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# **75 YEARS OF UDHR: WHERE DO WE STAND NOW? A CRITICAL ANALYSIS OF THE RECENT LABOUR REFORMS IN INDIA**

Somosnigdha Pal<sup>1</sup>

## **ABSTRACT**

The reforms in the labour law structure of India, having received the green signal of the Union Parliament in 2020, will bring sweeping changes in the economy. The implications of these reforms on the human rights of the workers will also be manifold. In this regard, it is relevant to recall India's constitutional obligations and commitments to the international community under the regime of human rights law. This article tries to locate the current position of India with regard to workers' welfare and human rights. It also attempts to analyse the impending changes in the democratic and socialist structure of the country in the light of 75<sup>th</sup> anniversary of UDHR.

## **KEYWORDS**

Labour reforms, Human Rights, Social Justice, UDHR

## **INTRODUCTION**

The International Labour Conference by ILO held in June 2023 has accentuated the need to 'bend the arc of history in favour of social justice' where every human being can reap the fruits of social and economic progress. It was unanimously reasserted by the global leaders that lasting peace and sustainable development can never be achieved by neglecting the interests of workers.

In the Indian context, social justice forms the cornerstone of our

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constitutional morality. 'No other Constitution', as Granville Austin has rightly pointed out, 'has provided so much impetus towards changing and rebuilding society for the common good'. While the Fundamental Rights promise the basic rights of workers, the Directive Principles of State Policy lay down elaborate guidelines to ensure adequate livelihood, education, just and humane working conditions and participation of workers in industrial management.

Despite this exalted ideology of our lawmakers, there seems to exist a quandary with regard to the labour law framework in the country. This is primarily because labour falls under the Concurrent List of the Constitution which empowers both the Parliament and the state legislatures to make laws regulating labour. The central government has stated that there are over 100 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages. These laws are often overlapping and lack uniformity which engendered the necessity of a reform.

### **DEVELOPMENTS IN THE LABOUR LAW REGIME IN THE 21<sup>ST</sup> CENTURY**

The idea of consolidation of Labour laws was conceived by the Second National Labour Commission in 2002 which recognised the intense complexity and multiplicity of the then labour laws and upheld the need to simplify them for transparency and ease of compliance.

On 27<sup>th</sup> April, 2015, the Ministry of Labour and Employment (MoLE), Government of India had published a draft Labour Code on Industrial Relations Bill with the stated objective to simplify the country's archaic labour laws relating to the registration of trade unions, conditions of employment, investigation and settlement of disputes and related matters. The purpose was to initially repeal and then integrate the three

most vital labour legislations viz., Industrial Disputes Act, 1947; Trade Unions Act, 1926; and Industrial Employment (Standing Orders) Act, 1946 into a single code.

In the meanwhile, the BJP led NDA government at the Centre had announced the Shramev Jayate programme aimed at industrial development and skill training of formal sector workers. Pompous sloganeering was used by the ruling party to shift the focus from the major restructuring and amendments of the labour laws. While the publication of this draft code invited public consultation and comments by interested stakeholders, no trade union or labour organisation was actually involved in the drafting process. In the face of staunch disapproval from trade unions and labourers against the draft code, a tripartite committee with trade unions was formed with BJP's own affiliate Bhartiya Mazdoor Sangh (BMS) and the Congress affiliated Indian National Trade Union (INTUC). It is disappointing to note that the other influential trade unions including the leftist Centre for Indian Trade Union (CITU) and All India Trade Union Congress (AITUC) which had the potential to raise a stronger opposition were left out.

The codes eventually took shape in 2019 when MoLE introduced 4 labour bills in the Parliament codifying 29 central laws. The Code on Wages, 2019 was passed by the Parliament while the rest three viz., the Social Security Code, the Industrial Relations Code and the occupational safety, Hazards and working Conditions Code were referred to the Parliamentary Standing Committee and were eventually passed in 2020<sup>2</sup>.

However, it is pertinent to mention that the implementation of the four Codes is still dubious, given that the stakeholders have reached an impasse in negotiations with the Centre. Also, several states including West Bengal, Nagaland, etc. are yet to frame the rules that would set the

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<sup>2</sup> In 2020, the three pending codes were withdrawn and newly introduced again. It was claimed by workers' rights groups that the recommendations of the Standing Committee were not fully incorporated.

Codes into operation<sup>3</sup>. Hence, owing to the conjectures about the enforcement of these laws, it is surmised that a concrete decision would only be taken post-2024 General Elections.

Even though, as of now, the fate of these Codes hangs in the air, some of the significant changes that would be introduced after their implementation are discussed below:

- While a trade union, earlier, could have been formed and registered by any 7 workers of an establishment/ industry, it now requires at least 10% of the workforce.
- It makes provisions for recognition of negotiation unions with 51% membership. In the absence of such support, a negotiation council may be formed. However, the Code does not clarify how vote will take place.
- It weakens collective bargaining rights by requiring a two-week notice for strikes.
- Earlier, any establishment employing over 100 workers required government permission before any retrenchment; the threshold is now raised to 300, with the government empowered to raise it further through notification.
- It allows companies with up to 300 workers to lay off people without the concerned state government's approval.
- It introduces 'fixed term employment', giving employers the flexibility to hire workers based on requirement through a written contract.
- It has given powers to the state governments to exempt establishments or class of establishments from any or all provisions which unlike its predecessor Industrial Disputes Act, 1947 does not specify the conditions.

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<sup>3</sup> Lok Sabha Secretariat, *"Implementation of Labour Codes"*.

- Though it has expanded its ambit from formal to contract and gig workers but does not include wage workers in the agricultural sector, domestic workers, bidi workers and even street vendors.

In this regard, a closer look should also be taken at the alarming changes taking root at the state level. In 2014, Rajasthan amended the Industrial Disputes Act, 1947 to enhance employment flexibility in firms. The amendment, inter alia, lifted the requirement for government approval for retrenching regular workers in medium sized factories.<sup>4</sup> The critical times during Covid 19 pandemic of 2020 further saw large scale variations in labour policies of the states. The *Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020*, exempted all establishments, factories, and businesses from the purview of most labour laws for three years. This implied that key legislations like Factories Act, 1948, Trade Unions Act, 1926, Industrial Dispute Act, 1947, etc. were no longer applicable to ensure ‘flexibility to industry in their labour practices’. Madhya Pradesh government promulgated the *Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020* to amend two state laws which, in effect, raised the threshold for industries to be regulated for employment conditions, allowed the state to exempt industries from paying to a fund for labour welfare and even relieved the new factories from certain crucial provisions of the Industrial Disputes Act, 1947 related to dispute resolution, strike and lockouts, trade unions, etc.

Furthermore, states like Gujarat, Himachal Pradesh, Rajasthan, Haryana, Uttar Pradesh, Goa, Assam and Uttarakhand increased maximum weekly work hours from 48 hours to 72 hours and daily work hours from 9 hours to 12 hours for certain factories using this provision.<sup>5</sup>

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<sup>4</sup> Chaudhury Sarur and Sharma Siddharth, “*The Impact of Lifting Firing Restrictions on Firms Evidence from a State-Level Labor Law Amendment*”, Policy Research Working Paper 10039, World Bank Group.

<sup>5</sup> Ram Bharat Anya, “*Relaxation of Labour Laws across States*”, The PRS Legislative

In 2023, Karnataka passed the *Factories (Karnataka Amendment) Bill* without any debate thereby not only extending daily working hours to twelve but also overtime working hours from 75 and a ¼ to 145 hours. This is a flagrant violation of the ILO C001 – Hours of Work (Industry) Convention, 1919, which being ratified by India, strictly limits the working hours to eight.

### **PRO-WORKER OR PRO-EMPLOYER?**

The growth of industrial jurisprudence in India, though began at the onset of the 20<sup>th</sup> century, has expanded substantially in the post-independence period. India's tilt towards a socialist model was visibly reflected in the legislations which challenged the traditional idea of a “*master-servant*” relationship and the classical doctrine of “*laissez-faire*” in order to protect the rights and interests of the working classes. The idea has always been to secure economic and social justice by ensuring fair return to the labour through necessary state intervention since the employer with better economic footing will generally have an upper hand.

However, these recent legal developments to magnify the “*ease of doing business*” will make one ponder if at all these changes are beneficial to the labourers. While the four Labour Codes cannot be placed into watertight compartments of pro-worker or pro-employer, certain provisions raise doubt about the “welfare” they seek to offer. By making the registration of trade unions difficult and limiting their power to bargain collectively, these codes curb the ability of workers to agitate and exert influence on the employers. This difference might prima facie seem subtle and insignificant. But the role of trade unions in engaging all the stakeholders in an inclusive and effective social dialogue to safeguard workers' rights stems from a strong democratic spirit. In a country where labour is cheaply available, it is too naïve to assume that businessmen will voluntarily endeavour to protect labour interests. A number of

workers' organisations are also afraid that these reforms will pave the way for a 'hire and fire' regime with easy retrenchment and exemption of certain class of establishments from compliance.

The state level amendments and ordinances give rise to more concern. Large scale relaxation of labour laws threatens the very core of an economy that is based on principles of social security. The importance of these legislations lies in the fact that it is through them that the crucial issues of long working hours, low wages and allowances, poor working conditions leading to health risks, etc. are checked. It goes without saying that peaceful industrial growth can only be achieved by harmonising labour-capital relations and in a welfare state like India, it the constitutional duty of the government to wipe out economic inequalities.

Supporters of this new regime has linked protection of labour with economic performance and has claimed that state interference in industrial functioning will hamper productivity. But it is through these interferences that an equitable distribution of profits and benefits resulting from industrial growth can be maintained. Another major argument put forth by the supporters is that such formal legislations are futile given the huge informality that exists in the Indian economy. This stream of thought can be countered by the view that protective labour laws can only fuel the process of formalisation<sup>i</sup>.

Hence, a general examination of the labour reforms, both at the Centre and the State levels, makes it evident that the interest of the workers will take a backseat in the attempt to "*accelerate the pace of economic growth*".

### **ARE LABOUR RIGHTS HUMAN RIGHTS?**

This is a question that has attracted a lot of interest over the years. A scrutiny of international human rights and labour jurisprudence will

help us with the answer. Human rights, in general words, are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status (Article 2, UDHR). Labour rights on the other hand are the primary rights of the workers.

75 years down the line, in a world shattered by war and atrocities, global leaders had come together to “*reaffirm their faith in fundamental human rights*” (United Nations general Assembly in Paris on December 10, 1948 - General Assembly resolution 217 A). It was in consequence of this that a milestone document called the *Universal Declaration of Human Rights* (the Magna Carta of Human Rights) was adopted which set out the inalienable and indivisible rights of all peoples. However, it was much before 1948 that the human rights of workers got a practical expression in the form of the *International Labour Standards*. The International Labour Organisation, since 1919, through the ILS, has been upholding a comprehensive framework aimed at attaining freedom, security, equity and dignity of all men and women at work. These standards articulate the basic rights of labourers like right to work, the right to social security, the right to safe and healthy working conditions, the right to fair wages, reasonable limitation of working hours and periodic holidays with pay. The UDHR has further elaborated that ‘everyone has the right to work’ and “*right to form and join trade unions for the protection of his interests*” (Article 23).<sup>6</sup> A careful reading of the UDHR provisions will make it evident that the drafters had envisioned a world where workers would have “*an existence worthy of human dignity*”.

The year of 1948 also witnessed the adoption of a Convention on *Freedom of Association and Protection of the Right to Organise* (ILO Convention No. 87). This marked a specific effort to reiterate that the freedom of association and the right of workers to form and join trade unions for the protection of their health and safety is a fundamental,

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<sup>6</sup> “*Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles – Article 23*”, Press Release, Office of the High Commissioner for Human Rights.

internationally recognised right of all workers.

2023 is also the 25<sup>th</sup> anniversary of the ILO Declaration on Fundamental Principles and Rights at Work, a landmark document showcasing the commitment of governments, workers' and employers' organisations to uphold basic human values in our social and economic lives. Besides, one of the 17 Sustainable Development Goals of the UN is dedicated to 'decent work' and 'economic growth'.

It is, therefore, irrefutable that protection of rights at work is an integral part of fulfilling human rights obligations.

It is pertinent to note here that India has been a founding member of ILO, which came into being in 1919, and a permanent member of ILO governing body since 1922. India is also a signatory of the UDHR and has ratified its two protocols, viz. International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). It is in fact argued that the Indian Constitution was heavily influenced by the Declaration and the rights guaranteed under Part III of the Constitution bear striking resemblance with UDHR provisions<sup>7</sup>.

## **CONCLUSION - WHERE DO WE STAND IN 2023?**

This essay, through a critical analysis of the labour reforms in India, tries to ascertain our current footing as a society. With the manufacturing sector contributing to approximately 17% of our GDP in 2022 and predicted to grow at 11.8 percent<sup>8</sup>, it is the pressing need of the time to find out if at all labour welfare is the priority of this government.

Over the years we have successfully created this global image of a nation

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<sup>7</sup> Dhar Kaushik, "*Domestic Implementation of Human Rights*", February 19, 2012, SSRN Publications.

<sup>8</sup> Economic Survey of India, 2021-2022.

that is compassionate about the dignity and well-being of men victimised by social and economic inequality. The last couple of years have also seen a desperate attempt by the Union government to privatise public sector undertakings, attract foreign investors and turn India into a 'global manufacturing hub'. The Make in India campaign, for example, clearly identifies 'ease of doing business' as the single most important factor to promote entrepreneurship. The question we must answer here is that are we endorsing this 'ease' at the cost of labour rights. In order to boost fast paced economic development, are we shaking the elements that form the very foundation of our economy?

These cardinal changes in our labour law regime are serious, tremors of which will reach far, and some of them are dangerous enough to undermine the fundamental human rights of the workers. Standing in 2023, this makes us contemplate our progress. This concludes that irrespective of our international position as a budding economic giant, these reforms take this 'socialist' state 75 years back, if not more. They potentially undermine the rights which took years of relentless struggle and agitation by workers to materialise. Not only do these measures deviate us from our obligation towards the international community, it also dishonours the essence and principles of our Constitution. As we celebrate the noble ideals of UDHR, we must not forget that "*disregard and contempt for human rights*" in the past "*have resulted in barbarous acts which have outraged the conscience of mankind*" and labour rights, without an ounce of doubt, are intrinsic human rights. (Preamble, UDHR).

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