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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

IJAR

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.



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Labour Law Reforms and Workers' Rights: A Critical Analysis of Recent Labour Law Changes and Their Impact on Workers' Rights in the Formal and Informal Sectors

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Abstract

Labour law reforms are integral to shaping the socio-economic landscape of a country, influencing not only industrial relations and employment conditions but also the overall well-being of workers. In India, labour laws

have historically played a crucial role in regulating the employer-employee relationship, protecting the rights of workers, and promoting fair working conditions. Recent changes in the country's labour law framework, however, have sparked intense debate and concern among various stakeholders, including trade unions, employers, and policymakers. While these reforms are presented as a means to simplify regulations, promote ease of doing business, and attract investment, critics argue that they undermine workers' rights, reduce social security, and potentially exploit vulnerable workers, especially in the informal sector.

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1. Background: The Need for Labour Law Reforms in India

India's labour law framework has historically been complex, fragmented, and often criticized for being cumbersome for both employers and employees. It comprises numerous central and state laws governing various aspects of employment, including wages, working conditions, industrial disputes, and social security. Some of the prominent statutes include the Industrial Disputes Act, 1947; the Minimum Wages Act, 1948; the Factories Act, 1948; and the Trade Unions Act, 1926. These laws were often seen as outdated, rigid, and a hindrance to industrial growth².

With the changing dynamics of the global economy and India's ambition to become a major manufacturing hub, there was a growing demand for labour law reforms to create a more flexible and business-friendly environment. The Indian government responded by consolidating 29 existing labour laws into four major labour codes:

1. **The Code on Wages, 2019**
2. **The Industrial Relations Code, 2020**
3. **The Occupational Safety, Health, and Working Conditions Code, 2020**
4. **The Code on Social Security, 2020**

These reforms were introduced with the stated goals of rationalizing and simplifying labour laws, ensuring ease of compliance, and providing social security to all workers. However, the impact of these reforms on workers' rights, particularly in the informal sector, remains a contentious issue.

2. Overview of the Four Labour Codes

The new labour codes aim to streamline the regulatory framework, making it easier for employers to manage compliance and reducing the multiplicity of laws³. A brief overview of each code is as follows:

2.1. The Code on Wages, 2019

The Code on Wages consolidates four existing laws related to wages and remuneration: the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. The key features include:

² Available at: https://www.mha.gov.in/sites/default/files/armed_forces_special_powers_act1958.pdf

³ Suvro Kamal Dutta, "On the Issue of Repeal of AFSPA", *Mainstream* 19 (2006).

- **Uniform Definition of Wages:** The Code introduces a uniform definition of wages, which is expected to simplify the calculation of salaries, bonuses, and other payments.
- **National Floor Wage:** It introduces a national floor wage to ensure a minimum level of income for workers across the country, but leaves it to the states to fix their respective minimum wages.
- **Gender Equality:** It prohibits gender discrimination in wages and recruitment.

While the Code aims to ensure that workers receive fair and timely remuneration, the lack of clarity on implementation mechanisms has raised concerns about the enforceability of the minimum wage provisions.

2.2. The Industrial Relations Code, 2020

This Code merges and revises the Trade Unions Act, 1926; the Industrial Employment (Standing Orders) Act, 1946⁴; and the Industrial Disputes Act, 1947. It seeks to balance the interests of employers and workers by:

- **Simplifying Registration of Trade Unions:** It makes the process of registering trade unions easier but also introduces conditions that may limit their autonomy.
- **Fixed-Term Employment Contracts:** The Code permits fixed-term employment, which provides flexibility for employers but has raised concerns about job security.
- **Changes in Layoff and Closure Rules:** Establishments with up to 300 workers can now lay off workers or close down without seeking government approval, a threshold increased from 100. This provision has been widely criticized for undermining job security and making it easier for employers to terminate employment.

2.3. The Occupational Safety, Health, and Working Conditions Code, 2020

This Code consolidates 13 laws related to the health, safety, and working conditions of workers, including the Factories Act, 1948; the Mines Act, 1952; and the Contract Labour (Regulation and Abolition) Act, 1970. Key provisions include:

- **Improved Safety Standards:** The Code mandates improved safety measures for hazardous occupations and stipulates provisions for workplace welfare.

⁴ S.G.Vombatkere, “Armed Forces Special Powers Act Governance by Ballot or Bullet”, Mainstream, December 21 (2006).

- **Expansion of Applicability:** The Code applies to establishments employing at least 10 workers, which means smaller establishments are largely exempt from stringent safety norms.
- **Flexibility in Working Hours:** Employers have more flexibility in determining working hours and shifts, which could lead to potential exploitation without proper oversight.

2.4. The Code on Social Security, 2020

This Code amalgamates nine laws related to social security, including the Employees' Provident Fund Act, 1952⁵; the Employees' State Insurance Act, 1948; and the Maternity Benefit Act, 1961. It aims to expand social security benefits to a wider pool of workers, including those in the informal sector:

- **Gig and Platform Workers:** The Code includes provisions for gig and platform workers, recognizing their rights to social security benefits such as health insurance and provident fund.
- **Unified Registration and Contribution Mechanism:** It introduces a unified system for registration and contributions to social security schemes, which is expected to simplify processes for employers.

While these provisions appear progressive, the implementation and actual benefit delivery for informal workers remain uncertain due to the lack of clarity on funding and administrative mechanisms.

3. Impact of Labour Law Reforms on Workers' Rights

The consolidation of labour laws into these four codes has had varied impacts on workers' rights in the formal and informal sectors. While the government emphasizes the benefits of these reforms for economic growth and employment generation, the concerns of workers and trade unions highlight several potential drawbacks:

3.1. Reduced Job Security and Collective Bargaining Rights

One of the most contentious aspects of the new labour codes is the weakening of job security provisions. The Industrial Relations Code, in particular, makes it easier for employers to hire and fire workers by relaxing conditions for layoffs and retrenchments. This flexibility, while

⁵ Entry 2A of List-I.

beneficial for business efficiency, could lead to increased precarity and job insecurity for workers, especially in industries prone to cyclical fluctuations.

The restrictions on the formation and functioning of trade unions further undermine workers' rights to collective bargaining. Trade unions play a crucial role in advocating for fair wages, safe working conditions, and job security⁶. The new rules for union registration and the limitations on strike actions could weaken the bargaining power of workers, making it difficult for them to negotiate better terms of employment.

3.2. Impact on Informal Sector Workers

The informal sector, which accounts for nearly 90% of India's workforce, has traditionally been excluded from formal labour protections. While the new codes claim to extend benefits to informal workers, the lack of clarity on enforcement mechanisms raises concerns about whether these benefits will be effectively realized. For instance:

- **Gig and Platform Workers:** The inclusion of gig and platform workers in the Code on Social Security is a positive step. However, the voluntary nature of contributions and the absence of clear guidelines on employer contributions could limit the actual benefits available to these workers.
- **Migrant Workers:** The Occupational Safety Code includes provisions for migrant workers, but the implementation challenges and limited scope of coverage could leave many migrant workers without adequate protection.

3.3. Gendered Impact of Labour Reforms

Women workers, who are predominantly employed in informal sectors and low-paying jobs, are likely to be disproportionately affected by these reforms. The lack of stringent provisions for workplace safety, maternity benefits, and gender-sensitive policies could further marginalize women in the workforce.

4. Conclusion: Balancing Reforms with Workers' Rights

The recent labour law reforms in India represent a significant shift in the regulatory landscape, aimed at promoting economic growth and ease of doing business. However, the emphasis on flexibility and simplification should not come at the cost of workers' rights and social security.

⁶ Section 3, the Armed Forces (Special Powers) Act, 1958.

It is essential to strike a balance between the needs of businesses and the rights of workers, particularly those in the informal sector.

To ensure that the benefits of these reforms are equitably distributed, the government must prioritize effective implementation, strengthen enforcement mechanisms, and engage in meaningful dialogue with workers and trade unions. Protecting the dignity and rights of workers is not just a legal obligation but a moral imperative that underpins the pursuit of inclusive and sustainable development.

Background: The Need for Labour Law Reforms in India

India, a country characterized by its socio-economic diversity and vast population, has always had a complex relationship with labour and employment. The framework of labour laws in India has evolved over decades, shaped by colonial influences, post-independence aspirations, and the changing dynamics of the global economy. Over the years, labour laws were enacted to protect workers' rights, regulate employer-employee relationships⁷, and ensure fair working conditions. However, with time, these laws have become fragmented and outdated, necessitating comprehensive reforms. This article provides a detailed overview of the historical evolution of labour laws in India, examines the need for reforms, and highlights the factors that have driven the demand for a revamped legal framework.

1. Historical Evolution of Labour Laws in India

The history of labour laws in India can be traced back to the pre-independence era, where initial regulations were introduced primarily under British colonial rule. The industrial revolution in the West and the establishment of factories in India led to the development of a formal labour law framework. The labour laws developed in this period were largely influenced by the British legislative framework and were designed to protect the interests of the colonial administration and employers rather than the welfare of the workers.

1.1. The Early Years: Colonial Era and the Birth of Labour Laws

During the early stages of industrialization in India, workers were often subjected to harsh conditions, low wages, and long working hours. There were no formal regulations to protect workers' rights, and exploitation was rampant. The first significant labour law in India was

⁷ Supra note 1 at 22.

introduced with the **Factories Act of 1881**⁸, which was aimed at improving working conditions for factory workers, especially women and children. The Act restricted the working hours of children and women and introduced some basic safety measures in factories. However, it was limited in scope and failed to address broader issues like wages, social security, and collective bargaining.

Following this, the **Factories Act of 1891**⁹ brought minor changes by reducing working hours and setting specific rest periods. The Act also raised the minimum age for employment of children. Despite these initial efforts, labour legislation remained weak, and implementation was poor, as the colonial government prioritized the interests of British-owned enterprises.

The early 20th century saw the rise of nationalist movements, which brought labour issues to the forefront. The **Trade Unions Act of 1926**¹⁰ was a landmark piece of legislation that recognized the right of workers to form unions. This Act legalized trade unions and provided a framework for their registration and functioning, marking the beginning of organized labour movements in India. It was a critical step towards empowering workers to collectively bargain for their rights.

1.2. Post-Independence Era: Building a Labour Law Framework¹¹

The post-independence period was marked by a strong emphasis on social justice and labour welfare. The newly independent Indian state aimed to create a just and equitable society, and labour laws became a crucial instrument in achieving these objectives. Several comprehensive legislations were introduced during this period, laying the foundation for India's modern labour law framework:

1. **The Industrial Disputes Act, 1947:** This Act was enacted to regulate the settlement of industrial disputes, maintain industrial peace, and protect the rights of both employers and employees. It provided mechanisms for dispute resolution through conciliation, arbitration, and adjudication. The Act also introduced provisions for strikes, lockouts, and layoffs, making it a cornerstone of industrial relations in India.
2. **The Factories Act, 1948:** Building on the earlier colonial-era Factory Acts, this legislation focused on ensuring safety, health, and welfare of workers employed in

⁸ Lt. Gen. Harwant Singh (ret'd), "Withdrawing AFSPA: It Will Affect Army's Functioning in J&K", the Tribune, November 3, 2011 p.6.

⁹ A.K Gopalan v. State of Madras, AIR 1950 SC 27

¹⁰ Supra note 9.

¹¹ Maneka Gandhi v. UOI, AIR 1978 SC 853.

factories. It set standards for working hours, rest intervals, and employment conditions, particularly for women and children.

3. **The Minimum Wages Act, 1948:** This Act was introduced to ensure that workers in different industries received a minimum standard of wages, preventing the exploitation of unskilled and semi-skilled workers. It empowered state governments to fix minimum wages for various occupations and industries.
4. **The Employees' Provident Fund and Miscellaneous Provisions Act, 1952:** A significant social security legislation, this Act aimed to provide a savings scheme for workers, ensuring financial security after retirement. It mandated contributions from both employers and employees towards a provident fund, which could be accessed by workers upon retirement or in emergencies.
5. **The Employees' State Insurance Act, 1948:** This Act provided for health insurance and medical benefits to employees in case of sickness, maternity, or employment-related injuries. It marked a crucial step towards the social security of workers in India.
6. **The Payment of Gratuity Act, 1972:** This Act provided a retirement benefit to employees in the form of gratuity, recognizing the contribution of long-serving employees.

The post-independence labour law framework was thus characterized by a strong focus on worker welfare, social security, and industrial harmony. However, these laws were enacted in a period when the economy was largely agrarian and industries were state-controlled. As India transitioned towards a more liberalized and globalized economy, these laws became less suited to the changing needs of the labour market.

2. The Need for Labour Law Reforms: A Changing Economic Landscape

By the late 20th century, India's economic landscape had undergone significant changes. The shift from a state-controlled economy to a more liberalized, market-driven economy brought new challenges for labour regulation. The existing labour laws, which were designed for a different era, were increasingly seen as rigid¹², complex, and an impediment to economic growth.

¹² Available at: http://www.hrdc.net/sahrdc/resources/armed_forces.htm>accessed on 12.12.2011.

2.1. Complexity and Overregulation

India's labour laws were often criticized for being overly complex and fragmented. There were over 40 central laws and more than 200 state-specific laws, each regulating different aspects of employment, such as wages, working conditions, industrial relations, and social security. This multiplicity of laws created confusion and made compliance burdensome, especially for small and medium enterprises (SMEs). Employers had to navigate through a maze of regulations, leading to high compliance costs and bureaucratic hurdles.

2.2. Rigid Provisions Hindering Employment Growth

Many labour laws in India contained provisions that were seen as excessively rigid, particularly in terms of hiring and firing workers. For example, the Industrial Disputes Act, 1947 required establishments with 100 or more employees to seek government permission before retrenching workers or closing down operations. This provision, while protecting workers' job security, made employers reluctant to hire more workers¹³, leading to a preference for contract and temporary employment over regular employment.

2.3. Inadequate Coverage and Protection of Informal Sector Workers¹⁴

Despite the comprehensive nature of India's labour laws, a significant portion of the workforce remained outside the ambit of formal protection. The informal sector, which accounts for nearly 90% of India's workforce, was largely unregulated and excluded from the benefits of existing labour laws. Informal sector workers, such as agricultural labourers, construction workers, and domestic workers, often faced exploitation, low wages, and unsafe working conditions.

2.4. Need for Modernization and Global Competitiveness

As India aspired to become a global manufacturing hub, there was a growing realization that the existing labour laws needed to be modernized to make the labour market more flexible and competitive. The government and industry stakeholders argued that labour law reforms were necessary to attract foreign investment, promote ease of doing business, and create more employment opportunities.

¹³ S. Bhaumik, "India targets North-east Rebels," BBC News 29th Oct 1995 as available at http://news.bbc.co.uk/2/hi/south_asia/43881 accessed on 2.12.2011.

¹⁴ Article 4(1) and 4(3) of ICCPR.

3. The Path to Labour Law Reforms

The demand for labour law reforms gained momentum in the early 2000s, with successive governments recognizing the need for change. However, the process was fraught with challenges, as labour is a concurrent subject under the Indian Constitution, meaning both the central and state governments¹⁵ have the authority to legislate on it. This created a complex political and administrative environment for implementing reforms.

In 2019 and 2020, the government took a major step towards overhauling the labour law framework by consolidating 29 existing laws into four comprehensive labour codes:

1. **The Code on Wages, 2019**
2. **The Industrial Relations Code, 2020**
3. **The Occupational Safety, Health, and Working Conditions Code, 2020**
4. **The Code on Social Security, 2020**

These codes were introduced with the objectives of simplifying the regulatory framework, promoting ease of compliance, and extending social security benefits to all workers, including those in the informal sector.

4. Conclusion: The Way Forward

While the new labour codes are a step towards rationalizing the legal framework, their success will depend on effective implementation and the ability to balance the interests of employers and workers. There is a need to ensure that labour law reforms do not dilute workers' rights or exacerbate existing inequalities. For the reforms to be truly effective, they must promote a fair, inclusive, and sustainable labour market that protects the rights and dignity of all workers, formal and informal alike.

¹⁵ M.P. Jain, *Indian Constitutional Law*, 6th edn., 98 (1998).