

## Indian Labour Laws are undergoing a Paradigm Transformation

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### Abstract

The administration of the National Democratic Alliance, which was elected on the basis of a "public promise" of development, is pursuing labour deregulation aggressively. In light of the government's efforts to weaken the three key labour laws governing industrial relations—the Trade Unions Act of 1926, the Industrial Employment (Standing Orders) Act of 1946, and the Industrial Disputes Act of 1947—this article outlines some notable modifications to the laws. It also emphasises Indian trade unions' defensive posture, which arises from the government's hurry to change labour rules.

### Keywords

Indian Trade Union, India, Labour laws, Law Transformation

### Introduction

The Ministry of Labour and Employment (MoLE) of the Government of India released a draught of the "Code for Industrial Relations" on April 27, 2015, with the aims to repeal and combine the three major central government labour laws – the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947.

The code was made public on the MoLE website with a deadline of May 26, 2015 for interested parties to submit comments and feedback (MoLE 2015). The Labour Code on Industrial Relations Bill of 2015 was then drafted. The dynamics at work are so diverse that they are difficult to encapsulate in a single discipline as poor quality labour statistics, a high level of informality, and state-level variances compound this complexity in India.

A comprehensive overhaul of Indian labour laws is one of the various initiatives adopted by the current government to please capital and business. This article tries to place the proposed amendments in the context of the Indian government's recent actions and debates on labour regulation. The "recoding" of labour regulations has caused a lot of uncertainty; this page outlines some of the major modifications that have been proposed. The administration of the Bharatiya Janata Party (BJP), which came to power on the "public promise" of development, has been acting fast on these requests. While this is unsurprising, the disparity between the government's sloganeering and its actions demonstrates a distinct "two-facedness".

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The government launched the Shramev Jayate—"Victory to Labour"—programme in October 2014, proposing and/or implementing changes to several formal sector labour laws, including the Factories Act (1946), Employees' State Insurance Act (1948), Minimum Wages Act (1948), Employees' Provident Fund Act (1952), Apprentices Act (1961), and the Labour Laws (Exemption) Act (1986).

### **Objections to Labour Laws**

The strong strain on India's labour laws is consistent with a global trend of falling government support for labour (including laws, policies, and regulations). The strong relationship between the government and the business class, the structure of segmentations in the Indian labour force, inadequate enforcement, and pressure on governments to achieve high economic development all add to the severity. A corpus of literature has advocated against labour protections over the years. Its arguments can be divided into three types.

#### ***Argument for efficiency***

The most widespread argument is that labour laws are linked to economic performance, and that labour regulations reduce economic "efficiency." Besley and Burgess (2004), Kochhar et al (2006), Basu and Maertens (2007), Ahsan and Pagés (2008), and Amin (2008) are examples of literature focusing on India (2009). Despite the fact that considerable holes have been poked in them (Anant et al 2006; Bhattacharjee 2006; Mitchell et al 2014: 36; Deakin and Haldar 2015), they appear to have maintained their agreement on toeing the line of certain pre-existing theoretical concepts. These arguments fit in nicely with charges of interference, in which labour rules are perceived as interfering with the operation of the industry and, as a result, limiting employment.

Employers' conventional argument arises from the belief that labour laws (and often general commercial and trade rules as well) are a kind of government interference in their "freedoms," and hence in market operations. This "efficiency" argument has been taken by the business community, which has persuaded governments that what is best for employers is also best for employment, and hence best for employees. In such circles, the oft-repeated circular adage is that "labour rules often injure workers themselves."

#### ***Institutional or informal argument***

The third significant point concerns the Indian economy's high level of informality (NCEUS 2009; Chen 2007). While there is no denying India's large level of informal employment, disagreements arise when the reasons for its continuous existence are discussed. The institutionalist school has made a substantial contribution in the context of developing economies. This school blames the high levels of informality to the high costs of institutionalisation and formalisation, as well as a lack of private property protection (for example DeSoto 2000). The rationale of this line of thought is that labour regulations are a barrier to formalisation because of the high expenses of registration, compliance, and register maintenance, among other things, and as a result, the economy becomes more informal. This also leads to self-defeating conclusions, such as reducing or eliminating prices to diminish informality, and therefore diluting labour rules (Basu 2006; Dougherty 2009; Djankov and Ramalho 2009).

Formalization occurs when one gets under the protection of labour regulations, which is rarely acknowledged. It would be foolish to believe that firms will freely shift to formal regular employment and provide workers with more rights on their own volition, especially in India. After the Second National Labour Commission in 2002, minor changes in labour regulations resulted in a huge surge in informal employment (Shyam Sundar 2011; Sood et al 2014).

### *The argument of complexity*

The labour is a dual-controlled topic by the federal government and the states, regulatory procedures and legislation might differ. There might be a huge variety of legislation and case law interpretations in a varied country like India. This will, however, hold true for all other state-controlled laws. This argument has some merit (see Debroy and Kaushik 2005; Mitchell et al 2014). For example, it appears that there is some fundamental ambiguity regarding labour rules. The majority of studies and reports cite between 44 and 46 central labour regulations (varying numbers include Planning Commission 2011 (44), Basu and Maertens 2007 (45), and MoLE 2015). (46). However, the Law Commission has classified 60 legislations as labour laws (Law Commission 2014).

According to an assessment of the various sets of legislation, there appear to be a total of 64 central labour laws in India. The majority of anti-labor legislation debates revolve on these three primary points. Ironically, they all seem to arrive to "oxymoronic" conclusions like lowering labour protections for the benefit of employees. These results are not only counterintuitive on the surface, but they also reveal a lack of knowledge and awareness of the growth of labour laws and regulations, as well as the reasons for and efforts that went into their creation.

### *As a cover of simplicity*

Workers and labour organisations would not have any cause for concern if the proposed of Indian labour laws only involved consolidating the legislation. But it seems like important changes are being made while simplification is being pretended to be simplification. Additionally, it appears that no labour unions or organisations were involved in the creation of the code and that their feedback was only requested after it was finished (Outlook 2015). If laws were changed in a constructive way, through specific amendments, such changes would have been obvious. In a nutshell, the government intends to introduce modifications of many laws in one fell swoop. That creates ambiguity and confusion of the Indian traditional labour force through the lens of social protection floor, social cohesion and social consensus.

## **Conclusions**

The three industrial relations statutes are the backbone of Indian trade unions. The proposed amendments in this law, which include minor phrasing changes, definition changes, deletions, and other permutations and combinations, are far too many to be detailed in a short essay. However, there is little doubt that if these changes are adopted, they will be seismic for both the history and future of India's workers: the core of labour laws has essentially remained untouched over the previous century, with modest improvements made over time. This has the potential to permanently harm formal employment across industries, as well as the quality of

future industrial employment. In seeking to win an election with great promises of progress, the current government has backed itself into a corner, ensuring its destruction if it fails to meet the expectations it has raised. With a global economic slowdown, currency market volatility, and challenging export markets looming, the government must scramble and yield to the demands of capital, investors, and corporate bodies for deregulation in a number of areas. When trade unions voiced their objections to the "code," a tripartite committee was formed, with the BMS and the Congress-affiliated Indian National Trade Union Congress serving as trade union representatives (Economic Times 2015). This should at the very least be expanded to include the big five unions (the other three being the All-India Trade Union Congress, Centre of Indian Trade Unions, and Hind Mazdoor Sabha), all of which have more than 2 million members (the "Big Five" unions account for around 75% of the total unionised workforce, according to Roye 2008). The administration, on the other hand, would be leery of including communist unions since they would undoubtedly mount a far stronger and more serious opposition. Meanwhile, on September 2, 2015, all of the major unions declared their opposition to the "codes" and went on an all-India strike. The bill is, without a doubt, the second of four or five instalments aimed at substantially overhauling India's labour rules. The process of changing labour rules has been hastened, despite the fact that it is still in draught form, and unions have complained that they are not being given enough time to adequately research and present their case. It will be interesting to see how the trade unions react to these recommendations and how much of this draught makes it into the final measure. Small changes to labour regulations were demanded by industry groups. They've been guaranteed a windfall.

## References

- Ahsan, A and C Pagés (2008): "Are All Labor Regulations Equal? Evidence from Indian Manufacturing," IZA Discussion Paper No 3394, Bonn: IZA.
- Amin, M (2009): "Labor Regulation and Employment in India's Retail Stores," *Journal of Comparative Economics*, 37(1), pp 47–61.
- Anant, TCA, R Hasan, P Mohapatra, R Nagaraj, and SK Sasikumar (2006): "Labor Markets in India: Issues and Perspectives," *Labor Markets in Asia: Issues and Perspectives*, J Felipe and R Hasan (eds), Basingstoke: Palgrave Macmillan, pp 205–300.
- Basu, K (2006): "Labor Laws and Labor Welfare in the Context of the Indian Experience," *Poverty, Inequality and Development*, A de Janvry and R Kanbur (eds), New York: Springer.
- Basu, K and A Maertens (2007): "The Pattern and Causes of Economic Growth in India," *Oxford Review of Economic Policy*, 23(2), pp 143–67.
- Besley, T and R Burgess (2004): "Can Labor Regulation Hinder Economic Performance? Evidence COMMENTARY 22 October 3, 2015 vol 1 no 40 EPW Economic & Political Weekly from India," *Quarterly Journal of Economics*, 119 (1), pp 91–134.
- Bhattacharjea, A (2006): "Labour Market Regulation and Industrial Performance in India: A Critical Review of the Empirical Evidence," *Indian Journal of Labour Economics*, 49(2), pp 211–32.
- Chen, M A (2007): "Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment," DESA Working Paper 46, United Nations.
- Deakin, S, and A Haldar (2015): "How Should India Reform its Labour Laws?," *Economic & Political Weekly*, 50(12), pp 48–55.
- Debroy, B and P D Kaushik (2005): "Issues in Labour Law Reform," *Reforming the Labour Market*, Debroy and Kaushik (eds), New Delhi: Academic Foundation.

- DeSoto, H (2000): *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, New York: Basic books.
- Dougherty, S (2009): "Labour Regulation and Employment Dynamics at the State Level in India," Organisation for Economic Cooperation and Development Departmental Working Papers.
- Djankov, S and R Ramalho (2009): "Employment Laws in Developing Countries," *Journal of Comparative Economics*, 37(1), pp 3–13.
- Economic Times (2015): "RSS-affiliated Bharatiya Mazdoor Sangh Joins Congress to Oppose New Labour Law," ET Bureau, *Economic Times*, 9 May available at: [http://articles.economictimes.indiatimes.com/2015-05-09/news/61977685\\_1\\_new-labour-law-bms-labour-minister-bandarudattatreya](http://articles.economictimes.indiatimes.com/2015-05-09/news/61977685_1_new-labour-law-bms-labour-minister-bandarudattatreya), accessed on 14 May 2014.
- Kochhar, K, U Kumar, R Rajan, A Subramanian, and I Tokatlidis (2006): "India's Pattern of Development: What Happened, What Follows?," *Journal of Monetary Economics*, 53(5), pp 981–1019.
- Law Commission (2014): "Obsolete Laws: Warranting Immediate Repeal–Interim Report," Report No 248, Law Commission of India, GoI, available at, <http://lawcommissionofindia.nic.in/reports/Report248.pdf>; accessed on 14 May 2015.
- Mitchell, R, P Mahy and P Gahan (2014): "The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development," *Asian Journal of Law and Society*, 1(02), pp 413–53.
- MoLE (2015): "Comments on Draft Labour Code on Industrial Realtaions" (sic), accessed on 14 May 2015, <http://labour.gov.in/content/whatsnews/draft-labour-code-on-wages---suggestions-are-invited-by-the-ministry.php>.
- NCEUS (2009): "The Challenge of Employment in India: Vol 1," National Commission for Enterprises in the Unorganised Sector, Government of India.
- Outlook (2015): "Draft Labour Code: Govt Says Rights of Workers Will Be Protected," *Outlook Magazine*, 7 May, available at <http://www.outlookindia.com/news/article/draft-labour-codegovt-says-rights-of-workers-will-be-protected/895812>; accessed on 14 May 2014.
- Planning Commission (2011): "Report of the Working group on 'Labour Laws and Other Regulations' for the Twelfth Five-Year Plan 2012–17," Planning Commission Report Z20025, Government of India, available at [http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg\\_labour\\_laws.pdf](http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg_labour_laws.pdf); accessed on 14 May 2015.
- Roye, S D (2008): "Verification of TU Membership– A Factual Analysis," *The Working Class*, 38 (7), New Delhi: Centre of Indian Trade Union.
- Shyam Sundar, K R (2011): "Non-regular Workers in India: Social Dialogue and Organizational and Bargaining Strategies and Practices," *DIALOGUE Working Paper* 30, Geneva: International Labour Organisation.
- Sood, A, P Nath and S Ghosh (2014): "Deregulating Capital, Regulating Labour: The Dynamics in the Manufacturing Sector in India," *Economic & Political Weekly*, 49(26–27), pp 58–68.