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Constitutional and Legal Rights Given to the Working Class in India- An Analysis

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ABSTRACT: After independence was won in 1947, the Constitution of India of 1950 embedded a series of fundamental labour rights in the constitution, particularly the right to join and take action in a trade union, the principle of equality at work, and the aspiration of creating a living wage with decent working conditions.

KEYWORDS: independence, constitution, India, fundamental, working, class

I. INTRODUCTION

However, the Indian Constitution does not explicitly recognise the 'right to work' as a fundamental right. It is placed in Part IV (Directive Principles of State Policy) of the Constitution under Article 41, which hence makes it unenforceable in the court of law. Despite the absence of an express wording of the 'right to work' in Part III (Fundamental Rights) of the Constitution, it became a 'fundamental right' through a judicial interpretation.[1,2,3]

All thanks to the wider interpretation of Article 21 made by the Hon'ble Supreme Court through its judgement in Olga Tellis & Ors. v Bombay Municipal Corporation & Ors.- 'right to work' was recognised as a fundamental right inherent in the 'right to life'.

Labour Laws in India:

Indian labour law refers to law regulating labour in India. Traditionally, the Indian government at the federal and state levels has sought to ensure a high degree of protection for workers, but in practice, this differs due to the form of government and because labour is a subject in the concurrent list of the Indian Constitution.

1.The Minimum Wages Act 1948:

It requires companies to pay the minimum wage set by the government alongside limiting working weeks to 40 hours (9 hours a day including an hour of break). Overtime is strongly discouraged with the premium on overtime being 100% of the total wage. Under the provision of the minimum wages act, 1948, both central and state governments are appropriate government to fix, review and revise the minimum wages of the workers employed in the scheduled employments under Prescribed Act.

2.The Factories Act, 1948:

It regulates working conditions in factories, including provisions related to working hours, health and safety, welfare amenities, and employment of young persons and women.

3.The Minimum Wages Act, 1948:

It sets minimum wage rates for different categories of workers to ensure fair remuneration for their services.

4.The Employees' Provident Funds and Miscellaneous Provisions Act, 1952:

It establishes a provident fund scheme for employees and mandates contributions from both the employee and employer to provide social security and retirement benefits.

5.The Employees' State Insurance Act, 1948:

It provides for medical, cash, maternity, and other benefits to employees working in factories or establishments covered under the Act.

6.The Industrial Disputes Act, 1947:[4,5,6]

It governs the resolution of industrial disputes, including provisions related to collective bargaining, strikes, lockouts, and layoff/retrenchment of workers.



7.The Maternity Benefit Act, 1961:

It grants maternity leave and other benefits to women employees before and after childbirth.

8.The Payment of Wages Act, 1936:

It regulates the payment of wages to workers and provides safeguards against unauthorized deductions.

9.The Contract Labour (Regulation and Abolition) Act, 1970: It regulates the employment of contract labour and ensures their welfare and conditions of service.

These are some basic fundamental rights and Labour laws in India. Such, Rights and Laws are the extract of Constitution of India. These are just few examples, the country has several other laws and regulations in place to safeguard the rights of workers and promote fair and equitable employment practices.

II. DISCUSSION

Labour Jurisdiction

Under the Constitution of India, Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

Labour Jurisdiction : Constitutional Status	
Union List	Concurrent List
Entry No. 55	Regulation of labour and safety in mines and oil fields
Entry No. 22	Trade Unions; industrial and labour disputes.
Entry No. 61	Industrial disputes concerning Union employees
Entry No. 23	Social Security and insurance, employment and unemployment.
Entry No. 65	Union agencies and institutions for "Vocational ...training..."
Entry No. 24	Welfare of labour including conditions of work, provident funds, employers "invalidity and old age pension and maternity

In 1991, the Indian government made an agreement with the International Monetary Fund to liberalise the economy in exchange for short-term financial assistance. This included the government's commitment to 'reform' the [7,8,9] labour market and further open up the partly protected Indian economy to foreign capital. The era of the Bombay Plan was over. India was attractive to foreign capital not only because of the size of its internal market, but also because of its large pool of workers who were being paid criminally low wages. Over the years since independence, workers remained underpaid and underfed, but there was a significant change: a large section of them had become literate. This technically skilled and more ambitious workforce emerged by the 1980s and continued to expand due to the government's investment in vocational and technical training, the fight for increased educational opportunities for children, and the agrarian transformation that produced new aspirations among the children of farmers and peasants. However, there was no expansion of employment to accommodate them. It was this large army of underpaid, underfed labour, accustomed to working in what are likely some of the worst working conditions in the world, but now with new aspirations and literacy, that awaited the exploitation of international capital on the eve of liberalisation.

The corporate sector pushed a full-spectrum media campaign against workers, making the argument that they were entitled and lazy and that there needed to be 'flexibility' in this new age of globalisation. Many academic and policy institutions jumped on the bandwagon to make the case for 'labour market flexibility'. The general orientation of this argument is that labour must work at the whim of capital, which should not be 'captive' to regulations about employment and wages and must be allowed to pay wages according the simple principle of supply and demand, uninfluenced by any responsibility to maintain workers' living standards. Such a scenario – despite the social costs to workers – would bring in foreign investment, they argued, which would allegedly raise the general technological level of industry and further increase labour productivity, thereby increasing both growth rates and wage levels in the long term.

Two impediments lay before this golden road to growth: public-sector trade unions, which continued to resist the doctrine of ‘flexibility’, and the existence of labour laws. One important illustration of the resistance of trade unions is the fight at the Visakhapatnam Steel Plant, led by workers and joined by the public, who, together, have staved off multiple privatisation attempts over the course of a decade.⁶

Faced with challenges from the unions, the government moved towards a comprehensive solution not to fight the unions factory by factory, but to change the law in its favour, assisted, since 1991, by a judiciary aligned with the neoliberal agenda. In the early years of liberalisation, the Supreme Court ruled that contract workers at Air India could become permanent workers in certain cases. But in 2001, the court reversed this judgement following an appeal from the Steel Authority of India and other public-sector firms, thereby nullifying the gains that workers had made through decades of struggle. This assault on contract workers came alongside other industrial disputes, such as a concerted attempt to ban strikes. Then, on 6 August 2003, the Supreme Court ruled in favour of the Tamil Nadu state government’s dismissal of 170,000 employees on the grounds that they had been on an ‘illegal strike’. Only if the workers offered an unconditional apology, the Supreme Court said, would the government have to rehire them. Crucially, the Supreme Court concluded that ‘there is no question of [government employees] having any fundamental, legal, or equitable right to go on strike’, further stating that trade unions do not have ‘a guaranteed right to an effective collective bargaining or to strike’ and that ‘[no] political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire state and is entitled to prevent the citizens not in sympathy with its viewpoints from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the state or the nation’.⁷[10,11,122]

v. Government of Tamil Nadu Others, Case no.: Appeal (civil) 5556 of 2003 (New Delhi, 6 August 2003),

This judgement not only went against Indian laws: it also violated a range of International Labour Organisation conventions that the Indian government had signed over the years.

Over the course of the past few decades, there has been a change in the higher judiciary’s approach towards disputes between workers and management as well as the working class’s right to collectively protest and go on strike – a change that favours market principles and the sanctity of the contract. The judiciary’s views have allowed capital to open up a ruthless campaign against workers, but this has not stopped them from fighting back, as is evident from workers’ struggles, from the Maruti Suzuki factory in Manesar (Haryana) and the Volvo Buses factory in Hoskote (Karnataka) to the anganwadi (crèche) workers of Gujarat and the ASHA (Accredited Social Health Activist) workers of Punjab. Workers’ attempts to form unions have nonetheless been treated as criminal actions. As Maruti Suzuki’s Management Executive Officer S. Y. Siddiqui put it in June 2011, ‘The problem at Manesar is not one of industrial relations. It is an issue of crime and militancy’. Furthermore, the firm, he said, would not ‘tolerate any external affiliation of the union’, warning the unionised workers that any attempt to find political allies amongst the national labour federations to help their fledgling struggle would be met with retaliation from the company.⁸

Vijay Prashad, *No Free Left: The Futures of Indian Communism* (New Delhi: LeftWord Books, 2015),

In the face of continued worker struggles, the government has turned to using anti-terror legislation to arrest workers and subdue their right to strike. For instance, in 2017, when contract workers for Reliance Energy unionised and went on strike for a few hours demanding compensation for the death of a worker, five of them were arrested on terrorism charges.⁹

Jyoti Punwani, ‘How 5 Reliance Workers Fighting for a Better Deal Found Themselves in Jail on Terrorism Charges’, Article 14, 29 July 2021,

Furthermore, violence against union organisers along the Gurgaon-Manesar-Dharuhera-Rewari stretch (in northern India) is mirrored in the Coimbatore-Chennai belt (in southern India). The immanent violence in both of these zones led to industrial actions that resulted in workers’ deaths, such as the 2012 murder of Awanish Kumar Dev at the Maruti Suzuki plant and the 2009 murder of Roy George of Pricol Limited in Coimbatore (in the state of Tamil Nadu). In 2009, after the uprisings in Coimbatore, Jayant Davar, the president of the Automotive Component Manufacturers Association of India, put it bluntly:[13,14,15] ‘We can’t be a capitalist country that has socialist labour laws’.¹⁰

Proponents of ‘labour flexibility’ argued that this approach would attract foreign capital and increase labour productivity and economic growth. Decades after its implementation, however, the data contradicts the theory. Instead, growth has slumped and so has employment – especially full-time, formal employment – as the workforce has increasingly shifted to a model of short-term contracts with minimal regulatory oversight and benefits. Due to deteriorating working conditions, the share of profits and wages has diverged significantly: from 1999–2000 to 2018, the share of profits increased from 17 percent to 48 percent while the share of wages decreased from 33 percent to 26 percent.¹¹



Profits are now the national interest, and struggling workers are terrorists. Divisive labour practices have decimated trade unions in private-sector industry and have created difficulties for the unions of the public-sector industry. This has led to hierarchies of exploitation between formal and contract workers, which most acutely impact the most exploited sectors and cause an atmosphere of resentment between workers on the shop floor. Struggles that largely focus on bargaining over wages are unlikely to rally united mobilisations, except in extraordinary circumstances.

III. RESULTS

Employment generated by the neoliberal dispensation is work for the desperate. The promise of large-scale industrial investment and the creation of high-quality industrial jobs did not materialise in a significant way, and both economic and industrial growth have remained at low levels not only because of the lack of investment, but also because of the suppressed demand of the Indian population. This demand was reduced because of the desperately low wages of much of the population as well as neoliberal restraints on public spending, particularly in the agrarian sector.

Since 1991, there have been two periods of significant economic growth in India, but neither of them are due to 'labour market reforms' or neoliberal policies [16,17,18] in general. The first, from 2003 to 2008, was generated by the spillover from the credit-fuelled demand of US consumers, and the second, from 2009 to 2011, was generated by credit-fuelled spending by Indian corporations as they borrowed vast sums of soon-to-be defaulted loans from Indian public-sector banks to build infrastructure, such as power plants and roadways. These bubbles are not sustainable, since US consumer demand has flattened and since Indian firms are not willing to increase investment in the face of depressed demand, which is reflected in the vastly unutilised capacity of the country's industry. Private conglomerates continue to borrow from public-sector banks, but they do so to fund acquisitions rather than create employment.

These large conglomerates, which are able to borrow astronomical amounts of capital from public-sector banks, employ – at their peak – no more than 2 percent of India's workforce and no more than 5 percent of the non-agricultural workforce.¹²

Government of India, Periodic Labour Force Survey (PLFS)– Annual Report (New Delhi: Ministry of Statistics and Programme Implementation, July 2020 – June 2021).

Rather, the majority of India's workers are hired by small enterprises, which face an entirely different reality. In these firms, which are often strapped for credit, the wage bill takes up the majority of the operational costs, there is little 'value addition' during the production process, the profit margins are slim, and there is relatively little access to capital. These small, scattered enterprises have limited market power, which means that they cannot mobilise the political power needed to access public resources at scale. The only way for these small enterprises to accumulate profits and capital, then, is to squeeze workers. In these sectors – almost completely unregulated – workers are overworked and underpaid, with few rights as compared to those in the formal sector. During market swings, these firms perish, as happened during the COVID-19 pandemic. Their reliance on cheap labour limits the likelihood, or even the possibility, that they will improve working conditions, which is why their workers require direct state support during an emergency such as the pandemic.

Meanwhile, the informal sector is mostly made up of a wide array of service workers who are either employed by small businesses or are 'self-employed'. A large number of these small businesses, such as shops and restaurants, each employ a handful of workers, many of them hired daily and paid in cash or in kind. Another large section of workers in the informal sector sell their labour directly to consumers. This includes auto drivers, domestic workers, electricians, load carriers, manual scavengers, mechanics, plumbers, rickshaw pullers, ragpickers, road sweepers, and security guards. Most of them have neither an employer nor a stable occupation, and many of them hold multiple jobs. For many of these workers, there is a continuum between rural and urban spaces, as they travel to their villages during the sowing and harvest seasons either to work on their family farms or to hire themselves out as agricultural workers. These are the footloose workers of modern India.¹³

Jan Breman, *Footloose Labour: Working in India's Informal Economy* (Cambridge: Cambridge University Press, 1996).

The development of road networks made possible the perpetual circulation of desperate workers, creating a massive reserve army of labour for the informal sector in both urban and rural areas. The expansion of mobile networks and the availability of more affordable mobile phones allow these informal workers to be in constant contact with labour recruiters



(known as 'jobbers') and with their families and friends who alert them about the possibilities of employment on a daily or seasonal basis. These workers come from the most disenfranchised and oppressed castes of rural India. Some of them chase agricultural seasons across the country while others seek out construction projects in far-off cities. These migrant workers live in temporary dwellings at the edge of the fields or construction sites, often tents made of old sarees and plastic sheets [19,20] that have no kitchens or toilets – only the open air. Children play in the rubble or are slung onto the backs of their mothers as they carry heavy loads up ladders or into the fields. The food that the migrants grow is not eaten by them, and the homes that they build are not for them. They work, and having worked, move on to new temporary worksites to work some more.

Migration puts distance between families, particularly across generational lines, draining the youngest and most able-bodied sections of communities to far-flung places in search of work that offers no security for their futures. It is not uncommon to see older men and women who were once casual workers now reduced to begging or to early deaths as they face large out-of-pocket expenses in the predominantly private healthcare sector, which push 55 million Indian every year into poverty.¹⁴

Taran Deol, 'India's Persistently High out-of-Pocket Health Expenditure Continues to Push People into Poverty', *Down to Earth*, 22 September 2022, <https://www.downtoearth.org.in/news/health/india-s-persistently-high-out-of-pocket-health-expenditure-continues-to-push-people-into-poverty-85070>.

Furthermore, the Indian pension system is abysmal, dispensing meagre, and often irregularly paid, sums far below the cost of living (as low as Rs. 200 per month for many).¹⁵

Express News Service, '14 States Give Rs 500 or Less as Pension, Says Report', *The Indian Express*, 29 September 2018, <https://indianexpress.com/article/india/14-states-give-rs-500-or-less-as-pension-says-report-5378783/>

As road networks developed across the country, regional disparities in industrialisation widened. Much of the industrial production concentrated in peninsular India and in mining regions, attracting private capital to areas where the needed infrastructure had already been developed. Migrant workers travel vast distances to these sites, alienated culturally and linguistically in their new, temporary homes. This alienation also means that they are often unable to mobilise community support for their struggles, from condemning cases of extreme abuse to demanding higher wages and better working and living conditions. As the journalist Siddhartha Deb writes, 'It is an arrangement that suits employers everywhere well, ensuring that the workers will be too insecure and uprooted to ever mount organised protests against their conditions and wages. They are from distant regions, of no interest to local politicians seeking votes, and they are alienated from the local people by differences in language and culture'.¹⁶

Siddhartha Deb, *The Beautiful and the Damned: A Portrait of the New India* (New York: Faber and Faber, 2011), 170. A powder keg of conflicting regional, linguistic chauvinism is being filled up for future detonation.

Small businesses and industrial firms face significant challenges, from the disadvantage compared to the economies of scale enjoyed by large conglomerate to the enormous challenges posed both by the Indian government's demonetisation scheme, which, overnight, withdrew 86 percent of the cash in circulation in the economy in 2016, and by its implementation of the General Service Tax (GST) in 2017.¹⁷

Shruti Srivastava and Archana Chaudhary, 'Amidst the Digital Push, GST Transition Will Be Painful for SMEs', *The Economic Times*, 23 May 2017, https://ecoti.in/hR_02a

Demonetisation was a blow to small business that depended on cash transactions for sales, purchases, and wage payments. The new GST regime, meanwhile, placed a heavy regulatory burden on small firms as it significantly raised their overhead costs by increasing the cost of compliance, while for large firms it improved the ease of doing business across states. These two processes wiped out many small firms, which resulted in a loss of employment for the most vulnerable workers. Furthermore, the firms that were shuttered during the pandemic provide an opening for large conglomerates to expand.

The data on Indian workers is unreliable. The official unemployment rate stands at 8 percent, although some estimates place the actual rate far higher. Work participation rates remain low, at approximately 40 percent, and the income of the median Indian worker is Rs. 10,000, which is below the minimum wage.¹⁸

Mrinalini Jha and Amit Basole, 'Labour Incomes in India: A Comparison of PLFS and CMIE-CPHS Data' (CSE Working Paper no. 46, Centre for Sustainable Employment, Azim Premji University, Bengaluru, February



2022), [https://cse.azimpremjiuniversity.edu.in/wp\[19\]content/uploads/2022/02/Jha_Basole_PLFS_CPHS_Labour_Incomes.pdf](https://cse.azimpremjiuniversity.edu.in/wp[19]content/uploads/2022/02/Jha_Basole_PLFS_CPHS_Labour_Incomes.pdf) With 410 million workers in a population of 1.4 billion people, every Indian worker needs to earn enough wages to provide for 3.5 people, which means that they must do so on less than the minimum wage.¹⁹

Class struggle is not the invention of unions or of workers. It is a fact of life for labour in the capitalist system. The capitalist buys the worker's labour power, seeking to make it as efficient and productive as possible, and retains the gains from this productivity, sloughing off the worker to their slums at night to figure out a way to summon the energy to come back the next day. This pressure for the worker to be more productive and to donate the gains of their productivity to the capitalist is the essence of the class struggle. When the worker wants a larger share of the output, the capitalist does not listen. It is the power to strike that provides workers with a voice to enter the class struggle in a conscious way.

Since the late 1990s, Indian trade unions have joined together to call for a general strike against liberalisation almost every year, with roughly 200 million workers participating as of 2022.²⁰

Peoples Dispatch, 'Millions Strike in India Against Modi Government's Policies', Peoples Dispatch, 30 March 2022, <https://peoplesdispatch.org/2022/03/30/millions-strike-in-india-against-modi-governments-policies/>.

How did so many workers – most of them in the informal sector – join this strike? As a result of the fights led by informal workers (mainly women workers in the care sector), trade unions have begun to take up the issues of informal workers as issues of the entire trade union movement over the course of the past two decades. Fights for permanency of tenure, proper wage contracts, dignity for women workers, and so on produced a strong unity between all the different sections of workers, whose militancy is now channelled through the organised power of trade union structures. Similarly, women workers do not see issues that pertain to them as women's issues, but as issues that all workers must fight for and win, as is also the case with issues that impact workers along lines of race, caste, and other social distinctions. Furthermore, unions have been taking up issues impacting social life and community welfare, arguing for the right to water, sewage connections, and education for children as well as against intolerance of all kinds. These community struggles are an integral part of the lives of workers and peasants.

At the same time, the ideas of the right wing – notably manifested in Hindutva (the core ideology of Hindu supremacists) – have begun to take root in Indian society, including in sections of the working class. The right wing has found fertile ground in the socioeconomic conditions generated by neoliberal capitalism, such as the invisibility and alienation that workers experience in urban areas, the indignities of everyday life, the isolation and toxic socialisation engendered, especially, in men separated from their families, the solace offered by religious gatherings, and the search for community and identity. With the waning influence of secular and rational ideologies in the country and the general narrowness of the working-class movement, there has been no significant force to counter this. A working class high on Hindutva and the hallucinations of a Hindu state (Rama Rajya) turning its misery and humiliation on fellow workers of a different religion or caste and finding empowerment through degrading fratricide is the neofascist prescription to control workers. What delays a united, full-blown neofascist agenda across the country is the presence of regional nationalities, particularly in southern India. Nonetheless, the potential of working-class and peasant resistance to this kind of neofascist agenda was evident in the farmers' movement, for instance, when farmers and peasants from a range of backgrounds took the fight against big capital to the streets.

IV. CONCLUSION

The pandemic shed light on the clear incompatibility of the interests of the working class and capital. The former lie in public investment, generating employment, taxing corporations to generate funds for the welfare of the working class, and bolstering agriculture and small industries. Given the structure of the working class and the numerical weakness of organised workers, the confrontation with capital can only be successful when it goes beyond the shop floor and wage bargaining to compel the state on a deeper, and political, level. This is easier said than done, as the left wing of the trade union movement knows well. Yet, the pandemic has the potential to open a window into and expand workers' class consciousness, countering the ideological and media apparatus of capital which only obfuscates the contradictions facing society.

In August 1992, textile workers in Bombay took to the streets in their undergarments, declaring that the new order would leave them in abject poverty. Their symbolic gesture continues to reflect the current reality of Indian workers in the twenty-first century: they have not surrendered in the face of the rising power of capital. They remain alive to the class struggle.[20]



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