

The effect of Industrialization and Globalisation on Rights of the working Class in India

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Abstract

This paper analyses the various acts and judgments passed to promote the welfare of the working class prior to the rapid Industrialization starting in the 1970s and compares it to the contrasting judgments and laws passed after the Industrialization and globalisation in India. Through this paper, the author aims to make a case that post Industrialization and globalisation the rights of the working class were diluted and ignored in order to promote industry, businesses, and economy.

Keywords: Migrant Crises, Labour Laws, History of Labour Laws in India, Trade Unions, Globalisation, Contract Labour

INTRODUCTION

The recent COVID-19 pandemic has shed light on the political complacency and denialism that exists in our society. The migrant crises that followed as a result of the pandemic was an eye-opener that exposed the growing inequality that persists in India today. It is evident that the working class has experienced a fundamental rupture which has left many of us asking why did it happen. Unfortunately, the suffering of the workers is not solely attributable to COVID-19 but rather has been ongoing for many years. This paper traces back the legislations and court cases that are responsible for setting the current trajectory of labour law and explains the failures in our legal system responsible for the current conditions of the working class.

Pre-globalization

Worker rights have been a long contested issue in India. In the 1940s, when nearly most of the nation belonged to the working class, Indian leaders deliberated on what should be the first principles for Indian laws. Leaders like Dr. Ambedkar envisaged a vision of social democracy for India in where, as the nation progresses its citizens would progress with it. This meant that while industries were necessary for the economy so were the rights of the workers. With this spirit, Pandit Nehru's government started strong by introducing the Industrial Truce Resolution. This legislation assured a fair wage to workers, the employer and the government were to ensure housing for workers, and a profit-sharing system geared to production was created to ensure both parties reap the fruit of their common efforts [1]. However, this legislation became one of the first failures in protecting worker rights since the committees formed to evaluate 'fair wages' and 'profit-sharing geared towards production' diluted 'fair wages' to 'minimum wage', the promise of housing was ignored and the profit-sharing was shifted from geared towards 'production' to 'profiteering' denying workers a dignified life. Though this legislation was a failure, the legislator's spirit to

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uplift the working class stayed intact and many laws and judgments were passed in the subsequent years which positively impacted the rights of the workmen.

In 1946, the central government passed the Industrial Employment Act, 1946, the key element of the act was that it recognised that the contract of employment between a worker and an employer was not a contract between two equal parties, and there existed an inherent power imbalance. This was expounded by Justice Desai in *Glaxo Laboratories v. Labour Court* [2] where he stated ‘in the laissez-faire system the management is the supreme master and the contract is between unequals, to rectify this imbalance the act requires the employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to the workmen employed by them.’ It was because of this act employers were required to submit their draft standing order and invite objections from unions and workers which led to a higher level of fairness and reasonableness in the employment process.

The following year the government passed the Industrial Dispute Act, 1947. The main aim of the act was the prevention, settlement, and adjudication of industrial disputes. It provided for a works committee and an Industrial Tribunal. The act brought about various settlement mechanisms such as conciliation to ensure there is industrial peace. The Act further prohibited the workers to hold strikes and lockout during the pending conciliation to ensure the process is expedient. The industrial tribunal was also given plenty of powers to ensure there is justice. For example, in the case of *Western India Automobile vs Industrial Tribunal*, [3] the tribunal stated that it had superior jurisdiction to reinstate a dismissed workman, unlike other civil courts which were bound by the provisions of Code of Civil Procedure, 1908 and Indian Contract Act, 1872.

Such powers allowed the industrial tribunal to pass judgments that transformed the rights of workmen. For example, in the case of *D. N. Banerji vs P. R. Mukherjee*, Justice N. Chandrasekhara in this matter held that ‘conflicts between workman and industry were to be determined more from a viewpoint of status than of contract as without this approach the cases cannot be adjudicated satisfactorily [4].’ This case led to the recognition of the fact that such complex human problems cannot solely be addressed with age-old legal and economic principles. The adjudication of such matters ‘requires a new set of principles based on compassion and comprehension of the problems of the poor which needs to be infused in our system of law which would be in accordance with public interest and social justice. This needed to be achieved by actively allowing collective bargaining and going beyond the strict principles of contract and torts [5].’ Similarly, the five-judge Supreme Court judgment in the case of *Niemia Mills Ltd Vs. Punjab Industrial Tribunal* laid down that “there may be instances where the law is not clear, the industrial courts in this regard are to adjudicate claims by determining "rights" and "wrongs" of the claims made based on principles of justice, equity and good conscience. However, industrial courts need to keep in mind that their jurisdiction is invoked not merely for the enforcement of mere contractual rights but for preventing labour practices regarded as unfair and for restoring industrial peace on the basis of collective bargaining [6].”

Similarly, many such protective legislations were passed which protected worker rights by curbing the powers of the employers. Many legislations were passed regarding arbitrary terminations, arbitrarily shutting down of establishments, disciplinary procedures, minimum wages, bonuses among others. This gave workers security and ensured the workers who had less power as compared to the collective strength of the employers, got security and Justice [7]. Although, unfortunately, all these laws existed only on paper and not in practice.

Industrialisation

Soon the problems with the legislations began to come to light. The bulk of these legislations deliberately did not include informal labour which denied them the most basic rights. Laws were only governing ‘workmen’ in large establishments and factories and excluded workers in small

unregistered establishments and in irregular employment relationships. The employers inevitably exploited these laws. They would divide their establishments into small independent units, create artificial breaks in employment to prevent workers from attaining permanent status, hire contract labour from labour contractors to avoid workers from being shown on the payroll of their companies. The trade unions too were reliant upon the government for their effective functioning as per the Trade Unions Act. On paper, the informal workers could collectively strike although in practice since there was a lack of recognition of their work as per law, if they attempted strikes, the employer would merely dismiss the worker which led to them losing their rights to seek legal redress [8].

In 1977 and 1980 the state's intervention in regulating industrial relations did more damage than good. There was a need to ensure informal workers get basic rights however, the state's industrial policy and five-year plans under the leadership of Indira Gandhi overlooked that agenda. Instead, they did the opposite and granted assistance to scale up and increase the small-scale industrial units. The consequence of this plan was that the applicable legal requirements in the factory sector as prescribed under the Factory Act 1948, which gave workers legal rights to unionize and collectively bargain were no longer applicable to these small industrial units as they fell within the unorganised sector. This further meant that while such small-scale industrial units were given sufficient assistance such as cheap credit and tax concessions, so it can produce a third of the country's manufacturing output, it had no requirement to ensure how it treats its workers [9]. This attack on labour rights had a snowball effect from hereon.

Employers in the large industries struggled to compete with the newly upgraded small sector. They responded by transferring more jobs to the unorganised sectors, these large industries started shifting production, downsizing, and worst of all releasing their existing workforce. This new revolution started from the textile industry in Bombay. It is estimated over 100,000 jobs were lost after the Bombay textile strike in 1982-1983 [10]. This rippled across the country and lakhs of jobs were lost. The workers were not happy about this. These ordinary workers who survive on everyday wages found it hard to navigate through the legal process, when they approached the courts it led to a long lengthy, complicated and expensive court process. If they received a favourable order, the employer would simply approach the higher courts and they would lose many more years again. They were being backed into a corner and in order to get quick redressal retaliated with strikes, lockouts, and violent outbursts. This also gave rise to militant leaders such as Dr. Datta Samant who led the eighteen-month textile strike in Bombay. The textile workers demanded a stop to the exploitation by the monopoly official union of Rashtriya Mill Mazdoor Sangh, regularisation of casual workers, and an increase in wages. The whole strike however petered off and did not yield the desired results. The state government called the strike illegal and stated that the central government does not wish for them to yield due to the undesirable repercussions that might follow in other sectors i.e ports and docks [11]. An assessment of such strikes shows, that while the state projected a pro-labour attitude, whenever there was a major confrontation between workers and employers, the state always supported the employers.

Globalisation

While the tensions between the labour force, employers, and the state persisted, In 1991 the Narasimha Rao lead government introduced the economic liberalization program which further came to be known as globalisation in India. The new economic policy wanted to bring in foreign investment to encourage the expansion of stagnant industries. These new economic measures however did little to aid the working population. In the 1991 census, it was noted India had a working population of 317 million people of which 290 million worked in the unorganised sector and only 26 million in the organised sector. There were also considerable differences between the two sectors, while the organised sector made up only 8% of the entire working population, the earned 33% of country's total wages [12].

Globalisation added to the previous problems. The emphasis was now to produce cheaply for the global markets. Given the incentives the small industries sector provided, employers continued to pursue that form of production. Employers were attracted to the low costs and flexibility of the labour clubbed with unspecified working timings, easy lay off provisions, less government oversight and lack of trouble from the scattered trade unions. The workers tried responding to the same with conventional means. They protested, held demonstrations and strikes however there was no effect. This situation would not have occurred if the workers were more unionised as stronger bargaining power may have brought them favourable results.

The courts too had a role to play in the non-unionising of the workers. In the case of *H.R. Adyanthaya vs. Sandoz (India) Ltd*, [13] the question before the court was whether medical representatives were workmen according to the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947. The Supreme Court dismissed the petition as they interpreted that the petitioners work as a sales promotion representative did not meet the criteria of 'skilled' and 'operational' as required to be considered a workman under the definition. This meant that the ambiguities of the ID Act protected only 'workmen' and the other employees such as service staff, clerical workers, sales representatives etc., fell within a 'non-bargainable category' [14] of employees, who did not have the right to belong to a union or bargain collectively. This gave the employers yet another way to push more of their staff into the non-bargainable category by exploiting the *lacunae* and ambiguities of the ID Act, which led to further fragmentation of the workers.

Another judgment by the courts that negatively impacted the worker rights was the *SAIL Vs National Union Water Front Workers* [15] This judgment dealt with the automatic absorption of contract labour with the establishment of the principal employer. One might think a worker should be given a permanent status if they've been working for an establishment for many years, however, the court in this case ruled is no implicit requirement of automatic absorption of Contract Labour by the Principal Employer in the concerned establishment. The court did however mention that 'in case a contract between the Principal Employer and the contract labour is found to be not genuine but a mere camouflage, the contract labourer should produce evidence before the industrial adjudicator who may then regularize the services of the contract labour in the concerned establishment. With the lack of knowledge and resources among the workers coupled with the inherent power imbalance between these parties, in my opinion, this is yet another judgment that favours the employers over workers.

This was further followed by the additional reforms to alter the existing ID Act by the then NDA government. In 2002, the Standing Conference of Public Enterprises represented the employers and demanded deletion of section 10 of the Contract Labour Act, which restricted the use of contract labour and requested to initiate amendments in the Chapter 5 B of IDA and raise the limit beyond which the firm must obtain approval from the state to retrench and lay-off workers from 100 to 1000 with a provision that workers be paid as much as 45 days severance salary for each year served [16]. However, after political pressure, the limit was brought down from 1000 to 300 workers. Now the employers could liberally use contract labour, easily lay off workers and close down establishments that employed less than 300 workers with no accountability towards anyone.

CONCLUSION

While these measures were celebrated by the employers, they came at the cost of the Job security of the working man. Inevitably, unnecessary terminations became a rampant practise. As Senior Advocate, Mr. Colin Gonsalves, a famous human rights lawyer described the situation, 'there have been instances where a worker who was found sleeping on the job because he was sick and not well, was straight out terminated, a worker absent for 2-3 days, terminated, a bus conductor showed a Rs. 3 imbalance in the accounts was accused of corruption and terminated, such workers go home and tell their wives they don't have work anymore. Take out our daughters from the school, sell our *bartans* (utensils) and your jewellery because we don't know where are next meal is going to come from

[17].’ While, this may not be considered an academic reference, it is still the harsh reality of millions of working class in our country.

COVID-19 exposed us to the gaps in our system. We saw millions of migrants workers walk and die on the streets. They got denied healthcare, they got pushed into poverty and down to starvation. The working class experienced a fundamental rupture and this left many of us asking why did it happen. Unfortunately, the suffering of the workers is not solely attributable to COVID-19 but rather has been ongoing for many years. The practices of contract labour being encouraged by the government and Supreme Court’s verdict of denying long term labourers to be absorbed in the factories as permanent workers. The practices of unnecessary termination, unregulated work, unregulated wages, denial of job security, denial of legal framework and denial of basic rights along with complete division and de-unionization of trade unions, India’s working class became an army of slaves. We as a nation have come a long way away from the ideals of social democracy envisioned by our forefathers and unfortunately today only seek to continue our ‘economic growth’ on the backs of the poor working class.

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