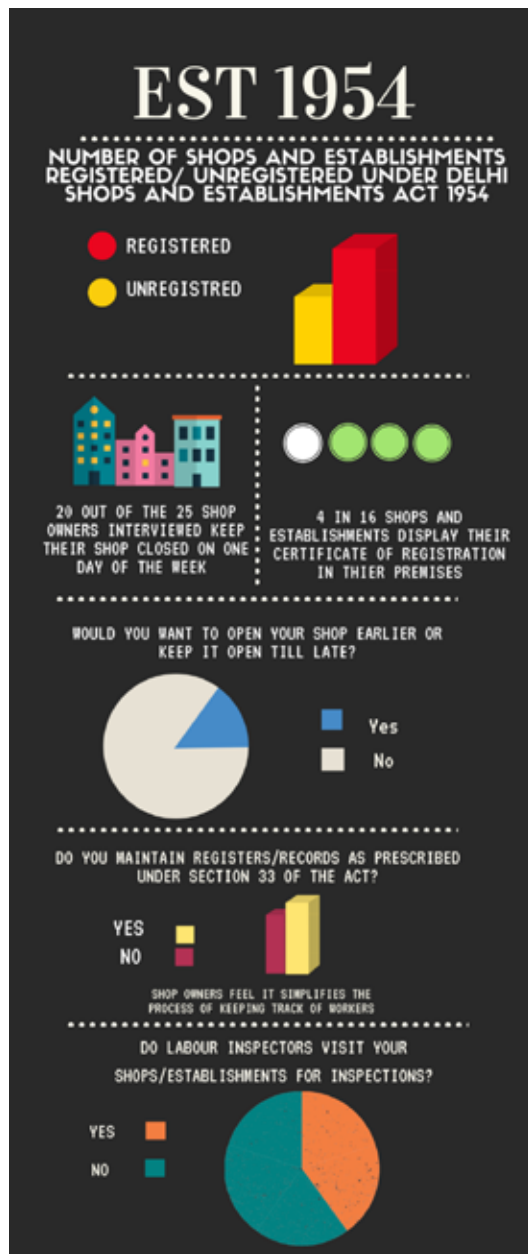
b) Self-Enforcement

As pointed out above, certain obligations under the Act, such as the maintenance of registers and closing of shops once a week, are observed by shop keepers as matters of practicality and self-interest. Thus, there is little need for a law necessitating these practices. Moreover, for shops employing two or three employees, provisions about maintenance of registers and similar regulations were meaningless.

c) Invalid Database

The only purpose that registration of shops and establishments under the Act served was to develop a database of the number and category of the shops and establishments operating in Delhi. However, the online system of registration introduced in 2009 lacks a mechanism to verify the information provided by the occupier of shop/ establishment. As a result, the online database fails to serve its purpose and gives a false picture of the current situation in Delhi.

From these interviews, it became clear that, for standalone shops in central trade districts of the city, the Delhi Shops and Establishments Act holds no relevance.



LABOUR FREEDOM & EMPLOYMENT CONTRACTS: THE SWISS MODEL

The Global Competitiveness Index measures the set of institutions, policies, and factors that set the sustainable current and medium-term levels of economic prosperity (Schwab 2016). One of the factors on which the competitiveness index is measured is “labour market efficiency” and Switzerland has been securing first rank in overall competitiveness as well as labour market efficiency consistently. Switzerland is also ranked among the top five countries with highest level of economic freedom by Heritage Foundation, which maintains Economic Freedom Index (Index of Economic Freedom: Country Rankings 2016).

Swiss labour legislations are not codified. A distinction can be drawn between private labour law, whose provisions pertain to the employment contract, public labour law, which imposes minimal standards for worker protection, and collective labour law. Collective agreements and standard contracts play a key role. Employment contracts are governed by Articles 319-362 of Code of Obligations. Moreover, the scope and applicability of collective agreements are also laid out by the Code of Obligations. The collective labour law is just governed by two provisions viz. the provisions for collective labour agreements and industrial disputes. No special form is required for an individual employment contract. However, when the duration of employment relationship is unlimited or of more than one month, the employer must inform in writing to the worker about specified work conditions such as name of the parties, the date of the beginning of the employment relationship, job description, salary conditions and weekly number of work hours. All these provisions are agreed upon and set by the parties to the contract. On the contrary, basic legislations regarding protection of workers, employment-worker relationship, unemployment assurance and social security are set by the Confederation. Moreover, the constitution prohibits manoeuvres like discrimination on any ground and payment of unequal wages for equal work. It also guarantees free choice of occupation and free access to an economic activity (Peterson and Muller 2007).

Conclusion and Recommendations

As discussed above, the Model Shops and Establishments Act does address some of the weak points in the Delhi Shops and Establishments Act, but like most other labour reforms being undertaken, it reflects an outdated and patronising approach to securing labour welfare, with the government largely dictating the conditions of work. Currently, shop or establishment owners in Delhi face three major problems with regard to labour:

- i. Variation in demand for labour
- ii. Lack of skilled labour
- iii. Lack of flexibility in hiring

On the other hand, the major concern of workers in shops and establishments is poor wages. But neither the present Act, nor the Model Act adequately addresses this issue. Moreover, the attempt by the Acts to dictate the conditions of work is misguided and unlikely to result in a situation beneficial to both workers and employers. Terms and conditions of work are not something which can, or should, be imposed upon the shop owners or workers. Instead, they should be negotiated and agreed upon directly by the concerned parties. The sequence and system of affairs must be left at the discretion of the direct parties involved (Epstien 1995). This negotiation and agreement between the shop owner and the workers would entail a legal contract. And it is perhaps a better way to go about employer-worker relationships, as it gives greater autonomy to the parties who are directly involved in the framework.

Moreover, this would also account for the issues actually faced by shop owners and their employees, such as those discussed above. Setting up a new contract-based system would also reduce administrative costs that have to be borne by the government in order to implement these terms on the one hand and on the other, set desirable incentives for both the parties (Epstien 1995).

Certainly, the government can and should set some customary rules to ensure that parties select only that sequence of affairs which minimises the likelihood of breach of contract by either party, but that should be the limit of government intervention.

The idea of repealing such legislation on shops or establishments may sound outrageous, but there are instances where such steps were taken. Britain is perhaps the most illustrative example. Until 1950, nine to ten legislations regarding opening or closing of different types of shops persisted in Britain. These were repealed and replaced with the Shops Act 1950, an act similar to the Shops and Establishments Acts. By the end of 1994, the Shops Act was repealed and replaced with the Deregulation and Contracting Out Act, 1994.

An application of a law of contract would be a better alternative than any Model Shops Act for the sole reason that the entire approach behind a contract-based system is far more innovative, yet simpler to enforce.

Looking at the Bigger Picture

Labour legislation can essentially be distinguished as collective labour law, individual labour law and labour standards. Individual labour law pertains to relationship between an individual employer and a worker. Collective labour law pertains to a group of employees. Labour Standards are statues regarding protection of workers and related issues. An ideal labour regime would be so designed that it is based on individual labour law, regulated through minimal labour standards, while providing for collective labour law in certain areas. This approach towards labour legislation would ensure a higher degree of labour freedom which is positively correlated with labour market efficiency. On the contrary, economies with tighter labour standards and more collectivist laws such as India tend to have weak labour markets.

Individual labour laws provide a better labour regime because each individual member of society has a different set of needs, views and objectives. The rules set by the government are based on a single set based on its understanding of individuals in a society. However, this single set would never be able to satisfy each and every individual that is a part of the society. In fact, it will satisfy a very small share of individuals whose set of needs, views and objectives happen to coincide with that of the “model individual” that the government assumed for laying out the rules which are now being imposed over individuals who are far different from each other. The status quo is so that the government can function efficiently only so far as it plays the role of a mediator, allowing the members of society to set the rules



themselves by directly interacting with each other and thereby reaching a negotiation which satisfies both ends.

The problems discussed in this paper would be addressed to a significant extent if one could alter the composition of labour legislations from a static set of rules to a dynamic decision-making process directly involving the parties which are most concerned. The most rudimentary attribute of a contract is that it treats the parties involved as equals, ignoring the respective roles they play

in a society. It would then not matter to the law that one end of this contract is employer and the other is employee. Opponents of contract law argue that ignoring the inherent features of social relationships could never lead to a thorough understanding of how labour markets work, but they fail to address the fact that treating the parties involved as equals would imply that these parties act in their self-interest, rather than leaving the employee at the disposal of government to direct the employers actions (Epstien 1995).

APPENDIX 1: Questionnaire

- 1 Since when have you been running the shop/establishment?
- 2 Is the shop/establishment registered under Shops and Establishment Act?
- 3 Is the Certificate of Registration (obtained under Delhi Shops and Establishments Act 1954) displayed in the shop?
- 4 Have you applied for renewal of registration?
- 5 Did you get the shop/establishment registered online or offline? Did you do it yourself?
- 6 What are the opening and closing hours of the shop?
- 7 If you were allowed to open earlier and stay open till late, would you do that? If not, why?
- 8 Do you have a close day? If yes, have you applied for an exemption? Why do you prefer to close your shop/commercial establishment on one day of the week?
- 9 Do you maintain records to keep a track of your workers (leaves, in and out time etc)? Do you think maintenance of records is beneficial for you and the workers working under you or it is a mere legal obligation?
- 10 Do you have inspections by Labour Inspectors? How often do they visit your shop/commercial establishment?

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