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Labour Rights in the Indian Constitution and Beyond: Challenges and Reforms

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ABSTRACT

*The Indian Constitution, often hailed as a social document, embeds labour rights within its framework, primarily through fundamental rights under Part III and Directive Principles of State Policy (DPSP) under Part IV. However, key labour rights, such as the right to form trade unions, collective bargaining, and the right to strike, are not recognized as fundamental rights, as clarified by judicial interpretations like *All India Bank Employees' Association v. National Industrial Tribunal*. This article critically examines the constitutional and statutory provisions governing labour rights in India, the colonial legacy of the Trade Unions Act, 1926, and the implications of recent labour code reforms. It highlights the low participation in trade unions, the shift from a socialist to a facilitative state, and systemic issues like judicial delays and societal inequalities. Drawing comparisons with international standards, such as those of the International Labour Organization (ILO), the article proposes constitutional, legislative, and judicial reforms to strengthen labour protections and align with global norms.*

I. INTRODUCTION

The Indian Constitution, enacted in 1950, is celebrated for its commitment to social justice and equality, often described as a "social document" that seeks to uplift marginalized sections, including workers.¹ Labour rights, integral to socio-economic justice, are addressed through a combination of fundamental rights (Part III), Directive Principles of State Policy (Part IV), and statutory laws. However, the absence of explicit constitutional recognition for core labour rights, such as forming trade unions or engaging in collective bargaining, distinguishes India from nations like South Africa, where such rights are constitutionally enshrined.² This article analyzes the constitutional provisions related to labour rights, the judicial interpretations limiting their scope, the colonial legacy of labour legislation, and the challenges posed by recent

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¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50-52 (1966).

² S. Afr. Const., 1996, § 23.

reforms. It argues for a reimagined legal framework to empower workers in a rapidly changing economic landscape.

II. CONSTITUTIONAL FRAMEWORK FOR LABOUR RIGHTS

The Indian Constitution provides a dual framework for labour rights through fundamental rights and DPSP, though the former are limited in scope.

A. Fundamental Rights and Labour

Part III of the Constitution guarantees fundamental rights, some of which indirectly support labour interests. Article 19(1)(c) ensures the right to form associations or unions, subject to reasonable restrictions under Article 19(4) for public order, morality, or sovereignty and integrity of India.³ However, the Supreme Court has consistently held that this right does not extend to recognising trade unions as a fundamental right. In *All India Bank Employees' Association v. National Industrial Tribunal* (1962), the Court ruled that Article 19(1)(c) protects only the formation of associations, not their ancillary activities like collective bargaining or striking.⁴ This interpretation, reaffirmed in cases like *Kameshwar Prasad v. State of Bihar* (1962), restricts trade unions' constitutional protections.⁵

Article 19(1)(b) guarantees the right to assemble peacefully without arms, but the judiciary has clarified that the right to strike is not fundamental.⁶ Similarly, Article 21 (Right to Life) has been expansively interpreted to include labour rights linked to human dignity, as seen in *Bandhua Mukti Morcha v. Union of India* (1984), which addressed bonded labour.⁷ However, the reliance on Article 21 underscores the absence of direct labour-specific fundamental rights.

B. Directive Principles of State Policy

The DPSP, enshrined in Part IV, provide non-justiciable guidelines for state policy, including labour welfare. Key provisions include:

Article 39(b): Equitable distribution of material resources for the common good.⁸

Article 39(e): Protection of workers' health and strength.⁹

Article 39(f): Prevention of worker exploitation.¹⁰

³ India Const. art. 19, cl. 1(c), cl. 4.

⁴ *All India Bank Emps.' Ass'n v. Nat'l Indus. Tribunal*, AIR 1962 SC 171.

⁵ *Kameshwar Prasad v. State of Bihar*, AIR 1962 SC 1166.

⁶ *Id.*

⁷ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

⁸ India Const. art. 39, cl. b.

⁹ *Id.* cl. e.

¹⁰ *Id.* cl. f.

Article 43: Assurance of living wages and decent working conditions.¹¹

These principles, while aspirational, have been invoked alongside Article 21 to address issues like child labour, migrant labour, and bonded labour. For instance, in *People's Union for Democratic Rights v. Union of India* (1982), the Supreme Court linked DPSP with Article 21 to enforce fair wages.¹² However, their non-enforceable nature limits their impact compared to fundamental rights recognized globally, such as social security in the United States.¹³

III. TRADE UNION RIGHTS: CONSTITUTIONAL AND STATUTORY GAPS

Trade unions are pivotal to labour rights, yet their legal status in India remains constrained by judicial and legislative frameworks.

A. Judicial Interpretation of Trade Union Rights

Despite Article 19(1)(c)'s provision for forming unions, the judiciary has consistently denied trade union formation the status of a fundamental right. The *All India Bank Employees' Association* case (1962) established that Article 19(1)(c) does not encompass trade union-specific rights or activities like collective bargaining.¹⁴ This stance, unchanged since 1962, creates a paradox: the right to form associations is fundamental for citizens, but employees most of whom are citizens lack a parallel fundamental right to form trade unions. Similarly, the right to strike, often integral to trade union activities, is not protected under Article 19(1)(b).¹⁵

This restrictive interpretation contrasts with international norms, such as the International Labour Organization's (ILO) Convention No. 98, which recognizes collective bargaining as a fundamental right.¹⁶ The judiciary's approach reflects India's historical self-perception as a socialist welfare state, which assumed responsibility for labour protections, reducing the need for strong trade unions.

B. The Trade Union Act, 1926

The Trade Unions Act, 1926, a colonial-era legislation, governs trade union activities in India. Enacted during British rule, it reflects a colonial mindset prioritizing industrial growth over labour rights. Section 2(h) defines a trade union broadly, including employers' associations, which dilutes its focus on workers' interests.¹⁷ The Act grants both workers and employers the

¹¹ Id. art. 43.

¹² *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

¹³ Social Security Administration Act, 42 U.S.C. § 301 et seq. (United States).

¹⁴ *All India Bank Emps.' Ass'n*, AIR 1962 SC 171.

¹⁵ *Kameshwar Prasad*, AIR 1962 SC 1166.

¹⁶ Int'l Labour Org., Convention No. 98: Right to Organise and Collective Bargaining Convention, 1949.

¹⁷ Trade Unions Act, 1926, No. 16 of 1926, § 2(h) (India).

right to organize, a provision designed to balance power but misaligned with the needs of Indian workers, who face unique socio-economic challenges.¹⁸

The Act's colonial framework fails to address modern labour dynamics, such as low union participation and employer dominance. Unlike South Africa's Constitution, which explicitly protects trade union rights, India's reliance on outdated legislation weakens workers' bargaining power.¹⁹ Legislative reform is urgently needed to tailor trade union laws to contemporary Indian realities.

C. Low Trade Union Participation

India's trade union participation is significantly lower than global averages, with only a small fraction of workers unionized.²⁰ This low engagement is attributable to several factors:

Judicial Restrictions: The lack of constitutional protection for trade union rights discourages union formation.

Societal Perceptions: Trade unions are often viewed as obstacles to economic competitiveness, a narrative rooted in colonial legislation and reinforced by industry-friendly policies.

Political Interference: Trade unions in India are heavily politicized, with workers relying on political leaders rather than independent unions, as seen in the historical involvement of figures like Mahatma Gandhi and Jawaharlal Nehru.²¹

This politicization, combined with legal constraints, leaves workers vulnerable and diminishes the effectiveness of trade unions as advocates for labour rights.

IV. STATUTORY LABOUR LAWS AND RECENT REFORMS

India's labour laws, while numerous, are fragmented and poorly implemented, particularly for unorganized workers.

A. Scope and Limitations of Labour Laws

India has historically maintained a complex web of labour laws, with 208 state and 47 central laws governing various aspects of employment.²² Key statutes include:

- Industrial Disputes Act, 1947: Regulates industrial disputes and retrenchment.²³

¹⁸ Id. § 4.

¹⁹ S. Afr. Const., 1996, § 23.

²⁰ Int'l Labour Org., Trade Union Density Rate (2020).

²¹ V.V. Giri Nat'l Labour Inst., Trade Unions and Collective Bargaining in India 15-20 (2019).

²² Ministry of Labour & Emp., Annual Report 2019-20 (2020).

²³ Industrial Disputes Act, 1947, No. 14 of 1947 (India).

- Trade Unions Act, 1926: Governs union formation and activities.²⁴
- Inter-State Migrant Workmen Act, 1979: Protects migrant workers.²⁵
- Bonded Labour System (Abolition) Act, 1976: Prohibits bonded labour.²⁶

However, these laws primarily apply to the organized sector, which constitutes less than 10% of India's workforce.²⁷ The unorganized sector, including migrant, contract, and bonded workers, remains largely unprotected. The COVID-19 lockdown exposed these gaps, as the Inter-State Migrant Workmen Act failed to prevent widespread distress due to poor enforcement.²⁸

B. New Labour Codes: Simplification or Dilution?

In 2020, India introduced four labour codes to consolidate its fragmented labour laws:

- Code on Wages, 2019
- Industrial Relations Code, 2020
- Code on Social Security, 2020
- Occupational Safety, Health and Working Conditions Code, 2020²⁹

These codes aim to simplify compliance and enhance economic efficiency. However, critics argue they prioritize industry interests over workers' rights. For example:

The Industrial Relations Code raises the threshold for requiring government permission for retrenchment from 100 to 300 workers, reducing job security for employees in medium-sized establishments.³⁰

The Code on Social Security seeks to extend benefits to unorganized workers but lacks robust implementation mechanisms.³¹

Provisions allowing 10-12 hour workdays and relaxed factory regulations (e.g., drinking water, cleanliness) are seen as concessions to industry, potentially compromising worker welfare.³²

The Bonded Labour System (Abolition) Act explicitly recognizes migrant and contract workers

²⁴ Trade Unions Act, 1926, No. 16 of 1926 (India).

²⁵ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, No. 30 of 1979 (India).

²⁶ Bonded Labour System (Abolition) Act, 1976, No. 19 of 1976 (India).

²⁷ Nat'l Sample Survey Org., Periodic Labour Force Survey 2018-19 (2020).

²⁸ Jean Drèze & Anmol Somanchi, The Covid-19 Crisis and Labour Migration, 55 Econ. & Pol. Wkly. 16 (2020).

²⁹ Code on Wages, 2019, No. 29 of 2019; Industrial Relations Code, 2020, No. 35 of 2020; Code on Social Security, 2020, No. 36 of 2020; Occupational Safety, Health and Working Conditions Code, 2020, No. 37 of 2020 (India).

³⁰ Industrial Relations Code, 2020, § 77.

³¹ Code on Social Security, 2020, § 109.

³² Occupational Safety, Health and Working Conditions Code, 2020, § 24.

as potential bonded labourers.³³ Repealing interconnected laws without addressing these overlaps risks undermining protections. Simplification is necessary, but it must not come at the cost of labour rights.

C. Retrenchment and Social Security Challenges

The Industrial Disputes Act, 1947, historically required government permission for retrenchment in establishments with 100 or more workers, a threshold now increased to 300 under the Industrial Relations Code.³⁴ Smaller establishments, constituting over 90% of India's industries, face no such requirement, effectively enabling a "hire and fire" policy.³⁵ Many small industries employ fewer than 10-20 workers or underreport employee numbers to evade social security obligations, leaving workers vulnerable.³⁶

Social security remains a critical gap. Unlike the United States, where social security is universal, India's Code on Social Security has not achieved comprehensive coverage.³⁷ For instance, university employees often face disparities, with some covered by social security schemes and others excluded, highlighting systemic inequities.³⁸ Disparities in social security coverage among university academic employees, driven by fragmented laws, inconsistent policies, and societal biases, exclude contractual and marginalized workers, undermining financial security and institutional efficiency. The Code on Social Security, 2020, falls short in implementation. Legislative, institutional, and judicial reforms, aligned with international standards, are essential to ensure universal coverage, fulfilling India's constitutional commitment to social justice.

V. ROLE OF TRADE UNIONS IN A CHANGING STATE

The transition from a socialist to a facilitative state has shifted the burden of labour protection to trade unions, yet their influence remains limited.

A. Historical Context and Political Influence

In India's early post-independence decades, leaders like Mahatma Gandhi, Jawaharlal Nehru, and Sardar Vallabhbhai Patel championed labour movements, making them inherently political.³⁹ However, modern trade unions are often controlled by political parties, reducing their autonomy. Workers, particularly in vulnerable sectors, rely on politicians rather than

³³ Bonded Labour System (Abolition) Act, 1976, § 2(g).

³⁴ Industrial Relations Code, 2020, § 77.

³⁵ Industrial Disputes Act, 1947, § 25K.

³⁶ Nat'l Comm'n for Enterprises in the Unorganised Sector, Report on Conditions of Work 45-50 (2007).

³⁷ Code on Social Security, 2020, § 2(78).

³⁸ Id. § 45.

³⁹ B.R. Ambedkar, Writings and Speeches: Labour and Economic Reforms 120-130 (1989).

unions, as the legal framework offers insufficient support for independent unionism.⁴⁰

State-specific laws, such as those in Rajasthan and Madhya Pradesh requiring trade unions to have 30% worker membership for recognition, reflect industry-friendly reforms.⁴¹ In contrast, a uniform national standard (e.g., 25% membership) could strengthen unions, but central laws lag behind state initiatives.

B. Societal Perceptions and Employer Resistance

Trade unions are often stigmatized as barriers to economic growth, a perception rooted in the colonial Trade Unions Act and reinforced by modern narratives of “ease of doing business.”⁴² Employers’ associations, included under the Act’s definition of trade unions, further dilute worker-centric advocacy.⁴³ This colonial legacy, combined with a feudal mindset among employers, hinders equitable labour relations. Many employers, particularly in industries dominated by marginalized communities (e.g., SC/ST workers), view workers as inferior, discouraging alternative dispute resolution (ADR) and perpetuating exploitation.⁴⁴

VI. JUDICIAL AND IMPLEMENTATION CHALLENGES

The judiciary and administrative systems pose significant barriers to effective labour rights enforcement.

A. Judicial Delays and Employer Appeals

Labour courts often rule in favor of workers, but employers frequently appeal to High Courts, where cases are delayed for years.⁴⁵ Higher courts’ tendency to re-examine factual questions, as seen in *Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd.* (1994), undermines labour court decisions.⁴⁶ This judicial overreach, coupled with prolonged stays, effectively denies workers timely justice. The Industrial Disputes Act permits out-of-court settlements, and ADR mechanisms are encouraged, but employers’ feudal attitudes hinder their adoption.⁴⁷

B. Poor Implementation of Labour Laws

The Inter-State Migrant Workmen Act and Bonded Labour System (Abolition) Act exemplify implementation failures. During the COVID-19 lockdown, migrant workers faced severe

⁴⁰ V.V. Giri Nat’l Labour Inst., *Trade Unions and Collective Bargaining in India* 25-30 (2019).

⁴¹ Rajasthan Industrial Disputes (Amendment) Act, 2014; Madhya Pradesh Labour Laws (Amendment) Act, 2015.

⁴² Trade Unions Act, 1926, § 2(h).

⁴³ *Id.*

⁴⁴ Nat’l Comm’n for Enterprises in the Unorganised Sector, *Report on Conditions of Work* 60-65 (2007).

⁴⁵ *People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

⁴⁶ *Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd.*, AIR 1994 SC 2696.

⁴⁷ Industrial Disputes Act, 1947, § 18.

distress due to lax enforcement, highlighting systemic gaps.⁴⁸ Labour inspectors, empowered to ensure compliance, often face bureaucratic resistance or industry pressure, undermining worker protections.⁴⁹ The Occupational Safety, Health and Working Conditions Code introduces reforms like extended work hours, but without stringent oversight, these risk exacerbating worker exploitation.⁵⁰

VII. INTERNATIONAL COMPARISONS AND ILO STANDARDS

The ILO's Convention No. 87 (Freedom of Association) and Convention No. 98 (Right to Organise and Collective Bargaining) set global benchmarks for labour rights.⁵¹ Unlike India, countries like South Africa and Germany constitutionally or statutorily protect trade union rights, including collective bargaining and striking.⁵² India's failure to ratify these conventions and its restrictive judicial interpretations place it at odds with international norms. Aligning domestic laws with ILO standards could enhance workers' bargaining power and promote industrial harmony.

VIII. SOCIETAL INEQUALITIES AND LABOUR RIGHTS

India's labour market reflects deep-rooted social inequalities. Most workers belong to marginalized communities (e.g., SC/ST, OBC), facing discrimination that exacerbates employer-employee disparities.⁵³ This feudal mindset, where employers view workers as inferior, undermines ADR and perpetuates exploitation. The Code on Social Security aims to address these gaps, but without addressing societal attitudes, legal reforms alone are insufficient.⁵⁴

IX. CONCLUSION AND RECOMMENDATIONS

India's labour rights framework, rooted in a socialist constitutional vision, has not evolved to meet contemporary challenges. The absence of trade union rights as fundamental rights, reliance on colonial legislation, and poor implementation of laws leave workers vulnerable. Recent labour codes, while simplifying regulations, risk diluting protections in favor of industry interests. To address these gaps, the following reforms are proposed:

⁴⁸ Jean Drèze & Anmol Somanchi, *The Covid-19 Crisis and Labour Migration*, 55 *Econ. & Pol. Wkly.* 16 (2020).

⁴⁹ Ministry of Labour & Emp., *Annual Report 2019-20*, 30-35 (2020).

⁵⁰ Occupational Safety, Health and Working Conditions Code, 2020, § 24.

⁵¹ Int'l Labour Org., *Convention No. 87: Freedom of Association and Protection of the Right to Organise Convention*, 1948; *Convention No. 98*, 1949.

⁵² Grundgesetz [GG] [Basic Law], art. 9 (Germany); S. Afr. Const., 1996, § 23.

⁵³ Nat'l Comm'n for Scheduled Castes, *Annual Report 2018-19*, 40-45 (2019).

⁵⁴ Code on Social Security, 2020, § 2(78)

1. Constitutional Amendment: Recognize the right to form trade unions and collective bargaining as fundamental rights under Article 19.
2. Legislative Reform: Replace the trade unions laws, with worker-centric legislation mandating uniform recognition criteria focusing on enforcement area.
3. Judicial Streamlining: Limit higher courts' interference in labour court decisions and expedite appeals to ensure timely justice.
4. Social Security Expansion: Implement a universal social security system, covering both organized and unorganized workers on the ground level ensuring the applicability part.
5. International Labour Organisation Alignment: Ratify International Labour Organisation Conventions 87 and 98 to align with global labour standards.
6. Societal Sensitization: Promote Alternative Dispute Resolution and address feudal attitudes through awareness campaigns to foster equitable labour relations.

By embracing these reforms, India can strengthen its labour rights framework, ensuring dignity, security, and equity for its workforce in alignment with its constitutional ethos and global commitments.
