The liberal market economies

Introduction

The economies in the world are based on two types; the liberal market economies and the co-ordinated market economies. In liberal market economies (LME), the problem of coordination between firms and their financiers, employees, suppliers, and customers is solved through market mechanisms (Soskice, 1990). LMEs are free market economies. They are also characterized by a relatively decentralized system of industrial relations, with collective bargaining taking place at enterprise or workplace level (Soskice, 1990). Because of the dominance of the market, LMEs typically exhibit relatively short-term and adversarial relations between economic actors, i. e. the government and other international institutions. In the field of human resource management, there is a tendency for firms to have a poor record in training and development and to have limited systems of employee participation and involvement. Where trade unions are present they are kept at arm's length and the relationship is adversarial, focused mainly on distributive wage bargaining (Soskice, 1990). ' Although LMEs may be characterized by short-term and adversarial relations, they also possess a high capacity for innovation and economies of this kind secure comparative advantage by developing new products and new industries, particularly science-based industries such as biotechnology and computers' (Nissan 2003, pg 18). The prime example of a LME is the USA, but the label is also applied to the form of capitalist economies found in Australia, Britain, India, Canada, Ireland and New Zealand.

This essay will bring out the comparative and contrasting features of the economies of India (the world's largest democracy), UK (one of the parent

systems of the world) and the US (the world's largest economy). The employment regulations in these three countries are unique. The UK employment/labour regulations are based on ' common law' and also framed by the statute (Sargeant & Lewis, 2006). The influence of EU laws is also significant in UK in the forms of various treaties, charters and ' Framework Directives'. The US labour system is based on a heterogeneous collection of federal and state laws. Federal law not only sets the standards that govern workers' rights to organize in the private sector, but overrides most state and local laws that attempt to regulate this area. Federal law also provides more limited rights for employees of the federal government (Nissan, 2003). However, the Indian labour system is solely based on the framework set by the Constitution (Bhattacharjea, 2006). There are more than 45 national laws and several state laws which regulate the labour system in India. The Indian labour system is known to be very rigid and is generally more pro-worker.

Though all the three are liberal market economies, they still have differences in their employment/labour law regimes. Initially, it is important to give an overview of each of the economies. Statistics on current GDP, unemployment rate etc is important in order to understand how the labour regulations work in each economy. Then the focus will shift towards the labour laws and will constitute comparisons of the various significant laws enacted in each country.

UK Economy – An Overview

During the days of the British Empire the UK economy was the largest in the world and the first to industrialize. Although it has declined in significance since, the UK is still the sixth largest economy in the world by purchasing

power parity (economic watch, 2010). It is a member of the G7 (now expanding to the G8 and G20), the European Union (although not the European Economic and Monetary Union -EMU – or Euro) and the OECD (Organisation for Economic Cooperation and Development). It is also the founding member of the Commonwealth, the association formed by former British Empire states. UK budget deficit stood at 5. 3 per cent of GDP in 2008 (Chamberlin, 2010). With economic stimulus packages and bank bailouts being worked on, that is expected to balloon to 11. 3 per cent of GDP in 2009 and 13 per cent of GDP in 2010 (Chamberlin, 2010). The unemployment rate had reached 6. 3 per cent in the UK by the end of 2008 according to the Office of National Statistics, reaching close to 2 million unemployed. This figure is likely to grow to the 2. 5 million – 3 million figures, or 8-10% (Office of National Statistics, 2010). The forecast for 2010 has now shifted from flat to negative growth.

Indian Economy – An Overview

India, an emerging economy has witnessed unprecedented levels of economic expansion, along with countries like China, Russia, Mexico and Brazil. India, being a cost effective and labour intensive economy, has benefited immensely from outsourcing of work from developed countries, and a strong manufacturing and export oriented industrial framework (Malik, 1997). With the economic pace picking up, global commodity prices have staged a comeback from their lows and global trade has also seen healthy growth over the last two years. The global economy seems to be recovering after the recent economic shock. The Indian economy, however, was hit in the latter part of the global recession and the real economic growth

witnessed a sharp fall, followed by lower exports, lower capital outflow and corporate restructuring (economic watch, 2010). The GDP growth was estimated to be just 5. 4% in 2009 when compared to 7. 3% in 2008 (economic watch, 2010). It is expected that the global economies will continue to sustain in the short-term, as the effect of stimulus programs is yet to bear fruit and tax cuts are working their way through the system in 2010. Due to the strong position of liquidity in the market, large corporations now have access to capital in the corporate credit markets (economic watch, 2010). In order to sustain economic growth during the time of the worst recession, the government authorities in India have announced stimulus packages in order to prop up economic growth and to finance these stimulus packages, the Indian government has raised over $100 billion over the last four quarters (economic watch, 2010).

US Economy – An Overview

The United States of America (USA) has the world's largest economy. US dominance has been eroded however by the creation of the European Union common market, which has an equivalent GDP of over $13 trillion, and by the rapid growth of the BRIC (Brazil-Russia-India-China) economies, in particular China, which is forecast to overtake the US in size within 30 years (economy watch, 2010). The recent failure in the US housing and credit markets has resulted in a slowdown in the US economy. The 2007 GDP growth was estimated at 2. 2%, but in 2008 it was just 0. 9%, down from the 10-year average of 2. 8% (Bureau of Labor Statistics, 2010). Around two-thirds of the total production of the country is driven by personal consumption. Although the US is often referred to as a free market economy,

this is not entirely true, since there are government regulations protecting certain sectors, notably energy and agriculture. It can be more accurately described as a ‘ consumer economy’. In 2009 and 2010, following the Great Recession, the emerging problem of jobless recoveries resulted in record levels of long-term unemployment with over 6 million workers looking for work longer than 6 months as of January, 2010 (Bureau of Labor Statistics, 2010). This particularly affected older workers. In February 2010, the official unemployment rate was 9. 7% (Bureau of Labor Statistics, 2010).

Labour Regulations in UK

During the Nineteenth century the employment contract was based on the Master and Servant Act of 1823, designed to discipline employees and repress the ‘ combination’ of workers in Trade Unions. Employment Law in the United Kingdom has developed rapidly over the past forty years, due to a historically strong Trade Union movement and since 1973 to the United Kingdom’s membership of the European Union (Sargeant & Lewis, 2006).

In terms of its modern development, the central feature of the labour system had been a tradition of ‘ voluntarism’ reflecting a view that the role of state should be confined to the creation of a rough equilibrium between the social forces of capital and organised labour. In its current form, it is largely a creature of Statute, (Acts of the UK Parliament) rather than Common Law. Leading Employment Law Statutes include the Employment Rights Act (ERA) 1996, the Race Relations Act 1976 (Amendment) Regulations 2003, the National Minimum Wage (NMW) Regulations 1999, the Employment Act 2002 amended in 2006 and various legislative provisions outlawing discrimination on the grounds of sex, race, disability, sexual orientation, religion and age.

The UK labour system is also influenced by the EU Treaty and legislation in the form of Directives and the decisions of the international courts; especially the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR). Other statutory bodies like the Equality and Human Rights Commission (EHRC), Advisory, Conciliation and Arbitration Service (ACAS) and the Central Arbitration Committee play a special role in the field of dispute resolution between workers and employers, both individually and collectively. Unusually for UK legislation, the operation of the Employment Law system is broadly similar across the whole of the UK, although there are some differences in the common law between England, Wales, Scotland and Northern Ireland.

A more significant development for the employment relationship has been the enactment of employment protection legislation such as the ERA 1996, which confers statutory rights upon individual employees. These provide a basic framework of income protection and job security. The main categories of entitlement relate to minimum periods of notice prior to dismissal, maternity pay, lay-off pay within a guaranteed week and the provision by the employer of a written statement of the terms and conditions of employment. Legislation has also been introduced to provide protection against unfair dismissal (s. 94 (1) ERA 1996) and to provide a payment on redundancy (s. 136 (5) and s. 174 ERA), and to outlaw discrimination upon grounds of sex or racial origin in the terms of hiring, the conditions of employment and at termination. These rights and obligations do not attract criminal sanctions; instead they are enforceable by individuals through actions for monetary awards of damages via a system of specialised tribunals, from which appeal

may lie to the higher courts of the regular judicial system (Deakin, 1986). A tribunal may make an order of reinstatement or re-engagement following a finding of unfair dismissal, but the employer is entitled to resist the order which may lead to incurring a greater financial penalty.

Some of the key legislations which impact the employment in UK are also influenced by the EU legislations apart from UK's own laws. The fundamental legislations are based on:

Anti-discrimination

EU Legislation

Workplace discrimination

Directive 2000/78/EC (The European Employment Directive) establishes a general framework for equal treatment in employment and occupation, which forbids discrimination based on religion, belief, disability, age and sexual orientation. The principle of equal treatment means that there shall be no direct or indirect discrimination on any of the grounds outlined above. This also means that employers have to take appropriate measures to enable a person with a disability to participate in employment or to undergo training (LCCI, 2006).

Racial and ethnic discrimination

The general principle of anti-discrimination is safeguarded at the EU level by Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (London Chamber of Commerce and Industry (LCCI), 2006). The Directive covers areas such as education, social protection (social security and healthcare), social advantages and access to and supply of goods and services and goes beyond access to

employment and self-employment (see Directive 2000/78/EC). Under the Directive, all forms of direct or indirect discrimination on the grounds of race or ethnic origin are prohibited. Indirect discrimination may be in the form of less favourable treatment of the person or group of people concerned. Indirect discrimination can also happen in the form of an act that may appear to be neutral but is likely to have an unfavourable outcome for a person or a specific group of people (Sargeant & Lewis, 2006). The only possible exception here is when race or ethnic origin constitutes a fundamental professional requirement. The Directive does not cover discrimination based on nationality.

UK Legislation

Parts of Directive 2000/78/EC are implemented in the UK by the Employment Equality (Sexual Orientation) Regulation 2003 and the Employment Equality (Religion or Belief) Regulation 2003 (Sargeant & Lewis, 2006). In 1995, the Disability Discrimination Act (DDA) was passed by the UK Parliament. New provisions have been added to the original DDA and came into effect on 1 October 2004. The Employment Equality (Age) Regulations 2006, dealing with age discrimination came into force on 1 October and 1 December 2006 (Sargeant & Lewis, 2006). Directive 2000/43/EC (The Race Directive) is implemented in the UK by The Race Relations Act 1976 (Amendment) Regulations 2003, amending the Race Relations Act of 1976 (Sargeant & Lewis, 2006).

Equal treatment of men and women in the workplace

EU Legislation

Equality between men and women in the workplace is guaranteed by three pieces of EU legislation:

- The Equal Pay Directive
- Directive 75/117/EC is based on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women. This Directive specifies that an employer is not allowed to pay persons doing the same work or work of equal value differently due to their sex (LCCI, 2006). A job qualification or evaluation is used to determine the pay, has to be designed in such a way that it does not discriminate between the two sexes.
- The Equal Treatment Directive
- Directive 76/207/EC is based on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and working conditions (LCCI, 2006). This Directive ensures equal access to all types and levels of vocational guidance and training and equal working conditions, including dismissal. A woman cannot be dismissed on grounds of pregnancy or maternity. However, the Directive does not apply to occupations where the sex of the employee is a determining factor.
- The Equal Social Security Directive

Directive 86/378/EEC is based on the implementation of the principle of equal treatment for men and women in occupational social security schemes. This Directive applies to members of the working population

including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment and to retired and disabled workers (LCCI, 2006). The Directive does not apply to individual contracts, schemes having only one member and salaried workers.

UK Legislation

Directive 75/117/EEC (The Equal Pay Directive) has been implemented into UK law by the following acts and regulations:

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Equal Pay (Amendment) Regulations 1983
- The Sex Discrimination Act 1986

Directive 76/207/EEC (The Equal Treatment Directive) has been implemented into UK Law by the Sex Discrimination Act 1975. Directive 86/378/EEC on equal treatment for men and women in occupational social security was first implemented in the UK as the Personal and Occupational Pension Schemes Regulations 1996, but after several amendments to the 1996 Regulations, the Directive is now part of the Occupational and Personal Pension Schemes Regulations 2005 (LCCI, 2006).

Working Time Regulations and employment contracts

EU Legislation:

There are three EU Directives that deal with the organisation of working time:

- Working Time Directive

- Directive 2003/88/EC consolidates the original Working Time Directive 93/104/EC and it’s amending Directive 2000/34/EC. The Working Time Directive is intended to ensure that workers are protected against adverse effects on their health and safety that can be caused by excessively long working hours, inadequate rest or disruptive working patterns.

- Fixed-term work
- Directive 1999/70/EC aims to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to prevent abuse arising from the use of successive fixed-term employment contracts.

- Part-time work
- Directive 97/81/EC states that in respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time, unless different treatment is justified on objective grounds.

- Employment contracts

Directive 91/533/EEC is based on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship. The Directive establishes in particular that an employer has to provide employees with a written contract of employment, a letter of engagement or one or more other written documents (LCCI, 2006). Any change to the terms of the contract or employment relationship must be recorded in writing.

UK Legislation

The EU Working Time Directive is implemented in the UK by the Working Time Regulations 1998 and The Working Time (Amendment) Regulations 2003. Smaller amendments to the Working Time Regulations 1998 were also made in 1999, 2001, 2002 and 2006 giving guidelines on compulsory rest breaks, paid annual leave etc. The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 have introduced new rights for employees on fixed term contracts such as being entitled to the same pay and benefits, sick and holiday entitlements as comparable to permanent employees (Sargeant & Lewis, 2006). The Part-time Workers Directive is implemented in the UK by the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (Sargeant & Lewis, 2006). Finally, the Employment Contracts Directive is implemented in the UK by the Employment Rights Act 1996.

Maternity rights

EU Legislation

Directive 92/85/EEC of 19 October 1992 concerns the implementation of measures to encourage improvements in the health and safety of pregnant workers, women workers who have recently given birth and women who are breast-feeding (LCCI, 2006). This Directive is an application of the Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work in general.

UK Legislation

The Maternity and Parental Leave (Amendment) Regulations 2002 introduced new maternity leave rights for women. Pregnant workers are now entitled to 26 weeks' ordinary maternity leave irrespective of how long they have worked for their employer. If a woman has worked for her employer for 26 weeks (continuous service) by the beginning of the 14th week before the expected week of childbirth, she can take additional maternity leave of 26 weeks (Sargeant & Lewis, 2006). Additional maternity leave is normally unpaid but women may have contractual rights to pay during their additional maternity leave. The Statutory Maternity Pay, Social Security and Social Security Regulations 2006 which come into force on 1 April 2007 extends the statutory maternity leave to 39 weeks and all women will be entitled to take up to 52 weeks maternity leave (Sargeant & Lewis, 2006). The original UK implementation of Directive 92/85/EEC is The Maternal and Parental Leave Regulations 1999.

Labour Regulations in India

India is a federal democracy and under the Indian Constitution of 1949, ' industrial relations' is a concurrent subject. This implies that central and state governments have joint jurisdiction over labour regulation legislation. The law relating to labour and employment in India is primarily known under the broad category of " Industrial Law" (Malik, 1997). Industrial law in this country is of recent vintage and has developed in respect to the vastly increased awakening of the workers of their rights, particularly after the advent of Independence. Industrial relations embrace a complex of relationships between the workers, employers and government, basically concerned with the determination of the terms of employment and

conditions of labour of the workers (Malik, 1997). ‘ Escalating expectations of the workers, the hopes extended by Welfare State, uncertainties caused by tremendous structural developments in industry, the decline of authority, the waning attraction of the work ethics and political activism in the industrial field, all seem to have played some role’ (Malik, 1997).

The key piece of central legislation is the Industrial Disputes Act of 1947 which sets out the conciliation, arbitration, and adjudication procedures to be followed in the case of an industrial dispute (Fallon, 1987). The Act was designed to offer workers in the organized sector some protection against exploitation by employers. The Act specifies the powers of government, courts and tribunals, unions and workers, and the exact procedures that have to be followed in resolving industrial disputes. It has been extensively amended by state governments during the post-Independence period. With the aid of this ‘ machinery’, industrial law covers a comprehensive canvas of state intervention of social control through law to protect directly the claims of workers to wages, bonuses, and retirement benefits such as gratuity, provident fund and pension, claims, social security measures such as workmen’s compensation, insurance, maternity benefits, safety welfare and protection of minimum of economic well-being (Fallon, 1987). Job security has been particularly protected by providing industrial adjudication of unfair discharges and dismissals and ensuring reinstatement of illegally discharged or dismissed workmen. Protection has gone still further by laying down conditions of service in specified industries and establishments and limiting the hours of work.

The Employees' State Insurance (ESI) Act, 1948 is another important piece of legislation. It applies to factories and establishments functioning in the notified area and consisting of 10 or more employees. The basic objective is to provide for health care and cash benefits in cases of sickness, dependency, disablement, maternity and death/employment injury (Malik, 1997). This Act extends to the whole of India. However, the ESI Scheme is being implemented area-wise by stages. The Act absolved the employers of their obligations under the Maternity Benefit Act, 1961 and Workmen's Compensation Act 1923. All employees drawing salary of Rs 10, 000 or less are covered (w. e. f 2006).

One of the most important legislation for protecting women workers is the Maternity Benefit Act of 1961. This Act extends to the whole of India except the state of Jammu & Kashmir and is applicable to every factory, shop or establishment. Women are entitled to receive the benefits under this act only when they are not under the Employee State Insurance Act of 1948. Pregnant women employees are allowed to take leave 6 weeks prior the delivery and 6 weeks post the delivery. In case of miscarriage, 6 weeks additional leave with pay at the same rate as applicable to maternity benefit. The benefit given to the women are at an average rate of wages for the three months preceding her maternity leave.

One of the most important Acts with respect to the welfare of employees is the Factories Act of 1948. This Act which makes it obligatory on the part of the employer to provide for the health (sec. 11-20), safety (sec. 21-41) and welfare (sec. 42-50) of the workers employed. Under sec. 51-67, it also deals with the working hours and annual leave allowed in a factory. This act is

applicable to the whole of India. It applies to every factory wherein 10 or more workers are or were employed.

Labour Regulations in the US

Employment law in the U. S. has traditionally been governed by the common law rule of " at-will employment," meaning that an employment relationship could be terminated by either party at any time for any reason or without a reason (Taylor, 1987). This is still true today in most states. The American legal system comprises of the Constitution which is the ' supreme law of the land', the international treaties which impact legislation, federal and state statutes, executive orders and the judicial opinion (common law). However, starting in 1941, a series of laws prohibited certain discriminatory firings. That is, in most states, absent an express contractual provision to the contrary, an employer can still fire an employee for no or any reason, as long as it isn't an illegal reason (which includes a violation of public policy) (Taylor, 1987). Present Federal law regulating labour-management relations is largely a product of the New Deal era of the 1930s. While Congress has acted to raise the Federal minimum wage and has considered labour law reform affecting both private and public employees, no major new labour laws have been passed over the past several decades (Forbath, 1991). In order to understand the extent of the scope of the fundamental laws which govern the US, it is important to have a clear picture about what are Federal and State Laws. The US Federal Law sets the standards that govern workers' rights to organize in the private sector and overrides most state and local laws that attempt to regulate this area. It provides more limited rights for employees of the federal government (Taylor, 1987). It also establishes

minimum wages and overtime rights for most workers in the private and public sectors as well as provides minimum workplace safety standards to the states. It protects workers from employment discrimination. State laws apply to employees of state and local governments, agricultural workers or domestic employees. The states are also allowed by the federal law to take over those responsibilities and to provide more stringent standards. They also protect workers from employment discrimination (Taylor, 1987).

Some of the fundamental legislations and Acts which govern the US legal system are:

The Fair Labor Standards Act (1938) establishes minimum wage and overtime rights for most private sector workers. It does not pre-empt state and local governments from providing greater protections under their own laws.

The Occupational Safety and Health Act (1970) creates specific standards for workplace safety. The Act allows workers the right to refuse to work under unsafe conditions in certain circumstances.

Title VII of the Civil Rights Act of 1964 bars employment discrimination on the basis of race, gender, national origin and religion.

The National Labor Relations Act (or “ Wagner Act”) (1935) gives private sector workers the right to choose whether they wish to be represented by a union and makes it illegal for employers to discriminate against workers because of their union membership or retaliate against them for engaging in organizing campaigns or other, to form “ company unions”, or to refuse to

engage in collective bargaining with the union that represented their employees (Kolins, 2007).

The Labor-Management Relations Act (or “ Taft-Hartley Act”) (1947) prohibits jurisdictional strikes and secondary boycotts by unions, and authorizes individual states to pass “ right-to-work laws”, regulates pension and other benefit plans established by unions and provides that federal courts have jurisdiction to enforce collective bargaining agreements (Kolins, 2007).

Comparison of the three employment regimes and their development factors

From the brief account above of the labour regulations in each country, it can be seen that there are some distinctive features which make each of them unique. In respect of labour law the gap with India is much smaller than it is between the UK and the US. The US and Indian Labour Regulations have had very little change during the past 2-3 decades and on the contrary the UK labour regulations has seen very considerable change over this period. The UK, starting from a position of substantial protection for labour interests in the 1970s (although still below the aggregate level in India), underwent a rapid decline in the intensity of regulation during the 1980s and early 1990s, with a limited revival from the late 1990s (Deakin & Lele, 2007). The events triggering these changes were political: the election of a Conservative government committed to a policy of labour market deregulation in 1979, and the return to office in 1997 of a Labour government which ended the UK’s opt-out to the EU Social Charter and proceeded to incorporate a large body of EU labour law into the UK system, as well as legislating on certain other matters (Deakin & Morris, 2005). The US system has however shown weak levels of regulation of basic laws

governing working time (derived from federal legislation of the 1930s which has not been effectively updated since); a rigid and (for several decades) unreformed system of industrial relations law which neither provides for compulsory worker representation at workplace level in the manner of continental European co-determination, nor for a meaningful right to strike (Deakin & Lele, 2007). The employment at will rule in individual employment law, which preserves the managerial power to discipline and is more or less untouched by statute or even by the residual common law principles of fairness such as the concept of mutual trust and confidence which operates in the English common law of employment (Taylor, 1987).

In the UK, where labour law was strong in the 1970s, in respect of employee representation (at a time when the closed shop was widely enforced, although there was no co-determination and few mandatory rules on information and consultation), it is weak today, even a decade after the election of a Labour government. Concurrently, where it was weak in the 1970s, in relation to the control of alternative employment contracts; it is strong today, as a result of EU directives on part-time and fixed-term employment which have been implemented since 1997 (Deakin & Lele, 2007). Working time controls, which were strong in the 1970s as a result of legal mechanisms for extending the terms of multi-employer collective bargaining, disappeared from view in the 1980s as that system of legal support for sectoral collective agreements was dismantled; the implementation in 1998 of the European Working Time Directive has only partially redressed the balance (Deakin S. & Lele P. 2007). UK dismissal law has been relatively stable throughout the period from the early 1970s when

it was first introduced; at the start of the 2000s, but since then has declined in significance.

The centrepiece of India’s labour law is legislation passed in the 1940s in the immediate aftermath of independence, the Industrial Disputes Act 1947. This provides a framework for collective bargaining and protects the right to strike. Working time controls were derived from the factories legislation based on the British model. India’s unfair dismissal laws were introduced in the 1970s and contains a concept of liability for ‘ retrenchment’ which sets a high formal standard of protection by international standards (Bhattacharjea, 2006). The laws reported for I