

## A CRITICAL ANALYSIS OF THE LABOUR LAWS IN INDIA

### Abstract

This will seek to understand how the labour industry in India works and why it is important to have effective laws to protect the vulnerable population working in the informal sector which is an important part of India's labour force. The question is how effective laws can be used to increase the productivity of the labour force including both men and women. The paper then also focus on the wage game debate as how to women who today constitute a substantial portion of the working population in India are still denied equal payment for equal work. The argument here is that the labour market in India is structured in such a way that instead of creating favourable working conditions for women, it is highly unfavourable for them and this extends to both the formal and informal sector. Labour in India is more of a problematic and complicated category. It has multiple dimensions and has manifested itself in different forms over the years. One of the common place and popular understanding of the term labour is that of an old and malnourished farmer toiling away at his field in the afternoon sun. When we hear the word worker we also imagine a well built worker wearing a blue jumpsuit, carrying his lunchbox and dedicating his life to the machine. From Karl Marx to Charlie Chaplin, we have all come across life size depictions of the labourer and the worker in theories, books and cinema which has conditioned our understanding regarding them. The word 'Labour' has a profound place in Indian history. Even before imperialism, feudal Indian society was characterized by unequal relations between the landlord and the indentured labourers where the latter had to provide service on the lands of the former for a petty sum of money or a share of the crops.

In the present times, the labour market in India is characterized by the dual existence of the formal and informal sector. The informal sector is at the moment in dire need of substantial laws that can take care of its stakeholders or in other words the people who are working in this sector. Estimates say that 92% of the Indian population is engaged in the informal sector. This means that a total of only 8% of the population who are working and earning can actually enjoy job security benefits. One of the major reasons as to why we see a boom in the number of jobs in the informal sector is due to the fact that some entrepreneurs who are low on capital and do not have access to government agencies to obtain government clearances to start businesses, voluntarily move to the informal sector. The very fact that the entrepreneurs operating in this sector are off the government radar allows them to operate illegally. It also allows them to pay meager salaries to their employees as they are not protected by any unions or legal contracts.

Further, the informal economy has also seen an expansion from the 1990s onwards as globalization intensified around the world. Even though globalization can create many jobs and markets for employment, however many of these jobs and new markets are inaccessible to small scale workers or marginal labourers. They are also inaccessible to the wide number of informal workers who are not skilled enough to work in the kind of jobs that are created by globalization. What is happening as a result is that people are not getting access to reasonable incomes and hence are deprived of better life chances. Further they also do not get paid for the labour that informal sector workers put into their work. Their salaries might not compensate for the total amount of time that they put into their daily work. For instance the amount of work performed and time put into the daily work on an average by a part time maid far exceeds the work performed on an average by a women who might hold a corporate job in an MNC. The problem is further exacerbated by the fact that the maid who might be working hard to earn enough wages might also have her job once she is pregnant as her owner might fire her once she is unable to work on a regular basis. This small example nonetheless tells us that it is high time that the informal sector of the country gets defined and protected by better and encompassing laws. This is due to the reason that it is the informal sector in India which has the highest concentration of productive labour which is yet to be utilized to be in a optimum way.

This requires proper laws that would guarantee the welfare of workers while at the same time ensuring the accountability of the worker. Further in the academic discourse there is also a recognition that women tend to concentrate in the most precarious of livelihoods. Hence providing legal protection to the employees of this sector can be step towards the protection of women who have the right to work outside of their homes and earn equal wages. The existence of the informal economy increases the problems of the labourers in India. It is not possible to negate or ignore the existence of this gigantic and integral part of the Indian economy, however it is possible to make that the employers and employees are guaranteed better livelihood options through the introduction of steadfast, strong and protective laws.

### **Trade Unions - their Importance in the Indian Labour Market**

Historically Indian labour relations have been defined by the triad between the employers, employees and the trade unions. To discuss labour relations and labour law it is important to discuss trade unions as it is an significant mechanism for ensuring labour harmony. Trade unions historically have been mediating between the employees and employers to ensure industrial harmony. Some of the historic trade unions are that of All India Trade Union Congress (AITUC) and Centre of Indian Trade Unions (CITU). These are perhaps some of the few trade unions. However at the state and regional level there are numerous ones. These trade unions since independence have played an important role in putting forward workers' interests. However the question remains that if strikes and dharna can actually influence law making. The trade unions became more prominent and have started to play an increasingly important role in the mediation of industry related conflicts after the passing of the Trade Union Act in the year 1926 which gave trade unions in India a legal status by allowing them to be registered and also granted them immunity from any kind of criminal prosecution. It also gives the trade unions the right and power to solve any kind of disputes arising between the labour and the management. However the trade union act also suffers from weakness as it does not make the trade unions accountable to the labour populations they seek to represent. The Railways strike of 1974 under the leadership of George Fernandes saw approx 17 lakh railway workers going on a stike for the demand of hike in payscales. The strike was also brutally suppressed by the then Prime Minister Indira Gandhi. However the leaders did not arrive at a conclusion after consultation with the labourers. It was a political level decision.

One of the important conditions for the labour force of a country to turn into a productive force is that it requires proper and favourable working conditions. Since the underlying purpose of performing work and labour is to earn wages, hence it is better to ensure that labourers are given proper and sustainable wages. The strike of 74 actually shows us what happens when alienation sets in and labourers who are the drivers of economic development in a country revolt against the repressive working conditions. The Act of 1926 also does not restrict any trade union from being a part of political activities or active politics. The very fact that a lot of trade unions have political alliance with various political parties creates a barrier with members of the union and between the trade union leaders. Involvement with political parties also tends to influence the overall decision making process of the trade union. The act being passed even before Indian independence needs to be revised. The case of the 1974 Railways strike perhaps tells us why it is of utmost importance to have a stable labour force in the country.

### **Why Labour Law?**

The Ministry of Labour and Employment, Government of India defines labour law as "Labour law also known as employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers and employees.

In other words, Labour law defines the rights and obligations as workers, union members and employers in the workplace. Generally, labour law covers:

1. Industrial Relations—certification of unions, labour-management relations, collective bargaining and unfair labour practices;
2. Workplace Health and Safety;
3. Employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay.

Further labour laws in India operate at two levels:

1. Individual level
2. Collective level

The first one concerns the individual labourer regarding his working conditions and the right to have legal contracts for work which would give him the access to regular salary. The second right which functions at the collective level relates to the resolution of conflicts between the tripartite relationship of the management, the employees and the trade unions. The significance of labour laws relates to the establishment of a better working culture among the employees and also makes sure that the interests of all three parties i.e the employees, the employers and the trade unions are protected.

### **Criticism of the labour laws in India:**

Many economists and sociologists have argued that labour laws in India have been blindly in favour of the employees and workers rather than that of the employers and entrepreneurs. Many of them also argue that in India the ease of doing business declines due to the existence of archaic laws and labour related regulations. A claim that may be justified from the side of the entrepreneurs who might not have the required contacts and facilities to get bureaucratic clearances to get their enterprise kicking or who might not have the required funds to start their own business. A lot of small scale entrepreneurs who employ 10 or less than 10 workers may not have the legal knowledge to make sure his startup has the required license or the required legal clearances to start his business. A lot of times it has also been seen that the entrepreneurs or owners would bribe labour inspectors to get off the hook of the governments. This leads to a kind of legal stagnation in which the people working in hazardous situations or in the informal sector do not get recognized and hence are denied of opportunities or benefits they rightly deserve. Hence this is why there is the need to make comprehensive labour laws. Labour law most interestingly is also known as industrial law. To make sure that the labour laws work in the favour of workers it is important to have a sharp and a clear demarcation between laws related to labour welfare and industrial reforms. This is because certain important aspects of labour like that of dignity of labour, wage rate and time required to perform labour cannot be discussed merely under industrial law. Hence an inclusive look at the labour law would be desirable for a robust labour population.

### **Industrial Dispute Act, 1947:**

One of the most important laws affecting the labour relations in India is that of the Industrial Disputes Act, 1947. The chapter 5 of this law states that any entrepreneur wishing to fire an employee or worker has to take the approval of the government. This act does not let the labour market to be flexible enough to induce any kind of labour related reforms. Moreover it does not allow promising entrepreneurs to enhance employee performances so as to enhance the productivity of their firms. Hence there is a need to codify laws into mutually agreeable ones while holding consultation with the workers and the management. The laws become problematic if they are too numerous in numbers as labour related issues figure in the concurrent list of the Indian Constitution.

This implies that both the state and central governments are open to make labour related laws which create a whole new set of problems. Existing laws also have a lot of problems. Even the ones that claim to protect the interests of the people working in the informal sector. For instance the Minimum Wages Act of 1948 vouched for providing minimum wages to the people working in employments that have ten or more people working in them. However the employments must be a part of the scheduled establishments which do not take into account the home based workers or domestic workers. The Beedi and Cigars Workers Act remains a state based labour act which does not extend to the rest of the country and hence a lot of industrial outworkers remain excluded from the benefits of this act even today.

### **Workmen's Compensation Act, 1923:**

Similarly this has the provision of providing compensation to workers in case of death of accidents that occurred while working in the workplace, however the limit of compensation or the price to be offered for people in different occupations is not specified. Further the procedure for availing the compensation was not clarified as a result the act is open to the manipulation and deceit on the part of the relatives of the victims and a lot of ex gratia compensation have not reached the ones who require it the most.

### **Payment of Gratuity Act, 1972:**

Another important Act is that of which provides gratuity or a fund as a retirement benefit for any person who has worked beyond 5 years in an establishment. The act however is not clear if for claiming the person has to be employed in the formal or informal sector. Moreover in the unorganized sector especially if the employer fires a worker then he may not only terminate his pay scale but at the same time also make sure that the worker is not paid any post- retirement benefits. The most important thing to be noted here is the fact that out of total 440 million workforce of India only 8% of it are eligible for availing the benefits of this act are working in the formal sector. As a result of which the rest 92% of the people working do not get access to better incomes or social security and also they have to spend on child education and health out of their meager incomes.

### **Unorganized Sector Social Securities Act, 2008:**

This was introduced in which it sought to identify the casual workers, industrial outworkers and contract based workers under the ambit of the employee regulatory authority so as to enable them to avail regular income and job related benefits. The act binds the Central government in giving the workers of the unorganized sector the minimum benefits that they deserve. This has been proposed to be done by identifying the people working in the unorganized sector and gives him or her a social security number and a social security card which will solve all their problems. However the law does not really identify or define what is actually social security. It is also not clear if the act intends to provide social insurance or social security as the terms are not identical but are different. Further it is also not clear how the people who need to avail the benefits are to be identified or in another sense what kind of establishments under the unorganized sector can be actually recognized as beneficiaries to this act. Another process confronting the process of labour laws in India is the problem of fixing definite wages for definite time of work. Further the process of fixing wages for the employees of the unorganized sector is also more of an ambiguous nature as consumption rates and time undertaken by the workers in different occupations to perform different kinds of work may vary from establishment to establishment. Hence uniform labour wage standards is required to be devised which would ensure proper wages for every worker.

Before concluding this sector on the critique on labour laws, it is important to note in India where almost a substantial part of her population is below the poverty line and still suffer from unemployment the relationship between an employer and employee is essentially that of the power bearer and the oppressed. Workers even today in the absence of comprehensive laws still have to work in exploitative conditions. The problem with perhaps every law in India is that it is not really well equipped with the dual character of the Indian labour market. The implementation of labour laws is also another problem. If India considers itself to be a real democratic country then it has to ensure that organization of labour struggle is an important human right. If labour laws are to be considered as important steps towards its projected goals of labour empowerment then through its proper implementation they should bring them social justice. However after the Second Commission of Labour (SCL) submitted its report in the year 2002 the government of India has been moving swiftly ahead in making the labour market of India flexible enough to grant the ease of doing business here especially for foreign multinational companies. However this has led to another problem as the unskilled labour now has to compete with highly skilled labour that works for the global firms. The agricultural sector has suffered the most as they now to have grown expensive crops in drought prone areas produced by the MNCs the knowledge of which they never acquired. The increasing suicides in the Marathwada region of Maharashtra can be perhaps explained by a new division of labour in which the huge transnational companies dictate small farmers of backward regions of the country as to what crops to grow, leading to vicious cycles of debts in which the farmer has no say whatsoever but take huge loans to get access to these expensive seeds and outputs. Thus the rich farmers get more benefitted at the expense of the small and marginal farmers. Leading to a new kind of inequality in which the 'haves' become richer and 'have not's become poorer and destitute.

### **Gender Inequality and labour:**

Talking about inequality it is evident that as far as labour relations are concerned it has been seen that women suffer the worst kind of discrimination here. The discrimination is in the amount of wages paid to women in comparison to men. Since the last decade there has been a lot of struggle undertaken to vouch for equality in wages between both men and women. However the underlying notion among employers (of which 93% still happen to be men both in the formal and informal sector) that women are not capable of hard mental and physical labour unlike men is intrinsic to the understanding of the subjugated position of women in labour relations existing since prehistoric times. The whole sphere of labour relations is patriarchal because of the reason that ranging from wages and recruitment to legislation everything is in favour of men. Amendments in such laws have also been opposed vehemently over the years. Historically there has been a tendency to devalue the labour of women no matter how strenuous and time taking the work is. The fact that the labour of housewives have not been paid or compensated with any kind of monetary value is evidence of this historic devaluation. As mentioned before, the labour market in India is that of a dualistic nature in which there are two sections of the economy: the formal and informal sector. Owing to this segmentation of the economy, there is the prevalence of highly unregulated casual work and agricultural work. According to a paper of UNIFEM, WEIGO and ILO set of papers there is a huge concentration of women in non-farm work than in agricultural farm work. This non farm work extends to include casual work and industrial out workers in which women are substantial in number and in South Asia far extends that of men. This is especially true for the women working in the self employed sector. The lack of a written contract, no access to income based work and also no maternity benefits in informal work opens women to a whole new range of exploitation and recourse to law also do not help them as judicial recourse is pro male than being pro female. Compensation also tends to devalue women's potential and capacity for intensive work. The problem is further aggravated as women who earn also do not have control to their own incomes. The fact that women spend a substantial amount of their incomes on childcare and family well being rather men who may spend on alcohol or on gambling, leaves them with a very meager amount of money to spend on their own education or own well being.

UNIFEM-WIEGO-ILO paper also shows that women employed in casual work also receive less wages than men on an hourly basis. The justification of the subordination of women in labour relations cannot be found anywhere. The fact that it is deeply entrenched in the political economy of a patriarchal world makes it impossible to deal with and oppose.

### **Maternity Benefit Act, 1961:**

The existing laws in the labour relations like that of the which seeks to regulate employment for women before and after childbirth. It seeks to give assurance for women while they are at home looking after their children that their employment rights would be protected. It can extend to establishments having more than 10 workers however it does not cover employees who are covered by the Employees State Insurance Act, 1948. This is indeed problematic as the Employees State Insurance Act does not effectively cover almost all the employees who work in the informal sector. For instance it is clearly stated that the act is applicable to the factories applying 20 or more workers who earn Rs 400 or below. This leaves the domestic workers or the women who work as industrial out workers or home based workers without any protection or maternity benefit. Also women who work in other non recognized establishments such as beauty parlours or spas are denied of these benefits as most of these establishments might not even have an operating license. In South India since the 1990s in Coimbatore there was a tradition of child labour known as the Sumangali scheme where prospective young girls who belong to poor families are recruited to work in the garment industry of Tamil Nadu. Here the girls from poor families are picked up to work in these factories by recruiters and are made to stay in dormitories. The girls are hired for three or four years for which they paid a sum. After the termination of contract they are paid a lump sum for their dowry. This is likened to soft trafficking as the living conditions of these girls in the so called dormitories are not of human conditions. In the absence of proper contracts they are also open to exploitation and forgery.

### **Equal Remuneration Act, 1976:**

This sought for equal wages for both men and women for equal amount of work done. It also gave women the freedom and right to work in their workplace without having to face any kind of assault or discrimination. Consequently there was the introduction of the Vishakha Guidelines which stated the legal procedure to lodge complaints against sexual complaints and harassments faced by women in their workplaces. However the need of the hour is to make sure these laws are effective for its purpose and make accountable the stakeholders involved to ensure labour and gender parity especially in the labour market of India. Can the above mentioned laws be used to abolish something as harmful as the Sumangali scheme? Why do women still face sexual harassment and economic exploitation even today in their workplaces? Why a female contract worker belonging to a certain caste does not find job as her jobber or contractor belongs to a different caste? Lastly the only way in which women can prove themselves to be meaningful stakeholders of the labour market is through education. The introduction of universal education for the girl child and later on the introduction of technical education for women which would equip them for better employment opportunities in the upcoming technical and software industries of the country would be a big step forward.

The test of labour laws today would be to see if it can encompass the entire informal and formal sectors of the Indian economy. Women like sex workers and domestic maids who through their work try to eke out a living also need to be taken into considerations while framing such laws.

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