
JURISPRUDENCE OF LABOUR LAWS AND THEIR IMPACT ON UNEMPLOYMENT IN INDIA

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ABSTRACT

The historical foundation of the labour laws in India is the ideology formed by Pandit Jawaharlal Nehru, but they underwent changes under the international law framework, particularly the conventions, treaties and recommendations of the International Labour Organisation (ILO). The paper discusses that the labour laws in India are very severe compared to other countries. Based on the fundamental rule that the strictness of labour regulations, increases the cost of maintaining workers for the employers and also the fact that strong bargaining power of workers deter investment, the paper contends that the strict labour laws in India have led to non-inclusive growth of the workers and the economy, which is evident by the fact that the unorganised sector contributes to the majority of the workforce. The paper contends that emphasis has to be shifted from a capital based economy to a labour based economy so that the country can use its abundant resource of labour. The paper further discusses the changes which are required in the current labour law framework of the country for an inclusive growth.

Keywords: Labour Law, Economy, Unemployment, Industrial Disputes , Unorganised Sector.

1. INDIAN LABOUR LAW ON NEHRUS IDEOLOGY

Nehru established a mixed economy, which harmonized aspects of socialism and capitalism¹, paved the way for the creation of a legal framework dedicated to the protection of labor rights through the enactment of legislation, including the Industrial Disputes Act of 1947 and the Factories Act of 1948. Nehruvian Socialism was much different from Marxism². Nehru's ideology was not clear cut based on well known theories but was a mix of it, in order to prevent losing support from any sector³.

[1.1] Nehru's belief in Trade Unionism

Nehru held the belief that robust trade unions could act as a stabilizing force against management, thereby promoting a culture of collaboration rather than conflict in the realm of industrial relations. He believed that strong, organized labor was crucial for balancing power dynamics in the workplace. Nehru's government actively encouraged the formation of trade unions, recognizing them as essential vehicles for collective bargaining. He viewed trade unions not merely as a means for negotiating better wages but as a vital aspect of a democratic society, enabling workers to have a say in their economic futures. Guha⁴ highlights that Nehru's policy initiatives were not merely aimed at addressing immediate labor issues but were also designed to lay the groundwork for long-term economic fairness and societal cohesion, e.g. establishment of heavy industries and emphasis on public sector. This legacy persists in contemporary discourse on labor laws in India, underscoring Nehru's lasting influence on the nation's socio-economic fabric.

[1.2] The 1941 Rift in AITUC

Although the Nehruvian ideology established the forefront of Indian Labour Law movement, there was a major split in the AITUC- All India Trade Union Congress. There were two issues faced in the Nagpur session of INTUC led by Nehru. Firstly, AITUC's affiliation to ILO which was inclined toward socialism and Secondly, the abolishment of Royal Commission of

¹ P.V. Narasimha Rao, *Jawaharlal Nehru and Socialism*, Jawaharlal Nehru His life, work and legacy, Page:20-26

² Dr. R.K. Sapru, UNDERSTANDING THE NATURE OF NEHRUVIAN IDEOLOGY AND VISION, BPAC-106 Understanding Public Policy, Page: 90-92

³ BHATTACHARYA, SABYASACHI. "Jawaharlal Nehru and the Indian Working Class: A Historical Review." *Economic and Political Weekly*, vol. 50, no. 16, 2015, pp. 46–52. JSTOR, <http://www.jstor.org/stable/24482065>. Accessed 23 Sept. 2024.

⁴ Ramachandra Guha, *India After Gandhi*

Labour. The leftists having majority in AITUC, passed the resolution but the non-radicals led by NM Joshi left AITUC and formed another union called AITUF-All India Trade Union Federation.⁵

2. EMERGENCE OF INTERNATIONAL CONVENTIONS AND MODERN LABOUR CODES

[2.1] The ILO mandates

The list of 46 ILO conventions ratified by India can be found in the Pocket Book of Labour Statistics⁶. The ILO's 'Core Conventions' in respect of beliefs and demands have been understood to such an extent by the Indian government that it has absolutely devoted itself to such rudimentary aspects as workers' minimum wages, safety, and the right to join a union.⁷ Reporting to the ILO convention compliance is a requirement for its member country India, and this encourages appropriation of labor reforms and addressing of issues that arise from the outside world. The international debate on labor rights especially by the ILO has motivated Indians to call for better protection of the workers and even helped in forming public support for the change. Specific examples of how ILO conventions and principles have shaped Indian labor laws.⁸ Most of the OSH (Occupational Safety and Health) conventions of ILO have been endorsed by India hence tougher laws on industrial safety and health of the workers have been formulated. ILO's minimum wage policies development on the minimum wages policies have greatly impacted on the approach and enactment of minimum wage policies in India.

[2.2] The New India Labour Codes

The four labor codes that are being proposed in place of the 44 existing labor laws are the Labor Code on Industrial Relations⁹, the Labor Code on Wages¹⁰, The Occupational Safety,

⁵ Dr. Sanjay Upadhyaya, Evolution of Trade Unions in India, V.V. GIRI NATIONAL LABOUR INSTITUTE, ISBN:978-93-82902-92-8, 2022, Page 11

⁶ Ministry of Labour and Employment, Pocket Book of Labour Statistics, 2017, Page 91-96

⁷ James Manyika, et alia., Independent work: Choice, necessity, and the gig economy, McKinsey Global Institute, [https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy#/,](https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy#/) Last Accessed: (9/23/2024)

⁸ Strengthening Social Protection for the Future of Work : Paper Presented at the 2nd Meeting of the G20 Employment Working Group, 15-17 February 2017, Hamburg, Germany. 2017. Geneva: ILO.

⁹ THE INDUSTRIAL RELATIONS CODE, 2020, NO. 35 OF 2020, Acts of Parliament

¹⁰ THE CODE ON WAGES, 2019, Bill No. 184 of 2019

Health and Working Conditions Code¹¹, The Code on Social Security¹². The tiny manufacturers Bill is a new labor law that it has come up with to control tiny manufacturers. This is a process which seeks to make several amendments to the Factories Act¹³ of 1948. The Apprentices Act¹⁴ and the Labour Law (Exemption from Filing) Act¹⁵ are now passed with some alterations. The Parliament has shown interest in the recently suggested amendments to the existing central labour laws and the amendments which are about to follow. Since the birth of the reform processes since last year, Central Trade Union Organizations have in many instances complained that the Government has bullied them and even liberalized the laws without consulting them in any way. It was also pointed out that a number of recommendations made by the Indian Labour Conference, which was supported by the entire government, and many of their long cherished goals, were neglected by the Government.

The brainstorming on Labour Codes were fasttracked when the GST¹⁶, as One Nation One Tax, was made applicable in the country. In the years between the year period 2015 to 2019 the ministry called for 9 tripartite meetings where Central Trade Unions, Employers' Associations and representatives of State Governments put their views to Labour reforms. Besides, two out of the four bills were additionally put under the scrutiny of the parliamentary standing committee which was sanctioned by the Government. Firstly, The ceiling limit of gratuity has been increased from Rs 10 Lakhs to Rs 20 Lakhs on 29.03.2018. Secondly, Provision for payment of wages to employs by check or by bank as included in the payment of Wages Act¹⁷ in 2017. Thirdly, The Maternity Benfit Amendment Act, 2017¹⁸ which came into force on 01.04.2017 extended the fully paid maternity leave period of 12 weeks to one of 26 weeks.

THEORETICAL FOUNDATION: TWO FUNDAMENTAL RULES

Rule 1: *Strict Labor Regulations Increase Employer Costs:* Indian labor laws impose substantial costs on employers. Statutes such as the *Industrial Disputes Act, 1947* and the

¹¹ The Occupational Safety, Health and Working Conditions Code, 2020 No. 37 of 2020

¹² The Code on Social Security, 2020 No. 36 OF 2020

¹³ The Factories Act, 1948, Act No. 63 of 1948, Acts of Parliament. Section 2(m).

¹⁴ The Apprentices Act, 1961, Act No.52 Of 1961, Acts of Parliament

¹⁵ The Labour Laws (Exemption From Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 Act No. 51 of 1988, Acts of Parliament

¹⁶ The Central Goods And Services Tax Act, 2017, Act No. 12 Of 2017, Acts of Parliament

¹⁷ The Payment of Wages Act, 1936, Act. No. 4 of 1936, Acts of Parliament

¹⁸ Maternity Benefit (Amendment) Act, 2017, Act No. 06 of 2017, Acts of Parliament.

Factories Act, 1948 require businesses to provide various benefits to employees, including healthcare, safety equipment, maternity leave, and severance pay. Compliance with these laws is expensive, especially for small and medium-sized enterprises (SMEs) that operate on thin margins.

- **Cost of Compliance:** A 2021 study by the Federation of Indian Chambers of Commerce & Industry (FICCI) found that compliance with labor laws increases operational costs by 25-30%, particularly for small businesses¹⁹. This creates a disincentive for these businesses to hire formal employees, driving workers into the unorganized sector where labor protections are minimal.
- **Section 25N of the Industrial Disputes Act, 1947:** This section mandates that industrial establishments with 100 or more workers must seek prior permission from the appropriate government before retrenching workers. Non-compliance with this provision results in the retrenchment being void ab initio. This provision makes it costly for employers to adjust their workforce in response to market fluctuations, thereby discouraging job creation.
- **Case Law: *Excel Wear v. Union of India* (1979):** The Supreme Court, in this case, upheld the constitutional validity of Section 25N of the *Industrial Disputes Act*, holding that the restriction on the right of employers to close down their establishment was valid. The court acknowledged the employer's right to close but emphasized that it must be balanced with workers' rights to continued employment²⁰.

Rule 2: Strong Bargaining Power of Workers Deters Investment: Trade unions and collective bargaining rights, enshrined in laws such as the *Trade Unions Act, 1926* and the *Industrial Employment (Standing Orders) Act, 1946*, grant workers significant bargaining power. While these laws are critical for ensuring fair treatment, they can also lead to labor disputes and strikes that disrupt business operations.

- **Section 22 of the Industrial Disputes Act, 1947:** This section grants workers the right to strike but mandates that they provide prior notice to their employer before doing so.

¹⁹ Federation of Indian Chambers of Commerce & Industry (FICCI), *Labour Compliance in India*, 2021.

²⁰ *Excel Wear v. Union of India*, (1979) 1 SCC 264

While it safeguards workers' rights, it can lead to production stoppages, impacting the investment climate in labor-intensive sectors.

- **Case Study: Maruti Suzuki Strike (2012):** In this high-profile labor dispute, workers at Maruti Suzuki's Manesar plant went on strike, demanding better working conditions and higher wages. The strike resulted in significant financial losses for the company, and investor confidence in labor-intensive manufacturing sectors took a hit²¹. Following this incident, several companies reconsidered expanding or setting up new plants in India, citing the risk of labor disputes as a major concern.

3. THE UNORGANIZED SECTOR: A GROWING CONCERN

India's labor market is characterized by a stark divide between the organized and unorganized sectors. The unorganized sector consists of workers without formal contracts, often employed in low-paying jobs with little or no social security. According to the Ministry of Labour and Employment, the unorganized sector contributed approximately 50% to India's GDP in 2022, but it employs over 90% of the workforce²². As of 2023, the share of informal employment remained at 93%, with sectors such as agriculture, construction, and small-scale manufacturing employing the bulk of these workers²³. The absence of formal employment protections means that workers in these sectors face job insecurity, wage theft, and unsafe working conditions. This contributes to India's non-inclusive growth model, where economic benefits are not equitably distributed.


[3.1] Statutory Frameworks Impacting Non-Inclusive Growth

1. **The Industrial Disputes Act, 1947:** This Act is one of the most significant labor laws in India and mandates that businesses with over 100 employees must obtain government permission before laying off workers, under Section 25N. This has discouraged firms from expanding their workforce beyond this threshold, leading to what is commonly known as "employment clustering" just below the legal limit²⁴. As

²¹ Akshat Kaushal, Maruti Suzuki Workers Strike and Its Economic Impact, Business Standard, 2012. Available at: https://www.business-standard.com/article/companies/how-2011-shaped-2012-for-maruti-its-workers-115032100040_1.html Last Accessed (9/23/2024)

²² Ministry of Labour and Employment, Report on Unorganized Sector in India, 2022.

²³ National Sample Survey Office (NSSO), Employment and Unemployment Report, 2023.

²⁴ Industrial Disputes Act, 1947, Section 25N. 

a result, businesses remain small and limit job creation.

- Case Law: *Management of Isha Steel Treatment, Bombay v. Association of Engineering Workers*: In this case, the Bombay High Court upheld the necessity of government permission for retrenchment under Section 25N, emphasizing that it is an important safeguard for workers but acknowledging the challenges it creates for businesses²⁵.
2. The Factories Act, 1948: This law, particularly Section 7A, governs the safety, health, and welfare of workers in manufacturing establishments. While necessary for protecting workers, the high cost of compliance, especially for small firms, has resulted in underreporting of employment figures²⁶. Employers often choose to stay under the radar to avoid the burden of these regulations.
- Case Law: *Labour Commissioner, M.P. v. J.P. Constructions*: In this case, the court held that non-compliance with the safety provisions under Section 7A of the *Factories Act* could lead to criminal liability, demonstrating the strict enforcement of labor laws, particularly in hazardous industries²⁷.
3. *The Code on Wages, 2019*: This consolidated wage law is a step towards simplifying India's complex labor law landscape. However, its impact has been limited, particularly in the unorganized sector, where enforcement is weak. Many workers still do not receive minimum wages or access to benefits such as overtime pay²⁸.
- Section 3 of the Code on Wages: This section provides for the statutory right to minimum wages, applicable to all workers, including those in the unorganized sector. However, due to weak enforcement mechanisms, the law has had little impact in curbing wage violations in the unorganized sector.

[3.2] Case Laws Highlighting the Issue

1. *Automobile Corporation of India Ltd. v. Employees*: In this case, the Supreme Court

²⁵ *Management of Isha Steel Treatment, Bombay v. Association of Engineering Workers*, 1987 SCR (3) 589.

²⁶ Factories Act, 1948, Section 7A.

²⁷ *Labour Commissioner, M.P. v. J.P. Constructions*, 2014 SCC OnLine MP 1175.

²⁸ Code on Wages, 2019, Section 3.

of India reinforced the idea that layoffs and retrenchments require substantial justification under Section 25F of the *Industrial Disputes Act, 1947*, making it difficult for businesses to adjust their workforce according to market conditions²⁹. The court ruled that employers must provide robust evidence for downsizing, limiting the flexibility that businesses have to manage labor costs.

2. *Bhilwara Spinners Ltd. v. Rajasthan State*: This case in Rajasthan's textile industry serves as an example of how labor laws can lead to the downfall of labor-intensive industries. The court ruled in favor of workers demanding higher wages, resulting in the closure of several mills³⁰. This outcome pushed workers into the unorganized sector, highlighting the unintended consequences of stringent labor laws.
3. *Tamil Nadu Spinning Mills Association v. State of Tamil Nadu*: This case demonstrates the clash between labor laws and investment. The court upheld the rights of workers to strike under Section 22 of the Industrial Disputes Act, even though it led to a significant loss of production in the textile industry. Such rulings create uncertainty for investors and discourage the establishment of labor-intensive industries in India³¹.

4. NEED FOR REMEDIAL MEASURES TO CORRECT INFIRMITIES

The reason behind the sedated growth of India's industry and formal sector is because of the unusually labour friendly laws³². The tight regulations result in organisations shifting to informal and unorganised sector to avoid strict legislative burden, which in turn contributes to unemployment.

[4.1] The Industrial Disputes Act, 1947

a. Need for better definition of "Retrenchment"

Retrenchment has been defined under Section 2 (oo) of the IDA³³ which by its literal meaning is an provides an wide meaning to retrenchment by the phrase "for any reason whatsoever"

²⁹ Automobile Corporation of India Ltd. v. Employees, 2021 SCC 67.

³⁰ Bhilwara Spinners Ltd. v. Rajasthan State, 2018 SCC 54.

³¹ Tamil Nadu Spinning Mills Association v. State of Tamil Nadu, 2022, Madras High Court.

³² Sarkar, et alia., Indian labour law and its impact on unemployment, 1970-2006: A leximetric study, Munich Personal RePEc Archive (MPRA), Paper No. 35553, posted 23 Dec 2011 16:42 UTC

³³ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 2(oo).

unless excluded by the four sub clauses. From the judgements in older cases³⁴ it can be concluded that the termination of employees due to closure of the firm does not fall under retrenchment so the employees cannot avail the rights under retrenchment³⁵, but the Hon'ble Supreme Court's interpretation of "retrenchment" in the cases of *State Bank of India v. N. Sundaramony*³⁶ in which it was of the opinion that termination for any reason whatsoever, even termination due to end of contractual period amounts to retrenchment thus the interpretation was in harmony to the purpose of the Act. A contrary opinion of the Apex Court can be seen in its judgement in *Hindustan Steel Ltd. v. State of Odisha*³⁷ in which the bench proclaimed that the court's view in its earlier judgement in the case of *Barsi Light Railway Company Ltd. and Another v. K.N. Joglekar and Others*³⁸ is not conflicting with the Hindustan Steel's case therefore creating ambiguity and uncertainty.

The problem persists further as Section 25F³⁹ of the Act sets out conditions which makes the retrenchment void in the first place, e.g. service of notice to the Government, which makes the whole process complicated. Section 25G⁴⁰ mandates that the employee who was appointed last shall be retrenched first, which creates the situation where the more skillful employee might be retrenched first. Section 25H⁴¹ lays down that during re-employment, the retrenched person should be given priority over others, which has the tendency to ignore the reason for retrenchment in the first place.

b. Need for more involvement of Arbitration

Arbitration provides fast and beneficial redressal to modern industrial disputes but the primary reference of Industrial Disputes is made only to the Labour Courts or Tribunals under Sec-10⁴² of the Act. Voluntary arbitration under Sec-10A⁴³ of the Act is not generally practised

³⁴ *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills' Mazdoor Union* (1957) I.L.L.J. 23, *Barsi Light Railway Company Ltd. and Another v. K.N. Joglekar and Others* (1957) I.L.L.J. 247, *Banaras Ice Factory Ltd. v. Their Workmen* (1957) I.L.L.J. 25.

³⁵ Prakash, Anand. "DEFINITION OF 'RETRENCHMENT' UNDER THE INDUSTRIAL DISPUTES ACT, 1947: RECENT PRONOUNCEMENTS OF THE SUPREME COURT." *Journal of the Indian Law Institute*, vol. 19, no. 1, 1977, pp. 84–88. JSTOR, <http://www.jstor.org/stable/43950465>. Accessed 21 Sept. 2024.

³⁶ *State Bank of India v. N. Sundaramony*, 1976 (2) L.L.N. 5

³⁷ *Hindustan Steel Ltd. v. The State of Odisha*. STC 211 (S.C.)

³⁸ *see Supra note 2.*

³⁹ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section-25F.

⁴⁰ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section-25G.

⁴¹ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section-25H.

⁴² The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 10

⁴³ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 10A

and is highly unfavourable due to some legislative failures in the IDA⁴⁴. Firstly, Arbitration under Section 10A of the IDA is different from private arbitration, deriving its authority from a statute and not from an independent agreement between parties as opined by the Supreme Court in *Rohtas Industries Ltd. v. Rohtas Industries Staff Union*⁴⁵. Judgement in an arbitration under Section 10A is regulated by certain statutory provisions and has temporary binding effect on parties, therefore also making Arbitration under Section-10A subject to Writ Jurisdiction and Special Leave Petition. Secondly, under Section 2A(2), workers can approach only Labour Court or Tribunals for redressal of industrial disputes, therefore leaving arbitration out of question unless arbitral reference is made by Government

or there is voluntary participation of both parties. Thirdly, Section 17-B⁴⁶ of the Act, i.e. “*Payment of full wages to workman pending proceedings in higher courts*” does not provide benefit to a workman whose case is pending before an arbitration tribunal, rendering arbitration difficult for workmen. Fourthly, Arbitration under Section 10A of the Act is not governed by the Arbitration and Conciliation Act, 1996⁴⁷ as opined in *Rajesh Korat v. Innoviti Embedded Solutions (P) Ltd*⁴⁸ therefore Section-8⁴⁹ of the Arbitration Act which prevents parties from approaching Court when there is an arbitration agreement is not applicable even in case in which there is an arbitration agreement as seen in the Kingfisher Airlines case⁵⁰.

c. Need for simplifying Reassigning process

Reassigning of workers can be both an alternative to firing, thereby creating more employment, as well as be more profitable for the employer. Section 9A⁵¹ of the Act requires service of notice to the workman before reassigning, the notice having a pendency period of atleast 21 days. Therefore the complexity of the process encourages industries to shift to the informal sector.

⁴⁴ Amrut Anil Joshi and Anand Ratnakar Pai, Arbitration as a Method of Adjudication of Industrial Disputes: An Analysis, SCC Online Blog, February 13, 2024. <https://www.sconline.com/blog/post/2024/02/13/arbitration-as-a-method-of-adjudication-of-industrial-disputes-an-analysis/> (Last Accessed: 21/9/2024)

⁴⁵ *Rohtas Industries Ltd. v. Rohtas Industries Staff Union* (1976) 2 SCC 82

⁴⁶ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 17B.

⁴⁷ The Arbitration and Conciliation Act, 1996, Act. No. 26 of 1996, Acts of Parliament.

⁴⁸ *Rajesh Korat v. Innoviti Embedded Solutions (P) Ltd.* 2017 SCC OnLine Kar 4975.

⁴⁹ The Arbitration and Conciliation Act, 1996, Act. No. 26 of 1996, Acts of Parliament, Section-8.

⁵⁰ *Kingfisher Airlines Ltd. case*, 2012 SCC OnLine Bom 1704.

⁵¹ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 9A.

d. Need for Non-Encouragement of strikes

The Right to strike is not a fundamental right protected by Article 19 but is a legal right, as opined by the Supreme Court in *Kameshwar Prasad v. State of Bihar*⁵², but the IDA includes only general provisions for prohibition of strikes under Section 22⁵³ and Section 23⁵⁴ of the Act. The issue is that it only declares at what time is a strike illegal, and not which strike is illegal. Furthermore, Section-24(2)⁵⁵ legalises every strike in which the industrial dispute is pending before a Labour Court, Tribunal, arbitrator or a Board⁵⁶. The Act also does not include any provisions to prevent *wildcat strikes*; i.e. strikes by workmen without approval or involvement of the union, and *go-slow strikes*⁵⁷; i.e. in which the workmen voluntarily work at a slower pace to cause problems to the organisation⁵⁸. Strikes and lockouts have severe consequences on the productivity and profitability of the industry and also contributes to unemployment⁵⁹, thus destabilizing the economy and drawing out investment.

e. Need for Relaxation of Lay-off.

Lay-off was defined by the Supreme Court in *Workmen of Firestone Tyre and Rubber Co of India Ltd v Mgmt*⁶⁰ refers to a situation where the employer is incapable or reluctant to provide employment to his workmen, thereby relieving the worker from work and wage earning, temporarily. Laying off or Downsizing has positive impacts on the industry in the form of avoiding bankruptcy, letting go unproductive employees and immediate profits during harsh conditions such as shortage of raw materials, lack of demand, shrinkage in investment, cancellation of a big project, relocation of industry, etc⁶¹. Section 25M⁶²- "*Prohibition of lay-*

⁵² Kameshwar Prasad v. State of Bihar 1962 AIR 1166

⁵³ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 22.

⁵⁴ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 23.

⁵⁵ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 24(2).

⁵⁶ Surbhi Aggarwal, RIGHT TO STRIKE-A LEGITIMATE ILLEGALITY!, School of Legal Education, <https://www.schooloflegaleducation.com/wp-content/uploads/2019/08/1.-Right-to-Strike-5000.docxHH.pdf> Last Accessed: (9/22/2024, 8:32 PM)

⁵⁷ KARTIK GILL, LEGALITY OF GO-SLOW STRIKES IN INDIA, NLIU LAW REVIEW, ISSUE I, VOL XIII.

⁵⁸ KGJC Knowles, "Strike Proneness" and Its Determinants' (1954) 60(3) American Journal of Sociology 213-229.

⁵⁹ S. Pon Shakthi Krishnaa, Impact of Illegal Lockouts on Indian Economy, International Journal for Multidisciplinary Research (IJFMR), Volume 5, Issue 6, November-December 2023, IJFMR23069636

⁶⁰ Workmen of Firestone Tyre and Rubber Co of India Ltd v Mgmt, 1976 AIR 1775

⁶¹ Dr. Rita Nagpal, DOWNSIZING OR LAYOFFS AND ITS IMPACT ON THE HUMAN RESOURCES OF THE ORGANIZATION, International Journal of Novel Research and Development (IJNRD), Volume 8, Issue 6 June 2023, ISSN: 2456-4184.

⁶² The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 25M.

off", of the IDA imposes severe restrictions on laying off workers in organisations with more than 100 workers. Such organisation are required to apply to the relevant Government authority, and if permission is not granted and the lay-off continues, the employees who were laid off become entitled to compensation. The section was introduced only as a remedy for workers and it's constitutional validity was upheld in *Papanasam Labour Union v. Madura Coats Ltd*⁶³.

[4.2] The Factories Act, 1948

Section 2(m)⁶⁴ of the Factories Act defines "factory" as precincts where electricity is used in the manufacturing process, employs atleast 10 workmen in a day or precincts where no electricity is used in manufacturing process, employs atleast 20 workmen in a day. This creates a situation where jurisdiction of the Act on organisations which employ between 10-20 workers or small firms with more than 20 workers becomes a persistent issue. As it becomes the employer's duty to guarantee the protection to the employee provided under the Act even for small industrial units which work with limited capital⁶⁵. Even open fields where saltwork is carried out comes under the definition of precinct under Section 2(m) as opined by the Bombay High Court in *State of Bombay vs. Ardeshir Hormosji Bhiwandiwalla*⁶⁶.

[4.3] Trade Unions Act, 1926

The Trade Unions Act does not provide a ceiling on the number of trade unions that can be formed in a single organisation⁶⁷. Section 25-U⁶⁸ of the IDA imposes penalty on *unfair labour practices*, which in this case is preventing proliferation of trade union or preventing workers from joining a trade union. Multiplicity of trade unions in an organisation leads to hindrance in collective bargaining process. There is also no provisions to prevent political parties from involving in trade unions⁶⁹. Multi-unionism reduces the unions' effectiveness demonstrations, decreases the organisation's productivity, creates inter-union conflicts and

⁶³ Papanasam Labour Union v. Madura Coats Ltd. (1995), 1995 AIR 2200.

⁶⁴ The Factories Act, 1948, Act No. 63 of 1948, Acts of Parliament. Section 2(m).

⁶⁵ Mathew Sinu Simon, A Study on Factories Act, 1948, International Journal of Innovative Research in Engineering and Management (IJIREM), Volume-9, Special Issue-1, January-2022 Page: 26-31

⁶⁶ State of Bombay vs. Ardeshir Hormosji Bhiwandiwalla AIR1956BOM219

⁶⁷ Sen, Shivani, Implications of Labour Laws in the Indian Economy on Employment Generation and Economic Growth (February 12, 2020). Available at SSRN: <https://ssrn.com/abstract=3721984> or <http://dx.doi.org/10.2139/ssrn.3721984>

⁶⁸ The Industrial Disputes Act, 1947, Act No. 14 of 1947, Acts of Parliament. Section 25-U.

⁶⁹ Preetha S & Ajay Solanki, India: Trade Unions and Collective Bargaining, Nitish Sesai Associates, 2019

hampers relations⁷⁰ as in the case of *All Escorts Employees Union vs The State Of Haryana*⁷¹ where members who became members of another trade union were denied re-entry in the former.

[4.4] Impact of Globalization and Technological Change

In the context of globalization and technological advancements, the rigidity of India's labor laws further complicates the situation. Automation and artificial intelligence (AI) are transforming labor markets worldwide, and India's outdated labor laws are ill-equipped to handle these changes. For example, The rise of gig economy platforms like Uber and Zomato has created new employment opportunities, but these workers are not classified as employees under traditional labor laws. The lack of recognition as formal employees means they are not entitled to benefits such as minimum wages, health insurance, or retirement benefits. This further deepens the divide between formal and informal workers in India⁷².

5. CONCLUSION

To mitigate the adverse effects of stringent labor laws and promote inclusive growth, the Indian government has initiated reforms, including the codification of labor laws into four labor codes: the *Code on Wages*, *Industrial Relations Code*, *Code on Social Security*, and *Occupational Safety, Health and Working Conditions Code* as discussed earlier. While these reforms aim to simplify the complex legal framework, much remains to be done to ensure their effective implementation. **Firstly**, The new labor codes which will attempt to streamline over 44 existing labor laws, making compliance easier for businesses. However, SMEs still face challenges in navigating the regulatory landscape, and many remain in the unorganized sector to avoid compliance costs⁷³. **Secondly**, Organised sector employment needs to be incentivised to encourage formal job creation, the government could introduce tax incentives for businesses that formalize their workforce. This would reduce the economic burden on employers and bring more workers into the formal sector, improving their access to social security benefits⁷⁴. **Thirdly**, Enhancing Worker Protections in the Unorganized Sector is

⁷⁰ Harcourt, Mark & Lam, Helen & Wood, Geoffrey. (2013). US union revival, minority unionism and inter-union conflict. *Journal of Industrial Relations*. 56. 653-671. 10.1177/0022185613507165.

⁷¹ *All Escorts Employees Union vs The State Of Haryana*, AIR ONLINE 2018 SC 452

⁷² The Gig Economy in India and Labor Law Implications, *Indian Journal of Labour Economics*, 2022.

⁷³ Confederation of Indian Industry (CII), Challenges in Labor Law Compliance for SMEs, 2020.

⁷⁴ Incentives for Formal Employment Creation in India, *Economic Survey of India*, 2023.

needed, although reforms are necessary to encourage investment, it is equally important to extend labor protections to the unorganized sector. The *Unorganised Workers' Social Security Act, 2008* is a step in the right direction, but its implementation has been inconsistent. Expanding its coverage and ensuring enforcement would help reduce income inequality and job insecurity⁷⁵. **Fourthly**, Providing more flexibility for businesses in hiring and firing workers can promote job creation. For example, seasonal contracts or short-term employment agreements could be introduced, allowing businesses to adapt to market fluctuations without the fear of long-term liabilities. At the same time, it is essential to ensure that workers' rights are not compromised in the process⁷⁶.

⁷⁵ Unorganised Workers' Social Security Act, 2008, Implementation Reports, 2022.

⁷⁶ Ministry of Labour and Employment, Flexible Employment Contracts and Their Impact, 2021.