

June 1, 2023

Practice of International Labour Laws in India

By: AV Jose

Labour rights in India have been based on the norms of the International Labour Organization but these have not led to any noticeable increase in standards. India's labour regulatory regime can become more functional through the greater participation of its beneficiaries.

How can India's labour regulatory regime become more functional through the greater participation of the regime's beneficiaries?

If we need to understand and explain the problems and prospects of a progressive evolution of labour regulations in India, we need to explore three related issues: (i) the historical role of the International Labour Organization (ILO) in facilitating the acceptance of labour standards as they evolved in industrial societies; (ii) the inherent limitations of an adaptation process in developing economies, notably India; and (iii) the practical means of overcoming such limitations.

Europe and Labour Standards

Initial discourse on a normative order for the governance of work can be traced back to the Industrial Revolution when far-reaching changes occurred in the content and organisation of work worldwide. The discourse mainly occurred in European countries and focused on addressing the “Social Question of Europe”, which surfaced during the preceding centuries of the Industrial Revolution.

The 19th century was turbulent when many European nations trudged towards economic prosperity, building on the blood and sweat of workers in the industrialising world and the colonies. The rising prosperity made economic disparities even more visible. It created a discourse around social evils such as sub-human working conditions, low wages, long work hours, unemployment, child labour, and minimal public distribution of goods or services.

|| The large workplaces of industrial societies had made it possible for the workers to come together, form fraternal alliances, and demand improvements in their working and living conditions.

There was an increasing recognition that it was the state's responsibility to administer the rights and entitlements of people who produced income and wealth, thus minimising the unequal distribution of the fruits of labour. The “social question of Europe” sought to understand what role the state should play in managing social evils and ensuring the prosperity of an industrial society was equitably distributed. European social reformers and epistemic communities played an active role in this discourse, arguing for new institutional safeguards to benefit workers as contributors to material prosperity.

It was the Industrial Revolution itself that provided a strong material foundation for responding to the social question. The large workplaces of industrial societies had made it possible for the workers to come together, form fraternal alliances, and demand improvements in their working and living conditions. The material prosperity brought in by the Industrial Revolution made it possible to acquiesce to their demands (Friedman 2006: Ch. 4). In addition, the rising income inequalities and a threat of social unrest by the distressed workers made a compelling case for addressing their concerns (Alcock 1971: Ch.1).

The first organised attempt to tackle the social question and to create a normative order for the governance of work was through the ILO, established after the Peace Treaty of Versailles in 1919. The peace treaty adopted a labour charter that specifically mentioned the following elements.

- i) Labour should not be regarded merely as a commodity or article of commerce;
- ii) The right of association;
- iii) Payment of adequate wage to maintain a reasonable standard of living;
- iv) An eight-hour working day or 48-hour week;
- v) A weekly rest of at least 24 hours;
- vi) Abolition of child labour;
- vii) Equal pay for equal work;

- viii) Equitable economic treatment of all workers in a country (migrants and nationals); and
- ix) An inspection system to ensure the enforcement of the laws for worker protection.

The charter represented the economic interests of workers that matured into necessary entitlements expected for the employed. The entitlements included improved wages, better working conditions, stipulated work hours, health and safety at the workplace, and social security benefits in industrial societies. They were recognised as workers’ rights, guaranteed under public laws, and constitutionalised by nation-states.

Substantive rights determine the actual conditions of labour, such as minimum wages, maximum working time ...
Procedural rights shape the processes that realise substantive rights, such as the right to form associations and represent workers.

These rights could be broken down into two different types—substantive and procedural rights (Hepple 2006). Substantive rights determine the actual conditions of labour, such as minimum wages, maximum working time, occupational safety, and health. Procedural rights shape the processes that realise substantive rights, such as the right to form associations and represent workers, bargain collectively, and have equal opportunities.

The ILO became a forum for developing, implementing, and supervising these standards, which became the conventions of the organisation. While the earlier conventions of the ILO focused on substantive rights, the emphasis shifted to procedural rights in later years.

This shift was due to a general presumption that more equitable outcomes for workers would follow the substantive rights only once procedural rights were in place. The substantive rights, in turn, brought workers closer to better living standards. The additional economic space (from improved living standards) could then be leveraged to command more political space, enabling them to gain access to additional civil liberties.

This complementarity between rights and incomes became an artefact of all industrial societies as they constitutionalised the procedural rights of workers for association, representation, bargaining, and non-discrimination. The prospect of justice through equitable outcomes served as a powerful force for the economic advancement of all.

In retrospect, the working class’s demand for additional civil liberties was important in creating more robust democratic states. The nation-state had to cater to the needs and demands of the working class and take on a broader range of responsibilities that involved facilitation, supervision, and redistribution in the functioning of labour markets. To this end, the state assumed a special responsibility to respect, protect, and realise the rights and entitlements of all at work, and it secured the support of social partners for attaining these goals.

As the interlinkages between income, civil liberties, and institutions grew stronger, underlying this long process, spread over a couple of centuries, was a transformation of customary personal laws of pre-capitalist societies into public laws of modern states, which went on to become public international laws for all countries.

The post-war decades were a period of great euphoria and optimism, accentuated by decolonisation, an explosion of markets, and an emphasis on internationalism. A European Social Model of employment relations was created. An enduring partnership came into being between the democratic regimes—conservative, liberal, or social—and the workers of industrial societies, who were drafted into the ranks of an ascending middle class.

The incumbents of industrial societies were empowered to become growth engines of their economies. Such empowerment came through institutions pioneered by social actors, most notably the trade unions.

Some notable features of the social model were as follows.

- i) Assured opportunities for employment based on open-ended contracts;
- ii) Improved conditions of employment along with minimal disparities in wage earnings;
- iii) Social protection of workers with safety, health, and secure income during and beyond working lives;
- iv) Universal provision of public goods, including education, healthcare, infrastructure, and a clean environment to all citizens.

Industrial societies attained these goals during a golden age of prosperity and created the relevant regulatory institutions to secure them (Esping-Anderson 1996).

The incumbents of industrial societies were empowered to become growth engines of their economies. Such empowerment came through institutions pioneered by social actors, most notably the trade unions. Primarily concerned about an equitable distribution of the products of work, the unions played a representative role, giving voice and identity to the workers.

In retrospect, the ILO served as a seedbed of institutions that helped industrial societies consolidate their material gains and provided a common forum to advance and realise workers' economic and social interests. In the process, the ILO partners developed a legal architecture for the governance of work, which was pushed for universal acceptance in the post-war years. The promoters believed (and still do) that common labour standards can minimise disruptive competition among workers within and across countries (Western 1997).

Transplanting Labour Standards

Not only did the ILO become the main forum for developing and institutionalising common labour standards, it also became the primary institution that facilitated the further diffusion of such standards. It facilitated the transplanting of labour standards in developing countries, many of whom in the 20th century were being freed from their colonial past but were still bearing the scars of poverty, deprivation, and income inequalities. Their prospects for economic advancement and employment growth were fundamentally limited.

For example, the threshold requirements preceding the design and implementation of labour institutions, such as a high level of urbanisation and a sizeable presence of industrial workers, were conspicuously absent among many developing economies.

Adapting labour standards to such countries, however, is and remains challenging. Chigara (2007) points out that these countries transplanted a pack of institutions that had been authored elsewhere and were then made to assume ownership without having fulfilled any of the pre-conditions needed for that ownership to be effective. For example, the threshold requirements preceding the design and implementation of labour institutions, such as a high level of urbanisation and a sizeable presence of industrial workers, were conspicuously absent among many developing economies adopting these new standards.

India's Experience

India was among the early acceptors of ILO standards, having associated with the organisation right from its inception, a link from a colonial legacy.

Trade unions were essential players in the adaptation process. In pre-independence India, the unions had a strong presence in urban manufacturing establishments and plantations. They were important allies of the national freedom movement and influenced the content of industrial relations in India.

The advent of independence and constitutional democracy led to the enactment of several vital pieces of labour-friendly legislation premised on procedural rights, such as the Industrial Disputes Act of 1947, Factories Act of 1948, Minimum Wages Act of 1948, and the Plantations Labour Act of 1951. These interventions presumed that employment was organised in large industrial establishments and that the workers there required protection to safeguard their jobs, wages, and working conditions. The legislation strengthened the hands of trade unions, giving them legal immunity while pursuing the interests of workers through industrial action.

Not having gone through the sequential transformation of labour markets as in industrial economies, there were natural limits to adapting labour institutions in the Indian context. These limitations became evident when the nation embarked on a strategy for planned economic development.

The first was that there was no perceptible gain in workers' substantive rights and employment even as they gained procedural rights. Second, the reach of protectionist legislation was limited to the formally employed of the organised sector—the regularly paid workers of large industrial establishments. Given that there was minimal employment expansion in the formal sector during the subsequent decade, this meant a limited impact of this type of legislation.

In manufacturing industries such as textiles, jute, coir, and cashew ... there has been continuous restructuring, dispersion, and decentralisation of industrial establishments, resulting in a significant erosion of employment, wages, and working conditions.

A good deal of empirical support comes for these contentions from the works of academic scholars—Ghose (2020, 2018), Basole et al. (2018), Srivastava and Padhi (2018), and Papola and Sahu (2012), to name a few. The two limitations have ominous implications for the labour market strategies being tried out in India.¹

To expand on the first limitation—the perceived inability of labour institutions to simulate tangible outcomes regarding substantive rights through employment and incomes—what happened in India was influenced by the endowments inherited from the past. In manufacturing industries such as textiles, jute, coir, and cashew, the main citadels of employment, there has been continuous restructuring, dispersion, and decentralisation of industrial establishments, resulting in a significant erosion of employment, wages, and working conditions.

A series of developments ranging from a demographic explosion, stagflation, lack of infrastructure, technological changes, the rising prominence of service industries, and the diminishing importance of traditional social partners rendered the regulatory system dysfunctional, limiting its scope to the formal sector only. The regulatory regime could not extend its coverage to more than 10% of the total workforce of India.²

As for the second limitation, this is due to the employment growth during the preceding decades, be it in capital-intensive or labour-intensive industries, which took place mainly outside the formal sector. If there was any employment growth in the formal sector, it occurred under the category of contract workers, who were not entitled to the same terms and conditions of employment on a par with regular workers (Basole et al. 2018).

Several states of India tried to water down the content of labour legislation, ostensibly to make them more employment-friendly (Jose 2021). They have not had any substantial growth in employment or wages, at least not so far. That brings us to the third topic for discussion, which is the practical means of overcoming the inherent limitations of our labour markets.

Expediting Adaptation

Returning to the fundamentals and completing the orderly transformation of labour markets is essential. Without short-circuiting the evolutionary process, we should aim to accelerate its pace and create a political space for the functioning of labour institutions. To this end, it is time to climb down from ideological perches and come to terms with the creative destruction underway in a changing world of work.

The emphasis should be on extending the reach of social spending in crucial domains of the economy, notably in education, health, housing, transport, and civic amenities. ... Such spending can cumulatively raise the ‘reserve price’ of labour.

The formal sector will probably not absorb even a tiny fraction of the ever-increasing workforce of India. However, a second option is from the supply side of markets towards strengthening the endowments and entitlements of all workers who crowd into the informal economy. It requires an inclusive policy framework to protect all workers’ economic and social interests, irrespective of their employment status. It is an eminently feasible goal for the emerging Indian economy, which is poised to make strides in productivity in service industries. Nevertheless, it calls for a shift in emphasis on two areas of public policy.

First and foremost, the emphasis should be on extending the reach of social spending in crucial domains of the economy, notably in education, health, housing, transport, and civic amenities. There is ample evidence to prove that such spending can cumulatively raise the “reserve price” of labour, especially those at the lower end of incomes. A market-based minimum price of labour will empower low-end workers to acquire mobility and navigate their way into more remunerative income-earning opportunities. Kerala is a typical example among Indian states where social spending has benignly influenced raising wages and making paid work more attractive (Isaac 2022; Jose 2022, 2021, 2020).³

Initially, India adopted policies of transplanting labour standards from Western industrial economies under the guidance of the colonial administration. Early in the 20th century, ... India was an early acceptor of ILO standards.

Second, the Indian states can foster the development of two types of institutions, one for means-tested social assistance and the other for contributory social insurance, both aimed at protecting the basic incomes of all workers, especially those in the lower deciles of the income distribution. The two sets of institutions can guarantee the beneficiaries a secure living during and beyond their active participation in work.

Regrettably, most Indian states have no impressive track record with such institutional safeguards. There is a long way before social security institutions can effectively sustain the country's income and consumption growth. At this stage, if the developing countries want to embrace a social model that takes care of substantive and procedural rights, they need to build on a social floor of living wages and acceptable working conditions for all.

Summing Up

We have focused on India's labour regulatory regime and how it can become more functional through the greater participation of its beneficiaries. This essay has explored three related issues: (1) the historical role of the ILO in facilitating the acceptance of labour standards in industrial societies; (2) the inherent limitations of an adaptation process in developing economies such as India; and (3) the practical means of overcoming such limitations.

Initially, India adopted policies of transplanting labour standards from Western industrial economies under the guidance of the colonial administration. Early in the 20th century, the ILO emerged as a global platform to design and develop common labour standards, and India was an early acceptor of ILO standards.

We have explored the limitations of focusing on procedural rights without guaranteeing substantive rights for workers. The safeguards have been limited to the formal sector, covering only about 10% of the workforce. To overcome these limitations, we need two policy approaches.

First, we must extend the reach of social spending for education, healthcare, public transport, and civic amenities. This can raise the reserve price of labour, empowering low-end workers to navigate their way into more remunerative income opportunities.

Second, we must foster the development of means-tested social assistance and contributory social insurance institutions for all workers, particularly those in the lower income deciles. Developing countries need to focus on a social floor of living wages and safe working conditions to make the social model of industrially advanced countries functional in their environment.

A.V. Jose is Honorary Fellow at the Gulati Institute of Finance and Taxation, Thiruvananthapuram.

Footnotes:

1 Ajit Ghose and Abhijit Sen made valuable contributions to the ongoing discourse on employment promotion in India. Ghose (2022) passionately argued for a manufacturing-led employment and growth strategy for India in the face of a pessimistic prognosis to the contrary.

2 According to the Periodic Labour Force Survey of 2021-22, regular wage/salaried persons in all establishments hiring workers formed 21.5% of the total workforce in India. They belong to the organised sector labour force. Among them, only 45.8% had formal employment with any eligibility for social security benefits (PLFS 2023: Statements 12 and 15).

3 Kerala has diversified better into the secondary and tertiary sectors of the economy as reflected in the higher levels of per capita income, consumption expenditure, productivity, and earnings per worker. They are notable achievements for a state with an impressive track record in promoting social consumption through redistributive spending (Jose 2020).

References:

Alcock, Anthony (1971): *History of the International Labour Organisation*. London: Macmillan.

Basole, Amit et al. (2018): *State of Working India 2018*. Bengaluru: Azim Premji University.

- Chigara, B. (2007): “Latecomers to the ILO and the Authorship and Ownership of the International Labour Code”, *Human Rights Quarterly*, 29 (3).
- Esping-Anderson, G. (1996): “After the Golden Age? Welfare State Dilemmas in a Global Economy”, in Esping-Anderson (ed.) *Welfare States in Transition: National Adaptations in Global Economies*, Sage, London.
- Friedman, Benjamin M. (2005): *The Moral Consequences of Economic Growth*. New York: Alfred Knopf.
- Ghose, Ajit K. (2020): “Structural Transformation of India’s Economy”, Working Paper 01, Institute for Human Development, New Delhi.
- Ghose, Ajit K. (2018): *India Employment Report*. New Delhi: Institute for Human Development.
- Hepple, B. (2006): “Rights at Work”, in Dharam Ghai (ed): *Decent work: Objectives and Strategies*, International Institute for Labour Studies, Geneva.
- Isaac, T.M. Thomas (2022): *Kerala: Another Possible World*. New Delhi: Left Word Books.
- Jose, A.V. (2022): “Wage Rates in Agriculture”, *Review of Agrarian Studies*, Vol. 12, No. 1.
- Jose A.V. (2020 and 2021): “The Story of Social Spending: A Revisit to the Kerala Model of Development - Part I and II”, in *Kerala Economy*, Volume 1-4 and Volume 2-1, Gulati Institute of Finance and Taxation, Thiruvananthapuram.
- Jose A.V. (2020): *Labour Regulations in India*, in Papers and Proceedings of a National Webinar, Gulati Institute of Finance and Taxation, Thiruvananthapuram.
- Papola, T.S. and Partha Pratim Sahu (2012): *Growth and Structure of Employment in India Long-Term and Post-Reform Performance and the Emerging Challenge*. New Delhi: Institute for Studies in Industrial Development.
- Periodic Labour Force Survey Report 2021-22 (PLFS), Government of India, 2023.
- Srivastava, Ravi and Balakrishna Padhi (2020): “Collapse in Wage/Salary Income Growth in India, 2011-12 to 2017-18”, Working Paper 01, Institute for Human Development, New Delhi.
- Western, Bruce (1997): *Between Class and Market: Post-war Unionisation in Capitalist Democracies*. New Jersey: Princeton University Press.