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ARE EXISTING LAWS ADEQUATE TO CURB UNFAIR LABOR PRACTICES? A CRITICAL STUDY

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ABSTRACT

Unfair Labor Practices (ULPs) are a serious challenge to the maintenance of harmonious industrial relations, the dignity of the workforce, and the broader ideals of social justice, as envisioned in the Constitution of India. India has built a robust, although disjointed, legislative framework to address the challenge of ULPs. These legislative interventions include the Industrial Disputes Act, 1947¹; the Trade Unions Act, 1926²; the Industrial Employment (Standing Orders) Act, 1946; and the more recent Labor Codes of 2019-20. Notwithstanding the existence of this legislative framework, ULPs are a pervasive reality, particularly in the unorganized sector of the workforce in India. This paper critically evaluates the adequacy of the existing legislative framework in India to address the challenge of ULPs. It undertakes a critical analysis of the definitions, enforcement, and structural limitations of the legislative framework in addressing the challenge of ULPs in India and concludes that, although a good starting point, the legislative framework is insufficient to address the challenge of ULPs in India.

INTRODUCTION

Not just a factor of production; labor is the very essence of human dignity and the foundation of economic growth of any nation. The inherent inequality between an employer and an employee is by itself a fertile ground for exploitation and unethical labor practices. Unfair labor practices encompass a wide range of unethical labor practices by employers and unions, which include wrongful dismissal, union busting, theft of wages, coercion, surveillance, contract labor, etc.

¹ Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), as amended

² Trade Unions Act, 1926 (Central Act No. 16 of 1926)

Being a welfare state and adhering to the directive principles of state policy set out under Articles 38, 39, 41, 42, and 43 of the Constitution of India, it is the bounden duty of the Indian government to adopt a just and humane approach towards labor practices. Indeed, over the years, a plethora of legislation has been enacted by parliament and state legislatures to protect labor rights. It is noteworthy that the IDA of 1947 has a specific Schedule V that lists what constitutes an Unfair Labor Practice. However, the effectiveness of this legislation in being “sufficient,” in the sense of being “comprehensive,” “enforceable,” and “effective,” is a matter of great debate.

The introduction of the four Labor Codes between 2019 and 2020 marked an attempt towards consolidating and modernizing Indian labor laws. The Industrial Relations Code, 2020, which consolidates the IDA, continues to include provisions on unfair labor practices. It has been contended that consolidation without reform merely reorganizes inadequacy.

This paper critically analyses the Indian legal regime on unfair labor practices from three aspects:

- (a) the sufficiency of the legal regime in defining and addressing the phenomenon of unfair labor practices;
- (b) the effectiveness of the legal regime's enforcement and adjudication processes; and
- (c) the structural and systemic issues within the legal regime, which include the position of informal workers and the role of the judiciary.

DEFINING UNFAIR LABOR PRACTICES: THE STATUTORY FRAMEWORK

I. The Industrial Disputes Act, 1947:

The law in India talks about Unfair Labor Practices or ULPs in the Fifth Schedule of the Industrial Disputes Act from 1947. This law was changed by the Industrial Disputes Amendment Act in 1982.

The First Part of the Fifth Schedule says what Unfair Labor Practices employers can do. These Unfair Labor Practices include getting in the way of workers who want to form a union. Employers also do Unfair Labor Practices when they treat union members unfairly fire workers for no reason to refuse to talk to unions and hire workers on contracts when they should not.

The Second Part of the Fifth Schedule lists what Unfair Labor Practices trade unions can do.

These Unfair Labor Practices include forcing workers to join a union going on strikes without warning and being violent or slowing down work on purpose.

The Industrial Disputes Act from 1947 says that employers and trade unions cannot do Unfair Labor Practices. If they do, they can get in trouble under Section 25T. They might even go to jail for a month. Pay a fine of Rs. 1,000 Or maybe under Section 25U. The fine under Section 25U of the Industrial Disputes Act has not changed since 1982. A lot of people think this fine is too small because prices have gone up much over the years.

II. The Trade Unions Act, 1926:

The Trade Unions Act of 1926 is the governing legislation for the registration and functioning of trade unions. Though provisions exist for immunity from civil and criminal liability for legitimate trade union activities, there is a lack of adequate definition and penalty for interference by employers in the formation of trade unions. The lacuna in the legislation not recognizing collective bargaining rights as a legal right, as is provided by the United States' National Labor Relations Act (NLRA) and the United Kingdom's Trade Union and Labor Relations (Consolidation) Act of 1992, is perhaps the biggest lacuna. Collective bargaining is more of a practice rather than a legal right in India, which has resulted in workers being unable to effectively address cases of ULPs within an institutional framework.

III. The Industrial Employment (Standing Orders) Act, 1946:

This Act requires employers in industrial establishments (employing 100 or more workers) to formulate certified standing orders governing conditions of employment. Violations of standing orders may constitute unfair labor practices. However, the Act's applicability is limited to scheduled industries and establishments above a threshold size, leaving millions of workers unprotected.

IV. The Labor Codes, 2019–2020:

The four labor codes, namely, the Code on Wages, 2019; the Industrial Relations Code, 2020; the Code on Social Security, 2020; and the Occupational Safety, Health, and Working Conditions Code, 2020, represent the biggest change in labor laws in India since independence, consolidating 29 central laws.

The Industrial Relations Code, 2020, continues to include provisions on unfair labour practices under the IDA, including the Fifth Schedule. However, it has raised the threshold of applicability of certain provisions, including the need to obtain sanction of the government for

retrenchment and closures, which now applies to establishments employing 300 or more workers, as opposed to 100 or more workers in the previous law. It is argued that this has been done to deregulate unfair dismissal laws for millions of workers in medium-sized establishments, thereby increasing the scope of ULPs.

CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK

I. Definitional Inadequacy:

The definition of "unfair labor practices" under Indian law is narrow and does not fully encompass the scope of labor practices prevalent in contemporary workplaces. Some of the labor practices prevalent under modern workplaces, which are not explicitly dealt with under the law, are as follows:

a) Wage theft and under-payment of wages:

Although the Code on Wages³, 2019 specifically deals with minimum wages, the definition of under-payment of wages as an unfair labor practice is absent.

b) Surveillance and monitoring of union activities:

Although union activities are subject to increasing levels of digital surveillance, this is not dealt with under the existing framework of unfair labor practices.

c) Misclassification of workers:

The classification of permanent workers as "contract workers," "gig workers," and "fixed-term employees" is a growing unfair labor practice under Indian law, which is not dealt with under the Codes. Although the Industrial Relations Code⁴, 2020 specifically deals with "Fixed Term Employment," it is feared that it would be misused for denying permanency.

d) Psychological harassment and retaliatory transfers of employees:

These are not specifically dealt with under unfair labor practices and would have to be addressed under tort law.

II. Limited Coverage- The Informal Sector Problem:

However, the most glaring omission in the extant labor laws in India is their failure to protect the interests of informal and unorganized workers, who make up approximately 90% of India's workforce (National Commission for Enterprises in the Unorganized Sector, 2007). The

³ Code on Wages, 2019 (Central Act No. 29 of 2019)

⁴ Industrial Relations Code, 2020 (Central Act No. 35 of 2020)

provisions in the IDA in relation to the protection and regulation of ULPs are limited to "workmen" employed in "industrial establishment" exceeding specified thresholds.

The Unorganized Workers' Social Security Act, 2008, while recognizing the significance and importance of the sector, is more concerned with social security and does not extend to the regulation and protection of ULPs.

The Code on Social Security⁵, 2020, has some provisions in relation to gig and platform workers, but has failed to extend the status of "employees" to such workers and, therefore, has failed to extend the protection and regulation afforded under the provisions in relation to ULPs.

This is also constitutionally not in order, as in the case of **Workmen of American Express International Banking Corporation v. Management**⁶ the Supreme Court held that labor laws had to be interpreted considering the constitutional obligation to protect workers. Yet the legislature has persistently maintained frameworks that exclude the most vulnerable.

III. Weak Enforcement Mechanism:

The implementation of labor laws in India is plagued by inherent flaws that undermine their overall efficacy:

a) Deficit Labour Inspectorate:

The number of labor inspectors per worker in India is extremely low. In fact, there are hundreds of thousands of establishments per inspector in many states in India. Moreover, the recent amendment to the Factories Act in 2014 and the policy shift to "self-certification" and "inspector Raj" have led to a sharp decline in the frequency of inspections, leaving employers with near-total impunity.

b) Delays in Industrial Adjudication:

Disputes in respect of ULPs are generally referred to by Labor Courts or Industrial Tribunals under the IDA. These forums are in dire need of a makeover as it is not uncommon to witness delays of 10 to 15 years in resolving cases. Justice delayed is, in this context, justice denied, particularly in cases of wrongful dismissals, as the worker is expected to fund the prolonged litigation process himself or herself.

c) Inadequate Penalties:

The maximum penalty of Rs. 1,000 under Section 25U has been unchanged since 1982. This is not merely inadequate but actually an encouragement for non-compliance.

⁵ Code on Social Security, 2020 (Central Act No. 36 of 2020)

⁶ Workmen of American Express International Banking Corporation v. Management (1985), AIR1986SC458

Furthermore, under US law under the NLRA, the National Labor Relations Board can order reinstatement with back pay, issue cease and desist orders, and compel bargaining. Such remedial mechanisms are absent under Indian law.

d) Burden of Proof:

Under the present system, the burden of proof for a ULP rests squarely on the employee, who is the weaker party. This is inherently unfair.

IV. Judicial Interpretation- A Mixed Record:

The Indian judiciary has also had a significant role to play in the evolution of the law pertaining to ULPs, at times even expanding the scope of the law and, at others, showing deference to managerial prerogatives.

Expansive Interpretations: The Supreme Court, in **Management of Kairbetta Estate v. Rajamanickam**⁷, held that any action taken by the employer which had the effect of undermining trade union activities could amount to a ULP even in the absence of specific statutory enumeration. In **B.R. Singh v. Union of India**⁸, the Court affirmed the right of government employees to form associations, giving constitutional grounding to organizational rights.

Restrictive Interpretations: Nevertheless, the Court has also enforced the "hire and fire" prerogative in some areas, especially probationers and fixed-term workers. In **Delhi Transport Corporation v. D.T.C. Mazdoor Congress**⁹, it struck down a clause on termination without inquiry but did not go as far as requiring recognition of collective bargaining. Most recently, its permissive approach to contract workers in infrastructure and gig economies has been attacked as a facilitating circumvention of ULP provisions.

The overall picture is that of an inconsistent protector of workers' rights—helpful in high-profile cases but inaccessible to the vast majority of workers without legal representation.

V. The Problem of Union Recognition:

One of the most essential preconditions to tackle ULPs is the ability of the workforce to organize themselves and get represented through an 'recognized union.' India does not have a Central-level mandatory union recognition law. While some states like Maharashtra, Madhya Pradesh, and Kerala have laws on union recognition, the absence of a Central-level law means

⁷ Management of Kairbetta Estate v. Rajamanickam, AIR 1960 SC 893

⁸ B.R. Singh v. Union of India, AIR 1990 SC 1

⁹ Delhi Transport Corporation v. D.T.C. Mazdoor Congress, (1991) Supp (1) SCC 600

that most employers can choose to not negotiate with any union, resist collective bargaining, and selectively victimize union activists, all without breaching any of these provisions.

India has failed to ratify the International Labor Organization (ILO) conventions on 'Conventions 87 on Freedom of Association' and 'Conventions 98 on Right to Organize and Collective Bargaining,' which have been ratified by most democracies. This is not only a practical failure but also a normative failure, as India has historically been ambivalent towards worker empowerment.

STRUCTURAL AND SYSTEMATIC GAP

I. Multiplicity and Fragmentation:

Despite consolidation through the Labor Codes, the Indian labor law system continues to be fragmented with the central and state governments. The fact that labor falls under the concurrent list of the Seventh Schedule of the Constitution enables both Parliament and state legislatures to make laws on the subject. The fragmented system would enable the employer to take advantage of the system and put labor at a disadvantage.

II. The Gig Economy Challenge:

The rise of platform-based work, which encompasses millions of app-based delivery workers, cab drivers, freelancers, and home service providers, perhaps poses the most pressing challenge to the ULP regime today.

The current legal regime, which is based on the binary employer-employee relationship, is not equipped to deal with these emerging relationships.

The Code on Social Security, 2020, which has introduced the concept of "gig workers" and "platform workers," only provides them with the right to claim social security benefits, not labor rights. The gig workers will not be able to claim the rights under the ULP regime because they are not treated as "workmen" or "employees." The judicial intervention in the case pending before the Supreme Court, **Indian Federation of App-based Transport Workers v. Union of India**¹⁰, may be the solution to the problem, but legislative intervention is the need of the hour.

III. Gender Dimensions of Unfair Labor Practices:

Women workers have to deal with a lot of things at work like sexual harassment that is used to

¹⁰ Indian Federation of App-based Transport Workers v. Union of India, Writ Petition (Civil) No. 1068 of 2021 Steel Authority of India Ltd. v. National Union Waterfront Workers, (2001) 7 SCC 1.

stop them from forming unions, unfair pay, not getting maternity benefits and being fired when they are pregnant. There are laws like the Sexual Harassment of Women at Workplace Act from 2013 and the Maternity Benefit Act from 1961 which was amended in 2017 that try to help with some of these problems. However, these laws do not really work together to stop unfair labor practices.

The problem with these laws is that they do not do a job of dealing with the specific issues that women workers face. Women workers are not protected from unfair labor practices because the laws do not have special rules for them. When women workers are treated unfairly at work it is often because of both unfair labor practices and discrimination, against women. The laws do not do a job of stopping this from happening or helping women workers when it does happen. Women workers and unfair labor practices are still an issue because the laws are not strong enough to deal with the problems that women workers face.

IV. Contract Labor- A Structural Loophole:

The Contract Labor (Regulation and Abolition) Act, 1970, was enacted with the objective of ensuring that contract labor was not used as a device to avoid the provisions of labor laws. However, the enforcement of the Act has been imperfect. Contractors are often found to be operating without valid licenses, principal employers are absolving themselves of liability regarding the misconduct of contract labor, and the "abolition" of contract labor in certain industries is a time-consuming process.

Contract labor is frequently used as a device by employers to avoid ULP liability, where the employer refuses to regularize regular employees, employs contract labor for "perennial" work, and frequently changes contract laborers to avoid unionization. In the landmark judgment of **Steel Authority of India v. National Union Waterfront Workers**¹¹, the Court restricted the regularization of contract laborers, thereby inadvertently facilitating this structural ULP.

COMPARITIVE PERSPECTIVE

A comparative glance at some of these countries would also throw light on the extent of legislative vacuum in India.

United States of America: The NLRA is complete in its coverage of the issues concerning ULPs and provides for the National Labor Relations Board (NLRB) to be vested with powers of investigation, prosecution, and remedying of ULPs. The right to organizing is available to employees under this legislation, and employers are liable for remedial action of payment of

back wages and reinstatement of workers.

United Kingdom: The Employment Rights Act of 1996 and the Trade Union and Labor Relations (Consolidation) Act of 1992 are very strong in providing protection against unfair dismissal and discrimination on the ground of union activities. The tribunals are easily accessible and cost-effective and quick in disposal of cases.

South Africa: The Labor Relations Act of 1995 clearly defines and prohibits ULPs by employers and union members and provides for easily accessible dispute resolution through the Commission for Conciliation, Mediation, and Arbitration (CCMA) and is also protective of informal workers through creative judicial interpretations.

The Indian position is much weaker on all these counts.

RECOMMENDATIONS

Based on the above analysis, it is proposed that the following changes would make the Indian ULP framework truly effective:

- I. Enlarging the scope of what constitutes a ULP** to include wage theft, algorithmic management abuse, worker misclassification, retaliatory transfers, and digital surveillance.
- II. Inclusion of Informal and Gig Workers:** Legislatively recognizing "Platform Workers" as a protected class of workers who would have full rights under the ULP framework, rather than merely social security benefits.
- III. Creation of a dedicated Labor Relations Commission** like the NLRB and South Africa's CCMA, with investigation and prosecution powers, and accessibility for workers without any need for legal representation.
- IV. Significant amendments to the penalty framework** under the Industrial Relations Code, including proportionate fines, reinstatement with back pay, and punitive damages for egregious cases of ULPs.
- V. Enact a mandatory union recognition law** at the central government level, providing a definite time frame for recognition based on membership verification, with consequences for non-compliance in bargaining.
- VI. Ratify ILO conventions 87 and 98**, which are directives on international labor standards, as an expression of India's commitment to these standards.
- VII. Strengthen the labor inspectorate** through increased recruitment, training, and restoration of inspection rights, while protecting inspectors from political interference.

VIII. Develop a gender-sensitive ULP framework addressing the issue of gender discrimination and labor exploitation.

CONCLUSION

The query raised by this paper—that of the efficacy of existing labor laws in controlling unfair labor practices in India—is one that allows for a very clear, if rather uncomfortable, answer: they are not.

The new labor law codes of 2019 and 2020 were a missed opportunity. They have, in effect, watered labor law protections for workers against ULPs rather than strengthening them. What is more, they have failed to address the issue of labor law protection for gig economy workers and those working in the informal economy. The judiciary has been a welcome, if patchy, corrector of legislative failings.

But it is, of course, a matter of political economy too. In a world where capital is easily mobile, labor is abundant, and law is easily breached. There is every incentive for employers to engage in unfair labor practices and every disincentive for them to avoid them. What is needed is reengagement with the constitutional ideals of a social order where labor is not merely protected but actually valued.

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