

# Global Issues

## Labour Reforms in a Neo-liberal Setting: Lessons from India

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On 26 November 2020, ten central trade unions in India went on a nation-wide strike to protest against anti-working-class policies of the ruling Bhartiya Janata Party (BJP) government at the Centre. Their main grievances were directed towards the recently passed four labour codes and three farm laws, among others. In fact, farmers are currently holding a historic demonstration and have occupied the expressways near the nation's capital at Singhu, Tikri, Ghazipur and Palwal; they plan to march into the capital on 26 January 2021. It appears then, every section of the working population is opposing the economic policies of the government, which incidentally has resulted in low to negative output growth and an unprecedented surge in open unemployment rates. Although we shall briefly discuss the resistance emerging against the farm laws, our main concern in this article is about the political roots and implications of labour law changes.

### The Context of New Labour Laws

So what is the background to the changes in labour laws? Essentially, it springs from the neo-liberal thinking that promoting the interests of private capital (alongside withdrawal of the state from the policy arena) is the best way of managing the economy. Insofar as well-being of the people at large is concerned, it firmly believes in trickle-down economics and that “a rising tide lifts all boats”. These ideas have dominated the Indian policy circle for three decades now and over the years resulted in the state actively undertaking a number of market-oriented reforms like: (a) promoting free trade by reducing tariff rates; (b) encouraging private sector participation in essential services (such as health, education and banking); (c) creating markets in newer areas (water, infrastructure), among others. This has taken an aggressive form in the most recent period through inter alia, privatisation of the coal sector, airports and railways, as well as corporatisation of the ordnance sector and raising foreign direct investment limits in defence. Labour reforms may be seen as a logical extension of these changes to strengthen the hands of capital.

Bhaduri (2005: 41) detects the precise channels through which this is sought to be achieved: “reduce wages, lengthen working hours for the same wage, restrict workers’ rights, refuse pensions and social security and casualise regular employment in the name of labour market flexibility”. To be sure, some of these objectives were already met even before the current round of reforms, as there has been a policy consensus on the usefulness of these reforms (although labour codes accomplish the task more comprehensively). For example, former Prime Minister Manmohan Singh noted:

There are several impediments to new investment that must be removed, so that we can accelerate the growth process and generate more employment. ... Consider, for example, many of our labour laws. Several expert groups have studied them and come to the conclusion that some of these laws

have in fact hurt working class interests by discouraging investment in labour-intensive industries. ... A more flexible and transparent regime of laws, including labour laws, will in fact contribute to increased employment (Singh, 2005).

Therefore, it is not surprising that stable/defined pension benefits no longer exist, certain non-technical public sector jobs have been casualised through outsourcing, regular workers are forcibly removed through voluntary retirement schemes, and service conditions have dramatically changed through outright privatisation of public sector units. In fact, as early as in 2002, the Second National Commission on Labour (SNCL, 2002: 6) mentioned “rationalisation of existing laws relating to labour in the organised sector” as one of its primary objectives. It follows that labour law flexibilisation has been in the reform agenda for a very long time.

These ideas became institutionalised at the international level with the spread of global production networks aimed at exploiting labour arbitrage. Many countries (including developed ones like Germany) simultaneously pursued similar policies to attract globally mobile capital, and the tendency of dismantling workers’ rights was intensified with the World Bank’s Ease of Doing Business (EoDB) index – ranking countries on the basis of their business-friendly environment (that is, prioritising interests of capital over labour). This is evident from even a cursory look at the labour component of the index; for instance, a country’s rank in the EoDB index improves if fixed-term employment is offered in place of permanent jobs, minimum legal wages are removed, “hire and fire” at will are allowed, weekly holidays and annual paid leave are suspended and an eight-hour workday is done away with (World Bank, 2020: 57–65).

## Conditions Enabling the Changes

But what conditions have facilitated the fast-tracking of labour reforms in the present period? At least three factors may have contributed to the process. First, there is the hegemony of neo-liberal ideas and Prime Minister Narendra Modi readily accepting these ideas to single-mindedly pursue policies for improving India’s rank in the EoDB index. As the Prime Minister stated:

We are just a few steps away from breaking into the top 50 in the [EoDB] rankings. India has improved on 8 out of 10 markers ... Our country is on a path of reform and improvement. Global institutions such as the IMF [International Monetary Fund] and World Bank have acknowledged India’s rise (*The Times of India*, 19 November 2018).

This progress is ultimately aimed at establishing India as the manufacturing hub of the world, and to realise Modi’s dream project “Make in India”.

Second, in both its first and second terms, the BJP was elected with single-majority, allowing them to act decisively, free from the hazards of coalition politics. It only helps their cause that the Opposition is miserably fragmented and without any effective counterstrategy; for instance, when three out of four labour codes were passed with less than two hours of discussion in the lower house of Parliament, the Opposition staged a boycott, in effect ensuring smooth passage of the bills (although it shows the BJP’s scant respect for democratic principles).

Third, the pandemic helped the state to hurriedly push through these reforms, as the trade unions were caught unawares, for the lockdown rules made it difficult for them to demonstrate outdoors. (This is in sharp contrast to the farmers’ protest; more on this below.)

Next we turn to the discussion of some key labour law changes; however, *it is important to keep in mind the underlying policy thrust that brought about these changes.*

## Analyses of the Labour Codes

The union government combined twenty-nine out of forty-four Central labour laws into four labour codes. These are: (a) the Wages Code; (b) the Code on Industrial Relations (IR code); (c) the Code on Social Security (SS code); and (d) the Occupational Safety, Health and Working Conditions Code (OSHWC code). All four codes obtained the President's assent and now enjoy the status of law. Some of the crucial changes in labour codes and their likely implications are discussed below.<sup>1</sup>

It is well known that globalisation of capital has weakened trade unions the world over (most notably in the United States and Britain). In India, every indicator on trade unionism confirms this fact, and it is associated with the rising proportion of workers without any security of job tenure. There are at least three ways in which the new labour codes give a further blow to secured/regular jobs. First, manufacturing establishments employing at least 100 workers previously required *prior* government permission to conduct lay-offs, retrenchments or closure of units; this threshold has been raised in the IR code to 300 workers. Consequently, firms employing 100 to 299 workers can now “hire and fire” at will. Using 2017–2018 organised manufacturing sector data, Sundar (2020a) estimates that 44 per cent of workers would lose protection against arbitrary dismissal and 90 per cent of firms would enjoy unrestrained flexibility. Moreover, many states (Andhra Pradesh, Haryana, Madhya Pradesh, Maharashtra, Rajasthan and Uttarakhand) had approved severance pay at the rate of forty-five days' pay for each completed years of service; the IR code only grants fifteen days of pay. Second, firms and contractors employing twenty or more contract workers earlier had to follow certain regulations under the Contract Labour Act 1970; according to the OSHWC code, such stipulations shall now apply only to establishments and contractors employing fifty or more contract workers. Thus, firms employing twenty to forty-nine contract workers remain outside the purview of regulations. This would encourage non-standard forms of employment; already the proportion of contract workers in the organised manufacturing sector has dramatically increased from 12 per cent in 1990–1991 to 33.6 per cent in 2013–2014. Third, termination of fixed-term workers on expiry of their contracts shall no longer be treated as retrenchment, and unfettered use of fixed-term employment (FTE) is allowed in the IR code. However, many countries strictly regulate FTE, with caps on the number of (contract) renewals and maximum cumulative duration up to which a worker can be employed on a fixed-term basis. No such clarity is available in the case of India, and without such restrictions FTE has the potential to completely deregulate the labour market. It is easy to see that these changes would directly hinder trade union membership, as the threat of dismissal would constantly haunt an ever-growing section of the workforce.

Along with job security, wages are probably equally important in the lives of workers. However, the Wages Code has raised doubts about the continuance of minimum wages in future. This is due to the deliberate introduction of two categories of wages, namely the minimum wage and the national floor wage. Now although there is an objective criterion to calculate the former (the product of a long-drawn struggle), there is no concrete basis to estimate the latter (vaguely defined to attain “minimum living standards”). This has resulted in a substantial divergence between them. For example, the minimum wage recommended by a government-appointed committee (Anoop Satpathy Committee) in 2018 was Rs 375 per day, whereas the national floor wage in the same year was merely Rs 176. Since states are directed to set their minimum wages above the national floor wage, states competing for investment would effectively use the latter as

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<sup>1</sup> The discussion is in no way exhaustive, as it would require a book-length treatment.

their reference point – ultimately diluting the whole idea of a minimum wage.<sup>2</sup>

Additionally, the enforcement machinery for implementing the minimum wage has been weakened since inspector-cum-facilitators (earlier known as inspectors) cannot conduct surprise checks in establishments, even with information about violation of laws (this abrogates International Labour Organization (ILO) convention C-81, ratified by India). This will be centrally controlled now and inspector-cum-facilitators can only investigate establishments *assigned* to them through random draw of lots. Further, web-based inspections (without actually visiting factories) are allowed along with electronic submission of information.

Next we turn to non-wage provisions, in form of social security benefits available to workers. Although the SS code broadened the definition of unorganised-sector workers to include home-based workers, self-employed, gig and platform workers, it failed to effectively *universalise* social security across sectors/workers as a legislative right. This is because the concept of an “establishment”, which must employ ten or more workers, is used for various social security schemes. Automatically, the whole of the unorganised sector with less than ten employees goes out of social security coverage; for example, women in unorganised sectors would be denied maternity benefits as this is restricted only to the organised sector.

To be sure, the SS code includes provision for setting up a social security fund for unorganised, gig and platform workers. Nonetheless, the sources of financing this scheme have not been explicitly identified. So ambiguity remains about how social security to the unorganised sector is to be extended, and a historic opportunity has been lost.

Finally, we look at the provisions on working conditions available in the OSHWC code. Once again stipulations apply only to firms employing at least ten workers and exclude anyone engaged in a unit with less than ten workers.

In order to provide a safe working environment and to guard workers against dangerous operations, the Factories Act 1948 laid down certain stipulations applicable to any manufacturing unit employing ten or more workers (if run with the aid of power) and twenty or more workers (if run without power). The OSHWC code raises these thresholds to twenty or more workers (with power) and forty or more workers (without power). Therefore, a section of workers previously protected against dangerous manufacturing operations will now get exposed to such activities in an unregulated manner.

Even for those still protected under the OSHWC code, safety norms have been diluted. For example, previously the Factories Act *exactly* mentioned the maximum permissible limits of exposure to chemical and toxic substances in various manufacturing processes. These permissible upper limits are absent from the new code; instead, these limits can now be decided by the appropriate government (including state governments), with the possibility of competitively raising them. This is the case even when the proportion of fatal accidents to total accidents has sharply increased from 3 per cent in 2003 to 20 per cent in 2013. Further, state governments can exempt new factories from *all* the provisions of the code to create output and employment.

Even though workers have seen their rights being snatched away, their ability to strike at work has been severely curbed. This is because the IR code stipulates that no establishment can go on (legal) strike without giving notice fourteen days prior to the actual date of the strike. Previously, this requirement applied only to public utilities (such as electricity and water); now the IR code extends it to *all* establishments (this is in sharp contrast to the relaxation of norms for carrying out retrenchment and lay-offs). However, once notice is served a labour administrator

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<sup>2</sup> Sub-national governments may simply revise their minimum wages more slowly than the national floor wage, therefore closing the gap over time.

simply has to initiate the conciliation process within the fourteen-day notice period; during the process of conciliation and arbitration, trade unions are legally bound not to go on strike. Further, mass casual leave involving at least 50 per cent of workers is construed as a strike. Therefore, going on a legal strike has almost become impossible.

From the foregoing discussion it is clear that, persuaded by neo-liberal logic, the Indian state has heavily sided with capital, weakening the hard-earned rights of labour and in the process completely abandoning the act of balancing the interests of both parties.

## **In Lieu of a Conclusion**

In this context, it may be interesting to note how these anti-worker legislations came to be drafted in the first place. Trade unions have fiercely criticised the unilateral approach adopted by the state. Although India is bound by international convention to adopt a tripartite consultative process for formulating laws and therefore mandatorily needs to take into account the views of workers' representatives, trade unions have complained about lack of discussion on the bills; in some instances, they were not even informed about certain provisions of the bills. In fact, Bhartiya Mazdoor Sangh, the union with the same ideological roots as the BJP, noted: "The government has disrespected the tripartite tradition followed in the country before any labour-related decisions are taken. The government, by disappointing 50 crore workers in the country, stands today in a sorry state in front of them" (quoted in Sundar, 2020b). At one stage, workers' voices were so acutely side-lined that the Director General of the ILO had to write to the Indian prime minister to "encourage effective social dialogue" (Sundar, 2020b). In fact, the attitude of the Indian government to push through the reforms is succinctly captured by a comment by Amitabh Kant, the CEO of NITI Aayog (one of the highest policy-making bodies in India), who stated that "tough reforms are difficult in the Indian context" because "we are too much of a democracy" (*The Print*, 9 December 2020).

However, even though workers found their rights being taken away so drastically, the resistance emerging from the workers' side is limited<sup>3</sup> and nothing comparable to the spontaneous massive farmers' protests we are witnessing currently. What explains this differential response to legislations aimed at suppressing rights? One can tentatively cite a number of reasons. First, in the last three decades "reform by stealth" has already eaten away labour rights and only a very small section of the (organised) workforce is actually protected by law; in contrast, state support in the form of guaranteed minimum support prices (MSPs) still benefits farmers. Second, even though only 6 per cent of farmers receive MSPs,<sup>4</sup> their geographical concentration in Punjab, Haryana and West Uttar Pradesh certainly helped farmers' unions to organise protests. Moreover, farmers from different states (notably Maharashtra, Madhya Pradesh and Kerala) are joining protests and other sections of the farming community, like agricultural labourers, have joined hands. In comparison, industrial workers are scattered and trade unions find it very challenging to organise contract workers. Third, the threat of capital flight is more serious for industrial workers than for farmers, since a fundamental input in agriculture – land – cannot emigrate. Fourth, protesting farmers have enough food stocks to sustain them over many months; a comparable guarantee for sustenance is unthinkable in the case of industrial workers. Finally, it is probable that the wave of religion-based identity politics has invaded the farming

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<sup>3</sup> The 26 November 2020 strike was followed up by online activism, and trade unions have resolved to launch more intense and longer struggles in future.

<sup>4</sup> This, however, is considered to be a severe underestimate and the actual proportion is at least double.

community less compared to the industrial working class,<sup>5</sup> and class interests still bring the former to put up a united resistance.

However, the silver lining in all this is that trade unions are joining hands with farmers' unions and extending their full support to the farmers' protests; this is the only hope for the republic to once again bring back class politics to centre stage and restore democratic functioning. Otherwise, we face a grim future as witnessed in the Wistron Corporation case in Karnataka in December (*The Indian Express*, 24 December 2020); thousands of workers erupted into violence as the corporation created sweatshop-like conditions (twelve-hour shifts, non-payment of full wages and denial of overtime pay), and democratic channels like trade unions or the employee grievance redressal system were absent. Consequently, Apple has decided to hold the corporation on probation by not placing new orders; industrial peace is an essential requirement for uninterrupted industrial progress and promoters of "Make in India" should learn their lessons fast.

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<sup>5</sup> This is so even after the disastrous sufferings of migrants during lockdown. A large section of them hailed from Bihar, and a BJP-supported alliance won the Bihar assembly elections recently.

## BIOGRAPHICAL NOTES

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