India's Labour Law Changes

Toward advancing principles of rights, inclusion and employment security

Society for Labour & Development

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The Society for Labour and Development (SLD) is a Delhi-based labour rights organisation, that believes in equitable development through social and economic well-being of labour, migrants, and women workers; and through cultural renewal among disenfranchised people. SLD is a national organisation that originated with a focus on the National Capital Region and works with partners in Uttar Pradesh, Bihar, Jharkhand and Kerala.

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Abbreviations

AITUC	All India Trade Union Congress
ASHA	Accredited Social Health Activists
CEACR	Committee of Experts on the Application of Conventions and Recommendations of the ILO
CESCR	Committee on Economic Social and Cultural Rights
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CITU	Centre for Indian Trade Unions
GDP	Gross Domestic Product
GPN	Global Production Network
GVC	Global Value Chain
ICDS	Integrated Child Development Service
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of Racial Discrimination
IKP	Indira Kranthi Patham
ILO	International Labour Organization
ILO CEACR	International Labour Organization Committee of Experts on the Application of Conventions and Recommendations
IMF	International Monetary Fund
INTUC	Indian National Trade Union Congress
ITES	IT-Enabled Service Sector
ITUC	International Trade Union Conference
MBO	membership based organization
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act, 2005
MIC	Methyl-iso-cynate
MoLE	Ministry of Labour and Employment
MRTP	Monopolistic and Restrictive Trade Practices
NCEUS	National Commission for Enterprises in the Unorganized Sector

NCL	National Commission on Labour
NFLMW	National Floor Level Minimum Wage
NGO	non governmental organization
NHRC	National Human Rights Commission
NRF	National Renewal Fund
NRHM	National Rural Health Management
NRLM	National Rural Livelihood Mission
NSSO	National Sample Survey Organization
PIL	Public Interest Litigation
PrEA	private employment agency
SEWA	Self Employed Women's Association
SEZ	Special Economic Zone
UN	United Nations
USD	United States Dollar
VRS	Voluntary Retirement Schemes

Foreword

Since the 1990's, the labour market in India has been systematically restructured to increase workforce flexibility, decrease the bargaining authority of trade unions and diminish the reach of India's state labour regulations. While *dejure* labour law reforms have been slower to materialize over the last twenty-five years, industrial relations have been defacto restructured along these lines. These shifts have been referred to as "labour reforms by stealth."[1]

In the last year, the Government of India has taken rapid action to restructure India's central labour laws. The Labour Code on Wages Bill, 2015 aims to consolidate the *Payment of Wages Act, 1936*; *Minimum Wages Act, 1948*; *Payment of Bonus Act, 1965*; and *Equal Remuneration Act, 1976*.[2] The central government Labour Code on Industrial Relations Bill, 2015 proposes to replace the *Trade Unions Act, 1926*; *Industrial Employment (Standing Orders) Act, 1946*; and *Industrial Disputes Act, 1947*.[3] Consistent with systematic restructuring of India's labour market since the 1990's, the 2015 Labour Bills on Wages and Industrial Relations dismantle labour inspections, undermine legal remedies for workers and diminish oversight from trade unions and workers organizations. Draft Labour Codes governing health and safety, welfare, working conditions and social security are imminently expected.

While harmonization and rationalization of India's more than 150 labour laws may be required, this report argues that any process of consolidation should maintain progressive improvement of substantive and procedural rights for workers in line with India's constitutional and human rights obligations. Under the International Labour Organization, Tripartite Consultation (Activites of the International Labour Organization) Recommendation, 1976 (No. 152), India committed to an inclusionary process of defining labour standards that includes government, workers' and employers' perspectives.[4] Contemporary workers' rights struggles have focused on extending job security and social security across sectors and defending collective bargaining against increasing restrictions.[5]

1. Anamitra Roychowdhury, *Recent Changes in Labour Laws and their implications for the working class*, SANHATI, January 13, 2015: http: sanhati.com/excerpted/12592/ (citing R. Nagaraj, *Fall in Organised Manufacturing Employment: A Brief Note*, ECONOMIC AND POLITICAL WEEKLY, July 24, 2004, p. 3387-3390).
2. Labour Code on Industrial Relations Bill, 2015, http://www.prsindia.org/uploads/media//draft/Labour%20Code%20on%20Industrial%20Relations%20Bill%202015.pdf (accessed July 11, 2016)
3. Labour Code on Industrial Relations Bill, 2015, http://www.prsindia.org/uploads/media//draft/Labour%20Code%20on%20Industrial%20Relations%20Bill%202015.pdf (accessed July 11, 2016).
4. International Labour Organization, Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152), supplementing the International Labour Organization, Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), paragraph 5(c), requiring member states of the ILO to adopt procedures of effective consultation between representatives of the government, workers and employers' organizations in respect of the preparation and implementation of legislative or other measures. The need for public authorities to hold consultation with representatives of workers' and employers' organization has also been emphasized in the International Labour Organization, Consultation (Industrial and National Level) Recommendation, 1960 (No. 113) and the International Labour Organization, Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
5. Surendra Pratap, *The Political Economy of Labour Law Reforms in India, Part I*, Centre for Workers Education, Delhi, accessed September 18, 2015, http://sanhati.com/excerpted/12159/.

This study is the first in a series of reports that aims to contribute to the evidentiary foundation for the Labour Law Changes Programme. By providing a detailed, contextualized—yet accessible—primer on proposed labour law changes, it seeks to inform engagement with India's current labour law reform process by formal and informal sector workers, trade unions, civil society organizations and government representatives. To that end, it brings together guiding constitutional and international human rights principles; detailed readings of Indian labour laws and proposed amendments; and insights from labour historians, lawyers, scholars, journalists, trade unionists and social activists.

Part I, Guiding principles in defining labour standards, reviews international norms and Indian constitutional standards pertaining to rights at work. This discussion proceeds from the perspective that the process of informing India's labour laws should maintain progressive improvement of substantive and procedural rights for workers in line with India's human rights and constitutional obligations. Incorporating Indian constitutional law and international human rights standards, this section provides a legal benchmark of India's commitments to individual and collective rights that should not be transgressed by the current labour law reform process.

Part II, Brief history of labour regulations in India, traces concepts undergirding the development of India's current labour law from pre-independence to the present. This historical discussion aims to provide a cursory understanding of the more than 150 separate pieces of labour legislation arising from India's central and state governments by presenting the contextual emergence of broad parameters of labour regulation. In particular, this brief history traces expansion of individual rights and tenuous state negotiation of collective rights, including freedom of association and collective bargaining.

Part III, India's contemporary labour market: demographic trends and precarious work, considers the impact of the emergence of megacities and increasing migration upon the structure of India's contemporary labour market. This section highlights the expansion of precarious, unpaid, invisible and coercive work; and the vulnerabilities workers face due to increasing employment insecurity and depressed wages. Not surprisingly, some of India's most vulnerable workers—including the intersecting categories of unorganized sector, migrant, women, child, Dalit, Adivasi and Muslim workers—are particularly impacted by the expansion of precarious work.

Parts IV - V apply the principles articulated in Part I to thematic areas of labour protection: Payment of Wages (Part IV) and Industrial Relations (Part V). Built upon a line by line comparative reading between the 2015 Labour Bills and the principle acts facing consolidation, these chapters highlight significant labour law changes, including advances and erosion of existing protections under the proposed Labour Code on Wages Bill, 2015 and Labour Code on Industrial Relations Bill, 2015. These thematically focused sections include full text citations of international, constitutional and legislative provisions as footnotes to facilitate easy reference. Where possible, the issues discussed in these thematic sections are illustrated with short case studies of working conditions. The sections on Payment of Wages and Industrial Relations conclude by providing targeted recommendations as a starting point for advocacy aimed at maintaining and expanding individual and collective labour rights.

Beyond legislation, the Ministry of Labour and Employment (MoLE)—the nodal ministry for labour welfare and implementation of labour laws in India—must implement current labour laws to ensure workers' rights. However, an assessment of Ministry policies, programmes and budgets shows that the total allocation made for labour and employment amounted to just .26 percent of the total union government budget in 2012-2013. No specific allocations have been made for the implementation of labour laws, a vital component to ensure decent work within labour markets.[6] Where possible, Chapters IV and V of this report identify gaps in the implementation of existing protections and strategies for strengthening legal frameworks to improve implementation of labour laws.

6. Harsh Mander and Gitanjali Prasad, INDIA EXCLUSION REPORT, 2013-2014 (Books for Change: Delhi, 2014), 23 (citing Ministry of Labour and Employment, Note of Demand, 2012-13, Expenditure Budget, Vol. 2, http://indiabudget.nic.in).

I. Guiding principles in defining labour standards

STANDARDS PROTECTING RIGHTS AT WORK

International Labour Organisation Standards Rights and Conventions

Freedom of association and the effective recognition of the right to collective bargaining

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No.98)

Freedom from all forms of forced or compulsory labour.

- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)

Freedom from child labour.

- Minimum Age Convention, 1973 (No. 138)
- Prohibition and Immediate Elimination of the Worst Forms of Child Labour Convention, 1999 (No. 182)18

Equality in employment and occupation.

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Worker and employer participation in developing labour laws and policies

- Consultation (Industrial and National Level) Recommendation, 1960 (No. 113)
- Tripartite Consultation (Activities of the International Labour Organizations), Recommendation, 1976 (No. 152)

Payment of wages

- ILO Protection of Wages Convention, 1949 (No. 95)
- ILO Minimum Wage Fixing Convention, 1970 (No. 31)

The Constitution of India

Directive Principles (not enforceable through courts)

Article 39
- Right to adequate means of livelihood
- Distributing ownership and control of material resources of the community
- Right to equal pay for equal work.

Article 41
- Right to work
- Right to education
- Right to social assistance in cases of unemployment, old age,

Article 43
- Just and humane conditions of work
- Maternity leave
- Living wage

Article 46
- Promotion of economic interests of Scheduled Castes and Scheduled Tribes

Fundamental Rights (enforceable through courts)

Article 16(2)
- No discrimination with respect to public employment

Article 19
- Right to form associations or unions. (With restrictions)

Article 21
- Right to life. (Includes right to live with human dignity)

This report argues that the process of reforming India's labour laws should maintain progressive improvement of substantive and procedural rights for workers in line with India's human rights and constitutional obligations. Promotion of individual workers' rights at the expense of collective rights, however, risks undermining collective action and solidarity among workers. While international human rights frameworks have been critiqued for promoting individualistic rights, this report takes care to highlight human rights and constitutional norms and standards that protect not only individual rights, but also collective rights.

Human rights at work

Why human rights?

Human rights discourse, together with its promises and shortcomings, is central to many global conversations on domestic policies and international relations, including India's labour laws.[1] The international human rights system, at once, provides a generative space for exchange of ideas on critical economic, political and social issues; and constrains this conversation by privileging particular voices and actors who frame rights and their forums for deliberation.[3] For instance, human rights have long been critiqued for dividing women's rights from international human rights.[4]

Despite these shortcomings, international human rights standards prove nonetheless useful in evaluating India's existing laws and proposed legislative amendments affecting workers' rights. First, the Government of India has committed to upholding many of these standards. Second, they represent a growing international consensus on workers' rights. Finally, human rights discourse has been successfully mobilized by grassroots campaigns and social movements to project their perspectives and advance their demands.

Rights at work

The human right to work protects "the right of everyone to the opportunity to gain [her]/his living by work which [s]/he freely chooses or accepts."[5] International standards protecting the right to work are found in international instruments, including International Labour Organization (ILO) standards, United Nations (UN) conventions and other instruments and international agreements between or among countries that pertain to workers' rights. In order for a state to satisfy the right to work, it must fulfill the essential, interdependent elements of availability, acceptable conditions of work[6] and accessibility of the labour market.[7] The labour market must not only be physically accessible, but individuals must also be able to access information on how to acquire work.[8] For a state to achieve the full realization[9] of the right to work, therefore, it must provide technical and vocational guidance, training programs, and other techniques to create employment.[10]

1. See Isaac D. Balbus, *Commodity Form and Legal Form: An Essay on the "Relative Autonomy" of the Law*, 11 L. And Soc'y Rev., No. 3, 571, 576-581 (1977) (arguing that conference of individual legal rights obscures inequality and undermines formation of collective class consciousness). The trend of privileging individual rights and circumscribing collective rights, central to the evolution of India's labour law regime, is discussed at length in the brief history of labour regulations in India, contained in Chapter II of this report.
2. Jack Donnely, *Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights* 76 American Pol. sc. Rev., No. 2, 303, 311 (1982) (highlighting emphasis on individualism within the human rights approach).
3. E.g., V. Spike Peterson, *Whose Rights? A Critique of the "Givens" in Human Rights Discourse,"* 15 Alternatives: Global, Local, Political, No. 3, 303 (1990) (characterizing the model of human nature underlying human rights discourse as Western, liberal and individualistic).
4. *E.g.*, Symposium: Women and International Human Rights, 3 Human Rights Qu. (1981).
5. International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 6(1), *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3. Acceded to by India on 10 April 1979.
6. Acceptable conditions of work require, *inter alia*, safe working conditions, the right to form trade unions, and the right freely to choose and accept work. Comm. on Econ., Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work, para. 12(c), U.N. Doc. E/C.12/GC/18 (2005).
7. CESCR, *General Comment No. 18*, supra note 6 at para. 12(a)-(c).
8. *Id.* at para. 12.
9. *Id.* at para. 19; ICESCR, supra note 5 at art. 2(1).
10. ICESCR, supra note 5 at art. 6(2).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) also recognizes individual rights to enjoy just and favorable conditions of work[11] and social security;[12] and collective rights to form trade unions that may function freely, including by exercising the right to strike.[13] These rights—all linked to economic interests—are referred to as "second generation" human rights and included in a set of rights referred to as economic, social and cultural rights.[14]

Discrimination in employment

Under international human rights standards, discrimination in access to and maintenance of employment on the basis of any internationally protected ground is strictly prohibited.[15] Internationally protected grounds include race (caste), sex, language, religion and social origin. Under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), States are obligated to take all appropriate measures to eliminate discrimination against women in employment and to ensure women's rights in the workplace.[16] The Committee on Economic Social and Cultural Rights (CESCR) has encouraged the Government of India to enforce existing legal prohibitions on discrimination and enact comprehensive anti-discrimination legislation guaranteeing the right to equal treatment and protection against discrimination, including in employment.[17]

International Labour Organization (ILO) standards

India is a founding member of the International Labour Organization (ILO). As the specialized law in this area, this study uses ILO labour standards protecting workers as a primary benchmark to evaluate protections for workers under Indian law. The ILO Declaration on Fundamental Principles and Rights at Work cites eight core Conventions that define human rights at work:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Prohibition and Immediate Elimination of the Worst Forms of Child Labour Convention, 1999 (No. 182)[18]

While India has not ratified all of the above conventions, under the 1998 ILO Declaration on Fundamental Principles and Rights at Work, India has an obligation arising from the very fact of membership in the ILO, "to respect, to promote and to realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of these conventions."[19]

In addition to these eight core conventions, this study includes analysis of India's compliance with ILO conventions governing payment of wages and industrial relations. This study also considers

11. *Id.* at art. 7.
12. *Id.* at art. 9.
13. *Id.* at art. 8.
14. While referring to a particular cluster of rights, the definitional value of the term economic, social and cultural rights is limited by the fact that inclusion of rights in the International Convenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) respectively was the result of compromise between various states over political differences and has been widely acknowledged to be somewhat arbitrary. See Terence Daintith, *The constitutional protection of economic rights*, 2 INTL. J. CONST. L., 56, 58 (2004).
15. CESCR, *General Comment No. 18*, *supra* note 6 at para. 12; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), art.5(e)(i), *opened for signature Mar. 7*, 1966, 660 U.N.T.S. 195.
16. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), art. 11(a)-(f), opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13. See also ICESCR, *supra note* 5 at art. 3; CESCR, General Comment No. 18, *supra note* 6 at para.13. These rights include the right to the same employment opportunities as men, choices of profession, vocational training, and equal remuneration and benefits.
17. CESCR, 2008, *Concluding Comments on India report*. UN Doc.E/C.12/IND/CO/5, para. 52.
18. India has only ratified four of the fundamental conventions: Forced Labour Convention, 1930 (No. 29); ratified by India on 30 November 1954; Equal Remuneration Convention, 1951 (No. 100), ratified by India on 25 September 1958; Abolition of Forced Labour Convention, 1957 (No. 105), ratified by India on 18 May 2000; and Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by India on 3 June 1960.
19. International Labour Organization, ILO Declaration on Fundamental Principles and Rights at Work, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998, art. 2.

compliance with ILO standards calling for public authorities to develop labour laws and policies in consultation with employers' and workers' representatives. These standards are articulated in the the Consultation (Industrial and National Level) Recommendation, 1960 (No. 113), Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and Tripartite Consultation (Activities of the International Labour Organizations), Recommendation, 1976 (No. 152). The Committee on Freedom of Association, a supervisory mechanism of the ILO, has also emphasized the value of consulting employers' and workers' organizations while preparing legislation which affects their interests.[20]

India has declared a constitutional commitment to "foster respect for international law and treaty obligations."[21] This fundamental duty has been interpreted by the Supreme Court as "the duty of . . . courts to construe legislation so as to be in conformity with international law and not in conflict with it."[22] International standards should, however, be considered as a baseline rather than an endpoint for rights protection.

The structure of the global economy has changed fundamentally since many conventions foundational to the international human rights system were adopted. Accordingly, in order to respond to the needs of workers who inhabit precarious working relationships, international norms protecting rights at work should be extended to protect the rights of unorganized sector workers. In particular, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98) should be extended to working people in the unorganized sector.

Constitutional rights at work

The Constitution of India, 1949, has been distinguished as an exemplar in aspiring to protect economic rights.[23] Rights at work are enshrined in India's Constitution under both the Directive Principles of State Policy and Fundamental Rights. Together, the Directive Principles and Fundamental Rights have been described as the "conscience of the Constitution."[24] Fundamental Rights are distinct from Directive Principles in that Fundamental Rights can be enforced directly by the Supreme Court while Directive Principles aim to guide governance and law making but are non-justiciable.[25]

The Directive Principles of State Policy, articulated in Part IV of India's Constitution guide the establishment of laws and policies aimed at conferring basic rights for all citizens. [26]

- Article 39 of the Directive Principles recognizes the need for the state to direct its policy towards securing the right to an adequate means of livelihood for all men and women, distributing ownership and control of material resources of the community to serve the common good and

20. Ramapriya Gopalakrishnan, HANDBOOK ON LABOUR REFORMS IN INDIA (2016)(citing Digest of decisions and principles of the Committee on Freedom of Association (CFA), International Labour Office, Geneva, paras. 1065, 1072, 1075) and CFA, Case No. 2980 (El Salvador), Report No. 368, paras. 300-322, observing: "The process of consultation on legislation helps to give laws, programmes and measures adopted or applied by public authorities a firmer justification and to ensure that they are well respected and successfully applied; the Government should seek general consensus as much as possible, given that employers' and workers' organizations should be able to share in the responsibility of securing the well-being and prosperity of the community as a whole, this being particularly important in light of the growing complexity of the problems faced by societies and of the fact that no public authority can claim to have all the answers or assume that its proposals will naturally achieve all of their objective").
21. Constitution of India, 1949, art. 51(c): "foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration."
22. *Kesavananda Bharti Sripadagalvaru v. State of Kerala*, AIR 1973 SC 1461. See also *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (holding "it is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law where there is no inconsistency between them and there is a void in the domestic law").
23. Daintith, *supra* note 14 at 56, 73.
24. Surya Deva, *Public Interest Litigation in India: A Critical Review*, 8 Civil J.Q., No. 1, 20 (2009)(citing Granville Austin, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION, Oxford: Clarendon Press, 1966, 50).
25. *Id.* at 22, 31 (noting the role of Public Interest Litigation in expanding the jurisprudence of fundamental (human) rights in India, including by importing principles from non judiciable Directive Principles into the Fundamental Rights and thereby making various socio-economic rights as legally significant as the civil and political rights articulated in the Fundamental Rights).
26. Together, the Fundamental Rights, Directive Principles of State Policy and Fundamental Duties sections of the Constitution of India comprise a constitutional bill of rights that guides government action.

protecting the right to equal pay for equal work.[27]

- Article 41 of the Directive Principles directs the state, within the limits of its economic capacity and development, to secure the right to work, education and social assistance in cases of unemployment, old age, sickness and disablement.[28]
- Article 43 of the Directive Principles calls for just and humane conditions of work, including maternity leave, a living wage and conditions of work that ensure a decent standard of life.[29]
- Under Article 46 of the Directive Principles, the State is charged with promoting the economic interests of particularly the Scheduled Castes and the Scheduled Tribes.[30]

Constitutionally protected Fundamental Rights are articulated in Part III of the Constitution. The fundamental rights to non-discrimination in matters of employment and freedom of association are also particularly relevant to labour regulation.

- Article 16(2) of the Fundamental Rights sets forth that no citizen shall—on grounds only of religion, race, caste, sex, descent, place of birth, residence or any other grounds—be ineligible for, or discriminated against in respect of any public employment.[31]
- Article 19, of the Fundamental Rights guarantees all citizens the fundamental right to form associations or unions.[32] The right to form associations, is not, however, absolute: clause 4 of Article 19(1), empowers the state to restrict the fundamental right to form associations in the interests of national sovereignty and integrity.
- Under Article 21, the right to life has been interpreted to be more than mere physical existence and "includes the right to live with human dignity and all that goes along with it"[33] —including the right to livelihood.[34]

As discussed in the next chapter, a brief history of labour regulations in India, some of these constitutional protections find articulation in the legal framework governing labour and employment relations in India. In particular, India's labour laws have made significant headway in protecting individual rights at work. However, while India espouses a constitutional commitment to the collective right to form associations, the scope of this right has been circumscribed through legislative, judicial and political measures.

27. Constitution of India, 1949, art. 39: "The State shall, in particular, direct its policy towards securing—(a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as to best subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
28. Constitution of India, 1949, art. 41: "Right to work, to education and to public assistance in certain cases—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."
29. Constitution of India, 1949, art. 43: "Living wage, etc., for workers—The State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas."
30. Constitution of India, 1949, art. 46: "Promotion of education and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."
31. Constitution of India, 1949, art. 16(2): "No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state." "
32. Constitution of India, 1949, art. 19(1)(c): "All citizens shall have the right—to form associations or unions."
33. *Francis Coralie v. Union Territory of Delhi* AIR 1981 SC 746, 753.
34. *Olga Tellis v. Bombay Municipal Corp*, AIR 1986 SC 180; *DTC Corp v. DTC Mazdoor Congress* AIR 1991 SC 101.

II. Brief history of labour regulations in India

TIMELINE OF LABOUR REGULATIONS IN INDIA: PERIODS AND THEMES

CORE PRINCIPLES UNDERLYING INDIAN LABOUR LAWS

- Concurrent authority
- Introduction of individual workers' rights
- Constraints on collective rights
- Exclusion of unorganized sector workers from legal protection

PRE-INDEPENDENCE (1920-1949)

1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946

1947 INDEPENDENCE

1948

1949 CONSTITUTION

INDUSTRIALIZATION POST-INDEPENDENCE (1949-1991)

1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990

PHASE 1 (1950-1960s)

government-directed nation building and active state role in ensuring uninterrupted industrial production

PHASE 2 (1960s-1979)

Extending individual rights at work and economic deceleration under state-led industrialization

PHASE 3 (1980-1991)

Move away from inward-looking economic growth strategies and toward export promotion and domestic competition

ECONOMIC LIBERALIZATION (1991- PRESENT)

1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016

Increased workforce flexibility, decreased bargaining authority of trade unions and deregulation

LOGIC OF INDUSTRIAL PEACE

LOGIC OF COMPETETIVENESS OF FIRMS & ECONOMY

India has upwards of 150 separate pieces of labour legislation arising from central and state governments. Accordingly, understanding the regulatory context of contemporary labour law changes is a complex undertaking. Taking a genealogical approach, this chapter aims to trace the origin of a limited number of concepts undergirding the development of India's current labour law from pre-independence to the present.[1] These concepts include concurrent authority between central and state governments, expansion of individual rights at work for industrial workers and strict legislative, judicial and political control over collective bargaining. In keeping with this objective, discussion of labour legislation is selective and descriptions of legislation remain general, aimed primarily at sketching the emergence of broad parameters of Indian labour regulations.

This history is divided into three phases: pre-independence (1920-1949); industrialization post-independence (1949-1991); and economic liberalization (1991-present). These periods are defined, in large part, by the state of the Indian economy at the time. Discussions of each period foreground emergence of state laws and practices. Where possible, this section also attempts to briefly highlight the historical contexts and conversations that informed development of labour regulations. A significant limitation of this approach is that it does not adequately account for the role of workers, trade unions and social movements in calling for the expansion of individual and collective rights. Since labour law in India has for the most part excluded non-industrial workers from the ambit of protection—the struggles of unorganized sector workers are also largely absent from this history. This report addresses these gaps in subsequent sections. The position of unorganized sector workers in India is discussed in Part III, India's contemporary labour market: demographic trends and precarious work. Thematic sections on wages (Part IV) and industrial relations (Part V) discuss the potential impact of proposed changes on working conditions and workers movements.

Pre-Independence: concurrent authority, introduction of individual workers' rights and constraints on collective rights

The pre-independence years discussed in this section begin post-World War I and reach through to Indian independence in 1949. In this period, labour regulations in India were influenced by several factors that together altered the industrial and political landscape of the nation. Significant forces include communist influence in the labour movement following the 1917 Bolshevik Revolution in Russia; establishment of the International Labour Organization (ILO) in 1919; and the rapid development of trade unions, including the formation of the All India Trade Union Congress (AITUC) in 1920.[2]

The pre-independence framework of employment regulation introduced core concepts that continue to shape labour regulation in contemporary India. First, since 1919, India's central and state governments have maintained shared legislative authority over labour and employment relations.[3] Concurrent authority was carried into the Constitution of India in 1949 and remains the legal arrangement to date. Second, from the 1920's through World War II, labour legislation under British colonial authorities did, to a degree, strengthen individual workers' rights within industrial establishments. This period was also characterized by strict legislative control over collective rights, including but not limited to restrictions on the right to strike. Third, labour protections did not extend beyond industrial establishments, thereby excluding many categories of workers from the ambit of protection.[4]

Beginning in the early 1920's, labour legislation focused on regulating working conditions in factories. Laws of the period strengthening rights of

1. For discussion of labour legislation dating from 1859-1920, including introduction of the Factories Act, 1911, *see* V.K.R. Menon, *The Influence of International Labour Conventions on Indian Labour Legislation,* 73 Int'l Lab. Rev. 551, 554 (1956).
2. Richard Mitchell, *The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development*, Asian J. Of L. And Soc'y, 413-453, 414 (2014).
3. Menon, *supra* note 1 at 552-553 (noting that the regulation of inter-state migration and labour and safety in mines, oil fields, federal railways and major ports were subjects for central legislation; and factories, labour welfare, labour conditions, provident funds, employer liability, workmens compensation, health insurance, pensions, unemployment insurance, trade unions and industrial disputes were subject of concurrent legislative jurisdiction).
4. Mitchell, *supra* note 2 at 421 (identifying the three central themes discussed above and describing the simultaneous promotion of individual rights and restriction of collective rights as a "dual pattern" of regulation).

individual workers within factories included: the *Factories (Amendment) Act, 1922*;[5] *Workmen's Compensation Act, 1923*;[6] *Payment of Wages Act, 1936*;[7] and *Employment of Children Act, 1938*.[8] These measures have been attributed to the influence of international labour Conventions,[9] including: the Hours of Work (Industry) Convention, 1919 (No. 1);[10] Night Work (Women) Convention, 1919 (No. 4);[11] Night Work of Young Persons (Industry) Convention, 1919 (No. 6);[12] and Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18).[13]

The regulatory framework undergirding industrial relations in present-day India was also introduced during the 1920's.[14] Significant legislation included the *Trade Unions Act, 1926*[15] and *Trade Disputes Act, 1929*.[16] The *Trade Unions Act, 1926*, provided for registration of trade unions, gave unions legal status and extended some protection against civil and criminal liability in the course of industrial disputes. However, both the *Trade Unions Act, 1926* and *Trade Disputes Act, 1929* remained limited in their protection of freedom of association and collective bargaining. Unregistered unions were excluded from protection and the legislation did not obligate employers to bargain with registered unions. The *Trade Disputes Act, 1929*, severely limited the right to strike and required referral of industrial disputes to a conciliation board or court of enquiry—although the outcomes of a referral were not binding upon the parties. Both pieces of legislation faced strong criticism by the emerging trade unions, including the AITUC.[17]

In the context of late 1920's and 1930's global economic depression and unemployment, mass dismissals of workers in 1928 and 1929 were met with a wave of strikes. Against this backdrop, the British government established the Royal Commission on Labour in India in 1929. Recommendations of the Royal Commission contributed to legislation passed from 1931 onwards, including legislation protecting individual rights and defining collective rights.[18] The Indian labour movement, however, boycotted the Commission in protest of legislative restrictions on the trade union movement by the British Imperial government.[19]

In response to industrial unrest against the conditions and effects of World War II, regulation of employment relations by British colonial authorities during the war years further restricted strikes and other forms of industrial action. Legislation of this period included section 49A of the *Bombay Industrial Disputes Act*, passed in 1941. The *Bombay Industrial Disputes Act* granted the Bombay government the authority to refer industrial disputes to compulsory arbitration by an Industrial Court and banned all strikes and lockouts prior to arbitration. The central government's *Essential Services Act, 1941* and Defence of India Rules (Rule 81-A of 1942 and Rule 56-A of 1943) laid down further restrictions against strikes and industrial action.[20]

The pre-independence period set the legislative groundwork for central features of India's contemporary labour law regime that persist to this day. Shared legislative authority between India's central and state governments; simultaneous promotion of individual rights and limitation of collective rights; and exclusion of non-industrial workers from the ambit of protection remain prominent features of India's contemporary labour law landscape. However, as the forthcoming sections describe,

5. *Factories (Amendment) Act, 1922,* No. 11 of 1922 (25 January 1922).
6. *Workmen's Compensation Act, 1923,* No. 8 of 1923 (5 March 1923).
7. *Payment of Wages Act, 1936,* No. 4 of 1936 (23 April 1936).
8. *Employment of Children Act, 1938,* No. 26 of 1938, (1 December 1938).
9. Menon, supra note 1 at 557-560.
10. International Labour Organization, Hours of Work (Industry) Convention, 1919 (No. 1), ratified by India on 14 July 1921.
11. International Labour Organization, Night Work (Women) Convention, 1919 (No. 4), ratified by India on 14 July 1921.
12. International Labour Organization, Night Work of Young Persons (Industry) Convention, 1919 (No. 6), ratified by India on 14 July 1921.
13. International Labour Organization, Workmens Compensation (Occupational Diseases) Convention, 1925 (No. 18), ratified by India on 30 September 1927.
14. Mitchell, *supra*, note 2 at 417.
15. *Trade Union Act, 1926*, No. 16 of 1926 (25 March 1926).
16. *Trade Disputes Act, 1929,* No. 7 of 1929 (8 May 1929).
17. Mitchell, *supra*, note 2 at 417.
18. Menon, *supra* note 1 at 556.
19. Mitchell, *supra* note 2 at 417.
20. *Id.*

legislation that protects individual rights at work expanded significantly in the post-independence period as the central government was explicitly tasked with strengthening workers' rights consistent with constitutional articulations of social justice and the role of the welfare state. This proliferation of rights, however, did not extend to collective rights and continued to exclude non-industrial workers.

Post-independence: state-led industrialization, expansion of individual rights and restrictions on collective bargaining

This discussion of the post-independence period includes the years from 1950-1991. This time frame is further divided into three sub-phases of industrialization: phase one of industrial relations covers from the 1950 to mid-1960s; phase two covers from the mid 1960's to 1979; and phase three covers from 1980-1991.[21] The logic of India's legal framework governing employment relations, drawing from colonial precedents and extending through the 1980's, has been described as the "logic of industrial peace." However, the third phase of post-independence industrial relations (1980-1991) begins a shift within Indian state regulation of the economy and labour relations from: the"logic of industrial peace" to the "logic of competitiveness of firm and the economy."[22]

Post-independence: first phase of industrial relations (1950 to mid-1960s)

In the first phase of industrial relations following independence, corresponding to the first three Five-Year Plans (1951-56, 1956-61, 1961-66), India entered a period of 'national development.' Following independence, in order to advance government-directed nation building, the state took on the principal role of ensuring uninterrupted industrial production. The shift to state-led industrial policy, was pursued through import substitution and formation of large, employment-intensive public sector enterprises concentrated in production of capital and intermediate goods.[23] India built up a diversified industrial base and the public sector expanded to provide crucial infrastructure, raw materials and capital goods sufficient to sustain industrial growth.[24]

The development of large public sector enterprises led to employment growth in the organized economy and to the formation of public sector unions. While AITUC continued to expand and consolidate its position within the union movement, the growth of the public sector provided further scope for large-scale unionization. The Congress Party-affiliated Indian National Trade Union Congress (INTUC) developed and expanded with clear links in authority between party and union.[25]

Post-independence, pursuit of harmony in labour relations was articulated as Gandhian doctrines of trusteeship and non-violence. Harmonious industrial relations were pursued through measures to avoid strikes and lockouts by channeling dispute resolution into governmental dispute settlement machinery.[26] This labour relations regime has been referred to as 'responsible unionism,' attendant to the maintenance of industrial peace.[27] Although articulated as consonant with themes of post-independence nation building, it has been widely recognized that the evolution of labour law in India post-1945 largely followed the pattern established by British colonial authorities.[28] Significant features of this colonial pattern include a significant expansion of individual rights, however, limited to formal sector workers; exclusion of informal sector workers; and restrictions on collective bargaining.

21. This periodization of post-independence industrial relations follows the periodization laid out by Debashish Bhattacherjee in *The Evolution of Indian Industrial Relations: A Comparative Perspective*, 32 INDUS. REL. J., No. 3, 248 (2001).
22. K.R. Shyam Sundar, *Emerging Trends in Employment Relations in India*, 45 INDIAN J. OF INDUS. REL., No. 4, 585, 586 (2010).
23. India's Third Five Year Plan laid out the objectives of planned development to be comprised of economic and social goals pursued within the national democratic system. Government of India Planning Commission, *Third Five Year Plan*, 1961-66.
24. CP Chandrasekhar and Jayati Ghosh, THE MARKET THAT FAILED: A DECADE OF NEOLIBERAL ECONOMIC REFORMS IN INDIA (New Delhi: LeftWord, 2006), 3.
25. Bhattacherjee, *supra* note 21 at 248.
26. Van D. Kennedy, *The Sources and Evolution of Indian Labour Relations Policy*, 1 INDIAN J. OF INDUS. REL., No. 1, 15, 37-38 (1965) (citing Prime Minister Nehru's repeated insistence that "peaceful negotiation and compromise were the 'Indian way,' that they were 'unique' and 'democratic' methods and that 'conflict militates against the spirit of cooperative endeavour' and represented an 'out-of-date mentality which is not in keeping with the conditions of today'); and Gulzari Lal Nanda's questioning of the appropriateness of collective bargaining: "Collective bargaining is not suited to our socialistic pattern of society. It may be valid for a capitalist economy like the United States and the United Kingdom").
27. Bhattacherjee, *supra* note 21 at 249.
28. Mitchell, *supra* note 2 at 420

Strengthening protection for individual workers' rights was articulated as the responsibility of the central government. The central government was tasked with "dealing with all phases of the worker's life," –including "housing, welfare, work, better working conditions and fair wages."[29] Ideas of social justice and the role of the welfare state, articulated by the national movement for Independence and enshrined in the Indian Constitution, were articulated as the grounds for labour regulations aimed at advancing workers' rights in this period.[30] Consistent with these articulated objectives, a range of protective legislation was introduced between 1946 and 1962. Highlights include:

- *Industrial Employment (Standing Orders) Act, 1946* requiring employers to provide employees with clear terms of employment as set down by a certified employment Schedule;[31]
- *Factories Act, 1948* regulating conditions of work in manufacturing establishments to ensure adequate safety, sanitation, health, welfare measures, hours of work and leave parameters for workers employed in factories;[32]
- *Minimum Wages Act, 1948,* establishing wage standards by fixing distinct rather than universal minimum wages for scheduled forms of employment;[33]
- *Employees State Insurance Act, 1948,* providing a system of insurance in cases of sickness, maternity, injury, disablement and death;[34]
- *Plantations Labour Act, 1951 and Mines Act, 1952*, regulating conditions of work on tea and rubber plantations and in the mining sector;[35]
- *Employees' Provident Fund and Miscellaneous Provisions Act, 1952,* providing retirement benefits to employees through provident funds, pensions funds and deposit linked insurance funds;[36]
- *Maternity Benefit Act, 1961,* providing both pre-natal and post-natal leave entitlements and wage allowances for female employees;[37]
- *Payment of Bonus Act, 1965,* securing payment of an annual bonus to all employees receiving wages below a specified limit.[38]

Parallel to this advance in individual workers' rights within industrial establishments, however, regulation of industrial relations also excluded numerous workers from protection. The *Industrial Disputes Act, 1947,* applies only to "workmen" in "industries." The term "industry," however, has been progressively expanded to include an increasing but still limited range of employment under subsequent amendments to the Act.[39]

While individual workers' rights were expanded post-independence, collective bargaining rights were circumscribed through legislative measures, strong state intervention in industrial relations and judicial precedents. Trade unions were legally sanctioned but strikes and lockouts were strictly regulated. The *Industrial Disputes Act, 1947* applied conditions under which workers were allowed to strike and distinguished between legal and illegal strikes.[40] The Act also designated no procedures to determine the representative union in a particular bargaining unit. Since employers were under no legal obligation to bargain with unions, there was

29. *Id.* 421.
30. T.S. Papola and Jesim Pais, Debate on *Labour Market Reforms in India: A Case of Misplaced Focus,* Indian J. Of Labour Economics, Vol. 50, No. 2 (2007) (citing Jaivir Singh, *Incentives and Judicially Determined Terms of Employment in India: Endemic Trade-Off between Justice and Efficiency,* Economic And Political Weekly (2003), pp. 123-133; C.P. Thakur, *Labour Policy and Legal Framework in India: A Review,* Institute for Studies in Industrial Development, New Delhi (2007)).
31. *Industrial Employment (Standing Orders) Act, 1946,* No. 20 of 1946 (23 April 1946).
32. *Factories Act, 1948,* No. 63 of 1948 (23 September 1948).
33. *Minimum Wages Act, 1948,* No. 11 of 1948 (15 March 1948). Under The Minimum Wages Act, 1948, the minimum wage schedule is to be revised periodically by central and state governments in order to enable workers to subsist at least above the poverty line. The Act may be applied to any class of employment in which collective bargaining is not in operation.
34. *Employees' State Insurance Act, 1948,* No. 34 of 1948 (19 April 1948).
35. *Plantations Labour Act, 1951*, No. 69 of 1951 (2 November 1951); Mines Act, 1952, No. 35 of 1952 (15 March 1952).
36. *Employees' Provident Funds and Miscellaneous Provisions Act, 1952,* No. 19 of 1952 (4 March 1952).
37. *Maternity Benefit Act, 1961*, No. 53 of 1961 (12 Dec. 1961).
38. *Payment of Bonus Act, 1965,* No. 21 of 1965 (25 September 1965).
39. *Industrial Disputes Act, 1947,* No. 14 of 1947 (11 March 1947).
40. *Industrial Disputes Act, 1947,* No. 14 of 1947 (11 March 1947), arts. 22 and 23.

no incentive for collective bargaining.[41] Instead, privileging strong state intervention in industrial disputes, compulsory arbitration lies at the core of the *Industrial Disputes Act, 1947*, permitting the state to force any conflict into compulsory arbitration and to declare any strike or lockout illegal. These provisions allowed the state to intervene in industrial disputes and direct industrial relationships through civil dispute mechanisms.[42] For the most part, under these provisions, disputes were referred to conciliation, then to the labour commissioner—and if these mechanisms failed, disputes were settled in industrial courts, labour courts or through binding arbitration.[43] While during the late 1950's attempts were made to introduce labour legislation promoting collective bargaining, these attempts ultimately failed.[44]

The system of interest representation that held sway during this period, including interactions between unions, politics and the state, exemplifies what has been called "state pluralism." Under this framework, the state also intervened in determining wages and working conditions. Central and Industrial Wage Boards and the Bureau for Public Enterprises were responsible for setting wages—except in cases of dispute in which adjudicators were called upon to mediate. Collective bargaining was centralized, for the most part, at the national level but also, in some cases, at the industry and regional levels. This structure for determining wages, referred to as 'tripartism,' ultimately resulted in wages rising at a slower rate than labour productivity.[45]

Although this period is marked by a significant rise in registered unions, due to strong state intervention in labour relations, collective bargaining remained underdeveloped.[46] Reinforcing limitations on avenues for collective bargaining, in *All India Bank Employees' Association v. National Industrial Tribunal (1962)*, the Supreme Court expressly circumscribed the boundaries of the constitutional right to form a union. The Court held that the constitutional right to form a union does not carry with it the right of collective bargaining and the right to strike.[47] Under this line of reasoning, while the right to strike is a legal right, it does not amount to a fundamental right and can therefore be circumscribed.

In summation, from the 1950's to mid-1960's, the state pursued uninterrupted industrial production through pursuit of harmonious industrial relations. This dual approach of conferring individual rights and restricting collective rights, rooted in British colonial frameworks, has been described as a paternalistic approach toward workers. Although this approach to workers' rights was propelled through post-independence public articulation of 'socialist' principles, it has also been critiqued as ultimately aimed at promoting the narrow goal of industrial harmony.[48]

Post-independence: second phase of industrial relations (mid-1960s—1979)

The second phase of post-independence industrial relations corresponds with the 1967-69 Annual Plans, the Fourth Five Year Plan (1969-74) and the Fifth Five Year Plan (1974-79). From the mid-1960s-1979, state policy persisted in the mode of extending individual rights at work. However, this period also reflected two crises that began to reshape the landscape of collective bargaining: economic deceleration under state-led industrialization; and a crisis of legitimacy for the state pluralism model of industrial relations, characterized by state mediation of interactions between workers and employers.[49] These forces prompted the growth of

41. Bhattacherjee, *supra* note 21 at 248-49.
42. Mitchell, *supra* note 2 at 423.
43. Bhattacherjee, *supra* note 21 at 249.
44. For discussion of these attempts, see Bhattacherjee, *supra* note 21 at 249 (discussing the Code of Discipline, inter-union Code of Conduct and various bills ultimately vetoed by the executive branch).
45. *Id.* at 249, 250 (referencing the concept of state pluralism, articulated by R. Chatterjee in Unions, Politics And the State: A Study Of Indian Labour Politics (South Asian Publishers: New Delhi, 1980).
46. Id. at 250.
47. *All India Bank Employees' Association v. National Industrial Tribunal*, AIR 1962 S.C., 171; *Radhashyam Sharma v. Post Master General, Nagpur*, AIR 1965 S.C., 311 (holding that while the right to strike is not a fundamental right, it is recognized as a mode of redress for resolving worker grievances). See B.P. Rath and B.B. Das, *Right to Strike an Analysis*, 41 Indian J. Of Indus. Rel., No. 2 (2005) for further discussion of the status of the right to strike under Indian constitutional law, jurisprudence and international law.
48. Kennedy, *supra* note 26 at 38; Bhattacherjee, supra note 21 at 250.
49. Bhattacherjee, *supra* note 21 at 253.

left unions and informed decentralized bargaining in growth sectors. However, although trade union strategies diversified, the government and centralized unions simultaneously proceeded in the mode of state pluralism.

The period from the mid-1960's-1979, is associated with overall industrial stagnation, falling wages, falling productivity, rising inflation (above 10 percent in 1966-67 and 1967-68) and severe food price inflation (around 20 percent). There have been various explanations posited for this period of stagnation, including: deceleration in public investment; unequal terms of trade between agriculture and industry; inefficient state regulation in the public sector;[50] and, despite socialist rhetoric, little progress in redressing asset and income inequality, leaving rural land monopolies and industrial sector asset concentration largely intact.[51] The economy also suffered from oil price shocks in 1973 and 1978.[52]

Between 1966 and 1974, this downturn in the economy led to a sharp rise in industrial disputes (strikes and lockouts) and the number of workers involved in industrial disputes. Many workers also turned away from party-aligned leadership and toward more radical union leaders, including lawyers and student activists.[53] Rising union activity came to a peak during the all-India Railway Strike of 1974. In response to the Railway Strike, Indira Gandhi declared an internal emergency from 1975-77—suspending a range of civil rights and liberties. State insistence on industrial peace and discipline were reasserted, trade union rights were suspended and industrial conflict was suppressed.[54]

This second phase of industrialization saw legislative changes in the structure of collective bargaining practices and industrial relations. The 1965 amendments to the *Industrial Disputes Act, 1947* facilitated a new pattern in bargaining: coalition bargaining between multiple unions and an employer led to settlements; and conciliation proceedings were then sought to convert these agreements into legally binding documents. Particular states, including Gujarat, Madhya Pradesh, Maharashtra and Rajasthan also enacted state-level laws regarding union recognition. Following earlier legislation on union recognition, Maharashtra, for instance, passed the *Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act*, effective in 1975, making failure to bargain with a representative union an unfair labour practice.[55] Real wage gains beginning in the late 1970's have been attributed to the acceleration of union activity and shifts in the structure of collective bargaining from the mid 1960s through the 1970s.[56]

Further, changing the landscape of collective bargaining, the 1976 amendments to the *Industrial Disputes Act, 1947* brought closure, retrenchment and layoff into the ambit of regulation—further strengthening state authority and extending it to somewhat limit the impact of market forces in determining employment status. These amendments, however, led to a sharp spike in lockouts. In 1976 the number of working days lost due to lockouts exceeded the number of days lost due to strikes. [57]

Consistent with the raft of legislation protecting individual workers' rights that began in the colonial era and extended rapidly in the first post-independence phase of industrialization, the 1970's saw the passage of a series of central laws protecting extraordinarily vulnerable workers.[58] The *Contract*

50. *Id.* at 250-51.

51 Chandrasekhar, supra note 24 at 1 (arguing that one consequence of the persistence of asset and income inequality, particularly in rural India which was home to the majority of the population, was that there were definite limits to the expansion of the market for mass consumption goods in India, limiting employment and income growth in the private sector; another consequence was agricultural output far below the potential; and, as a result, continuous growth in state spending was essential for the growth of the market.)

52. Bhattacherjee, *supra* note 21 at 250-51.

53. *Id.* at 251.

54. K.R. Shyam Sundar, *Trade Unions and the New Challenges: One Step Forward and Two Steps Backward,* 49 Indian J. Of Lab. Econ., No. 4, 904, 905 (2006).

55. Bhattacherjee, *supra* note 21 at 251 (citing A.K. Sengupta, *Trends in Industrial Conflict in India (1961-1987) and Government Policy,* Working Paper Series No. 174/92 (Calcutta Institute of Management)).

56. *Id.* at 252 (citing B.K. Madan, *The Real Wages of Industrial Labour in India* (New Delhi: Management Development Institute, 1977), noting that wage data in earlier studies suffered from a serious downward bias since earlier studies were based upon a restricted category of 'low paid' workers and using wage data from the Annual Survey of Industries to find a real wage increase among manufacturing workers; and Tulpule and Datta, 1988 and 1989, *Real Wages in Indian Industry,* Economic And Political Weekly, 23 October 1988 and *Real Wages and Productivity in Industry: A Disaggregated Analysis,* Economic And Political Weekly 24 August 1989, finding evidence of real wage gains since the late 1980's even though there were substantial variations across industries).

57. The 1976 amendments to the *Industrial Disputes Act* introduced Chapter V-B which makes it compulsory for employers to give 90 days notice before closure, retrenchment or layoff in enterprises engaging 300 or more workers. In 1982, Chapter V-B was made applicable to enterprises engaging 100 or more workers.

58. Usha Ramanathan, *Through the Looking Glass,* Seminar 669, May 1, 2015, p. 42.

Labour (Regulation and Abolition) Act, 1970, regulated the employment of contract labour and prohibited its use in perennial activities engaging 20 or more workers.[59] Other legislation of the period, protecting particularly vulnerable workers, included the *Limestone and Dolomite Mines Labour Welfare Fund Act, 1972*;[60] *Bonded Labour System (Abolition) Act, 1976*;[61] *Equal Remuneration Act, 1976*;[62] *Iron Ore, Manganese Ore and Chrome Ore Mines Labour Welfare Fund Act, 1976*;[63] and *Inter-state Workmen (Regulation of Employment and Conditions of Service) Act, 1979*.[64] This string of laws conferring progressive protection of individual workers culminated in passage of the *Child Labour (Prohibition and Regulation Act), 1986* which abolishes child labour in particular operations and strictly regulates working conditions where child labour is present.[65]

In explaining the impetus of the neoliberal economic reforms that began in the early 1990's, both advocates and critics of neoliberal reform take as their reference the development impasse of this second phase of industrial relations, from the mid-1960s through the 1970s.[66] The emerging dual crises that characterizes this period—a crisis in state-led industrialization and simultaneous crisis in state-pluralism as a mode of industrial relations—extended into the third phase of industrial relations, from 1980-1991.

Post-independence: third phase of industrial relations (1980—1991)

The third phase of post-independence industrial relations corresponds to the Sixth and Seventh Five Year Plans (1980-85, 1985-90) and the 1990 and 1992 Annual Plans. During this period, the economy suffered from severe internal and external shocks, including the 1979 drought—one of the worst droughts since independence; political instability in the northeast, a recession in 1980-81, rising inflation, and increasing oil import bills. These factors, together, led toward India's balance of payment crisis.[67] By the mid-1980s, the economy began to move away from inward-looking growth strategies and toward export promotion and domestic competition.[68]

The massive public sector strike in Bangalore in 1980-81 and the definitive Bombay textile strike of 1982—the longest strike in post-independence labour history—mark a period of significant changes in the landscape of the union movement. The rise and proliferation of 'independent' unions operating in major industrial centres has been recognized as a defining feature of this phase. Due to segmented and uneven developments in the industrial sector, plant-level bargaining by independent unions was often able to deliver higher wages and benefits packages than party-affiliated unions. However, the structure of labour-management relations varied widely between cities: for instance, the Mumbai labour movement experienced a proliferation of labour leaders who disclaimed allegiance to political parties; while in Kolkata, the industrial relations regime remained highly politicized with strong links maintained between CITU and the ruling community party.[69]

In 1984, the Bhopal gas disaster—the accidental release of forty tons of toxic methy-iso-cynate (MIC)—killed an estimated 10,000 people and caused massive poisoning of more than 500,000 others.[70] This catastrophe, which continues to have severe impacts upon successive generations, had no parallel in the world's industrial history. The horror of the Bhopal gas disaster shattered the silence on exposure of

59. *Contract Labour (Regulation and Abolition) Act, 1970,* No. 37 of 1970 (5 September 1970).
60. *Limestone and Dolomite Mines Labour Welfare Fund Act, 1972,* No. 62 of 1972 (2 December 1972).
61. *Bonded Labour System (Abolition) Act, 1976,* No. 19 of 1976 (9 February 1976).
62. *Equal Remuneration Act, 1976,* No. 25 of 1976 (11 February 1976).
63. *Iron Ore Mines Manganese Ore Mines and Chrome Ore Mines Labour Welfare Act, 1976,* No. 61 of 1976 (10 April 1976).
64. *Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979,* No. 30 of 1979 (11 June 1979).
65. *Child Labour (Prohibition and Regulation) Act, 1986,* No. 61 of 1986 (23 December 1986).
66. Chandrasekhar, *supra* note 64 at 1.
67. J.S. Sodhi, *New Economic Policies and Their Impact on Industrial Relations, 29* INDIAN J. OF INDUS. REL.NO. 1, 31-54 (1993)(arguing in 1993 from the perspective that export oriented industrialization and World Bank and International Monetary Fund (IMF) conditionalities were necessary to revive the Indian economy).
68. Bhattacherjee, supra note 21 at 254.
69. *Id*. at 255.
70. Bhopal Memorial Hospital and Research Centre, *The Bhopal Gas Tragedy,* accessed August 1, 2015, http://www.bmhrc.org/Bhopal percent20Gas percent20 Tragedy.htm.

workers and communities residing in the vicinity of industrial establishments to hazardous waste within factories. The 1987 amendment to the *Factories Act, 1948* gave workers the right to information about the nature and extent of workplace hazards and held directors of companies responsible for risks imposed by hazardous waste and other dangers.[71]

This period also saw the rise of judicial intervention in interpretation and application of labour rights through Public Interest Litigation (PIL). PIL facilitated access to the courts for disadvantaged sectors of society by modifying traditional standing requirements, procedure to file writ petitions and evidentiary processes—including by appointing fact-finding commissions and amicus curiae.[72] The introduction of PIL in 1979 provided a new avenue for the Supreme Court to vindicate constitutional commitments to social welfare. This platform, oriented to remedial innovation and large questions of policy, facilitated cases on behalf of marginalized groups, including industrial and other workers.[73] Famous cases in which the Supreme Court protected workers' rights, include *People's Union For Democratic Rights v. Union of India* (1983),[74] ruling that working for less than minimum wage falls within the scope of forced labour prohibited by the constitution; *Bandhua Mukti Morcha v. Union of India* (1984) tackling the bonded labour system; and *Vishaka v. State of Rajasthan* (1997) laying down detailed guidelines on sexual harassment at the workplace.[75]

The period from the late 1970s through the 1980's has been distinguished as the first phase of PIL, characterized by litigation by public-spirited lawyers, journalists, social activists and academics that addressed the rights of disadvantaged sections of society, including child labourers, bonded labourers, prisoners, persons with intellectual disabilities, pavement dwellers and women.[76] The rise of PIL has been seen to correspond to the extent and level of judicial activism shown by the Supreme Court,[77] including in interpretation and application of labour law.[78]

During the three phases of industrialization post-independence (1949-1991) discussed above, India saw a robust period of state-led industrialization and experienced deceleration of the economy with the inability to sustain this model. These shifts in the economy precipitated a shift from the "logic of industrial peace" that in large part governed the years immediately post-independence to the "logic of competitiveness of firm and the economy." Despite this significant evolution in the economy, however, throughout this period, labour laws and Supreme Court jurisprudence expanded constitutionally protected individual workers' rights. At the same time, the central government maintained strict legislative control over collective rights—although by the second phase of industrialization (mid-1960s -1970s), particular states began enacting state-level laws pertaining to union recognition. It is against this regulatory backdrop that neoliberal economic reforms unfolded, beginning in 1991 and continuing through contemporary proposals for labour law reform.

Economic liberalization: increased workforce flexibility, decreased bargaining authority of trade unions and deregulation (1992-present)[79]

In June 1991, India's balance of payment crisis, beginning in the early 1980's and reaching its peak in early 1991, prompted the government to adopt the World Bank-IMF stabilization and structural adjustment programme.[80] Consistent with the pressure

71. Ramanathan, *supra* note 58 at 42.
72. *See* Surya Deva, Public Interest Litigation in India: A Critical Review, 8 Civil J.Q., No.1 23-26 for a more detailed discussion of these innovations.
73. Marc Galanter, *Legal Torpor: Why So Little Has Happened in India After the Bhopal Tragedy,* 20 Tex. Int'l. L. J. 273, 288-89 (1985).
74. *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.
75. *Vishaka v. State of Rajasthan,* AIR 1997 SC 3011.
76. *See* Deva, *supra* note 72 at 27 for a discussion of three phases of PIL. However, since under Deva's schematic, the second and third phases of PIL are only tangentially related to interpretation and application of labour law, these phases are not covered in this discussion.
77. *Id.* at 30 (citing Jain, *The Supreme Court and Fundamental Rights,* Fifty Years Of The Supreme Court Of India (Verma and Kusum eds.), p. 86).
78. Under the Supreme Court, *Guidelines to be Followed for Entertaining Letters/Petitions Received by it as PIL*, December 1, 1988, the bonded labour matters and non-payment of minimum wages are included as distinct categories under which PIL should be entertained.
79. Bhattacherjee, supra note 21 refers to the beginning of this phase as the fourth phase of industrial relations (1992-2000). However, given the significant impact of the June 1991 World Bank-IMF stabilization and structural adjustment programme, this report treats June 1991-present as a distinct period.
80. Sodhi 1993, *supra* note 67 at 31-54 (arguing in 1993 from the perspective that export oriented industrialization and World Bank and International Monetary Fund (IMF) conditionalities were necessary to revive the Indian economy).

towards privatization and openness to foreign investment imposed upon governments across the Global South, this conditionality-driven structural adjustment loan from the IMF called for reduction in the public sector, a larger role for private enterprises and opening up India's economy. Central and state-level government promotion of trade liberalization, international competition and privatization relied on wage constraints and diminished bargaining power of unionized sectors.[81] Although India has seen relatively high economic growth in the past decade, very few jobs have been added, mostly of low quality, and employment opportunities in public enterprises, the formal private sector and agriculture have declined.[82]

The process of liberalization initiated in the mid-1980s led to the formulation of new industrial policies in 1990 and 1991. The 1991 industrial policy opened up space for development of the private sector by relaxing labour regulations, removing limits under the *Monopolistic and Restrictive Trade Practice Act, 1969* (MRTP) and decreasing the exclusive domain of the public sector in core sector industries. India also eased trade restrictions to attract multinational investment in Indian industry. While these new economic policies offered Indian private sector industries opportunities for growth and expansion, they also opened up competition from foreign business interests.[83]

The global marketization of the economy has not only required nation states to compete for highly mobile investments—but, in turn, for workers to compete for decent jobs. Competitive advantage has come to include "cheap, skilled and controlled and disciplined labour."[84] Within this context, India's labour laws have been critiqued for facilitating the rising power of unions and protecting rights at work. In particular, criticism was leveled against inefficiency in India's state machinery for adjudicating industrial disputes and the 1982 amendments to the *Industrial Disputes Act, 1947* that were seen as curtailing employers' rights and enhancing bargaining power of unions.[85]

Such critiques have been mobilized to advocate for labour law reforms that increase workforce flexibility, decrease the bargaining authority of trade unions and diminish the reach of India's state labour regulatory apparatus.[86] While *dejure* labour law reforms have been slower to materialize, over the last twenty-five years, industrial relations have been defacto restructured along these lines. "Labour reforms by stealth"[87] have included amendments in trade union law, reductions in provident fund interest rates and special concessions to units in special economic zones (SEZs).[88]

The 1991 reform climate prompted systematic downsizing of the organized workforce, undertaken through measures such as voluntary retirement schemes (VRS). The Indian government also constituted the National Renewal Fund (NRF) to compensate employees affected by restructuring or closure of public and private sector industrial units. It has been estimated that between 1991 and 1995, this dedicated fund enabled firms to retrench 78,000 labourers from the public sector and further aimed to reduce 2 million workers. Micro-level studies

81. K.R. Shyam Sundar "Industrial Relations in India- Working Towards a Possible Framework for the Future," unpublished paper presented at International Labour Organization Bureau for Workers' Activities (ACTRAV) & Centre for Informal Sector and Labour Studies, Jawaharlal Nehru University (JNU) National Trade Union Conference on Labour Law Reform, Industrial Relations and Industry Development, June 29, 2015 (paper on file with author).

82. Coen Kompier, et.al., *Chapter 4: Labour Markets: Exclusion from 'Decent Work,'* India Exclusion Report, 2013-2014 (Books for Change: Delhi, 2014), 111 (citing International Labour Organization, Global Employment Trends, 2013: Recovering From a Second Jobs Dip (Geneva: ILO, 2013).

83. Significant trade measures introduced in the early 1990s include abolishing export subsidy (CSS), replacing REP licenses by Exim scripts, ceasing issuance of licenses to non-exporters and reducing customs duties at various stages. Sodhi 1993, supra note 107 at 33.

84. Kevin Hewison and Arne L. Kalleberg, *Precarious Work and Flexibilization in South and Southeast Asia,* 57 American Behavioral Scientist, No. 4, 395-402 (2013).

85. *E.g.* C.K. Johri, *Industrialism and Industrial Relations in India: The Task Ahead,* 25 Indian J. Of Indus. Rel., No. 3, 238 (1990) (arguing that laws governing industrial relations go beyond protecting workers from unfair practices and "bind the management, hand and feet, and place legal obstructions before it in the discharge of normal functions"); E.M. Rao, *The Rise and Fall of Indian Trade Unions: A Legislative and Judicial Perspective,* 42 Indian J. Of Indus rel, No. 4, 678-695 (1993). In particular, critiques have been leveled at the *Industrial Disputes (Amendment) Act, 1982* (introducing "unfair labour practices" under the *Fifth Schedule of the Industrial Disputes Act, 1947* and including refusal by an employer to bargain collectively in good faith with a registered trade union and hiring practices that deprive workers on casual or temporary contracts with the object of depriving them of the status and privileges of permanent workers as "unfair").

86. Papola, *supra* note Surya Deva, *Public Interest Litigation in India: A Critical Review,* 8 Civil J.Q., No.1.

87. Anamitra Roy chowdhury, *Recent Changes in Labour Laws and their implications for the working class,* Sanhati, January 13, 2015: http://sanhati.com/excerpted/12592/.

88. Sundar 2010, *supra* note 22 at 587.

of this period have also documented large-scale employment adjustments in response to adverse demand shocks. For instance, due to the collapse of Ahmedabad's textile factories in the 1980s and 1990s, 36,000 workers lost their jobs between 1983 and 1984.[89]

Other systematic measures to achieve labour flexibility during this period have included illegal closures, increased use of contract labour, outsourcing and subcontracting.[90] As a result of such systematic downsizing of the organized sector, workers were increasingly channeled into delivering flexible, labour intensive production activities at low cost and without wage, job or social security.[91] Simultaneously reducing the bargaining power of what remains of the organized industrial sector, 2001 amendments to the *Trade Unions Act, 1926* required unions to have at least 100 members or to represent at least 10 percent of the workforce in order to register under the Act—making the formation and registration of unions far more challenging than had previously been the case.[92]

The growth in the unorganized sector has been backed by judicial precedents. For instance, in 2001, in *Steel Authority of India Ltd. v. National Union Waterfront Workers*, the Supreme Court ruled that the *Contract Labour Act, 1970* did not require mandatory absorption of contract workers as "permanent workers," even if those workers were employed in contract work that was prohibited under the Act. This judgment abolished entitlements protecting secure employment of contract workers, facilitating workplace flexibility.[93] The Supreme Court further rolled back protection for casual and temporary workers by ruling that they could not seek regularization of their services, even after employment of more than 10 years, in *Secretary, State of Karnataka v. Umadevi*.[94] In 2005, in *Haryana State Co-Op Land Development Bank v. Neelam*, a worker who was illegally terminated was not entitled to reinstatement.[95] Such precedents stripped contract workers of labour protections and fueled unorganized employment within the organized sector.[96]

Against this backdrop of economic liberalization, recently proposed labour law changes have been anticipated for more than a decade. The 2002 report of the Second National Commission on Labour provides a blueprint for the rapid "consolidation" of labour laws currently underway.[97] Support for labour law changes also continued under former Prime Minister Dr. Manmohan Singh who advocated labour law changes in order to make the process of doing business in India less intimidating, cumbersome and bureaucratic.[98]

Labour law changes are now well on their way. In 2014, the central government amended the *Labour Laws (Exemption from Filing Returns and Maintaining Registers by Certain Establishments) Act, 1988*.[99] The principle Act exempted small establishments employing less than 19 workers from maintaining registers and filing returns under nine central acts. The 2014 Amendment extends this exemption to small establishments employing up to 40 workers and now relieves them of the requirements of

89. Roychowdhury, *supra* note 87 (citing R. Nagaraj, *Fall in Organised Manufacturing Employment: A Brief Note,* Economic And Political Weekly, July 24, 2004, p. 3387-3390).
90. *Id.* (citing Nagaraj, supra note 129; Roberto Zagha, *Labour and India's Economic Reforms,* in JD Sachs et. al. (eds.), India In The Era Of Economic Reforms (New Delhi: Oxford University Press, 1999.).
91. Surendra Pratap, *The Political Economy of Labour Law Reforms in India, Part I,* Centre for Workers Education, Delhi, accessed September 18, 2015, http://sanhati.com/excerpted/12159/.
92. *Trade Unions (Amendment) Act, 2001* (Act 31 of 2001)(section 5 inserted section 9A into the Trade Unions Act, 1926).
93. *Steel Authority of India Ltd. v. National Union Waterfront Workers,* Appeal (civil) 4263 of 2006 (Supreme Court).
94. *Secretary, State of Karnataka v. Umadevi, Appeal* (civil) 3595-3612 of 1999 (Supreme Court).
95. *Haryana State Co-Op Land Development Bank v. Neelam,* Appeal (civil) 1672 of 2002 (Supreme Court).
96. Roychowdhury, *supra* note 87 (citing Nagaraj, supra note 89).
97. T.K. Rajalakshmi, *Loaded against labour: The report of the Second National Commission on Labour draws flak from across the political spectrum for its attempt to dilute labour rights citing a changed economic situation,* Frontline, August 3-16, 2002: http://www.frontline.in/static/html/fl1916/19160990.htm.
98. J.S. Sodhi, *Labour Law Reform in India*, Indian Journal Of Industrial Relations, July 2014, Vol. 50 Issue 1, p. 100-117, at 102 (citing Manmohan Singh at the ILC 40th Session).
99. *Labour Laws (Exemption from Filing Returns and Maintaining Registers by Certain Establishments) Amendment Act, 2014,* No. 33 of 2014 (10 December 2014) amends the *Labour Laws (Exemption from Filing Returns and Maintaining Registers by Certain Establishments) Act, 1988.*

maintaining registers under 16 central acts.[100] Central trade unions have expressed concern that these Amendments will make a growing number of small establishments less accountable for upholding workers' rights.[101]

The Apprentices (Amendment) Act, 2014 widens the scope for engagement of apprentices and increases flexibility to employers under the Apprenticeship Act, 1961.[102] The Amendment extends the scope for engagement of apprentices by allowing employers to engage graduates without diplomas in engineering and technology as graduate technician apprentices; and engage migrant workers from other states as apprentices in addition to apprentices from the home states where businesses are located. The Amendment also affords greater flexibility to employers by allowing them to: initiate training in an "optional trade" without waiting for central government notification of this trade; determine the weekly and daily hours of work for apprentices; and engage apprentices according to the minimum and maximum numbers prescribed by the central government.[103] Finally, the Amendment reduces the penalties for contravening the Act from up to six months imprisonment to the mere requirement of answering a notice in writing and paying a fine.[104] These amendments reduce penalties against employers for engaging apprentices for regular production work instead of direct or contract workers—a practice that is already prevalent across the country.[105]

Legislation introduced by the Ministry of Labour and Employment in 2015 includes the 2015 Labour Code on Wages Bill which aims to consolidate the *Payment of Wages Act, 1936*; *Minimum Wages Act, 1948*; *Payment of Bonus Act, 1965*; and *Equal Remuneration Act, 1976*;[106] the Labour Code on Industrial Relations Bill, 2015 which aims to consolidate the *Trade Unions Act, 1926*; *Industrial Employment (Standing Orders) Act, 1946*; and *Industrial Disputes Act, 1947*;[107] the Small Factories Bill (Regulation of Employment and Conditions of Service) Bill, 2014; the Factories (Amendment) Bill, 2014; and proposed amendments to the *Child Labour (Regulation and Abolition) Act, 1986*.

State-level labour law changes

State governments have concurrent authority to enact labour laws and amend central labour laws. With the liberalization of the Indian economy, states have introduced significant changes in their labour policies and administration to deregulate industry and attract capital into their regions.[108]

For the last decade, in order to provide incentives for private investment, many state governments have modified labour laws in favour of employers operating in Special Economic Zones (SEZs)—duty-free enclaves deemed foreign territory for the purpose of trade operations, duties and tariffs under the *Special Economic Zones Act,*2005.[109] Reliable data on

100. Under the Labour Laws (Exemption from Filing Returns and Maintaining Registers by Certain Establishments) Amendment Act, 2014, Schedule I, establishments employing up to 40 workers are now exempt from maintaining registers under the following Acts: *Payment of Wages Act, 1936; Weekly Holidays Act, 1942; Minimum Wages Act, 1948; Factories Act, 1948; Plantation Labour Act, 1951; Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955; Motor Transport Workers Act, 1961; Payment of Bonus Act, 1965; Beedi and Cigar Workers (Conditions of Employment) Act, 1966; Contract Labour (Regulation and Abolition) Act, 1970; Sales Promotion Employees (Conditions of Service) Act, 1976; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Dock Workers (Safety, Health and Welfare) Act, 1986; Child Labour (Prohibition and Regulation) Act, 1986; Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.*

101. Ramapriya Gopalakrishnan, Handbook on Labour Reforms In India (2016), 60.

102. *Apprentices (Amendment) Act, 2014,* No. 29 of 2014, December 5, 2014.

103. Gopalakrishnan, *supra* note 101 at 61 (explaining that "earlier the number of apprentices who could be engaged in a particular trade was determined on the basis of ratio of apprentices to workers other than unskilled workers and the training facilities available in the establishment. The number varied from trade to trade. The ratio requirement has been done away with and the employer may engage apprentices in accordance with the minimum and maximum numbers prescribed by the central government in relation to the total worker strength which would also include workers engaged through an intermediary contractor").

104. *Id., supra* note 101 at 60-62 (listing the violations for which an employer could be punished: "the punishment of imprisonment for a term which may extend to six months could be imposed if an exployer (a) engaged as an apprentice a person who is not qualified for being so engaged; or (b) failed to carry out the terms of a contract of apprenticeship; or (c) contravened the provisions of the Act relating to the number of apprentices he or she is required to engage; or (d) required an apprentice to work overtime without the approval of the Apprenticeship Adviser or; (e) employed an apprentice on any work not connect with his or her training or (f) made payment to an apprentice on the basis of piece work or; (g) required an apprentice to take part in any output bonus or incentive scheme).

105. *Id., supra* note at 61-62.

106. Labour Code on Wages Bill, 2015, http://www.prsindia.org/uploads/media/draft/Labour%20Code%20on%20Wages%20Bill,%202015.pdf (accessed July 11, 2016).

107. Labour Code on Industrial Relations Bill, 2015, http://www.prsindia.org/uploads/media//draft/Labour%20Code%20on%20Industrial%20Relations%20Bill%202015.pdf (accessed July 11, 2016).

108. Sundar 2015, *supra* note 81.

109. *Special Economic Zones Act, 2005,* No. 28 of 2005 (23 June 2005).

working conditions in SEZs is unavailable because employers are permitted to obtain reports from accredited agencies rather than completing mandatory labour inspections by government authorities. SEZs have also been declared "public utility services" in order to make strikes more difficult.[110] As of October 2011, 583 SEZs had been formally approved but only 143 were operational. Direct employment in SEZs reached almost 400,000 workers in 2009.[111]

Within the last two years, Rajasthan, Gujarat, Madhya Pradesh and some other states have undertaken significant labour law changes to further deregulate industry and attract investment.[112] State amendments have increased the threshold number of workers in an establishment required for applicability of the *Factories Act, 1948* (Rajasthan);[113] *Contract Labour (Regulation and Abolition) Act, 1970* (Rajasthan)[114]; Chapters V A and B of the *Industrial Disputes Act, 1947* related to lay off retrenchment and closure (Rajasthan, Andhra Pradesh);[115] and the *Industrial Employment Standing Orders Act, 1961* (Madhya Pradesh).[116] States have also diminished the likelihood for criminal sanctions against employers by allowing for compounding of offenses under some or all of the following central laws:

- *Industrial Disputes Act, 1947*;
- *Factories Act, 1948*;
- *Minimum Wages Act, 1948*;
- *Motor Transport Workers Act, 1961*;
- *Payment of Bonus Act, 1965*;
- *Beedi and Cigar Workers (Regulation of Employment and Conditions of Service) Act, 1966*;
- *Contract Labour (Regulation and Abolition) Act, 1970*;
- *Payment of Gratuity Act, 1972*; and
- *Equal Remuneration Act, 1976*.[117]

State-level changes also include promoting engagement of apprentices through economic incentives (Rajasthan)[118] and self-certification schemes exempting employers who self-report compliance from inspection under numerous central acts (Andhra Pradesh, Gujarat, Jharkhand, Madhya Pradesh, Rajasthan).[119] Rajasthan, Madhya Pradesh and Gujarat had already already undertaken significant labour law changes.[120] Following this pattern, Andhra Pradesh, Haryana, Himachal Pradesh, Maharashtra, Uttar Pradesh and Telengana are also expected to introduce further labour law changes.

110. Sundar 2010, *supra* note 22 at 587.

111. Kompier, *supra* note 82 at 114.

112. Mukul G. Asher, *Reforming labour laws, creating livelihoods,* THE HINDU October 30, 2014, accessed online on October 31, 2014: http://www.thehindu.com/opinion/op-ed/comment-reforming-labour-laws-creating-livelihoods/article6545494.ece?css=print.

113. This state level law amends the *Factories Act, 1948,* No. 63 of 1948,23 September 1948, amended by the *Factories (Amendment) Act, 1987,* No. 20 of 1987. Gopalakrishnan, supra note 26 at 66 explains: "In Rajasthan, under the *Factories (Rajasthan Amendment) Act, 2014,* the definition of the term 'factory' in section 2(m) of the Factories Act was amended. As a result, in the state, the Factories Act would be applicable to premises where 20 or more workers are employed and a manufacturing process is carried on with the aid of power[;] or 40 or more workers are employed and a manufacturing process is carried on without power. The *Factories (Andhra Pradesh Amendment) Bill, 2015* proposes a to similarly amend the definition of 'factory.'"

114. This state level law amends the *Contract Labour (Regulation and Abolition) Act, 1970*, No. 37 of 1970 (5 September 1970). Gopalakrishnan, *supra* note 26 at 66-67 explains: "The Government of Rajasthan has under the *Contract Labour (Regulation and Abolition)(Rajasthan Amendment) Act, 2014* amended the Act so as to make it applicable only to establishments in which 50 or more workers are employed and to contractors who employ 50 or more workers."

115. These state level laws amend Chapter V-B of the *Industrial Disputes Act, 1947*, No. 14 of 1947 (11 March 1947). Gopalakrishnan, supra note 101 at 67 explains: "The Government of Rajasthan has also increased the threshold for application of Chapter V-B of the Industrial Disputes Act to 300. As a result, industries in the state employing between 100 and 299 workers will now not need the prior permission of the government before effecting any lay off, retrenchment or closure. Moreover, on account of an amendment to the definition of the term 'workman' under section 2(s) of the Act, the number of contract workers employed through an intermediary contractor will not be taken into consideration while computing the number of workers employed in an industry. The *Industrial Disputes Act (Andhra Pradesh Amendment) Act, 2015* also proposes to similarly enhance the threshold for the application of Chapter V-B to 300 workers."

116. This state level law amends the *Industrial Employment (Standing Orders) Act, 1946,* No. 20 of 1946 (23 April 1946). Gopalakrishnan, supra note 26 at 67 explains: "The *Madhya Pradesh Industrial Employment Standing Orders Act, 1961* applies to undertaking in which 20 or more workers are employed. Under the *Madhya Pradesh Industrial Employment (Standing Orders) Amendment Act, 2014*, it is proposed to increase the threshold for application of the Act to fifty. The Act also will not apply to industries classified as micro industrices under the *Micro, Small and Medium Industries Act, 2006*."

117. Gopalakrishnan, *supra* note 101 at 68-69.

118. The *Apprentices (Rajasthan) Amendment Act, 2014* amends the *Apprentices Act, 1961*, No. 52 of 1961. Gopalakrishnan, supra note 101 at 66-67 explains: "The amendments encourage employers to engage apprentices by providing for sharing the cost towards payment of stipend to apprentices (except those who have undergone institutional training and passed the relevant trade tests). In the case of employers employing 250 or more workers, the employer and government would bear an equal share of the cost of stipend; if an employer employs less than 250 workers, 75% of the cost would be borne by the state government. The amendments grant more powers to the state apprenticeship council by enabling it to prescribe the duration of training and to expedite the grievance redressal mechanism in case of termination of apprenticeship contract."

119. See Gopalakrishnan, *supra* note 101 at 69-70 for a detailed discussion of exemption from inspection under self certification schemes.

120. Asher, *supra* note 112.

State-level labour law changes have been justified on the grounds of promoting more competitive environments for business within particular states. In 2015, Rajasthan's Chief Minister Vasundhara Raje explained the role of labour law reforms in the state as creating a "fertile habitat for jobs creation."[121] Chief Minister of Maharashtra, Devendra Fadnavis, promises to introduce a Maharashtra model of labour law reforms: "Along with Make in India we are pitching for Make in Maharashtra," he says. "If the Indian economy has to grow at 8 per cent, Maharasthra has to grow at 10 per cent."[122] Consistent with this logic, an increasing number of Indian states are promising to enact labour law changes that segment the labour market and promote business within the state by deregulating industry and eroding accountability for upholding workers' rights. In the language of welfare economics, the competitive erosion of labour standards has been referred to as the "race to the bottom."[123]

Although India has seen relatively high economic growth in the past decade, this growth has not met "trickle down" expectations. While the growth rate of the Gross Domestic Product (GDP) in the past decades accelerated to 7.52 percent per annum, employment growth during this period was just 1.5 percent—below the long-term employment growth of 2 percent per annum over the four decades since 1972. Just 2.7 million jobs were added in the period from 2004-5 to 2009-10, compared to over 60 million during the previous five-year period.[124] These figures suggest that growth does not automatically trickle down to working people. Poverty is also affected by inflation, income inequality, asset distribution and government policy.

The current blueprint underlying India's labour law changes promotes deregulation, employer flexibility and reduced protection for workers and trade unions as critical elements of promoting business interests and attracting foreign investment. Accounts that foreground individual and collective workers' rights as the foremost barriers to economic growth, however, neither account for key elements of India's industrial trajectory nor address the actual structure of labour regulations in India. For instance, foregrounding protection of workers' individual and collective rights as the foremost historical limitations to India's post-independence industrial growth collapses the significance of India's dual crises in state-led industrialization and state-pluralism in industrial relations between 1966 and 1974. These factors were compounded by severe internal and global market shocks of the second and third period of post-independence industrial relations.

121. *'Gujarat Labour Minister Vijay Rupani's Note on Amendments in Labour Laws'*, Desh Gujarat, 25 February 2015.

122. *Changes in Industrial Disputes Act to accelerate Make in Maharashtra,* Indian Express, January 28, 2015, http://indianexpress.com/article/cities/pune/changes-in-industrial-disputes-act-to-accelerate-make-in-maharashtra.

123. Ajit Singh and Ann Zammit, *Labout Standards and the 'Race to the Bottom'*: Rethinking Globalization And Workers' Rights From Developmental And Solidaristic Perspectives, 20 Oxford Review of Economic Policy, No. 1, (2004), 89 (defining the race to the bottom, however in context of competitive erosion of labour standards between countries).

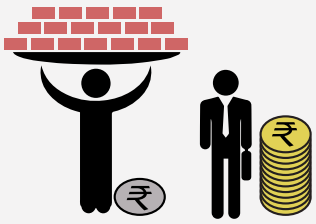
124. Kompier, *supra* note 122 at 111 (citing International Labour Organization, Global Employment Trends, 2013: Recovering From A Second Jobs Dip, Geneva: ILO, 2013).

III. India's contemporary labour market: demographic trends and precarious work

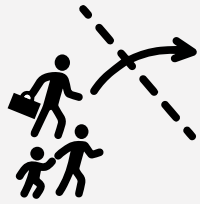
WHAT IS

PRECARIOUS WORK?

Uncertain, unpredictable and risky from the perspective of the worker

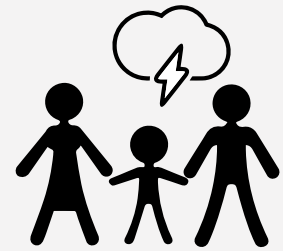


Greater economic inequality



Routine dislocation and migration for employment

Insecurity and instability among workers



Severe impacts on workers, families and communities.

Types of Precarious Work

Unorganized Work
- Unorganized work
- Unorganized work within the organized sector
- Unorganized work within the public sector

Unpaid Work
- Care Work
- Household Lively Work
- Economic Enterprize Work

Invisible Work
- Home based workers
- Domestic workers

Bonded and coercive work
- Feudal caste designated practices
- Global supply chain and associated services

Unorganized employment in India

By 2009-2010, 92 percent of all workers in the organized and unorganized sectors were effectively in unorganized employment (not counting unorganized workers within the public sector)

Particularly affected communities

Migrant workers

Women

Children

Dalits

Adivasis

Muslims

Rather than decent employment opportunities, supply-side economics, wage stagnation and high levels of inflation have relegated an increasing number of Indians to lifelong work without transcending the status of working poor.[1] Work is more temporary, unstable and outsourced as functions are divided up along global value chains (GVCs). The use of standard employment models continues to decline and employer-employee relationships are increasingly ambiguous. This section details the proliferation of precarious, unpaid, invisible and coercive work in India. The section concludes by highlighting the impact of these employment relationships on particularly vulnerable workers, including the intersecting categories of migrant, women, child, Dalit, Adivasi and Muslim workers.

Precarious work

The term precarious work refers to employment that is uncertain, unpredictable and risky from the perspective of the worker. As employers seek to easily adjust their workforce in response to supply and demand conditions, they generate more non-standard work. These forms of work shift risk from employers to employees. Precarious workers receive limited if any social benefits and statutory entitlements. Across organized and unorganized sectors of developing and developed economies, precarious work is steadily replacing standard employment relationships.[2] Proliferation of precarious work has a far-reaching impact upon the nature of work and workplaces and the gender-based distribution of work. Consequences of precarious work include greater economic inequality, insecurity and instability among workers—including through routine dislocation as workers travel to follow transient employment opportunities. These forces have severe impacts on workers lives and their roles within their families and communities.[3]

Within India, precarious work encompasses a spectrum of work regularly traversed by vulnerable workers—including unorganized workers within the organized and public sectors. For precarious workers, the insecurities and instabilities that arise from flexibilization and casualization include reduced protection under labour legislation, increasingly intensive work patterns and isolation from labour unions and collective bargaining.[4]

Unorganized work

The National Commission on Enterprises in the Unorganized Sector (NCEUS) defines the term unorganized workers to include both workers in unorganized enterprises and households, and workers in the organized sector who are not provided with any employment or social security benefits. In common parlance, the terms organized and unorganized sector are used interchangeably with the terms formal and informal sector.[5]

In India's contemporary labour market, the boundaries between the organized and unorganized sectors are eroding as precarious employment relationships increase within organized sectors, the public sector and the economy as a whole. The proportion of unorganized workers in the organized sector rose to 51 percent in 2009-2010. By 2009-2010, without accounting for unorganized workers within the public sector, 92 percent of all workers in the organized and unorganized sectors were effectively in unorganized employment. Put another way: more than 400 million workers in India are employed with low wages, little job security and no entitlement to state protection of their rights at work.[6] In 2004-2005, 95 percent of Scheduled Caste and Scheduled Tribe workers were employed in the unorganized sector. This situation has not fundamentally changed in the last decade.[7]

1. Coen Kompier, et.al., *Chapter 4: Labour Markets: Exclusion from 'Decent Work,'* INDIA EXCLUSION REPORT, 2013-2014 (Books for Change: Delhi, 2014), 122 (citing Government of india, Situation Analysis of the Elderly in India (New Delhi, MoSPI, 2011)).
2. Arne L. Kalleberg, *Precarious Work, Insecure Work: Employment Relations* in Transition, 74 AMERICAN SOCIOLOGICAL REV. (2009), 2; Arne L. Kalleberg and Kevin Hewison, *Precarious Work and the Challenge for Asia*, 57 AMERICAN BEHAVIORAL SCIENTIST, no. 3, 271-88 (2013).
3. Kalleberg 2009, *supra* note 2.
4. Hewison, *supra* note 2 at 3.
5. Surendra Pratap, *The Political Economy of Labour Law Reforms in India*, Part I, Centre for Workers Education, Delhi, accessed September 18, 2015, http://sanhati.com/excerpted/12159/."
6. Kompier, *supra* note 1, 113.
7. Jayshree Mangubhai, ed., BENCHMARKING THE DRAFT UN PRINCIPLES AND GUIDELINES ON THE ELIMINATION OF (CASTE)DISCRIMINATION BASED ON WORK AND DESCENT, INDIA REPORT, 51 (citing Sengupta, A., K.P. Kannan and G Raveendran, *India's Common People: Who are They, How Many are They and How do they Live?* 2008 ECONOMIC AND POLITICAL WEEKLY 43(II), pp. 49-63)

Unorganized work within the organized sector

Casualization and contractualization of the Indian labour force is well underway in the organized manufacturing sector. In 2009-10, in factories employing more than 5,000 workers, almost half of the workers were employed through contractors and not directly by the establishments where they worked. According to the NSSO, in 2011-2012, contract workers amounted to about 25 percent of all workers in establishments employing between 100 and 5,000 workers. More than 80 percent of all workers in the organized manufacturing sector had no written contracts or contracts that were valid for less than a year.[8] This trend toward casualization and contractualization has put a large section of the labour force outside the purview of India's labour protections.

For instance, within the garment sector, hiring workers on a regular contract is on decline. 60 percent of the garment workforce in India is composed of unorganized workers, employed as casual and contract workers. Around 80 percent of the workers employed in this sector are women. Garment sector workers have been recognized by the National Commission for Enterprises in the Unorganized Sector (NCEUS) as "informal workers in the formal sector." This designation appropriately accounts for the range of unorganized sector roles garment workers fill, including home-based work, daily wage work and contractual labour in small production units. Within the textile industry, this trend has been most apparent in the ready-made garment industry—a leading destination for outsourcing by multinational enterprises for the past two decades.[9]

To provide another example: in the automobile industry, flexible forms of labour deployment are a primary means by which companies maximize productivity. For instance, at the Bosch Audugodi plant in Bangalore, on-job trainees who perform the same tasks as other workers can be deployed across shop floors depending on the seasonal flow of business. Working in "fixed-tenure employment," these workers are outside of the ambit of protection of section V-B of the *Industrial Disputes Act, 1947*. When business ebbs, they are the first to lose their jobs.[10]

Proliferation of unorganized work within the organized sector has led to a sharp increase in the number of precarious workers engaged in work that was once protected. Common employment practices to transform protected work into precarious work include use of short-term contracts, casualization, labour supply agencies and employment of foreign and domestic migrant workers. These employment strategies are also used to restrict collective bargaining and reduce the bargaining power of unions. As a result, jobs that were once associated with regulated wages and labour standards governing paid leave, maternity benefits, workplace safety, retirement and other non-wage benefits are now uncertain, unpredictable and risky for workers.

Unorganized work within the public sector

Outsourcing and casualization of employment relationships are also increasingly common in India's public sector, including on the railways—one of the biggest employers in the country.[11] India's central government is currently the largest purchaser of contract services. In 2012-13, the central government alone hired more than 20 lakh (2 million) contract workers through nearly 43,000 licensed contractors.[12] According to data collected by the Seventh Pay Commission, in 2012-2013, the central government spent ₹300.49 crore on contract or temporary workers. Among government ministries and departments, the Indian Railways spent the highest amount on contract or temporary workers—about 35 crore (350 million) rupees a year.[13]

8. V. Sridhar, *The curse of cheap labour: A society that systematically shortchanges its workforce will have to pay dearly*, FRONTLINE, October 29, 2014, accessed online November 1, 2014: http://www.frontline.in/cover-story/the-curse-of-cheap-labour/article6540760.ece?homepage=true&css=print.
9. Interview with Anannya Bhattacharjee, Garment and Allied Workers Union, March 15, 2015. For further information on the garment industry in India, see Susana Barria, NATIONAL PEOPLE'S TRIBUNALS ON LIVING WAGE FOR GARMENT WORKERS IN ASIA (Delhi: Asia Floor Wage Alliance, 2014).
10. Sridhar, supra note 8.
11. Id.
12. Yogima Sharma, *Fostering equality: Government may limit portion of contract workers in companies to 50%*, ECONOMIC TIMES, September 8, 2015, accessed, February 9, 2016, http://articles.economictimes.indiatimes.com/2015-09-08/news/66326646_1_contract-workers-contract-labour-regular-workers
13. Prashant K. Nanda, *Central govt one of the biggest users of temps and contract workers in India*, LIVEMINT, November 24, 2015, accessed February 9, 2016, http://www.livemint.com/Industry/D2PEAR2RL7eZTX47kjp7UM/Meet-one-of-the-biggest-user-of-temps-and-contract-workers-i.html.

Government departments make three types of contractual appointments. These include: outsourcing of routine work such as housekeeping, maintenance and data entry which are bundled and entrusted to staffing agencies; introduction of select posts for high-level professionals through contractual appointments; and contractual hiring of retired government employees with particular skills and expertise.[14] The first category encompasses various categories of low skill work while the latter two facilitate short-term contracts with high-skill consultants.

Contract workers are not protected by the same labour standards or entitled to the same benefits as other public sector workers. This exclusion has a significant impact on workers from the first category delineated above. For instance, 10 million workers involved in delivering government schemes are currently not entitled to benefits or protected by labour standards, including wage standards. These workers include Anganwadi workers, Integrated Child Development Service (ICDS) Workers, Accredited Social Health Activists (ASHAs) under the National Rural Health Management (NRHM), Indira Kranthi Patham (IKP) and Grama Deepika workers of the National Rural Livelihood Mission (NRLM) and Shiksha Karmis involved in primary education.[15]

These workers provide critical public services. The ICDS scheme, launched 30 years ago, has developed into an institution with tremendous service delivery capacity. Anganwadi workers under ICDS are frequently made responsible for multiple health, education and livelihood security responsibilities at the grassroots level in rural, tribal and slum areas.[16] Since the ICDS has continued as a scheme, however, Anganwadi workers and helpers are denied protected status as government employees. They are paid an honorarium rather than a salary with no remuneration for additional responsibilities beyond those envisioned by their role under ICDS. Anganwadi workers are also denied protection under the *Minimum Wages Act, 1948* and access to avenues for promotion, job security and social security.

Anganwadi workers and helpers working at the grassroots level are uniquely singled out for exclusion. Programme authorities in the Women and Child Development Ministry at the apex level and Programme Officers at the District level are recognized as government employees but grassroots level staff, comprised of women from the local community, lack protection as government workers on the grounds that there are no set qualifications prescribed for their recruitment. Notably, regularization of Anganwadi workers and helpers as Group III and Group IV employees would amount to .6 percent of India's GDP.[17]

According to the Seventh Pay Commission Report, current expenditure on contractual workers is relatively small compared to expenditure on salaries of personnel serving in the government—₹300.49 crore on contractual workers, compared to ₹129,599 crore on permanent employees.[18] This comparison does not account for disproportionate salaries between contract workers completing low wage work, such as maintenance and sanitation work, and higher paid permanent employees. The pay commission, moreover, anticipates that government expenditure on contract workers is likely to increase in the upcoming years.[19]

Unpaid and invisible work

Unpaid work

According to the NSSO, in 2011-2012, 55.6 percent of the total male population and 22.5 percent of the total female population of India participated in the labour force.[20] The remaining share of the population—44.4 percent of men and 77.5 percent of women—are not recorded as being a part of the labour

14. Id.
15. T.K. Rajalakshmi, *Labour under attack*, FRONTLINE, October 31, 2014.
16. Responsibilities of Anganwadi workers include: treating oral rehydration and upper respiratory infections, providing directly observed treatment systems (DOTS) for tuberculosis, AIDS awareness and reproductive health planning; conducting total literacy, Sarva Shiksha Abhiyan and non formal education programmes; and promoting savings, group insurance, formation of Self Help Groups (SHGs) and identifying Below Poverty Line (BPL) families.
17. Rajya Sabha, Committee on Petitions, Hundred and Twenty-Ninth Report, On the Petitions Praying for Instituionalization of Integrated Child Development Services (ICDS) Scheme by Converting it Into a Regular Department Under the Ministry of Human Resource Development and Regularization of Services of Anganwadi Workers/Helpers as Employees of that Department, 17 May, 2006 (C.S. II-129).
18. Nanda, supra note 13.
19. Id.
20. Kompier, supra note 1 at 114 (citing National Sample Survey Organization, Key Indicators of Employment and Unemployment in India, 2011-2012; and NSSO, Employment and Unemployment Situation among Social Groups in India, NSS 66th Round, 2009-2010 (New Delhi: MoSPI, 2012)).

force. These workers are, nonetheless, involved in a range of labour activities, including household work and caregiving. Responsibility for household work and caregiving are deeply gendered in their distribution. Women in India spend, on average, over five hours a day on housework compared to an average of 24 minutes spent by men.[21] This work is invisible to the extent that it does not lead directly to visible income generation and does not occur in conventional sites of production.

Privatization of social services has further exacerbated the burden of care work for poor and marginalized women. Those who can afford care, pay for support from low wage workers who are most often women. Those who cannot, do their best to look after sick family members at home, a task that also disproportionately falls to women. As a result, women at the bottom of the socioeconomic pyramid meet the care needs of others while their rights to healthcare, social protection and decent work are systematically denied.[22]

Despite the significant contributions of women engaged in unpaid work, national laws and international conventions address only the concerns of workers in remunerative employment. In India, where nearly 80 percent of all women workers are associated with a range of employment that includes unpaid and invisible work, recognition of unpaid work and its consequences for women workers is particularly significant.[24] The Special Rapporteur on Extreme Poverty and Human Rights has positioned unpaid care work as a human rights issue and recommended that care be a social and collective responsibility.[25]

Invisible workers

Engaged in their homes and the homes of their employers, off the public radar, domestic and home-based workers are particularly vulnerable to exploitation and abuse. Most labour laws to date are designed to regulate working conditions in the organized sector. Therefore, domestic and home-based workers are invisible under organized labour registration systems.[26] Labour protections capable of meeting the distinct needs of domestic and home-based workers will require formulation outside the structure of organized employer-employee relations. The particular vulnerabilities of domestic and home-based workers are described in detail in this section.

Table: Typology of Women's Unpaid Work[23]

Care work		Household livelihood work	Economic enterprise work
Direct care	**Indirect care**		
Physical care for the daily living of household members (especially children, elderly and the sick, including bathing, feeding, cleaning and nursing) and work involved in social interaction, learning and leisure activities for child's social cognitive and psychological development or of elderly person's healthy living.	Washing clothes, cleaning utensils, giving medicine, overseeing activities of children and elderly persons as needed, maintenance of the household for cleanliness and hygiene.	Sourcing basic input for daily survival from outside the home such as fuel, food, and water; transforming raw food into cooked food for household consumption, food preservation, fodder collection, taking care of livestock, etc.	Work done inside or outside the house for family enterprise (non-farm as well as agriculture and agriculture-allied activities.)

21. International Trade Union Confederation (ITUC), FROZEN IN TIME: GENDER PAY GAP UNCHANGED FOR 10 YEARS, accessed September 24, 2015 http://www.ituc-csi.org/IMG/pdf/pay_gap_en_final.pdf.
22. *The fine line between unpaid care work and domestic servitude*, INTERACTIONS, accessed 2 February 2015, http://interactions.eldis.org/blog/fine-line-between-unpaid-care-work-and-domestic-servitude.
23. Radhika Desai, WOMEN'S WORK COUNTS: FEMINIST ARGUMENTS FOR HUMAN RIGHTS AT WORK, Programme on Women's Economic Social and Cultural Rights, 2.
24. REPORT OF THE NATIONAL WORKSHOP ON WOMEN'S UNPAID WORK (Draft for circulation) on file with author.
25. United Nations Office of the High Commissioner, *Unpaid work, poverty and women's human rights*, accessed February 11, 2016, http://www.ohchr.org/EN/Issues/Poverty/Pages/UnpaidWork.aspx.
26. Kompier, supra note 1 at 114-115.

Domestic workers

Hired domestic workers undertake household work in return for remuneration. Tasks frequently include care of children and the elderly, cooking, driving, cleaning, grocery shopping and running errands.[27] Women and girls who are employed as domestic workers frequently lack literacy, alternate income generating opportunities, land and assets. Domestic workers are also typically from some of the poorest and most socially marginalized communities in India, often facing discrimination in employment on the basis of caste or other identities. For instance, domestic workers who migrate for employment from Jharkhand's districts of Gumla and Simdega to the NCR are predominantly Adivasi women who move to urban centres through informal contacts. Among twenty-five young women (returned migrants) interviewed for a 2015 ILO study of the Jharkhand-Delhi route, thirteen respondents were below the age of sixteen when they migrated for employment and seven respondents had no formal education.[28]

Young female domestic workers make up a significant portion of the population of India's working children. A 2007 study conducted by the National Commission for the Protection of Child Rights found that 23.2 percent of all working children are domestic workers and 81.16 percent of domestic child workers are girls. Child domestic workers are frequently sent by their parents with agents to be placed with employer families.[29]

While several laws, including the *Unorganized Workers' Social Security Act, 2008*,[30] *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*[31] and Minimum Wages Schedules notified in some states refer to domestic workers, there is no comprehensive, uniformly applicable national legislation that guarantees them fair terms of employment and working conditions. Absent protection, domestic workers are subjected to below minimum wages and long work hours. Since domestic workers spend significant time within employers' homes, they are particularly vulnerable to a range of abuses, including physical and sexual abuse.[32]

Home-based workers

Home-based workers can be divided into two basic categories: self- employed home-based workers who operate independently and sell their own finished goods; and sub-contracted home-based workers, who are given raw materials, paid by piece and typically contracted through an intermediary. Many sub-contracted home-based workers produce under contracts for global value chains.[33] Home-based workers in India do at least 48 different types of piece-rate work—ranging from handicrafts, embroidering, fashioning key rings, assembling TV parts, making insulators for ironing elements and chemical washing car parts. Many of these jobs include hazardous work, such as working with shards of glass and toxic chemicals.[34] Home-based workers are also engaged in agricultural produce processing, fish processing, seed preserving, processing minor forest produce, livestock rearing, metal work and carpentry.[35]

According to 2009-2010 NSSO estimates, 79.2 percent of the non-agricultural female workforce in urban areas was employed in home-based work. These numbers may be an underestimate due to the difficulty in comprehensively identifying home-based workers. A 2012 study of 3000 home-based workers conducted by the Centre for Indian Trade Unions (CITU) found that the large majority of wom-

27. United Nations in India, *About Domestic Workers*, accessed February 9, 2016, http://in.one.un.org/page/rights-for-domestic-workers.
28. International Labour Organization, INDISPENSABLE YET UNPROTECTED: WORKING CONDITIONS OF INDIAN DOMESTIC WORKERS AT HOME AND ABROAD, 2015, at p. 38, accessed November 7, 2015, http://www.ilo.org/global/topics/forced-labour/publications/WCMS_378058/lang--en/index.htm.
29. *Id*.
30. *Unorganized Workers' Social Security Act, 2008*, No. 33 of 2008 (30 December 2008).
31. *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, No. 14 of 2013 (22 April 2013).
32. United Nations in India, *About Domestic Workers*, supra note 27 (citing data released by the Ministry of Women and Child Development in February 2014 in response to a question tabled in the upper house of Parliament).
33. Women in Informal Employment Globalizing and Organizing, *Home-Based Workers*, accessed on February 9, 2016, http://wiego.org/informal-economy/occupational-groups/home-based-workers.
34. Pamela Phillipose, *India's Home-Based Workers Fall Through Safety Net*, WOMEN'S ENEWS, August 30, 2011, accessed February 9, 2016, http://womensenews.org/2011/08/indias-home-based-workers-fall-through-safety-net/.
35. Self-Employed Women's Association (SEWA), HOME-BASED WORKERS IN INDIA: NEED FOR PROTECTION UNDER LAW, WIEGO Law and Informality Resources (Cambridge, MA, USA: WIEGO, 2014).

en involved in home-based piece work identified poverty and economic crises as the reasons for undertaking this type of employment alongside domestic and other responsibilities.[36]

Home-based workers are impacted by irregular or cancelled work orders, unreliable supplies of materials, delayed payments and rejected goods. Piece-rate work can be highly irregular.[37] On average, women work 16 days a month and seven months a year. Other members of the family, including the elderly and children, may be drawn into the production process. Since payments are made on a piece rate basis, contributions from other family members remain completely unaccounted for.[38]

Particular trade groups of home-based workers have won protection under trade-specific legislation. For instance, beedi workers are protected under the *Beedi and Cigar Workers (Conditions of Employment) Act, 1966*[39] and the *Beedi Workers Welfare Fund Act, 1976.*[40] Implementation of these welfare schemes required work by the Self Employed Women's Association (SEWA) to translate these Acts into local languages and advocate, through grassroots and legal advocacy, to secure workers' rights under these Acts. The vast majority of home-based workers, however, are not protected by India's labour laws. In fact, they are largely invisible from the policy landscape. The first and last time home-based workers were surveyed by the NSSO was in 1999-2000.[41]

Workers representatives have argued that measures to protect the rights of unorganized sector workers, including domestic and home-based workers, must include recognition, representation and protections formulated outside the structure of organized employer-employee relations. Policy measures should recognize these forms of work in national macro-level statistics; ensure worker representation in government, tripartite and other stakeholder forums—such as minimum wage boards; include worker registration by labour departments; invest in skill recognition and upgrade opportunities; secure social protection, including childcare, pension, disability benefits, maternity benefits and educational and housing assistance; and recognize and engage with membership based organizations (MBOs), including women's only MBOs.[42]

Bonded and other forms of coercive labour

Labour bondage and coercive work have existed in India for centuries. Coercive work is also assuming new forms in the contemporary labour market. Vulnerability to bondage and other forms of coercive labour is rooted in longstanding patterns of inequality, social exclusion, discrimination and inadequate labour market governance. Traditional forms of labour bondage, mostly observed in agriculture, involve several generations of the same family being bonded to the same household. Apart from agriculture, where both traditional and newer forms of bonded labour co-exist, bonded labour is also found among workers in a wide range of sectors, including: stone quarries, brick kilns, sex work, fishermen, forest labourers, bidi workers, carpet makers, weavers, head load carriers and children in match and firework factories.[43]

India's poorest and most socially vulnerable communities fall into bondage for many reasons. Most workers in bonded or other forms of coercive labour are landless, with little access to formal credit. In times of need, they may have no option except to turn to moneylenders. For instance, the brick kiln sector in India employs about 8 million workers annually, providing seasonal employment to distressed migrant workers in the agricultural lean season from October to March. Labour contractors provide migrant workers with advances ranging from ₹4,000 to 40,000. A contractor will typic-

36. Kompier, supra note 1 at 117 (citing inputs from a case study on home-based workers on file with the author).
37. Women in Informal Employment Globalizing and Organizing, supra note 33.
38. Kompier, supra note1 at 117 (citing NSSO, "Home-Based Workers in India," NSS 66th Round (2009-10)(New Delhi: MoSPI, 2012)).
39. *Beedi and Cigar Workers (Conditions of Employment) Act, 1966*, No. 32 of 1966 (30 November 1966).
40. *Beedi Workers Welfare Fund Act, 1976*, No. 62 of 1976 (10 April 1976).
41. SEWA, supra note 35.
42. SEWA, supra note 35 at 2-4 (discussing measures to protect home-based workers).
43. Harsh Mander and Gitanjali Prasad, INDIA EXCLUSION REPORT, 2013-2014 (Books for Change: Delhi, 2014) 34.

ally settle advances at the end of the employment period. In the interim, workers completely dependent upon the labour contractor, face exploitative working conditions and other forms of workplace violence. In most cases, children accompanying parents also work at the kilns.[44]

Within the garment global value chain, beginning in the early 1990's in Tamil Nadu, more than 100,000 young Dalit girls have worked in spinning mills under Sumangali or "happily married women" schemes. They are promised money for dowry in a lump sum at the end of a three-year period but receive no regular payment apart from pocket money. These schemes offer ₹30,000 to 60,000 for three years work, but workers say that they do not receive the full amount after deductions are taken for their food and lodging. Girls as young as thirteen years old report not being allowed to leave mill compounds, being made to work double shifts and facing physical and sexual abuse. As a result of their extended working hours, often more than 12 hours a day, women and girls report migraines, excessive stomach pain and heavy bleeding during menstruation as a result of dust and poor ventilation within factories.[45]

Bonded and forced labour is outlawed under Article 23 of the Constitution of India. The *Bonded Labour System Abolition Act, 1976*, recognizes forced and bonded labour in customary relationships and manifestations of these forms of coercive labour in inter-state migration.[46] The Supreme Court in *People's Union for Democratic Right v. Union of India (1982)* and *Bandhua Mukti Morcha v. Union of India (1984)*,[47] has taken a wide view of what may constitute force in a labour relationship:

> Any factor which deprives a person of a choice of alternatives and compels him to adopt a particular course of action, may properly be regarded as 'force' and if labour and service is compelled as a result of such 'force' it would be 'forced labour'. The word 'force' must be construed to include not only physical or legal force but also force arising from compulsion of economic circumstances which leaves no choice of economic circumstance to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Therefore, when a person provides labour or service to another for remuneration, which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour.'[48]

The definition of what constitutes bonded or forced labour in India, has two elements to note: first, the presence of a creditor-debtor relationship between a labourer and an employer is not sufficient to denote bonded labour unless it imposes involuntary restraints; second, a creditor-debtor relationship is not a necessary condition of bondage since this definition incorporates various categories of forced labour—including payment less than minimum wage.[49]

While the legislative framework of the *Bonded Labour System (Abolition) Act, 1976* and subsequent interpretations by the Supreme Court provide a robust standard outlawing bonded and other forms of coercive labour, implementation of this framework by the states has remained weak. The Supreme Court of India has, in a series of judgments directed that action be taken to strengthen enforcement of the Act. Accordingly, since 1997, the National Human Rights Commission (NHRC) has been directly involved in monitoring bonded and coercive labour and reporting to the Supreme Court. Despite these initiatives, bonded and other forms of coercive labour persist, due in significant part to the persistent lack of assets and livelihood opportunities among marginalized communities in India.[50]

44. Kompier, supra note 1 at 114 (citing Building and Wood Workers International, *Brick Kiln Industry: Joint Advocacy Efforts Reap Benefits*, http://www.bwint.org/default.asp?index=4562).
45. Nita Bhalla, *Captured by cotton: girls duped into "bonded labour" in India's textile mills*, REUTERS, August 6, 2015, accessed, February 8, 2016, http://in.reuters.com/article/india-textiles-women-idINKCN0QB04920150806.
46. Ravi Srivastava, *Bonded Labour in India: its Incidence and Pattern*, Working Paper for Work in Freedom, Special Action Programme to Combat Forced Labour, (Geneva: International Labour Office, 2005), 2 (explaining the contours of the Bonded Labour System (Abolition) Act, 1976, No. 19 of 1976 (9 February 1976)).
47. *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.
48. *People's Union for Democratic Righst v. Union of India*, 1982 LLJ 454 SC (1982)
49. Srivastava 2005, supra note 46 at 4.
50. *Id*. at 33.

Social structure of the labour market

Within India's labour market—migrant, women, child, Dalit, Adivasi and Muslim workers are at severe risk of exploitation and exclusion from decent work. Workers at the intersection of these categories are particularly vulnerable to rights abuses. While India's *Equal Remuneration Act, 1973*, requires an employer to pay women and men equally for the same work or work of a similar nature, this protection does not extend to protecting workers from wage discrimination along caste or tribal lines.[51] India currently has no laws specifically outlawing discrimination against Dalit, Adivasi, Muslim disabled or sexual minority workers. Without protection against exclusion and wage discrimination, the market in India consolidates rather than reduces social processes of exclusion.

Migrant workers

An estimated 15 million people in India enter the labour market each year.[52] As employment in agricultural sectors has declined over the last two decades, migration, and particularly women's migration, from rural to urban areas has increased manifold. Today, millions of workers migrate to urban areas to work at the growing base of global value chains and associated services. India's megacities—hubs of industrial, service and home-based employment—are manifestations of this imbalanced economic growth within the country.[53] By 2011, India's Census reported that urban population growth exceeded rural population growth for the first time since independence.

While there is no official or conclusive data on inter-state migration within India, according to one estimate, between 30 and 50 million people in India are engaged in circular migration.[54] For migrants, transit is regular and includes initial rural-urban migration, travel between transient employment, daily commutes through unsafe streets and long journeys to native villages. Without safe transportation options for low-wage workers, transit-related violence, especially for migrant women, is ongoing. The violence migrants face in transit is largely unmapped and unaddressed.

Migrant workers traveling in search of employment tend to be from some of the poorest, most backward castes and social groups in India. Traveling long distances from rural to urban areas, migrants have described the migration process as akin to moving to a foreign land. Without family and kinship support, they internalize that undocumented status translates into having no rights. Within this context, women who migrate for employment face the added challenge of shouldering the "double burden" of wage employment and socially productive and reproductive labour. For most migrants, wages for a standard workweek fall below the UN threshold for absolute poverty.

Upon reaching urban destinations, migrants face violent workplaces and dangerous living conditions. At work, they may face a range of physical, sexual and economic violence—including forced labour, discrimination in low wage work and withheld wages. The *Sexual Harassment of Women at Workplace Act, 2013* mandates sexual harassment prevention committees, but most committees exist only in formal records and fail to safeguard women workers. These protections, moreover, remain largely unaccessible to unorganized sector workers. In many of India's urban industrial hubs, migrants live in dangerous slums, housing colonies and on worksites.

As rural-urban migration increases, facilitating migration for employment has become highly profitable and recruitment intermediaries are assuming a crucial role in India's economic growth.[55] Moreover, the growth of India's unorganized labour force and corresponding increase in temporary employment has created further opportunities for private employment agencies (PrEAs) to match workers to employers. As a result, India's contemporary labour market operates in large part through a network of employment agencies and middlemen, often unregistered and unregulated. Intermediaries match

51. *Equal Remuneration Act, 1976*, No. 25 of 1976, Chapter II, Section 4.
52. *India Needs to Create 15 million Jobs Annually: Pitroda*, THE INDIAN EXPRESS, 23 March 2013, http://archive.indianexpress.com/news/india-needs-to-create-15-million-jobs-annually-pitroda/1092411.
53. Amitabh Kundu, *Urbanization and Urban Governance: Search for a Perspective beyond Neo-liberalism*, 38 ECONOMIC AND POLITICAL WEEKLY, No. 29, 3079-87 (December 2002).
54. Ravi Srivastava, *Labour Migration, Inequality and Development Dynamics in India: An Introduction*, 54 INDIAN J. OF LAB. ECON. No. 3 (2011).
55. ILO-FICCI-MOIA, Workshop on Strengthening Recruitment—Legislation and Structure, Delhi, August 26, 2015.

employees to employers and frequently determine wages, hours and working conditions.[56] This employment structure contributes to disregard for decent labour practices by diminishing accountability for offenses and eliminating direct bargaining to secure decent work between employees and employers.

Without adequate regulation of PrEAs, workers are vulnerable to exploitation and multiple forms of violence by recruitment intermediaries, including uninformed placement with employers where working conditions fall far short of decent work standards. Workers are routinely misinformed about the nature of employment and working conditions, denied regular payment and subjected to physical and sexual violence. At the far end of the spectrum, exploitative recruitment practices by PrEAs can lead to trafficking and forced labour.[57]

The *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979* applies to every establishment in which four or more interstate workers are employed and to every contractor who engages five or more interstate migrant workers.[58] Under the Act, establishments and contractors are required to register with the Deputy Labour Commissioner, maintain registers and records of particulars of migrant workers employed, the nature of work performed by these workers and their wage rate. Under the *Inter-State Migrant Workmen's Act, 1979* no recruitment can take place for the purpose of employing workers in another state without a proper license.[59] However, this provision is neither followed nor enforced by home states. The *Inter-State Migrant Workmens Act, 1979*, is also restricted to regulating contractors who engage numerous workers, thereby excluding migrant domestic workers from protection under the Act.

Due to the limitations of existing legislation, within India, regulation of complex recruiting chains that stretch from remote villages to rapidly expanding urban destination hubs remains a significant challenge. Although a wide range of PrEAs work in India, catering to distinct labour market needs, India currently lacks a well-defined labour law specific to governing PrEAs. Lack of regulation, licensing and a well-defined labour law governing private placement agencies leave workers vulnerable to exploitation. Responding to these challenges, in 2014, Chhattisgarh enacted the *Private Placement (Regulation) Act*—the first state-level legislation to regulate PrEAs. The Delhi Private Placement Regulation Bill, 2012 is currently pending. State-level measures, however, face critique for their inadequacy in addressing inter-state rights abuses faced by migrant workers.

Women

Nearly all women in India work, engaging in multiple economic activities significant for their households and the national economy. They are involved in a spectrum of work which includes care giving to children, elderly and sick family members; domestic work such as cooking, cleaning, water and fuel collection; and subsistence work in family farms and enterprises. These contributions are highly undervalued, unrecognized and regarded as economically insignificant.

Mainstream economics does not recognize these contributions because much of the time, labour, products and services rendered by women are not exchanged in the marketplace.[60] Currently, women's participation in the labour force is measured at around 27 percent—lower than any other country in the G-20 except for Saudi Arabia. Out of 189 countries studied by the International Labour Organization, India ranks 17th from the bottom on measures of women's participation in the market.[61]

Unfair and unrecognized divisions of domestic work constrain women's ability to enter the labour market as wage earners. There is a strong, inverse link between the amount of time that women and girls spend on unpaid care work and their economic empowerment. This relationship is defined by two reinforcing dynamics: first, women face discrimi-

56. Kompier, supra note 1 at 113.
57. International Labour Organization, Trafficking For Forced Labour: How To Monitor The Recruitment Of Migrant Workers, 2005, page 9-11, 21.
58. *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, no. 30 of 1979 (11 June 1979).
59. *Id.* Section 8.
60. Desai, supra note 23 at v.
61. Ellen Barry, *In India, a Small Band of Women Risk it All for a Chance to Work*, January 30, 2016, New York Times, accessed February 10, 2016, http://mobile.nytimes.com/2016/01/31/world/asia/indian-women-labor-work-force.html?referer=&_r=0

nation in the labour market; and second, drudgery involved in carrying out domestic responsibilities impacts the health and well being of women, compromising their ability to participate in civil, economic, social and political spheres. This "double burden" has been term "time poverty."[62]

Due to economic pressure on households and decline in traditional sectors of employment such as coir, handloom and other home-based small industries, an increasing number of women in India have been drawn into direct economic roles as wage earners in the unorganized sector, finding employment in factories, construction sites, homes and farms. Undervaluation of women's work in the paid economy adds to the already precarious nature of women's employment.[63] In the unorganized sector, women's work is characterized by low wages, long working hours, hazardous working conditions, very little job security and lack of basic services at work—including water and sanitation.

Retention and promotion in the labour force is also affected by women's lifecycle stage—both in terms of the choices that they make in terms of choosing not to work or to work fewer or more flexible hours; and in terms of the way they are perceived by employers in terms of wages, career progression and types of employment options. Women from more financially stable households who can afford to pay for childcare are more likely to be employed in organized sector jobs. Poorer women, who often have to care for children and sick and elderly relatives themselves, may not to able to sustain regular employment.

Women with little education and few marketable skills often have few options besides paid domestic work—including cleaning, cooking, child and elderly care. As previously discussed, outside the realm of labour regulations and social protections, female domestic workers tend to work long hours, earn low wages and receive fewer benefits and less legal and social protection than most other wage workers.

With little assistance from the state in terms of public provision of services, many women face increasing levels of time poverty, making it difficult for them to consider looking for better-paid jobs. While hiring and wage discrimination on the basis of gender is currently prohibited under the *Equal Remuneration Act, 1976*, women in paid work on average earn between 10 percent and 46 percent less than men.[64] Women employed in the public sector tend to be clustered in junior and lower-paying positions as well as in typically feminized sectors such as education and health.[65] A 2011 study on India estimated, however, that if minimum wages were extended to all wage earners, the gender pay gap would decline from 16 percent to 10 percent for salaried workers and from 26 percent to 8 percent for casual workers.[66]

Children

Child labour refers to full time work done by any working child who is under the legally specified age—whether they work in wage or non-wage work, for the family or others, in hazardous or non-hazardous occupations, or on a daily wage or contractual basis.[67] In the last decade, India has made considerable progress in reducing child labour. Government measures have included laws to protect children from exploitative employment and ensure their schooling, as well as a range of social welfare schemes. However, according to International Labour Organization estimates, there are still 5.7 million child workers in India who are between five and seventeen years old.[68] In 2011, the highest number of child labourers were from Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Rajasthan and

62. D. Chopra, *Balancing Paid Work and Unpaid Care Work to Achieve Women's Economic Empowerment*, 83 INSTITUTE OF DEVELOPMENT STUDIES POLICY BRIEFING January 2015, accessed February 11, 2016, http://www.ids.ac.uk/publication/balancing-paid-work-and-unpaid-care-work-to-achieve-women-s-economic-empowerment.
63. *Id*. 226.
64. International Trade Union Confederation (ITUC), FROZEN IN TIME: GENDER PAY GAP UNCHANGED FOR 10 YEARS, accessed September 24, 2015, http://www.ituc-csi.org/IMG/pdf/pay_gap_en_final.pdf (accessed 24 September 2015).
65. UN Women, PROGRESS OF THE WORLDS WOMEN 2015-16: TRANSFORMING ECONOMIES, REALIZING RIGHTS (2016), at p. 112.
66. Patrick Belser and Uma Rani, *Extending the Coverage of Minimum Wages in India: Simulations from Household Data*, ECONOMIC AND POLITICAL WEEKLY, May 28, 2011 (estimating based on simulations, the effects of extending minimum wage to all workers in India, including those in informal employment and assuming perfect compliance).
67. N.K. Chadha and Vandana Gambhir Chopra, *Child Labour: An Indian Scenario*, in S. Deb (ed.) CHILD SAFETY, WELFARE AND WELL-BEING (Springer, 2016), 205.
68. Nita Bhalla, *Why govt's promise to end child labour by 2025 is 'farcical,'* BUSINESSTODAY.IN, September 16, 2015, accessed February 8, 2016, http://www.businesstoday.in/current/economy-politics/ending-child-labour-by-2025-farcical-as-govt-plans-to-allow-children-under-14-family-work/story/223796.html.

Uttar Pradesh.[69] NSSO data from 2009-2010 also reports a significant number of working children in Gujarat, Uttarakhand and West Bengal.[70] The vast majority of working children in India are from socio-economically disadvantaged communities.

Children in India work in a range of occupations, many of them harmful to their physical and psychological wellbeing. More than half of child workers in India work in agriculture, including rice paddies and cotton and sugarcane fields, where they may be exposed to pesticides and risk injury from sharp tools and heavy equipment. Another 25 percent work in manufacturing where they are likely confined to poorly ventilated spaces. Children also work in restaurants, hotels and middle class homes. On the basis of census data, it is estimated that nearly 85 percent of child workers in India work in the unorganized sector, including within the family or in household based units in both rural and urban areas.[71] The ILO estimates 54 percent of working children in India work within the structure of the family unit, contributing to work that ranges from agricultural labour to home-based piecework.[72]

Child labour has severe physical and psychosocial consequences for child workers. Extended working hours negatively impact physical development and put children at risk of injury and long-term exposure to unsafe work environments. Children are also more prone to accidents since they are likely to be less aware of dangers and precautionary measures. Children are also often subjected to physical, sexual, mental and emotional abuse, with girls facing more abuse than boys.[73] Deprived of education, working children are more likely to become trapped in cycles of poverty.

The *Child Labour (Prohibition and Regulation) Act, 1986* defines a child as any person who has not completed 14 years of age. The Act prohibits child labour in occupations identified as hazardous under the Act. It does, however, permit employment of children in other occupations under particular conditions.[74] Under the *Factories Act, 1948*, children

Dangerous occupations notified under the Child Labour *(Prohibition and Regulation) Act, 1986*	**Child labour in manufacturing, including home-based production**	**Child labour in the unorganized sector**
• glass making • mining • construction • carpet weaving • zari making • fireworks • sandstone quarrying • breaking stones • polishing gems	• matches • bricks • carpets • locks • glass bangles • fireworks • bidis (cigarettes) • incense sticks (agarbatti) • footwear • garments • hand-loomed silk • leather • brass and metal goods	• domestic work • construction • street vending • repairing vehicles and tires • scavenging • rag picking • service sector (hotels, food service) • commercial sexual exploitation

Source: Chadha, Child Labour: An Indian Scenario, in S. Deb (ed.) Child Safety, Welfare And Well-Being (Springer, 2016), 211.

69. Chadha, supra note 67 at 208 (citing data from the 2011 Census of India).
70. *Id.* at 209 (citing data from the NSSO 66th Round of Survey on Child Labour, 2009-2010).
71. *Id.* at 208 (citing data from the Census of India, 2001 and 2011).
72. Bhalla 2015, *supra* note 68.
73. Chadha, *supra* note 67 at 213-215.
74. *Child Labour (Prohibition and Regulation) Act, 1986*, No. 61 of 1986 (23 December 1986).

under 15 years old cannot be required to work more than four and a half hours during the day or to work at night. A child above 15 years old, however, can be given a certificate of fitness to work as an adult in a factory. The *Factories Act, 1948* does, however, impose some limitations on allowing young people to work on dangerous machines without adequate training and supervision.[75]

Dalits

Dalits continue to be one of the poorest segments of the Indian population. Generally, they have little if any access to social services or economic resources, including land and financial capital. They also continue to be subjected to widespread exclusion and discrimination in labour and employment. They face exclusion in hiring, wages lower than market rates and unfavorable terms and conditions of work involving overwork and other forms of extra economic coercion and caste-related obligations.[76] Policy and legislative measures to promote equal rights and opportunities for Dalits in employment, including reservations in government employment, have not sufficiently impacted access to the labour market. As a result, Dalits remain concentrated in the most exploitative forms of labour. Many remain confined to menial and lowly valued caste-designated occupations. Dalits also form a significant proportion of unorganized sector workers who subsist on low wages with poor working conditions and no social security.[77]

Dalits have historically either been landless or nominal landholders, a trend that continues today due to lack of adequate land reforms.[78] NSSO data for 2009-2010 shows that 92.1 percent of Scheduled Castes in rural areas were landless or held less than one hectare of land. As a result, landless Dalits are disproportionately represented among casual labourers in rural and urban areas alike. In rural areas, 59 percent of Dalits work as casual labourers in agriculture or otherwise, compared to an overall average of 40.4 percent of the rural population. In urban areas, 25.1 percent of Dalits worked as casual labourers compared to 13.4 percent of the overall population.[79]

Dalits continue to face significant barriers in transcending caste-designated labour. In parts of India, Dalits who seek to break caste-designated employment barriers face economic boycotts and even physical violence from castes considered dominant. Caste-designated labour practices remain so deeply internalized within the social fabric of India that even state institutions such as village councils and municipal corporations perpetuate these practices. For instance, many from caste groups that traditionally worked as manual scavengers are denied any other jobs, leaving them dependent on manual scavenging for subsistence. A 2013 survey conducted in approximately 500 villages in five cities in Dhule district, Maharashtra, found that in 31 villages and all five cities, a total of 162 women and 90 men from caste groups that traditionally worked as manual scavengers are still hired by panchayats and municipal corporations to manually clean toilets and open defecation areas.[80]

The *Mahatma Gandhi National Rural Employment Guarantee Act, 2005* (MGNREGA) has the potential to provide immediate livelihood security in rural areas by guaranteeing 100 days of employment to every household.[81] MGNREGA has managed to offer a way out for some daily wage labourers from traditional feudal structures intrinsically linked to class and caste based discrimination—and often bonded forms of labour. The law is particularly significant for women workers belonging to marginalized communities, who would otherwise have no access to just employment opportunities.[82]

75. *Factories Act, 1948*, No. 63 of 1948 (23 September 1948), Sections 2(c), 23, 69, 71.
76. Manghubai, supra note 7 at 50 (citing A. Namala, Dismantling Descent-Based Discrimination: Report On dalits' Access To Rights. (New Delhi: NCDHR and IIDS, 2006))
77. Manghubai, supra note 7 at 44.
78. Kompier, supra note 1 at 115.
79. Id. (citing NSSO, Employment and Unemployment among Social Gropus in India, NSS 66th Round (2009-10)(New Delhi: MoSPI, 2012)).
80. Shikha Bhattacharjee, cleaning Human Waste: Manual Scavenging, Caste And Discrimination In India, Human Rights Watch, 2014.
81. *Mahatma Gandhi National Rural Employment Guarantee Act, 2005*, (MGNREGA), No. 42 of 2005.
82. Subhalakshmi Nandi and Rebecca Reichmann Tavares, *Making the NREGA more Gender Responsive: Reflections from the Field, Policy In Focus: Protagonist Women*, No. 27, March 2014, pp. 16-19.

Adivasis

Like Dalits, Adivasis are largely landless and disproportionately represented among casual labourers. In 2009-10, 76.5 percent of Scheduled Tribe households were either landless or held less than one hectare of land.[83] Over time, as the traditional non-monetized Adivasi economy has gradually eroded, many Adivasis have moved into settled agriculture or been driven to urban areas to seek work. Dependence upon credit and money lenders has also pushed many Adivasis into coercive forms of labour.

Along with Dalits, Adivasis make up a substantial portion of the workforce engaged in casual labour in both rural and urban areas—earning well below national minimum wage standards.[84] For instance, in 2014, Adivasi tea workers in Assam were paid ₹94 per day, well below the legal minimum wage of ₹69. Twenty-five percent of this daily income is lost to illegal deductions made by plantation owners, including electricity and retirement schemes, leaving workers with just ₹70 per day in take-home pay.[85]

Muslims

Significant barriers to accessing employment and education for Muslim communities have been documented in detail as early as 2006, with the release of the Sachar Report.[86] Five years later, according to 2009-2010 data from the NSSO, Muslim workers remained disproportionately represented among unorganized sector workers and unemployed. While Muslims hold a 13.4 per cent share of India's population, they represent only 5 per cent of employees in government departments, agencies and institutions. According to the NSSO, in 2009-2010, only 30.7 per cent of Muslim workers in urban areas were engaged in regular salaried work—compared to 39.7 percent of the total population in urban areas. According to NSSO data, work participation rates of Muslim women are also particularly low. Muslim workers do, however, comprise 46 percent of India's urban population with self-employment as their primary source of earnings.[87]

This low level of organized sector employment has been attributed to a range of factors, including discrimination in employment, preference for self-employment and barriers to accessing education—including lack of educational facilities in Muslim communities.[88] These employment trends correlate to low living standards among Muslim communities. According to survey data from Pew Research, Muslims in India spend the lowest amount per day on a per capita basis—only 32.7 rupees per day, compared to 55.3 rupees per capita per day by Indian Sikhs, 51.4 rupees per capita per day by Indian Christians and 37.5 rupees per capita per day by Indian Hindus.[89]

India's contemporary labour market is being structured by the proliferation of precarious, unpaid, invisible and coercive work. For these workers, the insecurities and instabilities that arise from flexibilization and casualization include reduced protection under labour legislation, increasingly intensive work patterns, isolation from labour unions and seasonal labour patterns that fuel unemployment—and coercive labour.[90] This section has discussed the social structure of the marketplace for migrant workers, women, children, Dalits, Adivasis and Muslims as discrete categories. However, the case studies of working conditions in particular sectors have also highlighted ways in which workers at the intersection of these identities are most vulnerable to rights violations.

83. Kompier, supra note 1 at 116 (citing NSSO, Employment and Unemployment among Social Groups in India, NSS 66th Round (2009-10)(New Delhi: MoSPI, 2012)).
84. Kompier, supra note 1 at 116 (citing National Sample Survey Organization, Employment and Unemployment among Social Gropus in India, NSS 66th Round, 2009-10(New Delhi: MoSPI, 2012)).
85. Nazdeek, *Visualising a living wage for Assam's tea workers*, accessed 24 September 2015, http://nazdeek.org/visualising-a-living-wage-for-assams-tea-workers/
86. Rajindar Sachar, Government of India, Prime Minister's High Level Committee, Report on Social, Economic and Educational Status of the Muslim Community in India (2006).
87. Kompier, supra note 1.
88. "NSSO data: Why Indian Muslims rely on self employment," F.India, August 20, 2013, accessed http://www.firstpost.com/india/muslims-dont-get-jobs-due-to-bias-in-the-system-experts-1047351.html.
89. Palash Ghosh, "Muslims are India's Poorest and Worst Educated Religious Group," IBT. August 21, 2013, http://www.ibtimes.com/surprise-surprise-muslims-are-indias-poorest-worst-educated-religious-group-1392849.
90. Hewison, supra note 2 at 3.

IV. Payment of Wages

LABOUR CODE ON WAGES BILL, 2015

KEY CHANGES

1

Diluting protective standards

· Minimum wage standards
· Standards prohibiting gender discrimination
· Standards prohibiting other discrimination
· Standards protecting bonuses

2

Decriminalizing wage-related rights abuses

· Decriminalizing arbitrary and illegal wage deduction
· Decriminalizing forced labour

3

Dismantling accountability mechanisms

· Dismantling labour inspections
· Restricting accountability functions of workers' organizations and trade unions
· Undermining access to justice

Contemporary context

Contrary to economic assumptions that wages and productivity move in tandem, data from the 2013 Annual Survey of Industries data shows that workers' real wages have been stagnant in India between 1983 and 2013 while real productivity has increased at an annual average rate of 7 percent. While a large part of this growth is attributed to increasing mechanization, requiring workers to upgrade their skills, this has not translated into higher wages.[1] Data from the last 25 years shows that wages for Indian workers have barely kept up with inflation. Accounting for inflation and calculating in 2011-12 prices, if a worker earned ₹8,154 per month in 1990-91, they earned only ₹7,972 per month in 2011-12. In real terms, workers today earn less proportionally than they did in 1990.[2]

International standards on payment of wages

The ILO Protection of Wages Convention, 1949 (No. 95) aims to guarantee payment of wages in a full and timely manner, whether fixed by mutual agreement, national law or regulation; or payable under a written or unwritten employment contract.[3] The Convention applies to all persons to whom wages are paid or payable.[4] Workers have to be informed of the conditions of their employment with respect to wages and the conditions under which their wages are subject to change.[5]

The ILO Minimum Wage Fixing Convention, 1970 (No. 31) calls for a minimum sum payable to workers that is guaranteed by law and fixed to cover the minimum needs of workers and their families. Under the Minimum Wage Fixing Convention, 1970 (No. 31) minimum wages should be established for groups of wage earners in consultation with employers' and workers' organizations and enforced by law. Failure to pay minimum wages should be subject to penal or other sanctions. Although India has not ratified the Protection of Wages Convention or the Minimum Wages Convention, they retain the status of international law and therefore serve as a valuable benchmark in evaluating proposed labour law changes.

Labour Code on Wages Bill, 2015

The central government Labour Code on Wages Bill, 2015[6] aims to consolidate the *Payment of Wages Act, 1936*,[7] *Minimum Wages Act, 1948*,[8] *Payment of Bonus Act, 1965*[9] and *Equal Remuneration Act, 1976*.[10] This section outlines implications for workers and trade unions that arise from this proposed consolidation. It also discusses the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 and the Factories (Amendment) Bill, 2014,[11] as they pertain to matters covered under the Labour Code on Wages Bill, 2015 or the relevant principal Acts. It is significant to note that the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 does not require factories where less than 40 workers are employed to adhere to the *Payment of Wages Act, 1936*, *Minimum Wages Act, 1948*, *Payment of Bonus Act, 1965* or *Equal Remuneration Act, 1976*.[12]

Labour law changes under the Labour Code on Wages Bill, 2015 impact workers in three thematic areas.

1. Prabhat Singh, *Higher productivity equals higher wages? Not for the Indian industrial worker: real wages have grown at an average 1 percent annually between 1983 and 2013*, LIVEMINT, January 22, 2015, accessed February 9, 2016, http://www.livemint.com/Opinion/Vxmd5HHO8qeLuqYUiobbpM/Higher-productivity-equals-higher-wages-Not-for-the-Indian.html.
2. Anumeha Yadav, *There's a wage crisis in Delhi's factories—and the Modi government's new labour laws won't help*, SCROLL.IN, June 22, 2015, accessed February 9, 2016 http://scroll.in/article/732336/theres-a-wage-crisis-in-delhis-factories-and-the-modi-governments-new-labour-laws-wont-help.
3. International Labour Organization, Protection of Wages Convention, 1949 (No. 95), Article 1.
4. *Id*. Article 2.
5. *Id*. Articles 8, 14.
6. Labour Code on Wages Bill, 2015, http://www.prsindia.org/uploads/media/draft/Labour%20Code%20on%20Wages%20Bill,%202015.pdf (accessed July 11, 2016).
7. Payment of Wages Act, 1936, No. 4 of 1936 (23 April 1936).
8. Minimum Wages Act, 1948, No. 11 of 1948 (15 March 1948).
9. Payment of Bonus Act, 1965, No. 21 of 1965 (25 September 1965).
10. Equal Remuneration Act, 1976, No. 25 of 1976 (11 February 1976).
11. Factories (Amendment) Bill, 2014, Bill No. 93 of 2014.
12. See Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, Section 54 for a proposed list of Acts from which small factories would be exempt under the 2014 Bill. For further discussion of the Small Factories (Regulation of Employment and Conditions of Service) Bill, 2014, see Ramapriya Gopalakrishnan, Handbook on Labour Reforms in India (2016), *supra* note 26 at 33-50.

First, proposed changes dilute protective standards, including standards governing minimum wages, equal treatment of women workers and protected bonuses. Second, the Labour Code on Wages Bill, 2015 weakens protection against wage related abuses, such as arbitrary and illegal wage deduction and forced labour. Third, the Wages Bill dismantles accountability mechanisms, including by undermining inspections mechanisms, restricting oversight by workers' organizations and trade unions and instituting barriers to accessing justice in cases of wage related rights abuses.

Diluting protective standards

Proposed changes under the Labour Code on Wages Bill, 2015 dilute protective standards, including standards governing minimum wages, equal treatment of women workers and bonuses. Together, these changes create the potential for state governments to entirely reshape the wage landscape within each state without representation from workers or their organizations. This section also suggests challenges to the constitutionality of provisions of the Labour Code on Wages Bill, 2015 that violate principles of concurrent authority and equality.

Minimum wage standards

Securing a living wage for all workers is a directive principle of state policy, embodied in Article 43 of the Constitution.[13] This principle has been legislatively enacted through the *Minimum Wages Act, 1948*[14] and upheld by the Supreme Court in numerous cases. For instance, in *Crown Aluminum Works v. Their Workmen* (1958), the Supreme Court definitively held that every employer, regardless of their capacity, must pay minimum wages to their employees.[15] In Bhikusa Yamasa *Kahatriya v. Sangamner Akola Taluka Bidi Kamgar Union* (1962), the Supreme Court upheld inclusion of unorganized and unregulated sectors within the ambit of the *Minimum Wages Act, 1948*.[16]

The Labour Code on Wages Bill, 2015 proposes significant changes to both the process and criteria for fixing minimum wage standards. Changes include shifting complete authority for setting wages to the states; dismantling the current tripartite composition of the Central Advisory Board; eliminating time-bound wage revision; and replacing employment schedules establishing distinct wages by sector with baseline wages for time and piece work. Prescribed criteria for fixing minimum wages under the Labour Code on Wages Bill, 2015 also depart from constitutionally based needs criteria articulated by the Supreme Court.

Notably, under the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, minimum wages do apply to small factories.[17]

Authority for fixing minimum wages

Under the *Minimum Wages Act, 1948*, minimum wage fixing is to be undertaken by the "appropriate government."[18] Under the principal Act, the appropriate government includes the central government in relation to any scheduled employment under the authority of the central government; and state governments in relation to any other scheduled employment.[19] In either instance, the appropriate government sets wages according to

13. Constitution of India, 1949, Article 43: "Living wage, etc. for workers: The State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co cooperative basis in rural areas."
14. *Minimum Wages Act, 1948*, No. 11 of 1948 (15 March 1948).
15. *Crown Aluminum Works v. Their Workmen,* 1958 AIR 30 (1947)(holding: "No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganized labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favored in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms").
16. *Bhikusa Yamasa Kahatriya v. Sangamner Akola Taluka Bidi Kamgar Union,* 1963 AIR 806 (1962)(upholding minimum wage notification by the Government of Bombay pertaining to piece-rate bidi making).
17. Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, Section 9: "Minimum Wages: The appropriate government shall extend the rates of minimum wages fixed under the provisions of the Minimum Wages Act,1948, to the small factories and no employer shall pay less than the minimum wages, so fixed." 948 (15 March 1948), Section 3.
18. *Minimum Wages Act, 1948*, No. 11 of 1948.
19. *Minimum Wages Act, 1948*, No. 11 of 1948 (15 March 1948), Section 2(b)(defining appropriate government: "appropriate Government" means,— (i) in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oilfield or major port, or any corporation established by a Central Act, the Central Government, and (ii) in relation to any other scheduled employment, the State Government."

industry-specific schedules. Currently, 45 sectors are governed by central authority and 1,679 sectors remain under state jurisdiction.[20] Under the *Minimum Wages Act, 1948*, wages must be revised every five years.[21]

The principle Act also establishes a Central Advisory Board, tasked with advising central and state governments in fixing and revising minimum wages. The Central Advisory Board, nominated by the central government currently includes equal numbers of employer representatives, employee representatives from scheduled employments and independent representatives.[22] The tripartite character of the Central Advisory Board under the principal Act is consistent with standards set by ILO Minimum Wage Convention, 1970, establishing that minimum wages should be set in consultation with employers' and workers' organizations.[23]

The Wages Bill, 2015 departs from this process for fixing minimum wages in significant ways. It eliminates standards for workers' and employers' representation on the Central Advisory Board; replaces scheduled, industry-specific minimum wage determinations with blanket state-level minimum wages for time-work and piece-work; concentrates authority for fixing minimum wages at the state level; and removes provisions that call for time-bound revision of minimum wages. These measures fundamentally change wage-fixing mechanisms. They exclude workers and their representatives from the process of informing minimum wage standards. They also further facilitate competition between states—which, at its worst, may lead to a race to drive down wage standards in order to attract business and capital.

First, undermining the tripartite composition of the Central Advisory Board prescribed under the principal Act, under, the Wages Bill, 2015, the Central Advisory Board would be comprised of "a Chairman and such number of members as may be prescribed."[24] This mode of composition does not require worker or employer representation—a proposed change that violates international standards set forth under the ILO Minimum Wage Convention, 1970.[25] While under this standard the Central Advisory Board may include worker and employer representatives, tri-partite representation is no longer mandatory.

Second, the Wages Bill, 2015 eliminates the schedule of employment[26] —the current mechanism for establishing wage standards by fixing distinct wages for different scheduled forms of employment under the *Minimum Wages Act, 1948*. Instead, the Wages Bill, 2015 tasks states with setting state-level minimum wage rates for time and piece work. This shift from industry-specific to standardized minimum wages for time and piece-work will likely result in minimum wage threshholds fixed according to the wages paid to the poorest

20. Surendra Pratap, *The Political Economy of Labour Law Reforms in India*, Part III, Centre for Workers Education, Delhi, accessed February 9, 2016, https://workerscentre.files.wordpress.com/2015/05/the-political-economy-of-labour-law-reforms-in-india-iii.pdf.

21. *Minimum Wages Act, 1948*, No. 11 of 1948 (15 March 1948), Section 3(1)(b): "3. Fixing of minimum rates of wages.- (1) The appropriate Government shall, in the manner hereinafter provided,-- . . . (b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary." Note: the subsequent section provides that if the appropriate government has not reviewed the minimum wage rates within an interval of five years, nothing prevents them from doing so after the expiry of the five year period.

22. *Minimum Wages Act, 1948*, No. 11 of 1948 (15 March 1948), Section 8, defining the role and composition of the Central Advisory Board: "Central Advisory Board.- (1) For the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-ordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board. (2) The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government."

23. International Labour Organization, Minimum Wage Fixing Convention, 1970 (No. 131), Article 1(2): The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered; Article 4: "1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time. 2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned. 3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of--(a) representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality; (b) persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice."

24. Labour Code on Wages Bill, 2015, *supra* note 6 at Section 15(3).

25. International Labour Organization, Minimum Wage Fixing Convention, 1970 (No. 131), Article 1(2). See full text of relevant articles at note 23.

26. *Minimum Wages Act, 1948*, No. 11 of 1948 (15 March 1948), Section 2(g), defining scheduled employment: "'scheduled employment' means an employment specified in the Schedule, or any process or branch of work forming part of such employment."

workers. This standard appears to universally include organized and unorganized sector workers and, therefore, may benefit workers not previously included in wage schedules. However, there is evidence to suggest that low baseline wages may depress wages for workers employed in occupations where rates were scheduled at a higher level. Studies suggest that minimum wages become reference wages in the bargaining between individual workers and employers.[27]

Moreover, advocacy for explicit inclusion in employment schedules has been a strategy used by unorganized sector workers to establish enforceable minimum wages at the central and state level. For instance, domestic workers in 13 states and 1 Union Territory have fought for and won inclusion in employment schedules. By eliminating this mechanism, the Wages Bill, 2015 reduces the capacity for trade unions and membership based organizations to bargain for industry-wide minimum wages. Eliminating central and state-level wage schedules also rolls back explicit recognition of minimum wages for particular unorganized sectors—standards that have been hard won through workers' struggles.

Third, while the "appropriate government" for fixing minimum wages under the principal Act includes central and state governments, the Wages Bill, 2015 concentrates authority for fixing and revising wages at the state level. This includes authority for fixing minimum wages for time-work and piece-work.[28] Functionally speaking, this provision promotes distinct minimum wages between states, including for similar central government employment.

This singular delegation of authority for fixing minimum wages to the states runs contrary to established constitutional principles. Concentration of wage-fixing authority at the state-level poses a challenge to concurrent authority over labour regulation under Article 246 of the Constitution.[29] Moreover, by permitting distinct minimum wage rates in similar Central Government employment undertakings, the Wages Bill, 2015 violates constitutional principles of equality under Article 14 of the Constitution.[30] Applying the constitutional principle of equality to equal remuneration, in *N.M. Wadia Charitable Hospitals v. State of Maharashtra* (1986), the Bombay High Court held: "There can be little doubt that if there are workers in different employments whose duties and functions are similar, they should be similarly treated in the matter of minimum wages, given their employers' capacity to pay."[31] This standard applies to government workers employed in similar employment but in different states who, under the Wages Bill, 2015, may be subjected to segmented and distinct state-determined wages.

Singular allocation of authority to the states for fixing minimum wages also has significant practical significance in promoting competitive federalism. State authority to fix wages facilitates competition between states to lower wage standards, promoting *a race to the bottom* to lower wage standards. For instance, the minimum wage rate fixed by the Delhi government is 25 percent-35 percent higher than in neighboring Haryana and Uttar Pradesh. This wage differential has led a significant number of industrialists to relocate from the Okhla Industrial Area in South Delhi to Uttar Pradesh and Haryana between 2010 and 2015.[32]

27. Catherine Saget, *Fixing minimum wage levels in developing countries: common failures and remedies*, 147 International Labour Review, No.1 (2008), 35 (finding that in some situations minimum wages seemed to be a reference wage in bargaining between individuals and employers).

28. Labour Code on Wages Bill, 2015, supra note 6, Section 6: "6. Fixation of minimum wages: (1) The State Government shall fix the minimum rates of wages payable to employees employed in an employment. (2) For the purposes of sub-section (1), the State Government shall fix –(a) a minimum rate of wages for time work; or (b) a minimum rates of wages for piece work; or (c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; and such rate of wages may be fixed for a period determined -(i) by the hour; or (ii) by the day; or (iii) by the month; and where such rates are fixed by the hour or by the day or by the month, the manner of calculating the wages, as the case may be, shall be as may be prescribed. (3) The State Government may revise from time to time the minimum rate of wages or remuneration fixed under sub-section (2). (4)The State Government, in fixing or revising the minimum rates of the wages under foregoing sub-sections, shall take into account the skill required, the arduousness of the work assigned to the worker, the cost of living of the worker, geographical location of the place of work and other factors which the State Government considers appropriate: Provided that while fixing or revising such minimum wage the State Government shall take into consideration any guidelines made by the Minimum Wages Advisory Board constituted by the Central Government under sub-section (3) of section 15 and shall abide by such guidelines."

29. Constitution of India, 1949, Article 246, Schedule 7, List III, Section 24 lists welfare of labour as an area of concurrent authority: "24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits."

30. Constitution of India, 1949, Article 14: "14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."

31. *N.M. Wadia Charitable Hospitals v. State of Maharashtra,* (1993) IIILLJ 536 Bom.

32. Yadav, *There's a wage crisis in Delhi's factories—and the Modi government's new labour laws won't help, supra* note 2 (comparing the wage for unskilled work (loading and unloading trays) at Rs. 348 per day in Delhi and Rs. 259 in Uttar Pradesh).

Moreover, while shifting authority in assigning minimum wages to the states, the Wages Bill, 2015, risks confusion by failing to align respective central and state authority and responsibility. States are responsible for fixing and implementing minimum wages under the Labour Code on Wages Bill, 2015 but the Central Government has been given singular rulemaking authority and authority[33] to remove difficulties within the code.[34] This division of authority suggests potential grounds for center-state conflicts and delays on matters critical to workers' well being.

Finally, the *Minimum Wages Act, 1948* protects workers' interests by establishing a five-year time limit within which minimum wages must be revised—allowing trade unions and membership based organizations to call for wage revisions at regular intervals.[35] The Wage Bill, 2015 replaces this discrete time frame with an ambiguous time frame—requiring revision from "time to time."[36] This formulation removes state accountability for revising minimum wages periodically in order to account for inflation and other contextual factors.

The Labour Code on Wages Bill, 2015 departs significantly from the process for fixing minimum wages under the *Minimum Wages Act, 1948*. Proposed changes have the cumulative effect of eliminating concurrent authority over wages and concentrating authority over minimum wages at the state-level; and excluding workers' and their representatives from the process of informing minimum wage standards. Absent the ability to negotiate central standards through collective bargaining, states are left with the ability to determine wage standards—and drive down minimum wages in order to attract business and capital.

Criteria for fixing wage standards

The criteria for fixing minimum wage standards has been definitively established by the Supreme Court in a series of cases, including *Hydro (Engineers) P. Ltd. v. Workmen* (1968)[37] and *Workmen Represented by Secretary v. Management of Reptakos Brett* (1991): minimum wages should be defined by needs-based criteria that extend beyond basic physical needs.[38] Under these standards, needs-based criteria for fixing minimum wages include: specific nutrition requirements (defined in calories), clothing and housing needs, medical expenses, family expenses, education, fuel, lighting, festival expenses, provisions for old age and other miscellaneous expenditure.

Diluting these established standards, the Labour Code on Wages Bill, 2015 instead instructs state governments to fix or revise minimum wages taking "into account the skill required, the arduousness of the work assigned to the worker, the cost of living of the worker, geographical location of the place of work and other factors which the state government considers appropriate."[39] While this formulation

33. Labour Code on Wages Bill, 2015 supra note 6, Section 58: "Power of the Central Government to make rules: (1) The Central Government may, by notification, make rules for carrying out the provisions of this Code. (2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or amendment shall be without prejudice to the validity of anything previously done under that rule."

34. Labour Code on Wages Bill, 2015, supra note 6, Section 40: "Removal of difficulties: (1) If any difficulty arises in giving effect to the provisions of this code, the Central Government may, by order, published in the official gazette, make such provision not inconsistent with the provisions of this code, as appear to be necessary; (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

35. *Minimum Wages Act, 1948*, No. 11 of 1948 (15 March 1948), Section 3(1)(b): "3. Fixing of minimum rates of wages.- (1) The appropriate Government shall, in the manner hereinafter provided,-- . . . (b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum ratesof wages so fixed and revise the minimum rates, if necessary." Note: the subsequent section provides that if the appropriate government has not reviewed the minimum wage rates within an interval of five years, nothing prevents them from doing so after the expiry of the five year period.

36. Labour Code on Wages Bill, 2015, supra note 6, section 6(1), (3): 6. Fixation of minimum wages: (1) The State Government shall fix the minimum rates of wages payable to employees employed in an employment . . . (3) The State Government may revise from time to time the minimum rate of wages or remuneration fixed under sub-section (2)."

37. *Hydro (Engineers) P. Ltd. v. Workmen,* 1969 AIR 182 (citing precedent to confirm that "minimum wage rates must ensure not merely the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as a workman. It should, therefore, provide as the Fair Wages Committee appointed by the Government recommended, not merely for the bare subsistence of his life but for the preservation of the worker and so must provide for some measure of education, medical requirements and amenities").

38. *Workmen Represented by Secretary v. Management of Reptakos Brett,* 1992 AIR 504 (citing five norms formulated by the Tripartite Committee of the Indian Labour Conference, 1957 and adding one additional criteria to arrive at six criteria for minimum wage determination: (1) 3 consumption units for one earner; (2) minimum food requirements of 2700 calories per average Indian adult; (3) clothing requirements of 72 yards per annum per family; rent corresponding to the minimum area provided for under the Government Industrial Housing Scheme; (5) fuel, lighting and other miscellaneous items of expenditure to constitute 20 percent of the total Minimum Wages; (6) children, education, medical requirements, minimum recreation including festivals/ceremonies and provision for old age, marriage, etc. to constitute 25 percent of the total minimum wage).

39. Labour Code on Wages Bill, 2015, *supra* note 6, Section 6(4).

leaves space for considerations of workers needs as they have been defined by the Supreme Court, states are not required to uphold these established standards. Rather than progressively expanding substantive rights for workers in line with Supreme Court interpretation of constitutional standards, this provision provides states with the space to define their own standards for minimum wage determination—providing yet another avenue for a competitive race to the bottom between states.

The changes in the procedure and criteria for fixing minimum wage standards proposed in the Labour Code on Wages Bill, 2015 effectively give state governments unchecked authority to fix minimum wage levels within their states. As the previous historical discussion in Section II of this report suggests, state level labour law reforms have at times advanced the interests of workers and their representatives. For instance, in the second phase of post-independence industrial relations, (mid-1960s through 1979), states, including Gujarat, Madhya Pradesh, Maharashtra and Rajasthan enacted state-level laws regarding union recognition. More specifically, the *Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1975*, made failure to bargain with a representative union an unfair labour practice.[40]

However, in the current period of economic liberalization, states have sought to deregulate industry in order to attract private investment—with Rajasthan, Gujarat and Madhya Pradesh as the forerunners in this approach to comprehensive labour law changes. State-level labour law changes have explicitly been justified on the grounds of promoting more competitive environments for business within particular states.[41] Promotion of competitive federalism by the Labour Code on Wages Bill, 2015 therefore risks promoting a competitive race to drive down wages. In addition to threatening workers' livelihoods, state competition may threaten India's national growth by reducing effective wage demands.

Standards prohibiting gender based discrimination

The *Equal Remuneration Act, 1976* prohibits discrimination between men and women with regard to wages, recruitment and other conditions of service.[42] The Labour Code on Wages Bill, 2015 claims to consolidate the *Equal Remuneration Act, 1976* with other significant central legislation governing payment of wages. The consolidation envisioned by the Labour Code on Wages Bill, 2015 is multifaceted: on one hand, it is socially progressive in its construction of gender; however, it is regressive in that it functionally dismantles the mechanisms within the *Equal Remuneration Act, 1976* for promoting women's employment and seeking accountability for gender based discrimination.

In relation to gender-based discrimination, the Labour Code on Wages Bill, 2015 takes one significant step beyond the *Equal Remuneration Act, 1976*, toward progressive improvement of substantive and procedural rights for workers. The Labour Code on Wages Bill, 2015 extends the definition of gender-based discrimination to include discrimination against transgender employees.[43] This measure—consistent with India's landmark 2014 Supreme Court judgment, *National Legal Services Authority v. Union of India*[44] — recognizes the discrimination and employment exclusion faced by transgender people in India.[45] By contrast, the Small Factories (Regulation of Employment and Conditions of Service) Bill, 2014, retains a limited conception of gender-based discrimination as applicable only to female workers.[46]

40. Debashish Bhattacherjee, *The Evolution of Indian Industrial Relations: A Comparative Perspective,* 32 Indus. Rel. J., No. 3 (2001), 251 (citing A.K. Sengupta, *Trends in Industrial Conflict in India (1961-1987) and Government Policy,* Working Paper Series No. 174/92 (Calcutta Institute of Management)).

41. *'Gujarat Labour Minister Vijay Rupani's Note on Amendments in Labour Laws'*, DESH GUJARAT, 25 February 2015; *Changes in Industrial Disputes Act to accelerate Make in Maharashtra*, INDIAN EXPRESS, January 28, 2015, http://indianexpress.com/article/cities/pune/changes-in-industrial-disputes-act-to-accelerate-make-in-maharashtra

42. *Equal Remuneration Act, 1976*, No. 25 of 1976 (11 February 1976), Sections 4, 5.

43. Ministry of Labour and Employment, Labour Code on Wages Bill, 2015: supra note 2, Section 3: "Prohibition of discrimination on ground of gender- (1) There shall be no discrimination among male, female and **transgender** [emphasis supplied] employees on the ground of sex in the matter of wages; under the same employer, in respect of work of same or similar nature. (2) No employer shall, for the purpose of complying with the provisions of subsection (1), reduce the rate of wages of any employee."

44. *National Legal Services Authority v. Union of India*, Writ Petition (Civil) No. 604 of 2013 (2014)(creating a third gender status for hijras or transgender people).

45. *One year after "third gender" recognized in India, parliament considers affirmative action measures*, FREE SPEECH RADIO NEWS, JULY 10, 2015, accessed February 9, 2016, http://fsrn.org/2015/07/one-year-after-third-gender-recognized-in-india-parliament-considers-affirmative-action-measures/

46. Small Factories (Regulation of Employment and Conditions of Service) Bill, 2014, Section 16: "No Discrimination against female workers: No female worker shall be discriminated against in matters of recruitment, training, transfers or promotions or payment of wages." Note: the Small Factories (Regulation of Employment and Conditions of Service) Bill, 2014 suspends application of the *Equal Remineration Act, 1976*. Section 16 of the Bill is the only Section pertaining to equal remuneration in small factories.

However, while broadening the category of workers protected from employment discrimination on the basis of gender, the Labour Code on Wages Bill, 2015 also dismantles accountability mechanisms set forth in the *Equal Remuneration Act, 1976*. In fact, the entire *Equal Remuneration Act, 1976* has been limited to one section within the Wages Bill that refers to "Prohibition of discrimination on the ground of gender."[47] This limited provision within the Labour Code on Wages Bill, 2015 eliminates mechanisms aimed at promoting equality of opportunity and non-discrimination, including: promotion of women's employment through advisory committees, to be comprised of at least 50 percent women;[48] appointment of labour officers to hear discrimination cases;[49] and central government authority to direct state enforcement of prohibitions on gender-based discrimination in employment.[50]

As previously discussed, women's work in the paid economy is undervalued—relegating many working women to precarious employment, characterized by low wages, long working hours, hazardous working conditions and very little job security. Unfair and unrecognized divisions of domestic work also continue to constrain women's ability to enter the labour market as wage earners. Within this context, measures to promote employment and mechanisms for adjudicating discrimination cases, as established in the *Equal Remuneration Act, 1976*, are critical mechanisms to achieve more equal opportunities and outcomes for women workers.

Standards prohibiting other forms of discrimination

The Labour Code on Wages Bill, 2015 does not include any measures to prohibit discrimination in employment on the basis of caste, religion or social origin—all included among internationally protected categories. As discussed in the previous section, *Dalit*, *Adivasi* and *Muslim* workers face widespread exclusion and discrimination in labour and employment, including: exclusion in hiring, wages lower than market rates, and unfavorable terms and conditions of work such as caste-related obligations.[51]

The Committee on Economic Social and Cultural Rights (CESCR) has encouraged the Government of India to strengthen enforcement of existing legal prohibitions of discrimination. In addition, the CESCR has called upon India to enact comprehensive anti-discrimination legislation guaranteeing the right to equal treatment and protection against discrimination, including in employment.[52] The minimalist and non-committal approach to the question of discrimination in the Wages Bill, 2015 demonstrates outright rejection of the recommendations of the CESCR.

Standards protecting bonuses

India's Higher Judiciary has derived the constitutional validity of the *Payment of Bonus Act, 1965* from Articles 39 and Article 43 of the Constitution of India—and particularly Article 39(b) of the Directive Principles of State Policy, prescribing distribution of the ownership and control of the material resources of the community as to best serve the common good.[53] Consistent with these principles, the *Payment of Bonus Act, 1965* protects the right of employees to bonuses, including increased bonuses linked with profit, productivity and the instances of allocable surplus.[54] The Labour Code on Wages Bill, 2015 dilutes protected access to bonuses by introducing a loophole under which establishments can avoid paying bonuses. The Wage Bill also limits the capacity for increasing bonuses through profit sharing; and eliminates mechanisms for trade unions to pursue accountability for transparent collective bargaining around profits.

47. Labour Code on Wages Bill, 2015 *supra* note 6, Section 3. See full text of section above at note 293.
48. *Equal Remuneration Act, 1976*, No. 25 of 1976 (11 February 1976), Section 6.
49. *Id.* at Section 7.
50. *Id.* at Section 14.
51. Jayshree Mangubhai, ed., Benchmarking The Draft UN Principles And Guidelines On The Elimination Of (Caste) Discrimination Based On Work And Descent, India Report. 50 (citing A. Namala, Dismantling Descent-Based Discrimination: Report On Dalits' Access To Rights. (New Delhi: NCDHR and IIDS, 2006))
52. CESCR, 2008, *Concluding Comments on India report*. UN Doc.E/C.12/IND/CO/5, para. 52..
53. Constitution of India, Article 39(b): "that the ownership and control of the material resources of the community are so distributed as best to subserve the common good." *UCO Bank Employees Association v. Union of India*, Madras High Court, W.A. No. 2893 of 2002, 29 July, 2008.
54. *Payment of Bonus Act, 1965*, No. 21 of 1965 (25 September 1965).

First, while entitling every employee to be paid a bonus on the basis of productivity, the *Payment of Bonus Act, 1965* exempts new establishments from these bonus requirements.[55] The Labour Code on Wages Bill, 2015 expands this loophole. Under the Wages Bil, not only are new establishments exempt from bonuses, but existing establishments can also establish new ownership in order to gain exemption from paying bonuses to their employees. This is a marked shift from the principal Act which clearly states that "an establishment shall not be deemed to be newly set up merely by reason of change in its location, management, name or ownership."[56]

Second, under the *Payment of Bonus Act, 1965*, employees can claim higher bonuses in instances where the establishment has allocable surplus due to production or productivity.[57] In order to promote transparent profit sharing and collective bargaining, under Section 23(2) of the *Payment of Bonus Act, 1965*, in cases of dispute, trade unions may appeal to authorities under the Act to require a company to furnish profit and loss accounts.[58] These provisions are omitted in the Labour Code on Wages Bill, 2015. Instead, the Labour Code on Wages Bill, 2015 protects employers from having to disclose profit and loss accounts by prohibiting authorities from disclosing balance sheets without the express permission of the employer.[59]

Removing Section 23(2) of the *Payment of Bonus Act, 1965* de-authorizes trade unions from legally accessing audited accounts and balance-sheets of employers in order to ensure sound financial reporting. This is currently the only legal mechanism that allows trade unions to seek legal remedy for unsound financial disclosure.[60]

Practically speaking, these proposed changes under the Labour Code on Wages Bill, 2015 would permit establishments to avoid paying bonuses by changing their location, management, name or ownership. The Wages Bill, 2015 also removes the ability of trade unions to promote transparent bargaining and accountability by eliminating access to company profit and loss accounts.

The Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 also restricts access to bonuses. The Bill only requires employers to pay bonuses at the rate of 8.33 percent of the wages earned by the worker during the accounting year.[61] There are no further provisions governing payment of bonuses in small factories under the Bill and the *Payment of Bonus Act, 1965* is suspended in these workplaces.

In sum, protective standards diluted under the proposed Labour Code on Wages Bill, 2015 include standards governing minimum wages, equal treatment of women workers and bonuses. Common features of these changes include diminished worker representation in establishing wage standards—including fixing minimum wages; dismantling of accountability mechanisms; and restrictions on union

55. *Id.* at Section 16(1A)(exempting newly set up establishments from section 15, entitling employees to additional bonus payments in the subsequent year when allocable surplus for the accounting year exceeds the amount of maximum bonus payable to employees in the establishment).
56. *Id.* at Section 16, Explanation I: "For the purpose of sub-section (1), an establishment shall not be newly set up merely by reason of a change in its location, management, name orownership."
57. *Id.* at Section 31(A): "Special provision with respect to payment of bonus linked with production or productivity. – Notwithstanding anything contained in this Act,-- (i) where an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 (23 of 1976), or (ii) where the employees enter into any agreement or settlement with their employer after such commencement, for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be: 1[Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right:] 2[Provided further that] such employees shall not be entitled to be paid such bonus in excess of twenty per cent. of the salary or wage earned by them during the relevant accounting year."
58. *Id.* at Section 23 (2): "When an application is made to the said authority by any trade union being a party to the dispute or where there is no trade union, by the employeesbeing a party to the dispute requiring any clarification relating to any item in thebalance-sheet or the profit and loss account it may, after satisfying itself thatsuch clarification is necessary, by order, direct the corporation or, as the casemay be, the company, to furnish to the trade union or the employees suchclarification within such time as may be specified in the direction and thecorporation or , as the case may be, the company, shall comply with such direction."
59. Labour Code on Wages Bill, 2015 supra note 6, Section 29(2): "Audited accounts of companies shall not normally be questioned: Provided that wherever there is any dispute regarding the quantum of payment of bonus the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance sheet before it, but the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer."
60. The right of trade unions to legally access audited accounts and balance sheets is currently protection under Section 23(2) of the *Payment of Bonus Act, 1965*.
61. Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, Section 14: "Payment of Bonus: Every employer shall, within a period of six months of the close of accounting year, pay bonus, at the rate of 8.33 percent of the wages earned by the worker during the accounting year."

oversight and accountability mechanisms. Together, these changes create the potential for state governments to entirely reshape the wage landscape within each state without representation from workers' or their organizations. This section also raises the constitutionality of provisions of the Wage Bill, 2015 that violate principles of concurrent authority and equality.

Decriminalizing wage-related rights abuses

Wage related rights violations are intimately linked to serious human rights abuses. At the most severe end of the spectrum, wage-related abuses may amount to wage theft, forced or bonded labour. Running contrary to Supreme Court jurisprudence, the Labour Code on Wages Bill, 2015 undermines protections against arbitrary and illegal wage deduction and forced and bonded labour.

Decriminalizing arbitrary and illegal wage deductions

The Labour Code on Wages Bill, 2015 permits employers to deduct wages based upon deeming the performance of an employee to be unsatisfactory; and to "recover losses."[62] These clauses are not qualified by ensuring due process prior to deduction. Accordingly, by suspending due process, this provision opens the door for arbitrary and punitive wage deduction.

The potential for punitive wage deduction activated under the Wages Bill, 2015 may have significant consequences for collective bargaining—for instance, by allowing employers to financially penalize workers for joining a union or exercising their fundamental right to freedom of association. This potential is particularly dangerous in context of a labour climate in which employers have responded to attempts to unionize through illegal lockouts, illegal terminations, assault and kidnapping of workers who attempt to form unions.[63]

Decriminalizing forced labour

As previously discussed, labour bondage and other forms of coercive work have existed in India for centuries. Coercive work is also assuming new forms in the contemporary labour market. Vulnerability to coercive labour is rooted in longstanding patterns of inequality, social exclusion, discrimination and inadequate labour market governance. In the contemporary economy, distressed migrants employed in the informal sector who are willing to accept advances are particularly vulnerable to coercive labour relationships. The Labour Code on Wages Bill, 2015 leaves marginalized workers exposed to coercive forms of labour by permitting recoverable advances and extended overtime hours that may amount to forced overtime.

First, by permitting recoverable advances, the Labour Code on Wages Bill, 2015 leaves marginalized workers vulnerable to coercive labour. Recognizing the stubborn persistence of coercive labour in India, the Supreme Court has explicitly linked advances to coercive labour and has even declared a legal presumption that advances suggest the presence of bonded labour.[64] Despite this presumptive link between advances and coercive labour relationships highlighted by the Supreme Court, the Wages Bill, 2015 retains provisions permitting employers to recover advances.[65]

62. Labour Code on Wages Bill, 2015 supra note 6., Section 19(2)(ii)(b), 19 (3)(k).

63. For a case study of such extreme actions to break unions, see Society for Labour and Development, The Empty Promise Of Freedom Of Association: A Study Of Anti-union Practices In Haryana (2015), 15.

64. *Bandhua Mukti Morcha v. Union of India,* AIR 1984 SC 802, para. 19: "It is now statistically established that most of bonded labourers are members of Scheduled Castes and Scheduled Tribes or other backward classes and ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage, *unless he has received some advance of other economic considerationfrom the employer* [emphasis supplied] and under the consideration from the employer and under the pretext of not having returned such advance or other economic consideration, he is required to render service to the employer or is deprived of his freedom of employment or of the right to move freely wherever he wants. Therefore, whenever itis shown that a labourers is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for reubutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act."

65. Labour Code on Wages Bill, 2015, supra note 6, Section 24: "Deductions for recovery of advances: Deductions for recovery of advances given to an employee shall be subject to the following conditions namely:-(a) recovery of an advance of money given to an employee before employment began shall be made from the first payment of wages to him in respect of a complete wage-period but no recovery shall be made of such advances given for travelling-expenses; (b) recovery of an advance of money given to an employee after employment began shall be subject to such conditions as the Appropriate Government may impose; (c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as the Appropriate Government may impose."

Here, it is significant to note that there is legal precedent for allowing displacement or relocation allowances to support workers in transition to new employment, while explicitly making allowances to workers non-refundable. For instance, under the *Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, contractors are required to pay inter-state migrant workers displacement allowances equal to 50 percent of the monthly wages payable but allowances are in addition to wages and not refundable.[66] By contrast, retention of provisions allowing recoverable advances under the Wages Bill, 2015 signal outright disregard for a line of Supreme Court jurisprudence aimed at eliminating coercive labour.

Second, the Labour Code on Wages Bill, 2015 reduces protection against compulsory overtime. Under the Labour Code on Wages Bill, 2015, states are delegated the authority to fix hours of work for a "normal working day"—this definition of normal working hours, however, does not apply to "preparatory or complementary work" which must be carried on outside limits laid down for general working; or to employment defined by the state as intermittent employment.[67] This definition of overtime work eliminates the express provision under the *Minimum Wages Act, 1948* that any definition of overtime cannot violate protections under Section 59 of the *Factories Act, 1948*. Section 59 clearly defines overtime to be any work in a factory for more than nine hours a day or 48 hours in a week.[68] By removing a clear definition of overtime and allowing complimentary and intermittent work to exceed normal hours, the Wages Bill, 2015 opens the door to compulsory overtime.

The Factories (Amendment) Bill, 2014 also proposes an increase in permissible overtime work and the number of consecutive hours of work that are allowed (spreadover hours). The Bill proposes an increase in the number of permissible over-time working hours in a quarter from a current maximum of 50 hours—or 75 hours with state government authorization;[69] to a maximum of 100 hours—or 125 hours with state authorization.[70] The Bill also proposes an increase in the number of spreadover hours from a current maximum of

66. *Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, No. 30 of 1979 (11 June 1979), Section 14: "Displacement allowance. -- (1) There shall be paid by the contractor to every inter-State migrant workman at the time of recruitment, a displacement allowance equal to fifty per cent of the monthly wages payable to him or seventy-five rupees, whichever is higher. (2) The amount paid to a workman as displacement allowance under sub-section (1) shall not be refundable and shall be in addition to the wages or other amounts payable to him."

67. Labour Code on Wages Bill, 2015 *supra* note 6, Section 13: "13. Fixing hours of work for normal working day: (1) In regard to any employment in respect of which the minimum rates of wages have been fixed under this Code, the State Government may– (a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals; (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest; (c) provide for payment for work on a day of rest at a rate not less than the overtime rate. (2) The provisions of sub-section (1) shall in relation to the following classes of employees apply only to such extent and subject to such conditions as may be prescribed, namely:- (a) employees engaged on urgent work or in any emergency which could not have been foreseen or prevented; (b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned; (c) employees whose employment is essentially intermittent; (d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and (e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces. (3) For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee or if there be no daily hours of duty as such for the employee the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention."

68. *Minimum Wage Act, 1948*, Section 14: "Overtime.- (1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher. (2) Nothing in this Act shall prejudice the operation of the provisions of section 59 of the Factories Act, 1948 (63 of 1948)] in any case where those provisions are applicable." This provision cites the Factories Act, 1948, Section 59: "Extra wages for overtime.— (1) Where a worker works in a factory for more than *nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages*[emphasis supplied.]"

69. *Factories Act, 1948*, Section 64(4)(iv): "the total number of hours of overtime shall not exceed fifty for any one quarter;" Section 65(2): "(2) The State Government or, subject to the control of the State Government, the Chief Inspector may by written order exempt, on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work. 1[(3) Any exemption granted under sub-section (2) shall be subject to the following conditions, namely:— (i) the total number of hours of work in any day shall not exceed twelve; (ii) the spreadover, inclusive of intervals for rest, shall not exceed thirteen hours in any one day; (iii) the total number of hours of work in any week, including overtime, shall not exceed sixty; (iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five. Explanation.—In this sub-section "quarter" has the same meaning as in sub-section (4) of section 64.]"

70. Factories (Amendment) Bill, 2014, Bill No. 93 of 2014, Section 38, 39: "38. In section 64 of the principal Act,— (a) in sub-section (4), in sub-clause (iv), for the word "fifty", the words "one hundred" shall be substituted; (b) in sub-section (5), for the words "Rules made", the words, brackets and figures "Rules made before the commencement of the Factories (Amendment) Act, 2014" shall be substituted. 39. In section 65 of the principal Act, in sub-section (3), in clause (iv),—(a) for the word "seventy-five", the words "one hundred and fifteen" shall be substituted; (b) after Explanation, the following proviso shall be inserted, namely:— "Provided that the State Government or the Chief Inspector may, subject to the prior approval of the State Government, by order further enhance the total number of hours of overtime work in any quarter to one hundred and twenty-five in the public interest.".

10.5 hours—or 12 hours with state authorization made to individual employers;[71] to 12 hours under a blanket authorization that can be made by a state government through official gazette notification. Gazette notification may pertain to a factory, class or description of factories.[72] These proposed increases in the number of permissible overtime hours and spreadover hours risk further worker exploitation. Many workers already work beyond the permitted overtime hours and—especially in the case of contract and temporary workers—they may not be compensated at overtime rates.[73]

Dismantling accountability mechanisms

The Labour Code on Wages Bill, 2015 takes significant steps to dismantle accountability mechanisms for upholding wage related rights under the principal acts. Measures include dismantling labour inspection mechanisms, restricting the functioning of trade unions and workers organizations and undermining access to justice.

Dismantling labour inspections

Under the *Payment of Wages Act, 1936*,[74] *Minimum Wages Act, 1948*,[75] *Payment of Bonus Act, 1965* and *Equal Remuneration Act*,1976,[76] labour inspectors and commissioners are tasked with exercising statutory enforcement authority. Inspectors under the principal Acts may enter premises at all reasonable hours for the purpose of inspection. Under the *Equal Remuneration Act, 1976* and *Payment of Bonus Act, 1965*, inspectors are empowered to examine workers, employers and agents. Under the *Minimum Wages Act, 1948*, inspectors may also examine anyone giving work to home-based workers and other out-workers. These provisions for inspection are consistent with India's commitments under the ILO Labour Inspection Convention, 1947 (No. 81).[77]

The Labour Code on Wages Bill, 2015 replaces commissioners and inspectors with facilitators and an ambiguous appointment of "one or more authorities"—without, however, specifying the nature of these authorities.[78] The facilitator is appointed to "supply information and advice to employers and workers concerning the most effective means of complying with the provisions of [the] code."[79]

Facilitators are also responsible for undertaking inspection consistent with inspection regimes set forth by state governments. However, the 2015 Wages Bill requires state inspection schemes to provide for web-based inspection schedules based on self-certification by employers.[80] Within these parameters, in the instance of defaulters, facilitators are granted authority to examine workers, require information, seize registers and records, require documents and search and seize as provided under section 94(4) of the Code of Criminal Procedure.

71. *Factories Act, 1948*, Section 56: "Spreadover.—The periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spreadover more than ten and a half hours in any day: Provided that the Chief Inspector may, for reasons to be specified in writing increase the 1[spreadover up to twelve hours]."
72 Factories (Amendment) Bill, 2014, Section 36: "In section 56 of the principal Act, for the proviso, the following proviso shall be substituted, namely: "Provided that where the State Government is satisfied, it may, by notification in the Official Gazette, increase the period of spreadover up to twelve hours in a factory or group or class or description of factories."
73. Ramapriya Gopalakrishnan, Handbook On Labour Reforms In India (2016), 52.
74. *Payment of Wages Act, 1936*, Section 14, 15
75. *Minimum Wages Act, 1948*, Sections 19, 20.
76. *Equal Remuneration Act, 1976*, Section 9.
77. International Labour Organization, Labour Inspection Convention, 1947 (No. 81), Article 16: "Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions." Article 12 outlines the powers that should be granted to inspectors: "1. Labour inspectors provided with proper credentials shall be empowered:(a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection; (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and (c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular-- (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions; (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them; (iii) to enforce the posting of notices required by the legal provisions; (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose. 2. On the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties." The Labour Inspection Convention, 1947 (No. 81) was ratified by India on April 7, 1949.
78. Labour Code on Wages Bill, 2015 *supra* note 6 at Section 43 and 47.
79. Labour Code on Wages Bill, 2015 *supra* note 6 at Section 47(4)(i)(a): "supply information and advice to employers and workers concerning the most effective means of complying with the provisions of this code."
80. Labour Code on Wages Bill, 2015 *supra* note 6, Section 47(2): "The appropriate Government may lay down an inspection scheme which shall provide for generation of a web-based inspection schedule, based on self certification, utilizing services of technical experts or agencies and complaint received and list of defaulters."

In response to imposition of self-certification schemes within the IT-enabled service sectors in India, the International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations (CEACR) urged the government of India to ensure that self-certification schemes do not impact the efficacy of the labour inspection system—and especially the frequency and thoroughness of inspection visits.[81] This recommendation was made in response to reports from India's central trade unions that very few inspections had been carried out under self-certification schemes within the IT-enabled services sectors (ITES).

The inspection system proposed under the Labour Code on Wages Bill, 2015 violates India's commitments under the Labour Inspection Convention, 1947 (No. 81). The proposed inspection system based upon self-assessment and complaint allows employers to avoid accountability by reporting false information. It also puts the onus on workers to make complaints—a system that both depends upon workers having a thorough understanding of their rights and potentially puts workers at risk of reprisal for making complaints.[82]

Restricting accountability functions of workers' organizations and trade unions

The Labour Code on Wages Bill, 2015 systematically limits the scope of trade union members to contribute independent funds designated for their welfare to other activities as legislated under the *Trade Unions Act, 1926*. Instead, under the 2015 Wages Bill, deductions that may be made from wages and allocated toward trade union activity are limited exclusively to membership dues.[83]

This consolidation explicitly omits the capacity for workers to choose to contribute wages to development of cooperative societies to promote common economic, social and cultural needs. It also undermines the capacity for trade unions to promote cooperatives as articulated in ILO Promotion of Cooperatives Recommendation, 2002 (No.193).[84]

Undermining access to justice

The Labour Code on Wages Bill, 2015, contains numerous provisions that restrict access to justice for workers facing wage-related rights abuses. These measures include: shifting from criminal and civil liability for wage related rights abuses to strictly civil liability; designating appellate authorities with ambiguous form and jurisdiction; undermining the ability of workers' to seek representation in legal proceedings; and removing attachment of employer assets as a legal remedy for wage related rights abuses. The Labour Code on Wages Bill, 2015, also undermines access to justice by removing accountability for wage abuse by government employers.

First, the Labour Code on Wages Bill 2015 shifts from criminal liability to civil liability in matters pertaining to wages, payment of wages and payment of bonuses.[85] Employers who violate the Labour Code on Wages Bill are provided with written

81. Gopalakrishnan, *supra* note 26 at 30-31 (citing CEACR, Labour Inspection Convention,1947 (No.81), Observation, India, adopted 2010, published 100th ILC session, 2011).

82. Gopalakrishnan, *supra* note 72 at 30-31.

83. Labour Code on Wages Bill, 2015 note 6, Section 19.

84. International Labour Organization, Promotion of Cooperatives Recommendation, 2002 (No. 193), Article 16: "Workers' organizations should be encouraged to: (a) advise and assist workers in cooperatives to join workers' organizations; (b) assist their members to establish cooperatives, including with the aim of facilitating access to basic goods and services; (c) participate in committees and working groups at the local, national and international levels that consider economic and social issues having an impact on cooperatives; (d) assist and participate in the setting up of new cooperatives with a view to the creation or maintenance of employment, including in cases of proposed closures of enterprises; (e) assist and participate in programmes for cooperatives aimed at improving their productivity; (f) promote equality of opportunity in cooperatives; (g) promote the exercise of the rights of worker-members of cooperatives; and (h) undertake any other activities for the promotion of cooperatives, including education and training."

85. Labour Code on Wages Bill, 2015 *supra* note 6, provides exclusively for civil liability pertaining to non-payment of wages, Article 43: "Claims under the Code and procedure thereof: (1) The appropriate Government may by notification appoint one or more authorities to hear and decide the claims arising out of non-payment of wages, deduction made by employer from the wages of an employee which are not as per this Code, payment of less wages than the minimum wages, non-payment of wages for the leave period, non-payment of over time, non-payment of equal remuneration to male, female and transgender employees as may be prescribed and non-payment of bonus. (2) The authority appointed under sub-section (1) may order payment of compensation up to 10 times in addition to the dues involved as specified in subsection (1) to the employee and such authority shall, before ordering compensation, have regard to the circumstances due to which the dues had remained unpaid or less paid. (3) If an employer fails to pay the outstanding dues of an employee that are decided to be paid by the authority under sub-section (1), the authority shall issue a certificate of recovery to the Collector or District Magistrate of the District where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee. (4) Any application for claim arising out of any dues payable as specified under subsection (1) may be filed before the authority by either the employee or any Trade Union of which the employee is a member or a Non-Government Organisation duly authorised...*[Contd.]*

notice and the opportunity to comply with provisions of the Code prior to receiving any penalty.[86] Those who commit offences can be acquitted by compounding offenses.[87] Under the *Minimum Wages Act, 1948*, by contrast, payment of less than minimum wage is punishable with imprisonment.[88] India's laws, policies and jurisprudence have systematically challenged non-payment of legal wages by criminalizing these practices—placing India at the global forefront of legislative and judicial action to shift social norms on wage theft and coercive labour. By decriminalizing non-payment of wages, the Labour Code on Wages Bill, 2015 undermines the Supreme Court decision in *Sanjit Roy v. State of Rajasthan* (1983) establishing that non-payment of minimum wages amounts to constitutionally prohibited forced labour.[89]

Second, the 2015 Wages Bill undermines due process in the case of wage related abuses. Replacing judicial appellate authority, the Code assigns "all powers of a civil court" to an ambiguous authority that may or not may not be judicial.[90]

Third, under the *Minimum Wages Act, 1948*[91] and the *Payment of Bonus Act, 1965*[92] employees can recover, through a Magistrate or Collector, any amount they are to be paid by an employer. The Labour Code on Wages Bill removes this "recovery" provision under the principal Act. By this omission, under the 2015 Wages Bill, recovery claims are now functionally de-linked from any guarantee of assets provided by the employer. The Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 also does not contain any provisions for recovering wages from an employer.

Fourth, while the *Minimum Wages Act, 1948* protects the right of an employee to seek representation from a legal practitioner,[93] the Wages Bill undermines right of legal representation by an advocate. The role of advocates under the Wages Bill, 2015 has instead been assigned exclusively to a representative trade union or non-governmental organization (NGO)—although no standard or statutory

[contd.] by the employee or an Inspector appointed under this Code. (5) Authority appointed under sub-section (1) and the appellate authority appointed under sub-section (1) of section 44, or as the case may be, the Chairperson and every Member of the Board referred to in sub-section (2) of section 44 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority, appellate authority or, as the case may be, the Chairperson and every Member shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)." By contrast, the Minimum Wages Act, 1948, Section 20, clearly delineates criminal procedure for cases of wage abuse.

86. Labour Code on Wages Bill, 2015 *supra* note 6, Section 49(3): "Notwithstanding anything contained in sub-section (1) or sub-section (2), the Facilitator shall, before initiation of prosecution proceedings, give an opportunity, to the employer to comply with the provisions of this Code by way of a written direction, which shall lay down a time period for such compliance and if the employer complies with the direction within such period, the Facilitator shall not initiate such prosecution proceedings."

87. Labour Code on Wages Bill, 2015 supra note 6, Section 50: "Compounding of offences: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),on the application of the employer concerned, any offence under this code shall be compounded, by such officer being a gazetted officer of the appropriate Government in such manner and on payment of such amount to such government as may be prescribed and if the employer does not agree to pay such amount for composition of the offence, then, the proceedings shall be initiated against such employer in accordance with law. (2) The offence referred to in sub-section (1) may be compounded before or pending the trial of the offence and when the offence is compounded during the trial of the offence, the officer compounding the offence under sub-section (1) shall file a report in the court in which the trial of the offence is pending and the court shall on filing of such report discharge the accused with whom the offence has been compounded and such composition shall have the effect of an acquittal of the accused. (3) No offence under this section shall be compounded if the accused has previously been convicted by a Court for committing same offence. (4) No offence under this code shall be compounded, except as provided under this section."

88. *Minimum Wages Act, 1948*, Section 22: "Penalties for certain offences.- Any employer who--(a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or (b) contravenes any rule or order made under section 13, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both: Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20."

89. *Sanjit Roy v. State of Rajasthan*, 1983 AIR 328 (holding "where a person provides labour or service to another for remuneration which is less than the minimum wage,the labour or service provided by him clearly falls within the meaning of the words 'forced labour' and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him he can complain of violation of his fundamental right under Article 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated."

90. Labour Code on Wages Bill, 2015 *supra* note 6, Section 43-44.

91. *Minimum Wages Act, 1948*, Section 20(5): "(5) Any amount directed to be paid under this section may be recovered-- (a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or (b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate."

92. *Payment of Bonus Act, 1965*, Section 21: "Recovery of bonus due from an employer.-Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue . . ."

93. *Minimum Wages Act, 1948*, Section 20(2): "Where an employee has any claim of the nature referred to in sub-section (1)], the employee himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3). . ."

registration systems for NGOs is specified.[94] This provision violates the *Advocates Act, 1961*, authorizing all duly registered advocates to practice in all courts and before any tribunal or person legally authorized to take evidence.[95]

Finally, the Labour Code on Wages Bill, 2015 restricts access to justice in cases in which the government fails to pay wages in a timely manner by exempting the government from the requirement of paying timely wages.[96]

Wage-related abuses are intimately linked to serious human rights abuses. At the most severe end of the spectrum, these abuses can amount to bonded and forced labour. The Wages Bill, 2015 by disabling labour inspection mechanisms, removing criminal liability, restricting the role of legal advocates and undermining due process—constitutes a systematic assault on access to justice for workers facing wage-related abuses.

Recommendations

Labour law changes under the 2015 Wages Bill impact workers by diluting protective standards and dismantling accountability mechanisms. In context of these proposed changes, the following recommendations seek to protect workers from wage-related abuses.

1. Wage laws should apply to all workers, including unorganized sector workers and home based workers, without any exception.
2. Provisions prohibiting discrimination in wages and hiring should extend to all internationally protected categories, including but not limited to Dalit, Adivasi, Muslim, women, disabled and sexual minority workers.
3. Consistent with Supreme Court jurisprudence, determination of minimum wages should be based upon needs-based criteria. Minimum wages should be a floor rather than a ceiling for wages and require incremental wage increases.
    - Current needs based allocations should account for 30 percent of wages; be raised to four consumption units in place of three; consider the actual rent of a two-room accommodation and the cost of children, education, medical costs, travel and communication.
    - Determination of minimum wages should be transparent to ensure that all need-based factors are accounted for.
    - Minimum wages should not be less than ₹15,000 per month in any sector, including within the unorganized sector.
4. Wage laws should require employers to provide employees with wage slips showing all payments made in a month, including overtime wages.
5. In order to effectively prohibit wage discrimination, wage laws should include precedential jurisprudence on same and similar work. If it is established that the job content is similar, there should be a presumption that the skill, effort and responsibility required is the same.
6. Wage laws should specifically establish that the piece-rate beyond the standard output per day should be double the rate, complying with overtime norms.
    - The Wages Bill, under section 2(c) does not clearly state that the piece rate should specify the standard output for eight hours of work.
7. Wage laws should specify that weekly wage is seven times the daily wage; monthly wage is thirty times the daily wage; and hourly wage should be the daily wage divided by not more than eight hours.

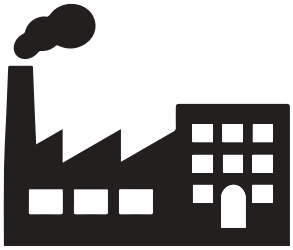
94. Labour Code on Wages Bill, 2015 *supra* note 6, Section 43(4): "(4) Any application for claim arising out of any dues payable as specified under subsection (1) may be filed before the authority by either the employee or any Trade Union of which the employee is a member or a Non-Government Organisation duly authorised by the employee or an Inspector appointed under this Code."
95. *Advocates Act, 1961*, No. 25 of 1961 (19 May 1961), Section 30: "Right of advocates to practise.—Subject to provisions of this Act, every advocate whose name is entered in the 1[State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,— (i) in all courts including the Supreme Court; (ii) before any tribunal or person legally authorised to take evidence; and (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."
96. Labour Code on Wages Bill. 2015 *supra* note 6, Section 18(5): "Notwithstanding anything contained in this section, the provisions of this section shall not apply to the Government establishment except where theappropriate Government applies, by notification, such provisions to the Government establishments specified in such notification."

8. In order to ensure access to justice in cases of wage-related abuses:
    - In all cases of non-payment of wages, the burden of proof should vest with the employer and not with the employee.
    - With regards to recovery, wage laws should include a clause that requires employers to pay an amount based on three components: (a) the full restitution of the claim amount based on existing bank rates; (b) compensation; and (c) any penalty/fine imposed.
    - Under Section 41, a specific clause should be added wherein the Principal employer of an establishment will be held liable in any case of non-payment of wages to all workers working within an establishment.

V. Industrial Relations

LABOUR CODE ON INDUSTRIAL RELATIONS BILL, 2015

KEY CHANGES



1

Recognizing unorganized sector unions

Recognizes the right to freedom of association within the unorganized sector

2

Undermining freedom of association and collective bargaining

· Barriers to registering trade unions
· Restrictions on union governance
· Lack of procedure for recognizing representative trade unions
· Increased provisions for canceling union registration and recognition

3

Prohibiting strikes

· Restricts disputes in small factories
· Restricts unfair labour practice complaints in small factories

4

Reducing barriers to layoff and retrenchment

· Introduces flexibility through fixed term employment.
· Deregulates retrenchment
· Streamlines closure of small factories

5

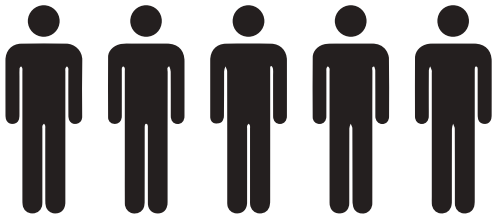
Weakening accountability mechanisms

· Removes adjudication forums and appeals mechanisms
· Undermines accountability for just adjudication
· Limits employer liability for workplace rights violations
· Exempts government departments and establishments

6

Undermining Standing Orders and Conditions of Service

· Eliminates worker input in rulemaking
· Exempts small factories from Standing



Contemporary context

The Indian economy currently represents a mix of three levels of collective bargaining and a range of union structures. In the private corporate sector, enterprise-based workers' unions that may or may not be affiliated to political parties may undertake plant-level collective bargaining for organized and unorganized sector workers. In public sector enterprises, centralized union federations affiliated to political parties bargain with the state (as employer) at the industry or national level, and at times at both levels. Central and state government employees in the service sector (transportation, postal services, banking and insurance, police and firefighters, etc.) typically have politically affiliated unions bargaining at the national or regional levels, or both.[1]

The last decade has seen significant decline in registered trade union members and strikes in India. Together, India's 11 central trade unions constitute 15 percent of India's workforce and are concentrated in the public and formal sectors.[2] According to Labour Bureau reports, while the 1970's witnessed almost 100,000 strikes each year, there were only 250 strikes in 2008; 167 in 2009; 199 in 2010; and 179 in 2011.[3]

For instance, in the Sriperumbudur belt of Tamil Nadu—a special economic zone established in 2008 with over 2 billion USD invested by companies primarily in the automotive and electronic sectors—the number of strikes declined from 110 in 2003 to just 28 in 2013.[4] Since 2010, labour department officials have not recorded any strikes in industrial areas in Delhi.[5] These trends correspond with a rise in contract labour and increasing fear among non-permanent workers of repercussions for joining a union.

International standards on industrial relations

The ILO Declaration of Fundamental Principles and Rights at Work recognizes the right to organize as one of four fundamental rights to be upheld by ILO member states. Together, the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and Right to Organize and Collective Bargaining Convention, 1949 (No.98) outline the right to join a trade union and the right to organize. In particular:

- The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) calls upon states to prevent discrimination against trade unions; protect employers' and workers' organizations against mutual interference; and undertake measures to promote collective bargaining.
- The Right to Organize and Collective Bargaining Convention, 1949 (No. 98), protects workers who are exercising the right to organize; upholds the principle of non-interference between workers' and employers' organizations; and promotes voluntary collective bargaining.

Although India has not ratified either of these conventions, they represent a growing international consensus on workers' rights and as core labour standards are binding on India as an ILO member country.[6]

In addition to these core standards, under the Labour Inspection Convention, 1947 (No. 81), India has committed to protect the rights of industrial workers by empowering labour inspectors to enter any premises where they have reasonable cause to

1. The three levels of collective bargaining and range of union structures referenced above is articulated by Debashish Bhattacherjee, *The Evolution of Indian Industrial Relations: A Comparative Perspective*, 32 INDUS. REL. J., No. 3 (2001) 247-48.The only addition to Bhattacherjee's schema is inclusion of explicit reference to organized and unorganized sector unions.
2. Anumeha Yadav, *Workers get more militant as space for unionization shrinks*, SCROLL.IN, June 24, 2015, http://scroll.in/article/736208/workers-get-more-militant-as-space-for-unionisation-shrinks.
3. *Id.*
4. Anu Kurian, *Labor's love lost*, PEOPLE MATTERS," Feb. 3, 2015, accessed Feb. 3, 2016 https://www.peoplematters.in/article/2015/02/03/employee-relations/labors-love-lost/10515; Ajai Seevatsan, *Data show labour unrest is not the problem*, THE HINDU, Nov. 1, 2014, accessed Feb. 3. 2016, http://www.thehindu.com/news/cities/chennai/data-show-labour-unrest-is-not-the-problem/article6553308.ece (both citing M. Vijayabaskar, Madras Institute of Development Studies).
5. Yadav, *Workers get more militant as space for unionization shrinks, supra* note 348.
6. Convention No. 87 has been ratified by 153 countries and Convention No. 98 has been ratified by 164 countries.

believe inspection is required; and to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that legal provisions are being strictly observed.[7] This section provides further details on these standards as they pertain to labour law changes proposed under the Labour Code on Industrial Relations Bill, 2015.

Labour law changes

The central government Labour Code on Industrial Relations Bill, 2015 (hereafter, Labour Code on IR Bill, 2015) aims to consolidate the *Trade Unions Act, 1926*, *Industrial Employment (Standing Orders) Act, 1946* and *Industrial Disputes Act, 1947*.[8] The Central Government has also published gazette notification of Draft Industrial Employment (Standing Orders) Central (Amendment) Rules, 2015[9] to amend the Industrial Employment (Standing Orders) Central Rules, 1946.[10] Changes under the Labour Code on IR Bill, 2015 apply only to industrial units with 40 or more workers.

Under proposed labour law changes, factories employing 10-40 workers will be governed by the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014. The 2014 Small Factories Bill suspends application of 14 labour laws to small units.[11] The Bill also reduces standards for health and safety established under the *Factories Act, 1948*[12]. Defining a factory as small based only upon the number of workers employed in the factory does not adequately account for variation in capital investment, turnover and volume of output. Further, size based classification provides incentives to employers to spread manufacturing work over more than one factory to seek exemptions under the Act.[13] It is unclear what law will apply to industrial units with 1-9 workers.

The remainder of this section outlines implications for workers and trade unions under the Labour Code on IR Bill, 2015, Industrial Employment (Standing Orders) Central (Amendment) Rules, 2015 and—where it pertains to matters covered under the *Industrial Disputes Act, 1949*—the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014. These proposed changes do include some gains in protection for unorganized sector unions. However, they also significantly undermine freedom of association and collective bargaining; prohibit the right to strike; reduce barriers to retrenchment; and weaken mechanisms for employer accountability.

Recognizing unorganized sector unions

The Labour Code on IR Bill, 2015 explicitly recognizes the right to freedom of association within the unorganized sector where no easily discernible employer-employee relationship may obtain. In

7. International Labour Organization, Labour Inspection Convention, 1947 (No. 81), ratified by India on April 7, 1949, Article 12: "1. Labour inspectors provided with proper credentials shall be empowered: (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection; (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and (c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular-- (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions; (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them; (iii) to enforce the posting of notices required by the legal provisions; (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

   "On the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties."

8. Labour Code on Industrial Relations Bill, 2015, http://www.prsindia.org/uploads/media//draft/Labour%20Code%20on%20Industrial%20Relations%20Bill%202015.pdf (accessed July 11, 2016).

9. Ministry of Labour and Employment, Gazette Notification G.S.R.327(E), New Delhi, 29 April 2015.

10. Industrial Employment (Standing Orders) Central Rules, 1946 (No. 20 of 1946).

11. The following labour laws are not applicable to small factories under the 2014 Bill: *Factories Act, 1947*; *Industrial Disputes Act, 1947*; *Industrial Employment (Standing Orders) Act, 1946)*; *Minimum Wages Act, 1948*; *Payment of Wages Act, 1936*; *Payment of Bonus Act, 1965*; *Employees State Insurance Act, 1948*; *Employees Provident Funds and Miscellaneous Provisions Act, 1952*; *Maternity Benefit Act, 1961*; *Employees Compensation Act, 1923*; *Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*; *(State) Shops and Establishments Acts, Equal Remuneration Act, 1976 and Child Labour (Prohibition and Regulation) Act, 1986.*

12. Ramapriya Gopalakrishnan, Handbook on Labour Reforms in India (2016) at 36 explains: "The Bill does not contain provisions relating to maintenance of cleanliness, adequate ventilation, suitable temperature, measures to contain dust and fumes, and the safety of persons working on machines. It also does not contain any provisions relating to provision of personal protective equipment, periodic medical testing of workers, reporting of work-related accidents and injuries and occupational diseases to the labour authorities. In the circumstances, the provisions relating to health and safety in the bill cannot be said to be adequate.

13. Gopalakrishnan, *supra* note 12 at 34.

such cases, the 2015 IR Bill suspends the requirement that the union achieve 10 percent membership in the concerned establishment, undertaking or industry.[14] Relaxation of this requirement may facilitate freedom of association among unorganized sector workers.

Challenges to freedom of association and collective bargaining

By virtue of India's membership in the ILO, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) commits India to take measures to promote collective bargaining.[15] Undermining these obligations, the Labour Code on IR Bill, 2015 has no provisions aimed at promoting collective bargaining. Instead, the IR Bill, 2015 undermines freedom of association and collective bargaining by creating additional barriers to registering trade unions, placing restrictions on the structure of union governance, including additional grounds for the cancellation of unions and prohibiting the right to strike. The Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 also limits freedom of association and collective bargaining by providing grounds to cancel representative status of unions and restrict disputes in small factories.

Barriers to registering trade unions

Under the Labour Code on IR Bill, 2015, the authority to appoint a registrar of trade unions is transferred solely to the state government, undermining concurrent authority under the principal act.[16] Barriers to registering trade unions under the Labour Code on IR Bill include potential difficulties in registering unions that operate across jurisdictions, required disclosure of the names of workers applying for union registration and grounds for technically disqualifying unions. The Labour Code on IR Bill also contains no clear instructions for recognizing trade unions.

Registering general, sector-wide, multi-state and national unions

Under the Labour Code on IR Bill, 2015, there is ambiguity with regard to whether unions that operate across jurisdictions or sectors require more than a single registration. This ambiguity impacts both general workers unions and sector-wide unions because lack of clarity under the IR Bill 2015 may create obstacles to registering multi-state plants and national unions—ultimately preventing a common national labour market from emerging.

Requiring disclosure of applicants' identity

In order to apply for registration of a trade union, the Labour Code on IR Bill, 2015 requires disclosure of the names and addresses of workers applying for registration to the registrar.[17] Without confidentiality and other protective measures, this disclosure clause opens the door for retaliation against workers who attempt to form a union.

Retaliation for union activity is a common feature of India's contemporary economy. For instance, during the 2014-15 fiscal year, NVH India Auto Limited, one of the suppliers for Hyundai Motor India Limited, suspended 15 employees for seeking basic facilities and permission to set up an employees

14. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 5(b): "(b) In the case of unions or association of workers in unorganised sector where there is no employer-employee relationship or such relationship is not clear, the requirement of 10 percent membership in an establishment or undertaking or industry shall not apply."

15. International Labour Organization, Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 4: "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

16. Labour Code on Industrial Relations Bill, 2015 *supra note 8,* Section 7: "Registrar of Trade Unions - (1) State Government may, by notification, appoint a person to be the Registrar of Trade Unions, and other person as Additional Registrar of Trade Union, Joint registrar of Trade Union and Deputy registrar of Trade Unions who shall exercise such powers and perform such duties of the Registrar as the appropriate Government may, by notification, specify from time to time. (2) Subject to the provisions of any order made by the appropriate Government, where an Additional Registrar of Trade Unions or a Joint Registrar of Trade Unions or a Deputy Registrar of Trade Unions exercises the powers and performs the duties of the Registrar in an area within which the registered office of a Trade Union is situated, such Additional Registrar of Trade Unions or a Joint Registrar of Trade Unions or a Deputy Registrar of Trade Unions, as the case may be, shall be deemed to be the Registrar in relation to that Trade Union for the purposes of this Code.".

17. Labour Code on Industrial Relations Bill, 2015 supra note 8, Section 6(1)(a)(i): "Application for Registration - (1) Every application for registration of a Trade Union shall be accompanied by - (a) a statement showing –(i) the names, occupations and addresses of the persons making the application, the name and address of the establishment, undertaking or industry, and where the establishment has two or more units, branches or offices, the name and address of the unit, branch or office, wherein such persons are employed."

union in the company.[18] In Haryana's Bawal industrial area, on the proposed Delhi-Mumbai Industrial Corridor, workers who submit their names and details in union applications are routinely transferred to another division or fired.[19]

Permitting technical qualification during registration

The Labour Code on IR Bill, 2015 does not distinguish between substantive and technical grounds for refusing an application for union registration.[20] Technical issues should not warrant refusal. Moreover, registrars should not have the authority to reject an application for registration until workers are granted a time-bound window within which to remedy objections.

Restrictions on union governance

Restrictions on free choice of office bearers

Under the *Trade Unions Act, 1926*, up to one-third of the office bearers of a registered trade union (although this number cannot exceed five) may be people not actually engaged or employed in the establishment or industry. With regard to unorganized sector trade unions, under the *Trade Unions Act, 1926*, up to half the office bearers may be persons not actually engaged or employed in the establishment or industry.[21]

Under the Labour Code on IR Bill, 2015, all office bearers of a registered union must be people actually engaged or employed in the establishment.[22] The IR Bill does make an exception for the unorganized sector, but still restricts the proportion of non-workers who can become office bearers to two. This allowance for non-worker office bearers in the unorganized sector is not absolute. The Code on IR Bill, 2015 allows the government to issue an order declaring that this sub-section does not apply to any trade union or class of trade unions.

The Labour Code on IR Bill, 2015 also provides for disqualification of an office bearer of a union on grounds of being an office bearer of 10 or more unions—an entirely new provision introduced under the 2015 IR Bill.[23] Over the last two decades, government circumscription of plant-level, industry-level and general union registration has led to the proliferation of office bearers working with multiple unions. Accordingly, this provision would cause significant hardship to workers and union leadership.

18. Kurian, *supra* note 4
19. Yadav, *Workers get more militant as space for unionization shrinks, supra* note 2
20. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 10: "Registration of a Trade Union - (1) If the information furnished by the trade union which has made the application is complete in all respects the Registrar shall make an order within 60 days from the date of receipt of the application for registration of the Trade Union for either granting or refusing to grant the registration and shall communicate his order to the applicant union electronically or otherwise: Provided that where the Registrar refuses to grant the registration, he shall state the reasons thereof for such refusal."
21. *Trade Unions Act, 1926,* Section 22: "Proportion of officebearers to be connected with the industry (1) Not less than onehalf of the total number of the officebearers of every registered Trade Union in an unrecognised sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected: Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order. Explanation. For the purposes of this section, "unorganised sector" means any sector which the appropriate Government may, by notification in the Official Gazette, specify. (2) Save as otherwise provided in subsection (1), all officebearers of a registered Trade Union, except not more than one third of the total number of the officebearers or five, whichever is less, shall be persons acutally engaged or employed in the establishment or industry with which the Trade Union is connected. Explanation. For the purposes of this subsection, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union. (3) No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the Trade Union is connected), in the Union or a State, shall be a member of the executive or other officebearer of a registered Trade Union.]"
22. Labour Code on Industrial Relations Bill, 2015 supra note 8, Section 27: "Proportion of Office Bearers not engaged in the Establishment or Industry- (1) Not more than two of the office bearers of every registered trade union in an unorganised sector shall be the persons who are not actually engaged or employed in the establishment or industry with which the trade union is connected: Provided that the appropriate Government may by special or general order declare that the provisions of this sub section shall not apply to any trade union or class of trade unions specified in the order: Provided further that out of President and Secretary of such registered company at least the President or the Secretary shall be held by the worker employed in such sector. Explanation: For the purpose of this Sub section a worker who has retired or has been retrenched from the establishment or industry with which the trade union is connected shall not be construed as outsider for the purposes of this sub section. (2) Save as otherwise provided in sub-section (1), all office bearers of a registered trade union shall be persons actually engaged or employed in the establishment or industry with which the trade union is concerned. (3) No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the trade union is connected) in the Union or a State shall be a member of the executive or other office bearer of a trade union."
23. Labour Code on Industrial Relations Bill, 2015 supra note 8, Section 25: "Disqualification of Office Bearers of Trade Unions - (1) A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office bearer of a registered trade union if—(i) he has not attained the age of 18 years; (ii) he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment unless a period of 5 years has elapsed since his release after undergoing such imprisonment; (iii) he is already office bearer of 10 trade unions; (iv) the Industrial Tribunal has directed that he shall be disqualified for being chosen or for being office bearer of a trade union for a period specified therein."

Choice of representation is inherent to the right to freedom of association under the Freedom of Association and Right to Organize Convention, 1948 (Convention No. 87). [24] The right to freedom of association protects the rights of workers to choose and elect their representatives. Non-worker members of trade unions play a crucial role in forming and strengthening trade unions. Unprotected, semi-literate and illiterate workers facing rights abuses at work may be entirely unable to address these issues without support from non-worker members of trade unions with the time and expertise to support the unionization process.

Overly frequent election requirements

Under the Labour Code on IR Bill, 2015, the frequency of electing union executives and office bearers has been increased to every two years, from every three years under the principal Act.[25] Within India, trade and general union membership is usually spread across a considerable area and frequently multiple states. Two-year election cycles would require an immense and unreasonable expenditure of resources.

Authority to leverage extensive fines against trade unions and workers

The Labour Code on IR Bill, 2015 expands grounds to levy fines against trade unions and workers, providing an avenue to drain the resources and capacity of unions, with potentially debilitating effects.

- Under the Labour Code on IR Bill, 2015 the grounds for fining the office bearers and executive members of a trade union extend beyond failure to submit returns to encompass default with regard to any notice, or sending any statement or other document.[26] Fines can range from ₹10,000 to ₹50,000 and attract an additional penalty of ₹100 per day as long as the default continues.
- The Labour Code on IR Bill, 2015 allows for a fine of ₹25,000 for any false entry made in the returns of a union or alteration of any rule by a union.[27]
- Any individual deemed to have provided "false information" to a trade union (on issues unspecified) or a worker (with reference to the registration status of a union) can be punished by a fine of up to ₹25,000.[28] "False information," however, is not further defined. The ambiguous definition of "false information" opens the door to levy financial penalties against trade unions or workers by selectively branding information provided to workers as false.
- Finally, commission of unfair labour practices by workers and trade unions attracts a penalty from ₹50,000 to ₹2 lakhs.[29] Practices considered unfair labour practices by workers and trade unions include: advising, supporting or instigating a strike deemed illegal under the code, preventing non-striking workers from entering

24. Right to Organize Convention, 1948 (Convention No. 87), Article 3: "(1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.(2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."
25. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 9(i): "the manner in which the members of the executive and the other office bearers of the trade union shall be elected once in a period of every two years and removed and filling of casual vacancies . . ."
26. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 103(7): "If default is made on the part of any registered trade union in giving any notice or sending any statement or other document as required by or under any provisions of this Code, every office-bearer or other person bound by the rules of the trade union to give or send the same, or, if there is no such office-bearers or person, every member of the executive of the trade union, shall be punishable with fine which shall not be less than rupees ten thousand but which may extend to rupees fifty thousand. The continuing default would attract an additional penalty of rupees hundred per day so long as the default continues."
27. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 103(8): "Any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 33 or in or form any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to twenty five thousand rupees."
28. Labour Code on Industrial Relations Bill, 2015 supra note 8, Section 103(9): "Any person who, with intent to deceive, gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the intent, gives a copy of any rules of an unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union, shall be punishable with fine which may be extended up to rupees twenty five thousand."
29. Labour Code on Industrial Relations Bill, 2015 supra note 8, Section 103(5): "Any person who commits any unfair labour practice as specified in the Third Schedule shall be punishable with a fine which shall not be less than rupees fifty thousand but which may extend to rupees two lakhs."

work places, violence in connection with a strike, refusal to bargain in good faith with an employer and demonstrations at the residence of employers and managers.[30]

These penalties, raised significantly from those prescribed under the *Trade Unions Act, 1926* and *Industrial Disputes Act, 1947*,[31] are disproportionately high: higher than the average monthly wage of a worker in formal employment and several times higher than those in informal employment. They disproportionately impact workers—with fines imposed on individuals in the case of worker lapses but on the employer as a single entity in cases of employer lapses.[32]

Lack of procedure for recognizing representative trade unions

The importance of recognizing representative trade unions in order to promote collective bargaining is articulated in the ILO Collective Bargaining Recommendation, 1981 (Recommendation No. 163).[33] Recognition by an employer of one ore more representative trade unions in an industrial establishment establishes the basis for collective bargaining procedures at the enterprise level. Absent provisions mandating recognition and delineating processes for establishing representative trade union status, employers may choose to ignore and bypass representative unions.[34]

While particular states, including Gujarat, Madhya Pradesh, Maharashtra and Rajasthan enacted state-level laws governing union recognition, there is currently no central law in place explicitly mandating employers to grant recognition to representative trade unions.[35] As a result of this legal lacuna, many employers resist recognizing representative trade unions, leading to protracted struggles for recognition.[36]

Provisions for canceling union registration and recognition

The Labour Code on IR Bill, 2015 introduces three new grounds under which a registrar can cancel a union's registration. These include failure to maintain accounts or submit an annual return within the prescribed manner or period; failure to hold elections every two years as prescribed by the code; and any other failure to fulfill registration requirements.[37]

The Labour Code on IR Bill, 2015 permits an aggrieved union to appeal an order of cancellation before an Industrial Tribunal and posits that the

30. The following actions are considered to be unfair labour practices by worker and trade unions under the Ministry of Labour and Employment, Labour Code on Industrial Relations Bill, 2015, *supra* note 8, Schedule III, Part II: "(1) To advise or actively support or instigate any strike deemed to be illegal under this Code. (2) To coerce workers in the exercise of their right to self-organization or to join a trade union or refrain from, joining any trade union, that is to say- (a) for a trade union or its members to picketing in such a manner that non-striking workers are physically debarred from entering the work places; (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workers or against managerial staff. (3) For a recognized union to refuse to bargain collectively in good faith with the employer. (4) To indulge in coercive activities against certification of a bargaining representative. (5) To stage, encourage or instigate such forms of coercive actions as willful, ,"go-slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff. (6) To stage demonstrations at the residence of the employers or the managerial staff members. (7) To incite or indulge in willful damage to employer's property connected with the industry. (8) To indulge in acts of force or violence or to hold out threats of intimidation against any worker with a view to prevent him from attending work."

31. Penalties for parallel offenses are covered under Section 31 and 32 of the *Trade Unions Act, 1926* and Section 25-U of the *Industrial Disputes Act, 1947*.

32. Sharit Bhowmik, *The Labour Code on Industrial Relations Bill 2015: Tough times ahead for labour in India*, Global Labour Column, No. 207, June 2015. International Labour Organization Collective Bargaining Recommendation, 1981 (No. 98), Article 3: "As appropriate and necessary, measures adapted to national conditions should be taken so that--

33. International Labour Organization Collective Bargaining Recommendation, 1981 (No. 98), Article 3: "As appropriate and necessary, measures adapted to national conditions should be taken so that--
(a) representative employers' and workers' organisations are recognised for the purposes of collective bargaining; (b) in countries in which the competent authorities apply procedures for recognition with a view to determining the organisations to be granted the right to bargain collectively, such determination is based on pre-established and objective criteria with regard to the organisations' representative character, established in consultation with representative employers' and workers' organisations."

34. Gopalakrishnan, *supra* note 12 at 19.

35. Bhattacherjee, *supra* note 61 at 251 (citing A.K. Sengupta, *Trends in Industrial Conflict in India (1961-1987) and Government Policy, Working Paper Series No. 174/92* (Calcutta Institute of Management)).

36. Gopalakrishnan, *supra* note 12 at 19.

37. Labour Code on Industrial Relations Bill, 2015 supra note 3, Section 12(1)(c),(e),(g): "Certificate of registration of a trade union may be withdrawn or cancelled by the registrar—. . . (c) if the union has failed to maintain the accounts or to submit the annual return in the prescribed manner or within the prescribed period or the annual return submitted by it is false or defective and the defect is not rectified within the prescribed period . . . (e) if the trade union has not held its elections as prescribed under this code within the prescribed period . . . (g) if the trade union no longer fulfills the requirements of registration as prescribed under section 18."

decision of the Tribunal is considered final.[38] This procedure departs from the procedure established under the *Trade Unions Act, 1926*. The principal Act allows an aggrieved union to appeal cancellation of registration to a high court, labour court or civil court with jurisdiction over the area. If a civil court initially hears the matter, the aggrieved union retains a further right of appeal to the high court.[39]

The Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, contains provisions for canceling union recognition. If a union recognized by an employer is found to engage in any unfair labour practice, its recognition will be canceled. All trade union rights protected under the *Trade Unions Act, 1926* will also be suspended.[40] This provision is newly introduced. There is no parallel provision under the *Industrial Disputes Act, 1947*. It is significant to note, moreover, that at the time of writing the schedule of unfair labour practices Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 had not yet been released.

The procedure for cancelling the registration of a union under the Labour Code on IR Bill, 2015 violates the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) which prohibits dissolution of suspension of workers' organizations by administrative authority.[41] As explained by the ILO, "The dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations and should therefore be accompanied by all the necessary guarantees. This can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution."[42] By eliminating the right of appeal in cases of trade union cancellation, the Labour Code on IR Bill, 2015 violates due process for the aggrieved trade union and fundamental rights at work, protected under ILO Convention No. 87.

Prohibiting strikes

The fundamental right to strike is protected under international human rights standards and the legal right to strike is protected under the *Industrial Disputes Act, 1947*. This legal right has also been upheld by the Supreme Court of India. Departing from these established protections, the Labour Code on IR Bill, 2015 prohibits both strikes and lockouts and establishes penalties for strikes and lockouts that disproportionately impact workers.

Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by India in 1979, protects the right to strike.[43] The ILO

38. Labour Code on Industrial Relations Bill, 2015 supra note 8, Section 13: "Appeal against Non-Registration or Cancellation of Registration- (1) Any person aggrieved by the refusal of the Registrar to grant registration to a trade union under section 23 or by cancellation of a certificate of registration under section 26 or if the Registrar has not acted within 60 days on the application for registration may within such period as may be prescribed prefer an appeal to the Industrial Tribunal whose decision shall be final. (2) The Industrial Tribunal my after giving the parties concerned an opportunity to be heard dismiss the appeal or pass an order directing the Registrar to register the trade union and to issue a certificate of registration or set aside the order of a cancellation or certificate of registration as the case may be and forward a copy of the order to the Registrar."
39. *Trade Union Act, 1926*, Section 11: "11. Appeal. —(1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal— (a) where the head office of the Trade Union is situated within the limits of a Presidency town to the High Court, or (aa) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal, as the case may be; (b) where the head office is situated in any area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the 20[appropriate Government] may appoint in this behalf for that area. (2)The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order or withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order. (3) For the purpose of an appeal under sub-section (1) an appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said Code. (4) In the event of the dismissal of an appeal by any Court appointed under clause (b) of sub-section (1) the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly."
40. Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, 32(1)(c): "where a union recognised by the employer has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all of any or its rights under the Trade Unios Act, 1923, shall be suspended."
41. International Labour Organization, Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Article 4: "Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority."
42. International Labour Organization Committee of Experts, *Dissolution and suspension of organizations by administrative authority*, General Survey On The Fundamental Conventions Concerning Rights At Work In Light Of the ILO Declaration On Social Justice For A Fail Globalization, 2008, International Labour Conference, 101st Session, 2012, para. 162, accessed Feb. 3, 2016, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_174846.pdf.
43. ICESCR, *supra* note 11: "Article 8: The right of everyone to form a trade union, join the trade union of [her/]his choice and the right to strike."

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organize and Collective Bargaining Convention, 1949 (No. 98) concern freedom of association and protection of the right to organize and also indirectly protect the right to strike as an indispensable corollary of the right to organize.[44] Although India has not ratified these conventions, under the 1998 ILO Declaration on Fundamental Principles and Rights at Work, India has an obligation to promote the fundamental rights articulated in these conventions.[45]

The *Industrial Disputes Act, 1947*, both protects the legal right to strike and provides conditions under which workers can go on strike, positing a distinction between legal and illegal strikes. Section 22 of the *Industrial Disputes Act, 1947* sets out parameters under which employees in public utilities are permitted to declare a strike. Section 23 of the Act prohibits strikes and lockouts during pending conciliation, arbitration and adjudication and during the period of operation of settlements and awards. With the exception of these qualifications, the *Industrial Disputes Act, 1947* protects the legal right to strike. The Supreme Court has also upheld the legal right to strike and recognized the legitimacy of this approach to articulating collective demands.[46]

Undermining the right to strike, the Labour Code on IR Bill, 2015 extends prohibitions on strikes and lockouts that under the principle act only applied to public utilities to all industrial establishments.[47] Significantly, the Labour Code on IR Bill, 2015 requires workers to give employers between two and six weeks notice prior to a strike.[48] However, by giving notice, workers automatically initiate conciliation proceedings. Once conciliation proceedings are initiated, workers are prohibited from going on strike until one week after proceedings have concluded. However, the 2015 Draft Code on IR does not provide a time-limit for completion of conciliation proceedings. Together, these provisions allow strikes to be prohibited indefinitely. Violations of these provisions trigger significant penalties.[49]

44. The right to strike has been affirmed by the ILO in the "Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organization, 1957" and the "Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970" as well as numerous resolutions of the ILO's regional conferences and industrial committees. For further discussion, see Bernard Gernigon, et. al, ILO Principles Concerning the Right to Strike (International Labour Office: Geneva, 1998), 1, 11 (delineating four dimensions of the right to strike articulated by the Committee on Freedom of Association: "[T]he Committee on Freedom of Association has recognized that strike action is a right and not simply a social act, and has also: (1) made it clear it is a right which workers and their organizations (trade unions, federations and confederations) are entitled to enjoy; (2) reduced the number of categories of workers who may be deprived of this right, as well as the legal restrictions on its exercise, which should not be excessive; (3) linked the exercise of the right to strike to the objective of promoting and defending the economic and social interests of workers (which criterion excludes strikes of a purely political nature from the scope of international protection provided by the ILO, although the Committee makes no direct statement or indication regarding sympathy strikes other than that they cannot be banned outright; (4) stated that the legitimate exercise of the right to strike should not entail prejudicial penalties of any sort, which would imply acts of anti-union discrimination").

45. International Labour Organization, ILO Declaration on Fundamental Principles and Rights at Work, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998.

46. *See Chandramalai Estate v. Their Workmen*, LLJ, 1960(2) SC; *Kairbetta Estate, Kotagiri v. Rajamanicakam and others*, LLJ, 1960(2) SC.

47. Labour Code on Industrial Relations Bill, 2015, Section 71(1),(7): "71. Prohibition of Strikes and Lockouts –(1) No worker employed in an industrial establishment shall go on strike in breach of contract—(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or (b) within fourteen days of giving such notice; or (c) before the expiry of the date of strike specified in any such notice as aforesaid; or (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; (e) during the pendency of proceedings before an Industrial Tribunal or National Tribunal and two months, after the conclusion of such proceedings; (f) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 50; or (g) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. . . (7) No worker who is employed in any industrial establishment shall go on strike in break of contract and no employer of any such worker shall declare a lock-out."

48. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 71(1)(a)-(b). See full text of provision in footnote 47

49. Labour Code on Industrial Relations Bill, 2015 supra note 8, Sections 71(1)(a)-(b) reproduced in footnote 47; Section 69: "Commencement and conclusion of proceedings – (1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out is received by the Conciliation Officer. (2) A conciliation proceeding shall be deemed to have concluded – (a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute; (b) where not settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or; (c) when a reference is made to a National Tribunal, under this code, then, during the pendency of conciliation proceedings"; Section 71(1)(e) reproduced in footnote 47; Section 72(1): "A strike or lock-out shall be illegal if- (i) it is commenced or declared in contravention of section 71; or (ii) it is continued in contravention of an order made under sub-section (7) of Section 50." Compare with the *Industrial Disputes Act, 1947*, Section 22(1): "Section 22- Prohibition of strikes and lock-outs (1) No person employed in a public utility service shall go on strike, in breach of contract—(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or (b) within fourteen days of giving such notice; or (c) before the expiry of the date of strike specified in any such notice as aforesaid; or (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings."

The Labour Code on IR Bill, 2015 also extends the definition of "strike" to include instances in which at least 50 percent of workers take casual leave simultaneously.[50] This provision creates an avenue for targeting workers who exercise freedom of association. For instance, if more than 50 percent of workers in an establishment opt to take casual leave in order to attend a meeting, rally or demonstration, employers may use this provision to target workers for supporting causes they see as unfit.

While the Labour Code on IR Bill, 2015 prohibits both strikes and lockouts, penalties for illegal strikes and lockouts[51] disproportionately penalize workers. Out of the four subsections dealing with penalties for illegal strikes and lockouts, only one covers punishments for lockouts.[52] An employer who commences, continues or otherwise furthers an illegal lockout can be punished with a fine extending from ₹20,000 to ₹50,000 or imprisonment of one month or both.[53] However, this section provides no relief to workers deprived of wages during an illegal lockout.

Workers who engage in an illegal strike are subject to a parallel fine as that imposed upon employers for a lockout (₹20,000 to ₹50,000 and/or imprisonment of one month).[54] Application of these penalties, however, is not proportional: an employer is treated as one entity and will pay a singular penalty for an illegal lockout while multiple fines can be levied against individual workers if their strike is declared illegal. Under the Labour Code on IR Bill, 2015, trade union leaders are also liable to ₹20,000 to ₹50,000 and/or imprisonment of one month if they are deemed to have instigated, incited or taken part in a strike that is deemed illegal.[55] Anyone who lends monetary support to striking workers is subject to the same penalty of ₹20,000 to ₹50,000 and/or imprisonment of one month if they are deemed to have instigated, incited or taken part in a strike that is deemed illegal.[56] By penalizing support to striking workers, this provision leaves workers who exercise the fundamental human right to strike vulnerable to severe human rights consequences, including deprivation of food and other basic needs.

Provisions prohibiting strikes and lockouts in public utilities have been justified on the grounds that a strike or lockout in a public utility has the potential to immediately and directly adversely impact the public at large. The Labour Code on IR Bill, 2015 expands this prohibition to undermine the fundamental human right and domestically protected legal right to strike with no limitations. Prescribing penal sanctions against workers for carrying out a peaceful strike also violates international norms. The ILO Committee on Freedom of Association has upheld the right to strike under international law and stated that the legitimate exercise of the right to strike

50. Labour Code on Industrial Relations Bill, 2015 supra note 8, 2(za): "'strike' means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal, under; a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment and includes the casual leave on a given day by the fifty per cent or more workers employed in an industry." Compare to *Industrial Disputes Act, 1947*, 2(q): "'strike' means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number or persons who are or have been so employed to continue to work or to accept employment." *Note: this provision of the 2015 Draft Code on IR as published by the Ministry of Labour Employment contains grammatical errors. The author has not introduced this error.*

51. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 7(2) for restrictions on the ability of employers to lock-out employees.

52. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 103(14), (15), (16) and (17).

53. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 103(15): "Any employer who commences, continues or otherwise acts in furtherance of a lock-out which is illegal under this Code, shall be punishable with a fine which shall not be less than rupees twenty thousand but which may be extended up to rupees fifty thousand or with imprisonment up to one month, or with both."

54. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 103(14): "Any worker who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Code, shall be punishable with a fine which shall not be less than rupees twenty thousand but which may be extended up to rupees fifty thousand or with imprisonment up to one month, or with both." Compare to *Industrial Disputes Act, 1947*, Section 26: "Penalty for illegal strikes and lock- outs.- (1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both. (2) Any employer who commences, continues, or otherwise acts in furtherance of a lock- out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

55. Labour Code on Industrial Relations Bill, 2015 *supra* note 8, Section 103(16).

56. Labour Code on Industrial Relations Bill, 2015 supra note 8, Section 103(16),(17): "(16) Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Code, shall be punishable with a fine which shall not be less than rupees twenty thousand but which may be extended up to rupees fifty thousand or with imprisonment up to one month, or with both. (17) Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with a fine which shall not be less than rupees twenty five thousand but which may be extended up to rupees fifty thousand or with imprisonment up to one month, or with both."

should not entail prejudicial penalties of any sort. In fact, the Committee on Freedom of Association has held that penalties for striking imply acts of anti-union discrimination.[57]

While international standards protect the right to strike for trade unions, federations and confederations,[58] these standards do not respond to the needs of workers precariously inhabiting casual, seasonal, temporary and other types of informal working relationships. In order to support unorganized sector workers in India who seek to take collective action to uphold the right to decent work, international and domestic standards should be expanded to defend the right to strike for all workers—whether or not they have been able to form a union.

Restricting disputes in small factories

Under the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, individual industrial disputes pertaining to dismissal, discharge, retrenchment or termination must first be raised before a conciliation officer. Prior to filing for adjudication in accordance with provisions of the *Industrial Disputes Act, 1947*, workers must complete a 45-day window in which they attempt to reach a settlement. Only after this window has elapsed are the eligible for adjudication under the *Industrial Disputes Act, 1947*.[59]

Collective disputes may only be raised by a minimum of 51 percent of workers in a small factory. Disputes can be raised directly by workers or with the support of a trade union. Prior to filing for adjudication in accordance with provisions of the *Industrial Disputes Act, 1947*, however, workers must complete a 90-day window in which they attempt to reach a settlement.[60] This 90-day waiting requirement is unique to the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 and does not existing in the *Industrial Disputes Act, 1947*.

Restricting unfair labour practice complaints in small factories

Under the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, a worker, union or inspector must file a complaint of unfair labour practices to the Labour Court within 90 days of the incident. In order for a union to make a complaint, however, it must show support of at least 50 percent of the workers in the small factory. [61]

Facilitating layoff and entrenchment

Introducing flexibility through fixed term employment

Draft amendments under the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2015, increase employer flexibility in hiring

57. Gernigon, *supra* note 44 at 11.

58. Gernigon, *supra* note 44 at 11.

59. Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, 27(1): "Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual worker, any dispute or difference between that worker and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other worker nor any union of workers is a party to the dispute. The worker may raise his dispute before the Conciliation Officer appointed under the Industrial Disputes Act, 1947and having jurisdiction in respect of the area where the small factory is situated. In the event of the dispute not being settled within 45 days of filing the dispute before the Conciliation Officer, the worker may submit his statement of claim before the Labour Court and on receipt of such application the Labour Court shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of the Industrial Disputes Act,1947 and all the provisions of the Industrial Disputes Act,1947 shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government."

60. Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, 27(2): "Collective dispute: Not less than fifty one percent of the workers, directly or through a trade union of workers, may raise a dispute about general demands before the Conciliation Officer appointed under the Industrial Disputes Act, 1947and having jurisdiction in respect of the area where the small factory is situated. In the event of the dispute not being settled within 90 days of filing the dispute before the Conciliation Officer, the workers or the trade union may submit a statement of claim before the Labour Court and on receipt of such application the Labour Court shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of the Industrial Disputes Act,1947 and all the provisions of the Industrial Disputes Act,1947shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government."

61. Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, Section 30: "Procedure for dealing with complaints relating to unfair labour practices - (1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any worker or any employer or any Inspector may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Labour Court having jurisdiction over the area in which the small factory is situate : Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint. Provided further that, where the complaint relates to more than one worker, then all the workers shall support the complaint, in writing, at the time of filing of the complaint and where the complaint has been filed by the union, such union will also have to show support by appending signatures of atleast fifty percent of the workers in that small factory. (2) The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint. (3) The decision of the Court, which shall be in writing, shall be in the form of an order. The order of the Court shall be final and shall not be called in question in any civil or criminal court. (4) The Court shall cause its order to be published on the notice board of the Court, and also send a copy of the order to the parties to the case. The order of the Court shall become enforceable from the date specified in the order. (5) The Court shall forward a copy of its order to the State Government for publication on the Web site or notice board of the Labour Department of the State."

and firing workers. The Amendment Rules, 2015 permit engagement of workers on fixed term contracts. Fixed term employees under the Amendment Rules, 2015 can be terminated through non-renewal of their contract. Under these conditions, fixed term employees are not entitled to notice or compensation upon termination.[62] This provision allows employers to engage employees on fixed terms and thereby avoid incurring any costs for terminating employees at will.

Deregulating retrenchment

Under the *Industrial Disputes Act, 1947* employers are required to take government permission before laying-off a worker or retrenching workers in industrial units with 100 or more workers.[63] The constitutional validity of these provisions was upheld by the Supreme Court in *Workmen of Meenakshi Mills v. Meenakshi Mills* (1992) and *Papnasam Labour Union v. Madura Coats Ltd.* (1995) in which the court argued that Section 25 protections against layoff and retrenchment do not impose an unreasonable restriction on the rights of employers.[64] Conditions for retrenchment under the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, remain similar to established procedures under the *Industrial Disputes Act, 1947*.[65]

The Labour Code on IR Bill, 2015, however, raises the threshold number at which employers must take permission from the government before retrenchment to factories employing 300 or more workers.[66] This reduces oversight and protection against retrenchment to workers employed in industries employing between 100 and 299 workers. This measure is consistent with defacto promotion of increased flexibility to retrench workers and close industrial establishments.

Streamlining closure of small factories

Under the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, owners or employers can close a small factory within fifteen days of closing the factory by electronically notifying the Chief Inspector who holds jurisdiction over the factory's registration. Upon being satisfied that workers have received their wages and that the

62. Industrial Employment (Standing Orders) Central (Amendment) Rules, 2015, part b, introduces definition h: "(h) A 'fixed term employment' workman is a workman who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits shall not be less than that of a permanent workman. He shall also be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even though his period of employment does not extend to the qualifying period of employment required in the statute;" part c(i),(ii) establishes: "(i) no notice of termination of employment shall be necessary in the case of temporary and badli workmen; (ii) no workman employed on fixed term employment basis as a result of non-renewal of contract or employment or on its expiry, shall be entitled to any notice or pay in lieu thereof, if his services are terminated:".

63. *Industrial Disputes Act, 1947*, Sections 25(K),(M),(N): "25K. Application of Chapter VB.- (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 2 one hundred] workmen were employed on an average per working day for the preceding twelve months. (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final;" "25M. Prohibition of lay- off.- (1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid- off by his employer except 1 with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay- off is due to shortage of power or to natural calamity, and in the case of a mine, such lay- off is due also to fire, flood, excess of inflammable gas or explosion]" (Note: Sections 25M(2)-(10) govern applications for lay-off and conditions in the case of lay-off); 25N. Conditions precedent to retrenchment of workmen.- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf."

64. *Workmen of Meenakshi Mills v. Meenakshi Mills*, 1994 AIR 2696 at para. 8.3 (a 5 judge bench of the Supreme Court, holding: "It is, therefore, not correct to say that sub-section (2) of Section 25-N by enabling the appropriate Government or authority to take into consideration the condition of employment in the industry or the condition of employment in the state imposes an unreasonable restriction on the right of the employer under Article 19(1)(g)") and *Papnasam Labour Union v. Madura Coats Ltd.*, 1995 AIR 2200 (following reasoning in Meenakshi Mills).

65. Gopalakrishnan, *supra* note 12 at 37 explains the procedure for retrenchment under the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014: "Section 26 of the Bill regulates the retrenchment of workers. The prescribed conditions need to be followed prior to the retrenchment of any worker who has worked for a minimum of 240 days in a year. Prior to retrenchment, a worker is required to be given one month's notice in writing stating the reasons for retrenchment or 1 month's wages in lieu of notice. The rule of 'last come first go' is required to be followed. At the time of retrenchment, compensation equivalent to 15 days of wages for every completed year of service needs to be deposited by the employer into the account of the worker. The conditions precedent for retrenchment are thus similar to that under the *Industrial Disputes Act*."

66. Chapter X of the Labour Code on IR Bill covers provisions relating to lay-off, retrenchment and closure in certain establishments. Section 85 defines the applicability of this chapter: "Application of this Chapter - (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workers were employed on an, average per working day for the preceding twelve months.

factory is closed, the register of small factories will cancel its registration.[67]

Weakening accountability mechanisms

The Labour Code on IR Bill, 2015 weakens employer accountability by removing adjudication forums and appeals mechanisms. The Code also undermines accountability for just adjudication, limits employer liability and exempts government employers from upholding the provisions of the Code.

Removing of adjudication forums and appeals mechanisms in adjudicating industrial disputes

Under the Labour Code on IR Bill, 2015, Industrial Tribunals are the single mechanism for ensuring accountability—removing the labour court, board of arbitration and tribunal court under the principle Act.[68] This framework dismantles the three-tiered adjudication structure under the *Industrial Disputes Act, 1947*—including the tribunal or court, High Court and Supreme Court—and therefore removes the guaranteed right to appeal decisions of tribunals.

Moreover, under the *Industrial Disputes Act, 1947*, only someone who held judicial office in the past could function as a Presiding Officer of the Labour Court or Industrial Tribunal.[69] Under the IR Bill, 2015, by contrast, prior judicial experience is not required to be appointed as Presiding Officer of an Industrial Tribunal.[70]

Undermining accountability for just adjudication

Under the Labour Code on IR Bill, 2015, in instances where no settlement between an employer and employee has been reached, conciliation officers are charged with completing a report setting forth next steps.[71] While this measure is consistent with reporting provisions under the *Industrial Disputes Act, 1947*, the Labour Code on IR Bill, 2015 weakens the reporting provisions in two ways: first, under the *Industrial Disputes Act, 1947*, reports are to be submitted to the appropriate government, providing a measure of accountability to the parties to the dispute in undergoing the next steps; further, under the principal Act, reporting on the status of settlement was time-bound, encouraging timely action in cases of non-resolution.[72]

Limiting employer liability

Strong penalties against employers for unfair labour practices, including anti-union discrimination and interference have the potential to protect individual and collective workers' rights. However, the Labour Code on IR Bill, 2015 limits employer liability by

67. Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, Section 6(5): "Closing of the small factory to be communicated to the Chief Inspector -The owner or employer of the small factory shall, within fifteen days of his closing the small factory, notify the closure to the Chief Inspector electronically. The Chief Inspector shall, on receiving the information and being satisfied about the nature of closure, and payment of all wages to the workers shall remove such small factory from the register of small factories and cancel the registration certificate."

68. Labour Code on Industrial Relations Bill, 2015 note 8, Section 60, referring to duties of National Tribunals: "Duties of National Tribunals - Where an industrial dispute has been referred by the Central Government to a National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or further period extended by the Central Government submits its award to such Government." *Note:* In this section, National Tribunals functionally assume the activities of labour boards and courts as laid out in the Industrial Disputes Act, 1947, Sections 13 and 14.

69. See *Industrial Disputes Act, 1947*, Section 7-A detailing qualifications to be a Presiding Officer of an Industrial Tribunal; and 7(3) detailing qualifications to be appointed a Presiding Officer of the Labour Court.

70. Labour Code on Industrial Relations Bill, 2015 supra note 8, see Sections 52(3)(e)(f): "Tribunal - (1) The appropriate Government may, by notification, constitute one or more Tribunal for the adjudication of industrial disputes and for performing such other functions as may be assigned to them under this Code. (2) A Tribunal shall consist of one person only to be appointed by the appropriate Government. (3) A person shall not be, qualified for appointment as the Presiding Officer of a Tribunal, unless - (a) he is, or has been, a judge of a High Court; or (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or (c) he has held any judicial office in India for not less than seven years; or (d) he has been the Presiding Officer of a Industrial Tribunal constituted under any State Act for not less than five years; or (e) *he is or has been a Grade III Officer of Central Labour Service or Joint or Deputy Commissioner of the State Labour Department , having a degree in law and at least seven years' experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer; or (f) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade* [emphasis supplied]."

71. Labour Code on Industrial Relations Bill, 2015 supra note 8, Section 59(4): "(4) If no such settlement is arrived at, the Conciliation Officer shall, as soon as practicable after the close of the investigation, send to the parties a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof."

72. *Industrial Disputes Act, 1947,* Sections 12(4) and 12(6): "(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. . . (6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute."

allowing for compounding of employer offences—thereby allowing employers to avoid prosecution by paying a fine.[73]

Further undermining employer accountability, under the Labour Code on IR Bill, 2015, offences are not cognizable unless they are based upon a complaint by the appropriate government.[74] This circumscribes the ability of trade unions to file legal complaints directly, further shielding employers from accountability.

Finally, under the Labour Code on IR Bill, 2015, responsibility for employer offenses is restricted to "every person who, at the time the offense was committed, was in charge."[75] This provision provides a loophole for finding no managing authority directly accountable.

Under the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, if an employer is found to have committed an unfair labour practice, a Labour Court can determine whether to order reasonable compensation or reinstatement—with or without back wages.[76] By leaving the grant of relief in the form of back wages, compensation, reinstatement (or a combination of these reliefs) to the Labour Court, this provision opens up the possibility that workers who are victims of unfair labour practices may not be granted any of these reliefs. The Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 also does not contain provisions relating to layoff and the payment of layoff compensation.[77] It is also significant to note that at the time of writing the schedule of unfair labour practices Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 had not yet been released.

Exempting government departments and establishments

The Labour Code on IR Bill, 2015 retains government authority to exempt any establishment, class of establishments or undertakings carried on by a government department from provision of the Code.[78] This provision is similar to Section 36B of the *Industrial Disputes Act, 1947* which was inserted under the Amending Act, No. 46 of 1982, but never brought into force.[79]

The ILO Committee on Freedom of Association has explicitly noted that this provision gives the government unduly wide discretion to place workers in exempted industries in a less favorable position—including by subjecting them to dispute resolution procedures in which they may lack confidence. Practically speaking, this provision would deprive public sector workers of various rights under the Code, including but not limited to rights pertaining to investigation and settlement of industrial disputes.[80]

73. Labour Code on Industrial Relations Bill, 2015, Section 104: "104. Compounding of offences: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),on the application of the accused concerned, any offence under this code shall be compounded, by such officer being a gazetted officer of the appropriate Government in such manner and on payment of such amount to such government as may be prescribed and if the accused does not agree to pay such amount for composition of the offence, then, the proceedings shall be initiated against such accused in accordance with law. (2) The offence referred to in sub-section (1) may be compounded before or pending the trial of the offence and when the offence is compounded during the trial of the offence, the officer compounding the offence under sub-section (1) shall file a report in the court in which the trial of the offence is pending and the court shall on filing of such report discharge the accused with whom the offence has been compounded and such composition shall have the effect of an acquittal of the accused. (3) No offence under this section shall be compounded if the accused has previously been convicted by a Court for committing same offence. (4) No offence under this code shall be compounded, except as provided under this section."

74. Labour Code on Industrial Relations Bill, 2015, Section 106(1): "106. Cognizance of offences - (1) No court shall take cognizance of any offence punishable under this Code or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government."

75. Labour Code on Industrial Relations Bill, 2015, Section 105(1): Offences by companies: (1) If the person committing an offence under this Code is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

76. Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, 32(1)(b): "(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order -. . . (b)direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act."

77. Gopalakrishnan, *supra* note 12 at 39.

78. Labour Code on Industrial Relations Bill, 2015, supra note 8, Section 97: "Power to exempt - Where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of industrial establishments or undertakings carried on by a department of that Government that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workers employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification, exempt, conditionally or unconditionally such establishment or undertaking or, class of establishments or undertakings from all or any of the provisions of this Code."

79. *See* Gopalakrishnan, *supra* note 12 at 23 for further discussion.

80. Gopalakrishnan, *supra* note 12 at 24 (citing Committee on Freedom of Association, Case No. 1113 (India), discussed in the 226th Report of the Committee).

Reducing protection under standing orders and conditions of service

The *Industrial Employment Standing Orders Act, 1946* makes it mandatory for employers to frame standing orders that define conditions of employment. Matters covered by standing orders should include hours of work, wages, leave, acts and omissions that constitute misconduct and grounds for terminating employment. The Act applies to all industrial establishments in which 100 or more workers are employed. Standing orders must be certified by a designated certifying officer.[81]

Eliminating worker input in rulemaking

Under the *Industrial Employment (Standing Orders) Act, 1946*, rule-making procedure includes a tripartite mechanism for including worker perspectives during certification of standing orders.[82] The Labour Code on IR Bill, 2015 removes this tripartite mechanism. While the Labour Code on IR Bill, 2015 includes "negotiating agents" in the development of standing orders, this position remains undefined.

Exempting small factories from standing orders

The Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, does not require standing orders.

Standing orders are instrumental in ensuring transparent, uniform conditions of work among employees. In particular, issues such as permanency, conduct attracting penalties and conditions of termination should be fair and transparent. By removing tripartite processes for certifying standing orders under the 2015 Draft Code on IR and removing standing orders entirely under the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, proposed labour law changes significantly undermine fair notice and transparency in the workplace.

Recommendations

The Labour Code on Industrial Relations Bill, 2015 undermines freedom of association and collective bargaining; prohibits the right to strike; reduces barriers to retrenchment; and weakens mechanisms for employer accountability. In context of these proposed changes, the following recommendations seek to protect fundamental rights to freedom of association and collective bargaining.

Registration of unions

1. Disclosing names of workers applying for union registration puts workers at risk. Workers should be protected from retaliation for seeking to unionize. Workers names should remain confidential. In order to defend the right to organize, workers should be granted protected status while their application for registration is pending and for a period of not less than one month after registration is complete.
2. If an application for registration is furnished to the registrar of trade unions, a formal receipt should be provided. While the application is pending, the receipt should retain the status of a certificate of registration.
3. In order to facilitate formation of unions across multiple states, a registrar in any one of the states where the union operates should be empowered to register the union. Moreover, this registration must be applicable across all states where the union has membership.
4. In order to facilitate registration, unions should be granted sufficient time to remedy inconsistencies between applications for registration and governing guidelines. In instances of failure to remedy inconsistencies, registrars should amend provisions of applications so that they are in line with the Labour Code on IR.

81. Industrial Employment (Standing Orders) Act, 1946, No. 20 of 1946 (23 April 1946).

82.. Industrial Employment (Standing Orders) Act, 1946, Section 5(2): "(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly."

Standing orders

5. The Labour Code on IR Bill, 2015 includes "negotiating agents" in the development of standing orders but this position remains undefined. In order to ensure inclusion of workers perspectives, a negotiating agent must be defined as a representative from a union, or in the instance in which there is no union, an elected workers committee. No rules of standing orders should be passed without inclusion of the perspectives or workers' or workers' representatives.
6. Conditions of service should include measures to promote a gender-sensitive and discrimination free work environment.

Provisions for canceling unions

7. Consistent with internationally accepted principles of due process, the only acceptable ground for cancellation of a union should be determination by a judicial body that the registration is fraudulent.
8. Any actions by a registrar that undermine the registration or continuation of a union should be subject to appeal.
9. Deviations from standard registration procedures or other guidelines under the IR Bill, 2015 should not justify canceling a union. Instead, industrial relations law should allow a time-bound window for unions to make any necessary changes to assure compliance.
10. The Labour Code on IR Bill, 2015 requires a registrar to cancel registration if a union has not held its elections as prescribed under the IR Bill, 2015. Cancellation should not be the recourse. Instead, the registrar should be granted the power to appoint an election officer to conduct elections in a timely manner.

Unjust retrenchment

11. While notice and compensation to retrenched workers has increased—temporarily enhancing security for workers who are fired, these measures do not protect workers against unjust retrenchment. Accordingly, the Labour Code on IR Bill, 2015 should be amended to allow workers and their representatives, within the notice period, to apply to the appropriate government authority for approval of retrenchment.

Employer liability

12. Under the Labour Code on IR Bill, 2015 responsibility for employer offenses is restricted to "every person who, at the time the offense was committed, was in charge." This provision provides a loophole for finding no managing authority directly accountable. In instances in which responsibility cannot be designated, the managing director or operation head of the establishment should be held accountable.

VI. Bibliography

Advocates Act, 1961, No. 25 of 1961 (19 May 1961).

All India Bank Employees' Association v. National Industrial Tribunal, AIR 1962 S.C.

Mukul G. *Asher, Reforming labour laws, creating livelihoods*, "The Hindu," October 30, 2014, accessed online on October 31, 2014: http://www.thehindu.com/opinion/op-ed/comment-reforming-labour-laws-creatinglivelihoodsarticle6545494.ece?css=print

Granville Austin, The Indian Constitution: Cornerstone Of A Nation, Oxford: Clarendon Press, 1966.

Isaac D. Balbus, *Commodity Form and Legal Form: An Essay on the "Relative Autonomy" of the Law*, 11 L. And Soc'y Rev., No. 3, 571 (1977).

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

Susana Barria, National People's Tribunals On Living Wage For Garment Workers In Asia (Delhi: Asia Floor Wage Alliance, 2014).

Ellen Barry, *In India, a Small Band of Women Risk it All for a Chance to Work*, January 30, 2016, New York Times, accessed February 10, 2016, http://mobile.nytimes.com/2016/01/31/world/asia/indian-women-labor-work-force.html?referer=&_r=0.

Beedi and Cigar Workers (Conditions of Employment) Act, 1966, No. 32 of 1966 (30 November 1966).

Beedi Workers Welfare Fund Act, 1976, No. 62 of 1976 (10 April 1976).

Patrick Belser and Uma Rani, *Extending the Coverage of Minimum Wages in India: Simulations from Household Data*, Economic And Political Weekly, May 28, 2011.

Nita Bhalla, *Captured by cotton: girls duped into "bonded labour" in India's textile mills*, Reuters, August 6, 2015, accessed, February 8, 2016, http://in.reuters.com/article/india-textiles-women idINKCN0QB04920150806. (209)

—Why govt's promiseto end child labour by 2025 is 'farcical,' Business Today.In, September 16, 2015, accessed February 8, 2016, http://www.business-today.in/current/economy-politics/ending-child-labour-by-2025-farcical-as-govt-plans-to-allow-children-under-14-family-work/story/223796.html.

Shikha Bhattacharjee, Cleaning Human Waste: Manual Scavenging, Caste And Discrimination In India, Human Rights Watch, 2014.

Debashish Bhattacherjee, *The Evolution of Indian Industrial Relations: A Comparative Perspective*, 32 Indus. Rel. J., NO. 3 (2001).

Bhopal Memorial Hospital and Research Centre, *The Bhopal Gas Tragedy*, accessed August 1, 2015, http://www.bmhrc.org/Bhopal%20Gas%20Tragedy.htm.

Sharit Bhowmik, *The Labour Code on Industrial Relations Bill 2015: Tough times ahead for labour in India*, Global Labour Column, No. 207, June 2015.

Bonded Labour System (Abolition) Act, 1976, No. 19 of 1976 (9 February 1976).

Building and Wood Workers International, *Brick Kiln Industry: Joint Advocacy Efforts Reap Benefits*, http://www.bwint.org/default.asp?index=4562.

N.K. Chadha and Vandana Gambhir Chopra, *Child Labour: An Indian Scenario*, in S. Deb (ed.) Child Safety, Welfare And Well-being (Springer, 2016).

Chandramalai Estate v.Their Workmen, LLJ, 1960(2) SC.

CP Chandrasekhar and Jayati Ghosh, The Market That Failed: A Decade Of Neoliberal Economic Reforms In India (New Delhi: LeftWord, 2006).

Changes in Industrial Disputes Act to accelerate Make in Maharashtra, Indian Express, January 28, 2015, http://indianexpress.com/article/cities/pune/changes-in-industrial-disputes-act-to-accelerate-make-in-maharashtra.

Child Labour (Prohibition and Regulation) Act, 1986, No. 61 of 1986 (23 December 1986).

D. Chopra, *Balancing Paid Work and Unpaid Care Work to Achieve Women's Economic Empowerment*, 83 Institute Of Development Studies Policy Briefing, January 2015, accessed February 11, 2016, http://www.ids.ac.uk/publication/balancing-paid-work-and-unpaid-care-work-to-achieve-women-s-economic-empowerment.

Committee on Economic Social and Cultural Rights (CESCR), 2008, *Concluding Comments on India report.* UN Doc.E/C.12/IND/CO/5.

—General Comment No. 18: The Right to Work, U.N. Doc. E/C.12/GC/18 (2005).

Constitution of India, 1949.

Contract Labour (Regulation and Abolition) Act, 1970, No. 37 of 1970 (5 September 1970).

Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature Mar*. 1, 1980, 1249 U.N.T.S. 13.

Crown Aluminim Works v. Their Workmen, 1958 AIR 30 (1947).

Terence Daintith, *The constitutional protection of economic rights*, 2 INTL. J. CONST. L., 56 (2004).

Radhika Desai, WOMEN'S WORK COUNTS: FEMINIST ARGUMENTS FOR HUMAN RIGHTS AT WORK, Programme on Women's Economic Social and Cultural Rights, 2.

Surya Deva, *Public Interest Litigation in India: A Critical Review*, 8 Civil J.Q., No.1, 20 (2009).

Jack Donnely, *Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights* 76 AMERICAN POL. SC. REV., No. 2 (1982).

DTC Corp v. DTC Mazdoor Congress AIR 1991 SC 101.

Employees' State Insurance Act, 1948, No. 34 of 1948 (19 April 1948).

Employment of Children Act, 1938, No. 26 of 1938, (1 December 1938).

Employees' Provident Funds and Miscellaneous Provisions Act, 1952, No. 19 of 1952 (4 March 1952).

Equal Remuneration Act, 1976, No. 25 of 1976 (11 February 1976).

Factories Act, 1948, No. 63 of 1948 (23 September 1948).

Factories (Amendment) Act, 1922, No. 11 of 1922 (25 January 1922).

Factories (Amendment) Act, 1987, No. 20 of 1987.

Factories (Amendment) Bill, 2014, Bill No. 93 of 2014.

The fine line between unpaid care work and domestic servitude, INTERACTIONS, accessed 2 February 2015,http://interactions.eldis.org/blog/fine-line-between-unpaid-care-work-and-domestic-servitude.

Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746, 753.

Marc Galanter, *Legal Torpor: Why So Little Has Happened in India After the Bhopal Tragedy*, 20 TEX. INT'L. L. J. 273 (1985).

Bernard Gernigon, et. al, ILO PRINCIPLES CONCERNING THE RIGHT TO STRIKE (International Labour Office: Geneva, 1998)

Ramapriya Gopalakrishnan, HANDBOOK ON LABOUR REFORMS IN INDIA (2016)

Government of India Planning Commission, Third Five Year Plan.

'*Gujarat Labour Minister Vijay Rupani's Note on Amendments in Labour Laws*', DESH GUJARAT, 25 February 2015.

Haryana State Co-Op Land Development Bank v. Neelam, Appeal (civil) 1672 of 2002 (Supreme Court).

Kevin Hewison and Arne L. Kalleberg, *Precarious Work and Flexibilization in South and Southeast Asia*, 57 AMERICAN BEHAVIORAL SCIENTIST, no. 4, 395-402 (2013).

Hydro (Engineers) P. Ltd. v. Workmen, 1969 AIR 182.

ILO-FICCI-MOIA, *Workshop on Strengthening Recruitment—Legislation and Structure*, Delhi, August 26, 2015.

India Needs to Create 15 million Jobs Annually: Pitroda, THE INDIAN EXPRESS, 23 March 2013, http://archive.indianexpress.com/news/india-needs-to-create-15-million-jobs-annually-pitroda/1092411.

Industrial Disputes Act, 1947, No. 14 of 1947 (11 March 1947).

Industrial Employment (Standing Orders) Act, 1946, No. 20 of 1946 (23 April 1946).

Industrial Employment (Standing Orders) Central Rules, 1946 (No. 20 of 1946).

International Covenant on Economic, Social and Cultural Rights, art. 6(1), *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3. Acceded to by India on 10 April 1979.

International Labour Organization, Abolition of Forced Labour Convention, 1957 (No. 105), ratified by India on 18 May 2000.

—CEACR, Labour Inspection Convention,1947 (No.81), Observation, India, adopted 2010, published 100th ILC session, 2011).

—Committee of Experts, *Dissolution and suspension of organizations by administrative authority*, General Survey On The Fundamental Conventions Concerning Rights At Work In Light Of The ILO Declaration On Social Justice For A Fail Globalization, 2008, International Labour Conference, 101st Session, 2012, para. 162, accessed Feb. 3, 2016, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_174846.pdf.

—Collective Bargaining Recommendation, 1981 (No. 98).

—Committee on Freedom of Association, Case No. 2980 (El Salvador), Report No. 368.

—Consultation (Industrial and National Level Recomendation, 1960 (No. 113)

—Declaration on Fundamental Principles and Rights at Work, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998.

—Digest of decisions and principles of the Committee on Freedom of Association (CFA), International Labour Office, Geneva.

—Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by India on 3 June 1960.

—Equal Remuneration Convention, 1951 (No. 100), ratified by India on 25 September 1958.

—Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

—Forced Labour Convention, 1930 (No. 29); ratified by India on 30 November 1954.

—Global Employment Trends, 2013: Recovering From A Second Jobs dip(Geneva: ILO, 2013).

—Hours of Work (Industry) Convention, 1919 (No. 1), ratified by India on 14 July 1921.

—Indispensable Yet Unprotected: Working Conditions Of Indian Domestic Workers At Home And Abroad, 2015, at p. 38, accessed November 7, 2015, http://www.ilo.org/global/topics/forced-labour/publications/WCMS_378058/lang--en/index.htm.

—Labour Inspection Convention, 1947 (No. 81), ratified by India on April 7, 1949.

—Minimum Age Convention, 1973 (No. 138).

—Minimum Wage Fixing Convention, 1970 (No. 131).

—Night Work (Women) Convention, 1919 (No. 4), ratified by India on 14 July 1921.

—Night Work of Young Persons (Industry) Convention, 1919 (No. 6), ratified by India on 14 July 1921.

—Prohibition and Immediate Elimination of the Worst Forms of Child Labour Convention, 1999 (No. 182).

—Promotion of Cooperatives Recommendation, 2002 (No. 193)

—Protection of Wages Convention, 1949 (No. 95).

—Right to Organise and Collective Bargaining Convention, 1949 (No. 98). (4)

—Trafficking For Forced Labour: How To Monitor The Recruitment Of Migrant Workers, 2005, page 9-11, 21.

—Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152).

—Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by India on 27 February 1978.

—Workmens Compensation (Occupational Diseases) Convention, 1925 (No. 18), ratified by India on 30 September 1927.

International Trade Union Conference (ITUC), *Frozen in time: Gender pay gap unchanged for 10 years*, accessed September 24, 2015, http://www.ituc-csi.org/IMG/pdf/pay_gap_en_final.pdf.

—Internationally Recognized Core Labour Standards In India: Report For The Wto General Council Review Of The Trade Policies Of India. Geneva, ITUC, 2007), pp. 8, 12).

Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, No. 30 of 1979 (11 June 1979).

Interview with Anannya Bhattacharjee, Garment and Allied Workers Union, March 15, 2015.

Iron Ore Mines Manganese Ore Mines and Chrome Ore Mines Labour Welfare Act, 1976, No. 61 of 1976 (10 April 1976).

Sanjay Jog, Maharashtra govt plans to amend labour laws, April 28, 2015, Business Standard, http://www.business-standard.com/article/economy-policy/maharashtra-govt-plans-to-amend-labour-laws-115042700190_1.html.

C.K. Johri, *Industrialism and Industrial Relations in India: The Task Ahead*, 25 Indian J. Of Indus. Rel. No. 3, 230 (1990).

Kairbetta Estate, Kotagiri v. Rajamanicakam and others, LLJ, 1960(2) S.C.

Arne L. Kalleberg, *Precarious Work, Insecure Work: Employment Relations in Transition*, 74 American Sociological Rev. (2009), 2.

Arne L. Kalleberg and Kevin Hewison, *Precarious Work and the Challenge for Asia*, 57 American Behavioral Scientist, no. 3, 271-88 (2013).

Van D. Kennedy, *The Sources and Evolution of Indian Labour Relations Policy,* 1 Indian J. of Indus. Rel., No. 1 (1965).

Kesavananda Bharti Sripadagalvaru v. State of Kerala, AIR 1973 SC 1461.

Coen Kompier, et.al.,Chapter 4: *Labour Markets: Exclusion from 'Decent Work*,' India Exclusion Report, 2013-2014 (Books for Change: Delhi, 2014).

Amitabh Kundu, *Urbanization and Urban Governance: Search for a Perspective beyond Neo-liberalism*, 38 Economic And Political Weekly, No. 29, 3079-87 (December 2002).

Anu Kurian, *Labor's love lost*, People Matters," Feb. 3, 2015, accessed Feb. 3, 2016 https://www.peoplematters.in/article/2015/02/03/employee-relations/labors-love-lost/10515.

Labour Laws (Exemption from Filing Returns and Maintaining Registers by Certain Establishments) Act, 2014, No. 33 of 2014 (10 December 2014).

Labour Laws (Exemption from Filing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

Limestone and Dolomite Mines Labour Welfare Fund Act, 1972, No. 62 of 1972 (2 December 1972).

(Mahatma Gandhi) National Rural Employment Guarantee Act, 2005, (MGNREGA) The Gazette of India, No. 42 of 2005.

Harsh Mander and Gitanjali Prasad, India Exclusion Report, 2013-2014 (Books for Change: Delhi, 2014).

Jayshree Mangubhai, ed., Benchmarking The Draft UN Principles And Guidelines On The Elimination Of (Caste)Discrimination Based On Work And Descent, India Report.

Maternity Benefit Act, 1961, No. 53 of 1961 (12 Dec. 1961).

V.K.R. Menon, *The Influence of International Labour Conventions on Indian Labour Legislation*, 73 INT'L LAB. REV. 551 (1956).

Mines Act, 1952, No. 35 of 1952 (15 March 1952).

Minimum Wages Act, 1948, No. 11 of 1948 (15 March 1948).

Ministry of Labour and Employment, Gazette Notification G.S.R.327(E), New Delhi, 29 April 2015.

—*Note of Demand, 2012-13*, Expenditure Budget, Vol. 2, http://indiabudget.nic.in.

—notification dated 21st March 2015, reference No. Z-13025/6/2015-LR Cell (announcing a call for comments/suggestions on a Draft Labour Code on Wages).(2)

—notification dated 27th April 2015, reference no. Z-20025/26/2015-LRC (announcing a call for comments/suggestions on a Draft Labour Code on Industrial Relations).

Richard Mitchell, *The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development*, Asian J. Of L. And Soc'y, 413-453 (2014).

Nagaraj, *Fall in Organised Manufacturing Employment: A Brief Note*, Economic And Political Weekly, July 24, 2004,
p. 3387-3390).

A. Namala, Dismantling Descent-based Discrimination: Report On Dalits' Access To Rights. (New Delhi: NCDHR and IIDS, 2006).

Prashant K. Nanda, *Central govt one of the biggest users of temps and contract workers in India*, Livemint, November 24, 2015, accessed February

9, 2016, http://www.livemint.com/Industry/D2PEAR2RL7eZTX47kjp7UM/Meet-one-of-the-biggest-user-of-temps-and-contract-workers-i.html.

Subhalakshmi Nandi and Rebecca Reichmann Tavares, *Making the NREGA more Gender Responsive: Reflections from the Field*, Policy In Focus: Protagonist Women, No. 27, March 2014.

National Legal Services Authority v. Union of India, Writ Petition (Civil) No. 604 of 2013 (2014)

National Sample Survey Organization, *Key Indicators of Employment and Unemployment in India*, 2011-2012

—*Employment and Unemployment among Social Groups in India*, NSS 66th Round, 2009-10 (New Delhi: MoSPI, 2012).

Nazdeek, *Visualising a living wage for Assam's tea workers*, accessed 24 September 2015, http://nazdeek.org/visualising-a-living-wage-for-assams-tea-workers/

New Gujarat labour bill passed, set to give govt more control over industries, Indian Express, February 26, 2015, http://indianexpress.com/article/cities/ahmedabad/new-gujarat-labour-bill-passed-set-to-give-govt-more-control-over-industries/

N.M. Wadia Charitable Hospitals v. State of Maharashtra, (1993) IIILLJ 536 Bom.

Olga Tellis v. Bombay Municipal Corp, AIR 1986 SC 180.

One year after "third gender" recognized in India, parliament considers affirmative action measures, Free Speech Radio News, July 10, 2015, accessed February 9, 2016, http://fsrn.org/2015/07/one-year-after-third-gender-recognized-in-india-parliament-considers-affirmative-action-measures/

Papnasam Labour Union v. Madura Coats Ltd., 1995 AIR 2200.

T.S. Papola and Jesim Pais, *Debate on Labour Market Reforms in India: A Case of Misplaced Focus*, Indian J. Of Labour Economics, Vol. 50, No. 2 (2007).

Payment of Bonus Act, 1965, No. 21 of 1965 (25 September 1965).

Payment of Wages Act, 1936, No. 4 of 1936 (23 April 1936).

People's Union for Democratic Righst v. Union of India, 1982 LLJ 454 SC (1982).

V. Spike Peterson, *Whose Rights? A Critique of the "Givens" in Human Rights Discourse*," 15 Alternatives: Global, Local, Political, No. 3, 303 (1990).

Pamela Phillipose, *India's Home-Based Workers Fall Through Safety Net*, Women's eNews, August 30, 2011, accessed February 9, 2016, http://womensenews.org/2011/08/indias-home-based-workers-fall-through-safety-net/.

Adam Pitman, *Expect Labor Reforms at the State Level in 2015*, INDIA BRIEFING, http://www.india-briefing.com/news/india-labour-laws-10010.html/.

Plantations Labour Act, 1951, No. 69 of 1951 (2 November 1951).

Surendra Pratap, *The Political Economy of Labour Law Reforms in India, Part I*, Centre for Workers Education, Delhi, accessed September 18, 2015, http://sanhati.com/excerpted/12159/.

—The Political Economy of *Labour Law Reforms in India, Part III*, Centre for Workers Education, Delhi, accessed February 9, 2016, https://workerscentre.files.wordpress.com/2015/05/the-political-economy-of-labour-law-reforms-in-india-iii.pdf.

Radhashyam Sharma v. Post Master General, Nagpur, AIR 1965 S.C.

T.K. Rajalakshmi, *Labour under attack*, Frontline, October 31, 2014.

—Loaded against labour: The report of the Second National Commission on Labour draws flak from across the political spectrum for its attempt to dilute labour rights citing a changed economic situation, Frontline, August 3-16, 2002: http://www.frontline.in/static/html/fl1916/19160990.htm.

Rajya Sabha, Committee on Petitions, Hundred and Twenty-Ninth Report, On the Petitions Praying for Instituionalization of Integrated Child Development Services (ICDS) Scheme by Converting it Into a Regular Department Under the Ministry of Human Resource Development and Regularization of Services of Anganwadi Workers/Helpers as Employees of that Department, 17 May, 2006 (C.S. II-129).

Usha Ramanathan, *Through the Looking Glass*, Seminar 669, May 1, 2015.

E.M. Rao, *The Rise and Fall of Indian Trade Unions: A Legislative and Judicial Perspective*, 42 Indian J. Of Indus rel, No. 4, 678-695 (1993).

B.P. Rath and B.B. Das, *Right to Strike an Analysis*, 41 Indian J. Of Indus. Rel., No. 2 (2005).

Report Of The National Workshop On Women's Unpaid Work (Draft for circulation) on file with author.

Biren Roy, *Apathy over Minimum Wages*, 32 Economic and Political Weekly, No. 48 (1997), 3050-51.

Anamitra *Roychowdhury, Recent Changes in Labour Laws and their implications for the working class*, Sanhati, January 13, 2015: http://sanhati.com/excerpted/12592/(1)

Catherine Saget, *Fixing minimum wage levels in developing countries: common failures and remedies*, 147 International Labour Review, No.1 (2008).

Sanjit Roy v. State of Rajasthan, 1983 AIR 328.

Secretary, State of Karnataka v. Umadevi, Appeal (civil) 3595-3612 of 1999 (Supreme Court).

Ajai Seevatsan, *Data show labour unrest is not the problem*, The Hindu, Nov. 1, 2014, accessed Feb. 3. 2016, http://www.thehindu.com/news/cities/chennai/data-show-labour-unrest-is-not-the-problem/article6553308.ece.

Self-Employed Women's Association (SEWA), Home-Based Workers In India: Need For Protection Under Law, wiego Law and Informality Resources (Cambridge, MA, USA: WIEGO, 2014).

A. Sengupta, K.P. Kannan and G. Raveendran, *India's Common People: Who are They, How Many are They and How do they Live?* 2008 Economic And Political Weekly 43(II).

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013 (22 April 2013).

Yogima Sharma, *Fostering equality: Government may limit portion of contract workers in companies to 50%*, Economic Times, September 8, 2015, accessed, February 9, 2016, http://articles.economictimes.indiatimes.com/2015-09-08/news/66326646_1_contract-workers-contract-labour-regular-workers (176)

Ajit Singh and Ann Zammit, *Labour Standards and the 'Race to the Bottom'*: Rethinking Globalization And Workers' Rights From Developmental And Solidaristic Perspectives, 20 Oxford Review of Economic Policy, No. 1, (2004).

Jaivir Singh, *Incentives and Judicially Determined Terms of Employment in India: Endemic Trade-Off between Justice and Efficiency*, Economic And Political Weekly (2003).

Prabhat Singh, *Higher productivity equals higher wages? Not for the Indian industrial worker: real wages have grown at an average 1 percent annually between 1983 and 2013*, Livemint, January 22, 2015, accessed February 9, 2016, http://www.livemint.com/Opinion/Vxmd5HHO8qeLuqYUiobbpM/Higher-productivity-equals-higher-wages-Not-for-the-Indian.html.

Society for Labour and Development, The empty Promise Of Freedom Of Association: A Study Of Anti-Union Practices In Haryana (2015).

J.S. Sodhi, *Labour Law Reform in India*, Indian Journal Of Industrial Relations, July 2014, Vol. 50 Issue 1, p. 100-117, at 102 (citing Manmohan Singh at the ILC 40th Session).

—*New Economic Policies and Their Impact on Industrial Relations*, 29 Indian J. Of Indus. Rel. No. 1, 31-54 (1993).

Special Economic Zones Act, 2005, No. 28 of 2005 (23 June 2005).

V. Sridhar, *The curse of cheap labour: A society that systematically shortchanges its workforce will have to pay dearly*, Frontline, October 29, 2014, accessed online November 1, 2014: http://www.frontline.in/cover-story/the-curse-of-cheap-labour/article6540760.ece?homepage=true&css=print.

Ravi Srivastava, *Bonded Labour in India: its Incidence and Pattern*, Working Paper for Work in Freedom, Special Action Programme to Combat Forced Labour, (Geneva: International Labour Office, 2005).

—*Labour Migration, Inequality and Development Dynamics in India: An Introduction*, 54 Indian J. Of Lab. Econ.No. 3 (2011).

K.R. Shyam Sundar, *Emerging Trends in Employment Relations in India*, 45 Indian J. Of Indus. Rel., No. 4, 585, 586 (2010).

—"Industrial Relations in India- Working Towards a Possible Framework for the Future," unpublished paper presented at International Labour Organization Bureau for Workers' Activities (ACTRAV) & Centre for Informal Sector and Labour Studies, Jawaharlal Nehru University (JNU) National Trade Union Conference on Labour Law Reform, Industrial Relations and Industry Development, June 29, 2015 (paper on file with author).

—*Trade Unions and the New Challenges: One Step Forward and Two Steps Backward*, 49 Indian J. Of Lab. Econ., No. 4, 904 (2006).

Supreme Court, *Guidelines to be Followed for Entertaining Letters/Petitions Received by it as PIL*, December 1, 1988.

Steel Authority of India Ltd. v. National Union Waterfront Workers, Appeal (civil) 4263 of 2006 (Supreme Court).

C.P. Thakur, *Labour Policy and Legal Framework in India: A Review, Institute for Studies in Industrial Development*, New Delhi (2007).

Trade Disputes Act, 1929, No. 7 of 1929 (8 May 1929).

Trade Union Act, 1926, No. 16 of 1926 (25 March 1926).

Shashikant Trivedi, *MP Agrees to Amend 20 Labour Laws*, Business Standard, 23 September2014.

UCO Bank Employees Association v. Union of India, Madras High Court, W.A. No. 2893 of 2002, 29 July, 2008.

UN Women, Progress Of The Worlds Women 2015-16: Transforming Economies, Realizing Rights (2016).

United Nations in India, *About Domestic Workers*, accessed February 9, 2016, http://in.one.un.org/page/rights-for-domestic-workers.

United Nations Office of the High Commissioner, *Unpaid work, poverty and women's human rights*, accessed February 11, 2016, http://www.ohchr.org/EN/Issues/Poverty/Pages/UnpaidWork.aspx.

United Nations Population Division, Department of Economic and Social Affairs, World Urbanization Prospects: The 2014 Revision, Highlights (2014).

Unorganized Workers' Social Security Act, 2008, No. 33 of 2008 (30 December 2008).

Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

Women in Informal Employment Globalizing and Organizing, Home-Based Workers, accessed on February 9, 2016, http://wiego.org/informal-economy/occupational-groups/home-based-workers.

Workmen of Meenakshi Mills v. Meenakshi Mills, 1994 AIR 2696.

Workmen Represented by Secretary v. Management of Reptakos Brett, 1992 AIR 504.

Workmen's Compensation Act, 1923, No. 8 of 1923 (5 March 1923).

Anumeha Yadav, *There's a wage crisis in Delhi's factories—and the Modi government's new labour laws won't help*, Scroll.In, June 22, 2015, accessed February 9, 2016 http://scroll.in/article/732336/theres-a-wage-crisis-in-delhis-factories-and-the-modi-governments-new-labour-laws-wont-help.

—*Workers get more militant as space for unionization shrinks*, Scroll.In, June 24, 2015, http://scroll.in/article/736208/workers-get-more-militant-as-space-for-unionisation-shrinks.

India's Labour Law Changes

Toward advancing principles of rights, inclusion and employment security

The proposed labour law changes in India begin against a backdrop of limited protection for individual and collective rights for the vast majority of workers— principles that have governed labour regulation in India from pre-independence British colonial rule to the present. Since the 1920's when India first recognized trade unions, the central government has maintained strict legislative control over collective rights. Although workers' rights progressively expanded in coverage post-independence, they also remained extremely limited in their application—including mostly industrial workers and therefore excluding the vast majority of workers in India from protection. The reach of workplace protections, furthermore, has been progressively circumscribed since the 1990s as an increasing number of workers are pushed into the unorganized sector workforce.

As detailed in this report, proposed labour law changes aim to further increase workforce flexibility, decrease the bargaining authority of trade unions and diminish the reach of India's state labour regulatory apparatus. These changes promise to push an increasing number of workers into precarious work—increasing economic inequality, insecurity and instability among workers.

Economic development should be undertaken to improve the lives of people, families and communities. These principles are at the core of India's constitutional and international commitments. This publication has been brought out with the hope that it contributes to an engagement with proposed changes through an inclusionary process that foregrounds constitutional and international human rights, common to organized, unorganized and self-employed workers.

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