

# Labour law and worker protection in emerging countries

## ➤ APPENDIX 3 - INDIA

India has a diverse and protective body of labour law which is at the core of national debates on economic policy. Both the Government and employer representatives see it as a factor that works against a flexible and dynamic labour market and economic growth. Yet, labour law is in fact little respected. It only applies, *de jure* and *de facto*, to a tiny minority of workers. Where it does apply, it is so incompletely that in reality it provides only tenuous protection. The Indian labour market has been confronted to a wave of informalisation since the 1980s. In this context, all attempts at structural reform are thwarted by conflicts between Government, employers' and workers' representatives. But as social protest grows, the need to improve working conditions and worker protection must be addressed, particularly in a democratic system. In recent years, this has led to an increasing number of public initiatives based on *ad hoc* assistance measures. Although these represent a considerable step forward for worker protection, they also reflect the difficulty of substantially reforming labour market institutions in order to improve access to productive employment and better working conditions. ■

## LABOUR LAW AND WORKER PROTECTION SINCE 1947 : SOCIALISM, LIBERALISM AND SOCIAL PROTEST

As in most former British colonies, labour law and the organisation of social protection in India are significantly marked by the legacy of the British Empire. From a strictly legal point of view, several fundamental employment laws were passed during the colonial period (employment contract legislation in particular dates back to 1872<sup>(1)</sup>), some under the influence of the International Labour Organisation (ILO).

Colonisation also explains the significant involvement of large companies, like Tata, in the construction of labour regulation. The rise of Indian industry at the turn of the 20th century was marked by shared interests among national economic and political stakeholders on the road to independence. The need to regulate labour relations was officially recognised by the Independence movement of the Congress in 1930, in the Karachi resolution on fundamental rights: “The State shall safeguard the interests of industrial workers and shall secure for them, by suitable legislation and in other ways, a living wage, healthy conditions of work, limited hours of labour, suitable machinery for the settlement of disputes between employers and workmen, and safeguard against the economic consequences of old age, sickness and unemployment.” The principles set forth in the resolution were reiterated in 1950 in the Directive Principles of State Policy Nos. 39, 41, 42 and 43 of the Indian Constitution.

Thus, while India adopted a socialist economic model after Independence, characterised by the State involvement in economic life, major companies and trade unions were fully-fledged partners in the industrialisation process. This cooperation between the Government and the social partners resulted in a diverse, protective body of labour laws being developed and maintained until the 1980s. Indian labour legislation is now one of the most comprehensive and detailed in the world. Regulation of employment and labour, which is a shared competence of the Central Government and the Regional Governments, is based on almost 200 laws (including approximately fifty Union laws). Several dispositions introduce minimum social security benefits<sup>(2)</sup>. Recently, India has signed a “decent work”<sup>(3)</sup> programme with the ILO, deemed by the organisation as the “biggest and most widespread decent work programme launched by the ILO and social partners so far<sup>(4)</sup>”.

Yet, since 1991 the Indian Government has shifted its strategy, from socialism to economic liberalisation, based on export-led growth and price competitiveness. This has led to a decline in government intervention and labour regulation. Since then, India has largely adopted “trickle down” economic theories whereby the gains of economic growth should trickle down to the poorest people, increasing individual income and improving material welfare. Within this context, regulation as a means of guaranteeing worker protection and quality of work has been disregarded. Instead, labour law has been increasingly considered against its effects on the attractiveness and growth of the Indian economy<sup>(5)</sup>. Both at the national level and in international negotiations, the Indian Government claims that “employment for all” is its first priority while “decent work” will automatically follow from full employment. In this context, the effectiveness of labour regulation has been placed at the centre of debates on Indian economic policies.

As a matter of fact, Indian labour law is not considered very effective, neither in terms of economic growth nor of working conditions. It is so diverse, detailed and decentralised that it has become somewhat contradictory, prompting recurrent criticism from employer representatives. This complexity has even led to the emergence of a sector dedicated to interpretation of the law<sup>(6)</sup>. As in Europe, the “inflexibility” of labour law is often seen in India as an obstacle to a dynamic



[1] The Indian Contracts Act of 1872.

[2] The Employees' State Insurance Act of 1948 (cf. details below), which applies to firms employing at least ten workers, makes provision for access to healthcare, payment of sickness and maternity benefits for employees and their families, as well as payment of monthly wages in the event of an occupational accident causing the employee's death or disability. The 1952 Employees' Provident Fund and Miscellaneous Provisions Act, which concerns firms with at least 20 employees, introduces the Provident Fund into which a contribution of 12% of the wage is paid. This fund is paid to the employee upon retirement, or to the family in the event of the employee's death.

[3] Decent work is defined by the ILO as being productive work for women and men in conditions of freedom, equity, security and human dignity. Decent work involves opportunities for work that is productive and delivers a fair income; provides security in the workplace and social protection for workers and their families; offers better prospects for personal development and encourages social integration; gives people the freedom to express their concerns, to organise and to participate in decisions that affect their lives; and guarantees equal opportunities and equal treatment for all.

[4] Lerche J. [2012], 'Labour regulations and labour standards in India: Decent work?', *Global Labour Journal*, vol. 3{1}.

[5] NCEUS [2007], *Conditions of Work and Promotion of Livelihood in the Unorganised Sector*.

[6] “Business booms for labour laws outsourcing units”. [http://articles.economicstimes.indiatimes.com/2010-08-19/news/27573114\\_1\\_labour-laws-pan-india-presence-outsourcing](http://articles.economicstimes.indiatimes.com/2010-08-19/news/27573114_1_labour-laws-pan-india-presence-outsourcing).

labour market<sup>(7)</sup>. At the National Labour Conference in February 2012, the Prime Minister declared that: “more and more States have adopted a much more flexible approach to labour issues”, something he saw as a sign of progress.

This relative withdrawal of the Government away from economic regulation contrasts with the previous period and is strongly criticised by trade unions. Indeed, India is experiencing an increasing informalisation of labour, decreasing job security and growing inequalities, despite the country's sustained economic growth (see below). The Gini index, which measures inequalities in income distribution in a country, rose from 30.8 in 1994 to 33.4 in 2005 in India, whereas it had fallen during the 1980s<sup>(8)</sup>. Within this context, the flexibilization of labour law and labour market has been criticised for driving a social race to the bottom between Indian States, while the Central Government is accused of favouring employers and turning a blind eye to breaches of the law. The Government is thus facing growing discontent in civil society and among trade unions, which are campaigning for substantial labour law reform to provide protection beyond the formal sector. Although several initiatives have been taken in response to these demands, they have been symbolic and largely unsatisfactory given the growing sense of vulnerability among workers.

One such initiative, which is both unprecedented and promising in its form, is the special commission set up in 2004 to study working conditions and labour regulation in the informal or “unorganised” sector as it is known in India (cf. definition below). The National Commission on Enterprises in the Unorganised Sector (NCEUS) issued its report in 2007, recommending the adoption of comprehensive legislation to protect all workers against the main risks (healthcare, sickness, employment and old age). Under pressure from trade unions, the Government has also introduced a guaranteed minimum wage in rural areas with the National Rural Employment Guarantee Act in 2005 (cf. below). Lastly, in 2008, in response to NCEUS recommendations, Parliament adopted the Unorganised Sector Workers' Social Security Bill. Targeting the 93% of informal Indian workers, the act provides for health insurance, life and disability insurance, insurance in the event of an occupational accident and a retirement pension. According to the Indian Government, 340 million workers should benefit by 2013.

These initiatives are without doubt a major step forward and give reason to hope for greater positive changes ahead in worker protection than in the past. However, they have been criticised for their lack of ambition. The laws passed target only minimum social welfare and offer hardly any improvement in terms of access to protected employment and working conditions. Thus, there is a widening gap between positive initiatives to create a social protection floor and the extreme vulnerability of most of the population in terms of working conditions and quality of employment<sup>(9)</sup>. This raises the question of whether the above initiatives are merely a means for the Indian Government to buy peaceful industrial relations at a low cost, while delaying structural reforms of social welfare and labour law<sup>(10)</sup>. But India cannot do without such reforms. As it stands, labour law is hard to enforce and, for that reason, hardly ever enforced.

## THE INDIAN LABOUR MARKET, BETWEEN SEGMENTATION AND INFORMALISATION

Although labour laws and worker protection are well established in India, they have always applied to a relatively small proportion of workers. These laws were inspired by those devised in Europe for an industrial society and have never corresponded to the economic and social realities of the Indian labour market. Unlike their European counterparts, most workers in India have never known full-time salaried employment. Enforcing the law is difficult in a highly segmented labour market, where the prevalence of informal employment and casual work means that only a minority of workers enjoy effective protection. As in the other BICS countries, reforming labour law in India is thus made all the more challenging by the fact that, unlike in Europe, the law has never reflected the economic and social realities of the labour market.



[7] Besley T. and Burgess R. [2004], “Can labor regulation hinder economic performance? Evidence from India”, *The Quarterly Journal of Economics*, vol. 119(1), p. 91-134, February.

[8] World Bank data.

[9] Harriss-White B. [2010], “India's informal capitalism and its regulation”, *International Review of Sociology*, vol. 20(3).

[10] Guérin I. et al. [2012], “Labour standards in India”, *Global Labour Journal*, vol. 3(1).

Formal employment in India accounts for less than 10% of total employment. “Inclusion”, i.e. the horizontal and vertical extension of employment-related protection<sup>(11)</sup>, is a considerable challenge in this context, as for many other emerging countries. But in India more than anywhere else, both the labour market and its regulation are highly fragmented, such that labour law coverage is extremely poor.

Informal employment is particularly persistent in India. The informal sector has been expanding despite sustained economic growth over the past two decades. Formal workers account for less than 10% employment, with private businesses in the formal sector accounting for approximately 3% of the population in work, and the public sector accounting for 5%. In all, informal work currently represents some 93% of employment<sup>(12)</sup> and contributes more than 50% to India's GDP<sup>(13)</sup>.

This trend does not look set to reverse. Looking beyond statistical volatility, the latest employment survey<sup>(14)</sup> reveals a relatively continuous trend of informalisation and casualisation of employment since the end of the 1980s and, more recently, a growing proportion of regular urban workers claiming to have no written contract<sup>(15)</sup> (up from 59% to 65% between 2004/2005 and 2009/2010), as well as a sharp increase in the proportion of temporary and casual workers.



Table 1

### The distribution of the Indian labour force

Employment survey	Self-employed persons (%)	Regular salaried employees (%)	Temporary/casual employees (%)
66th (2009-2010)	44.9	25.2	31.7
61st (2004-2005)	49.8	24.2	28.3
55th (1999-2000)	46.0	23.3	32.6
50th (1993-1994)	46.6	22.6	24.0
43rd (1987-1988)	48.2	23.5	14.5
38th (1983)	47.8	22.7	21.9

Source: Centre d'analyse stratégique calculation, according to The Indian annual employment survey, 2009/2010.

Four factors explain the extent and persistence of informal employment in India.

- ▶ The highly rural structure of society, with over two thirds of the population working in the agricultural sector.
- ▶ The overall trend in global labour markets towards the development of “atypical” jobs, which are nowhere well covered by labour legislation. India is no exception in this respect and, furthermore, its formal employment statistics are impacted by the falling number of public sector employees.
- ▶ The demographic change which means a balance of supply and demand on the labour market now unfavourable to workers in a context of “growth without employment”, particularly in recent years<sup>(16)</sup>, with the working-age labour force growing faster than formal employment. The rate of employment in the working-age population dropped by three percentage points from 58 to 55% in India between 2005 and 2010 according to the World Bank<sup>(17)</sup>.
- ▶ Last but not least, labour law itself contributes to the persistence of informal work. For example, India makes a distinction between what it calls the “organised” sector, which is covered by labour law and, in this respect, corresponds to the formal sector, and the “unorganised” sector, which is beyond the scope of labour regulation. Informal work can develop in either of these sectors. As with the informal sector, the exact boundaries of the “unorganised” sector are not clear, but according to the NCEUS definition given in 2007, it “encompasses all unincorporated private enterprises



[11] According to the International Labour Organisation terminology on extension of social protection, i.e. more people covered and a higher degree of cover.

[12] OECD (2011), *Economic Survey of India 2011*.

[13] National Statistical Commission (2012), Committee on Unorganised Sector Statistics, Government of India.

[14] National Sample Survey Office (2011), *Report on Employment and Unemployment Survey 2009/2010*.

[15] Note: in theory, the employment contract may be verbal under Indian labour law.

[16] Chowdhury S. (2011), “Employment in India: What does the latest data show?”, *Economic and political weekly*.

[17] “Jobs” database.

owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers.” “Unorganised” workers are those working in the unorganised sector or formal sector workers whose employer does not guarantee any social cover or labour law protection. The threshold of ten employees in the definition of the unorganised sector can be explained by the segmentation that exists in law. The fundamental law governing working conditions in India, the 1948 Factory Act, provides that regulations do not apply to companies with less than ten employees if the company has electricity and less than twenty employees if it does not use electricity. The 1947 Industrial Dispute Act, which governs labour relations and job protection, only applies to firms with more than fifty employees. Very many Indian companies and workers are therefore excluded *de jure* from coverage by the law and, therefore, from the organised sector<sup>(18)</sup>. In all India’s labour legislation, only two laws target the entire unorganised sector<sup>(19)</sup>.

Not only does the law organise statutory segmentation of workers, but even when it does apply, labour law coverage is very poor. Almost all Indian labour laws cover only a minute portion of workers, and no law has universal coverage<sup>(20)</sup>. The great variety of regulations that has emerged from this profusion of specific laws also explains the persistence of segmentation in employment status and conditions. Each law or regulation has its own definition of what constitutes a worker or enterprise, etc. This blurs the boundaries between formal and informal employment and it is not uncommon to see formal and informal employees working side by side in the same firm<sup>(21)</sup>. The application of labour law to formal workers varies considerably with the sector of industry concerned.

In addition to this legal segmentation, there is also *de facto* discriminatory and spatial segmentation.

The caste system, for example, remains a significant factor of unequal access to education, employment, and to the labour market in general. Its role is particularly predominant in the labour market as the caste system is itself partly based on a division of work, with some jobs being open only to certain groups: intellectual activities to the Brahmans, military activities to the Kshatriyas, commercial jobs to the Vaishyas and menial manual work to the Shudras. Not only wages, but also the type of job and work relationships are therefore greatly influenced by caste, with the least privileged groups (the Scheduled Castes and Scheduled Tribes according to the Indian administrative classification) being the most adversely affected<sup>(22)</sup>. This observation must, however, be qualified with regard to the social and economic changes that India has experienced since Independence, and depending on whether workers are in urban or rural areas. Firstly, the positive discrimination policy implemented by the various governments since Independence has drastically reduced caste-based discrimination. Quotas in universities and public institutions have enabled many members of traditionally marginalised groups to obtain public sector jobs, which are among the best protected and the most highly paid. Secondly, economic development, especially in urban areas, has reduced the importance of caste in relation to economic success. In this context, the quota policy is the subject of recurring debate, and is criticised for giving too little consideration to economic inequalities compared with traditional community discriminations. Despite criticism and variations, the influence of caste in social and professional life should not be overlooked. It remains a crucial factor in many rural areas and at key times in life, such as marriage.

As labour law in India is a shared competence between the Central Government and the Regional State governments, it further varies and applies differently, depending on where companies are located. Some States, like Gujarat and Rajasthan, have even demanded exclusive jurisdiction over labour law. Indian States have very different positions on social policies, in terms of both their ability and willingness to implement them. The dividing lines between business and politics vary locally and are sometimes unclear. Even national regulations are therefore implemented, monitored and controlled in varying ways from one State to the next. Standardising them is a considerable challenge. This can be seen in the



[18] Some studies suggest that this segmentation could even contribute to the preponderance of small production units in India compared to other emerging countries. See Hasan R. and Jandoc K.R.L. (2010), “The distribution of firm size in India”, ADB Economics Working Paper series n°213, August. The authors find that, in India, firms with less than 50 employees account for 84% of employment vs. 25% in China. Laws other than those relating to labour have also fostered the development of small and mid-size firms, particularly those establishing production quotas in many manufacturing sectors.

[19] Namely the 1976 Equal Remuneration Act and the 1976 Bonded Labour System Abolition Act.

[20] NCEUS (2007), *Ibid.*

[21] Barrientos S. *et al.* (2008), “What are the challenges and opportunities for economic and social upgrading?”, Concept note for “Capturing the Gains”, international research workshop, University of Manchester (UK), Dec. 8-12.

[22] On this topic, see Das M. and Dutta P. (2007), “Does caste matter for wages in the Indian labor market?”, Draft Paper, World Bank.

inconsistent enforcement of the National Rural Guarantee Act (NREGA, cf. below) as well as disparities in average daily wages. According to the Indian employment survey for 2009-2010, the average daily wage for a man varies in rural areas from Rs. 226.60 in Kerala to Rs. 70.83 in Chhattisgarh. For the same worker category in urban areas, the average wage is also the highest in Kerala (Rs. 237.42), and the lowest in Madhya Pradesh (Rs. 88.92). Kerala is in fact a “model” State in India regarding the development of and compliance with individual and collective labour laws (trade unions and worker unionisation are relatively high compared to the rest of the country, cf. below).

Lastly, special economic zones, which are exempt from certain regulations, have seen considerable development in India with the free-market economy. Labour laws also apply to companies set up in special economic zones under the 2005 and 2006 laws relating to these zones. In reality, however, States have some autonomy in this area. Some States have declared these zones to be of “public utility” and consequently restricted the right to strike. The Government has also announced that new special zones called National Manufacturing and Employment Zones (NMEZ) could soon be created. Here, labour law would be made more flexible to attract foreign investors.

Given this significant fragmentation of the law and its coverage, the extension of protection in India is clearly hindered by difficulties in standardising employment status and labour relations across the nation. Labour market instability and local dynamics make it very difficult to implement standard labour law by industrial sector or region.

## ▶ EFFECTIVE PROTECTION, WORKING CONDITIONS AND COLLECTIVE BARGAINING RIGHTS

### ■ Poor working conditions despite extensive legislation and regulatory institutions

As seen earlier, working conditions in India are governed by substantial legislation. Two laws are worthy of mention: the 1948 Factory Act, which focuses on working hours and overtime (legal working week of 48 hours, one day off per week, a maximum of 50 hours' overtime per quarter and a 100% increase in the hourly overtime rate); and the 1948 Employee State Insurance Act, which governs cover for sickness, maternity, occupational accidents and unemployment, with an employee contribution of 1.75%. The employer also pays a contribution of 4.75% of the total payroll.

There is also a minimum wage governed by complex rules. At 115 rupees per day in 2011, this minimum wage appears relatively generous. In 2010, the average wage in India in rural areas was 93 rupees for a temporary or casual worker and about 231 rupees for a regular employee. In urban areas, a temporary or casual worker earns 122 rupees on average and a regular employee 365. The household consumption survey also shows that in 2010, some 60% of Indians lived on less than 35 rupees a day in rural areas, and less than 66 rupees in towns.

#### Box 1

##### Minimum wage

Although India has not ratified the ILO Convention 131 on Minimum Wage Fixing, the minimum wage was among the constitutional obligations defined when the country gained independence, leading to the 1948 Minimum Wage Act. That year, a tripartite committee on “Fair Wages”, set up to establish guidelines for the minimum wage structure in India, found that “a minimum wage must provide not merely for the bare sustenance of life, but for the preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities”.

The minimum wage is set every five years by the Central Government and the State Governments in their respective spheres.

Based on a recommendation of the 1957 National Labour Conference, it takes five norms into account:

- three consumption units for one earner;
- minimum food requirement of 2,700 calories for an adult;
- clothing requirements estimated at 66 metres of fabric;
- rent corresponding to the minimum area provided under the Government's industrial housing schemes;
- fuel, lighting and other miscellaneous items of expenditure should represent 20% of the total minimum wage.

In 1991, other criteria were added by a decision of the Indian Supreme Court ruling in the *Reptako Brett and Co. vs. Its workmen* case.

The ruling stipulates that the following must also be taken into account:

- education, medical requirements and minimum recreation for children, representing at least 25% of the minimum wage;
- local conditions and other factors impacting the wage level.

The Indian Government introduced Wage Boards in the 1950s and 1960s to facilitate wage negotiations. These tripartite committees bring together employer representatives, unionists and independent personalities. They are responsible for making recommendations concerning the appropriate wage changes. However, with the decline in trade union influence and the fact that their recommendations are not legally binding<sup>[23]</sup>, their influence has decreased with time<sup>[24]</sup>.

While the Minimum Wage Act is the only Indian labour law with practically universal application (as categories of employment covered have increased), in practice the minimum wage varies greatly from one State to another. According to the Ministry of Labour, the Central Government was responsible in 2012 for setting the minimum wage for 45 job categories<sup>[25]</sup>, and the State Governments for 1,596 other categories.

In this context, the Government's minimum wage policy not only seeks to extend coverage of the minimum wage but also to standardise the level. These two aims are closely interlinked, as the ability to enforce and monitor policy is inevitably weakened by the disparity in existing minimum wages. To reduce disparities, the Central Government set up five regional committees in 1987 to promote standardisation and, since 1991, has striven to define a floor level. Since April 2011, this floor has been 115 rupees a day<sup>[26]</sup>.

The results of the latest Indian employment survey for 2009-2010 show that compliance with this floor level is far from generalised (cf. above): only regular workers and men in temporary public employment in urban areas declare that they earn at least this amount.

An extensive body of law completes these measures and covers the main aspects of working conditions (table 2).

Working conditions are still very poor despite these laws. In 2008, the ILO estimated that almost 403,000 people die each year in India due to work-related problems. Of those fatalities, 47,000 are thought to be caused by workplace accidents<sup>[27]</sup>. The number of cases of occupational illness is estimated at around 18 million<sup>[28]</sup>.

Working conditions are particularly poor in the mining, manufacturing and port industries. In the mining sector specifically, which employs over a million workers every day, accidents caused by explosion have risen since 2000 and occupational diseases such as silicosis or chronic pulmonary obstruction are still very problematic<sup>[29]</sup>. In addition to these "traditional" diseases and risks, other occupational illnesses have emerged more recently, such as occupational stress and repetitive strain injuries, the occurrence of which has risen with the growth of the services sector.

However, as with all labour law in India, the coverage of laws on occupational health and safety is low. Only the three above-mentioned sectors, which are the most hazardous, have occupational health and safety regulations. A bill with universal coverage was drafted in 2002, and concerned all industries and all workers, including those in the informal sector. But like most attempts at substantial legal reform, the vote was postponed due to a lack of consensus between politicians, management and labour.

Furthermore, there is little control on compliance with laws governing working conditions and with labour law in general<sup>[30]</sup>. Very few breaches of law are brought before the courts, and even fewer employers are sentenced. While the ILO put the estimated number of fatal workplace accidents in India in 2008 at 47,000, only 179 were officially reported that year.



[23] Except for those relating to the press sector.

[24] According to the Ministry of Labour – See: <http://labour.nic.in/wageboard/welcome.html>.

[25] For further details: <http://labour.nic.in/wagecell/Wages/CentralSphereWage.pdf>.

[26] Details of minimum wages per State can be found at <http://labour.nic.in/wagecell/MinWages.htm>.

[27] Dr. Al-Tuwajri S. et al. (2008), *Beyond deaths and injuries: The ILO's role in promoting safe and healthy jobs*, ILO report, 25 June.

[28] Pingle S.R. (2002), "Do occupational health services really exist in India?", <http://www.occuphealth.fi/NR/rdonlyres/04399102-514B-4444-AC38-C90DCC3D9A3D/0/7DoDHservicesreallyexistinIndia.pdf>

[29] Occupational Safety and Health Working Group.

[30] NCEUS (2007), *Ibid.*

Table 2

## National laws on working conditions in India, by category

Category	Description/Detail	Related regulations
Physical working conditions	Health and safety	The Dangerous Machine Act (1983), Inter-State Migrant Workmen Act (1979), the Building and Other Construction Workers Act (1996), the Beedi and Cigar Workers Act (1966)
Working hours	Legal working hours (daily and weekly), overtime, night work, leave	The Minimum Wage Act (1948), Inter-State Migrant Workmen Act (1979), the Building and Other Construction Workers Act (1996), Child Labour Act (1986), the Beedi and Cigar Workers Act (1966)
Pay	Wages, type of wage, bonuses, retirement, Providence Fund	The Minimum Wage Act (1948), Inter-State Migrant Workmen Act (1979), the Building and Other Construction Workers Act (1996), the Equal Remuneration Act (1976), the Payment of Wages Act (1936), the Bonded Labour System Act (1976), the Beedi and Cigar Workers Act (1966)
Individual and collective labour relations	Trade union recognition, settlement of labour disputes	The Trade Union Act (1926), the Bonded Labour System Act (1976), the Payment of Wages Act (1936), the Minimum Wage Act (1948), Child Labour Act (1986), the Equal Remuneration Act (1976), Inter-State Migrant Workmen Act (1979), the Beedi and Cigar Workers Act (1966), the Building and Other Construction Workers Act (1996)
Working conditions of vulnerable workers	Disabled workers, women, migrants, minorities, bonded workers, other forms of forced labour, child labour	The Dangerous Machine Act (1983), Inter-State Migrant Workmen Act (1979), the Building and Other Construction Workers Act (1996), the Equal Remuneration Act (1976), the Bonded Labour System Act (1976), Child Labour Act (1986)

Source: NCEUS, 2007.



Inspection institutions suffer from several failings. The Central Industrial Relations Machinery is only responsible for entities within the scope of Central Government (rail transport, mines, etc.). In the States, labour inspection covers both public and private undertakings, but each State Government has jurisdiction to determine the number of inspectors and their duties. While the effectiveness of labour inspection therefore varies greatly from one State to the next, it is considered poor overall and lacking in inspection resources, whether in terms of the number of inspectors or their skills. It thus suffers from a very poor reputation in the Indian bureaucratic hierarchy, and its effectiveness is further undermined by a very high turnover.

The volume and complexity of inspections required – combined with cumbersome administrative procedures – are also partly responsible for this deficiency. “Inspector Raj” is a phrase commonly used in India to refer to the multitude of obligations weighing on employers regarding the inspection of working conditions. A growing number of States have thus begun to streamline and simplify inspection requirements, paradoxically to make inspection more effective. But at a time of increasing casualisation, some critics suspect that this process is actually an attempt to hinder inspections<sup>(31)</sup>. The above initiatives are criticised by unions as illustrating government bias towards employers and greater flexibility of the law.

#### ■ While social dialogue has broken down, social protests are increasingly successful

India's broken down social dialogue cannot make up for the shortcomings of the administration. Indian trade unions, which are of political nature and most often affiliated to a political party, have played a key role in Indian labour regulation in the past. Under Article 19 of the Constitution, the right to form a union is recognised as fundamental. Trade unions are governed by the 1926 Trade Union Act, and the decades immediately following the country's independence were the golden age of unionism in India.

But, against a background of economic interventionism exerted at Central Government level, and with political dissension leading to an increasingly fragmented union scene, trade union influence over political power has significantly declined since the end of the 1970s. The state of emergency declared by Indira Gandhi and the ensuing suspension of social rights between 1975 and 1977 were a turning point in this respect. Trade union distrust of the Federal Government dates back to that time and was heightened by the 1991 free-market turn, with the Government adopting a far tougher attitude to unions than in the past. The 1980s thus saw the onset of more conflictual relations between the Union Government and social partners, and the beginning of a steady decline in the influence of trade unions and union law, against a background of economic liberalisation and reorganisation of production.

India has not ratified the ILO Convention 87 on Freedom of Association and Protection of the Right to Organise, or Convention 98 on the Right to Organise and Collective Bargaining. In 2001, an amendment to the Trade Union Act was passed. It provides that a trade union must represent at least 100 workers or 10% of labour in firms with less than 100 workers, compared to seven before. But this tougher attitude to trade unions is particularly visible in the separatist regions in the north-east. In Sikkim, for instance, the Trade Union Act does not apply and administrative authorisation must be obtained to form a union.

Within this context, trade unions have seen their activities and social regulation capabilities reduced. According to the latest figures collected by the Ministry of Labour in 2002<sup>(32)</sup>, almost 25 million workers claimed to be union members out of a total working population of 472.6 million in 2010 and a working-age population of almost 75 million in 2011<sup>(33)</sup>. As a result, the right to organise is seldom observed.

Collective bargaining is often blocked within companies, with employers adopting a negative attitude. Companies are in no way obliged to recognise unions or enter into negotiations. Employers often seem to oppose talks with new unions



[31] Deshingkar P. (2009), “Extending labour inspections to the informal sector and agriculture”, Chronic Poverty Research Centre, Working Paper No. 154.

[32] Result of a national survey in 2001. In June 2011, the Ministry of Labour opened talks with trade unions to renew the survey.

[33] 15 and over, United Nations Department of Economic and Social Affairs.

(sometimes in collusion with existing ones), or even contribute to the creation of co-opted company unions<sup>(34)</sup>. Furthermore, the very organisation of the settlement of labour disputes (individual or collective) favours judicial settlement and State intervention over negotiated solutions. Where individual or collective talks fail, as is most often the case, one of the parties or the Government may refer the matter to a conciliator, appointed by the State, who will attempt to find a compromise. But this is often an extremely long process and, once the compromise is reached, it only becomes legally binding if approved by the labour authorities *via* a labour tribunal decision. The 1947 Industrial Dispute Act was amended in 2010 in favour of workers, who may now dispense with government intervention and bring a layoff dispute directly before a labour tribunal, without going through the conciliator. But the effectiveness of the law is undermined by a lack of financial resources which prevents most workers from taking legal proceedings. On a collective level, although the right to strike does exist, it is also relatively restricted: firstly, by the existence of a minimum service in public services<sup>(35)</sup>; and secondly, by a lock-out right granted to private sector employers, i.e. the possibility of closing the company in the event of a dispute and ceasing to pay wages.

Outside formal enterprises, social dialogue and union capacity for action does remain influential, at least formally, *via* the Indian Labour Conference. Attended by employers's and labour representatives and by the Government, the conference is held every two years to examine the main employment and working condition issues, particularly minimum wages. At central level, however, given the significant dissension between social partners, labour law reform is a politically difficult topic to put on the agenda. As a result, the symbolic value of the conference tends to outweigh its effectiveness.

Union action is also finding growing support among workers in the unorganised sector, for whom it campaigns for extended rights. The SEWA (Self-Employed Women's Association), founded in 1971, is emblematic of this particularly strong trend in India. In 1972, this voluntary organisation obtained the right to unionise for the self-employed and has since met with great success. It has even inspired movements in other developing countries. In 2011, SEWA had over a million women members in around a hundred cooperatives<sup>(36)</sup>. Another example is NASVI, the National Association of Street Vendors in India, founded in 1998, which advocates a national regulation policy for these informal workers. These active union organisations very often work with NGOs and civil society.

Since 2000, there has been a growing number of general strikes, reaching beyond union membership and across the political divide. A recent example is the strike organised in February 2012 for tougher labour law and the introduction of an effective minimum wage. The growing success of collective action in obtaining concrete results suggests a more positive change in working conditions than in the past. The guaranteed minimum income for rural populations, the NREGA, came into being on the initiative of Indian trade unions. Another example, the 1948 Factory Act on working conditions, has been undergoing official reform since 2011 in response to constant working class pressure since the 1984 industrial disaster in Bhopal and the last amendment in 1987 (introducing specific regulations for workers in dangerous industries).

Under the influence of the organisation of Indian democracy and collective voting patterns, the power of civil society to exert pressure and take action for the protection of the most underprivileged workers is growing. As the working-age population in the unorganised sector accounts for the majority of Indian voters, these workers can influence legislative developments in social protection through their protests and votes<sup>(37)</sup>.



[34] ITUC (2011), *Internationally recognised core labour standards in India*, report for the WTO general council review of the trade policies in India.

[35] Under the 1947 Industrial Disputes Act, an employer must be given at least six weeks' notice for any strike. The 1981 Essential Services Maintenance Act grants extensive powers to public authorities, at federal or State level, through to the possibility of arresting strikers, to control or put an end to industrial action.

[36] Schurmnz S.J. and Eaton A.E. (2012), *Trade union organising in the informal economy, A review of the literature*, report to the Solidarity Center, Cape Town.

[37] For further reading on this topic, see Agarwala R. (2011), "From work to welfare: The State and informal workers' organizations in India", Working Paper series, The Center for Migration and Development, Princeton University.

## ➤ DUE TO LACK OF STRUCTURAL REFORM, TARGETED ASSISTANCE SCHEMES SET UP FOR THE MOST DEPRIVED

India has not ratified the ILO convention 2 on unemployment insurance and, like most emerging and developing countries, has no actual unemployment compensation scheme. The 1948 Employees' State Insurance Scheme (ESIS), which governs most employee protection, made no provision for any unemployment insurance until 2005, when an unemployment benefit called "Rajiv Gandhi Shramik Kalyan Yojana" was added for ESIS beneficiaries having paid into the scheme for three years<sup>(38)</sup>.

In the absence of unemployment insurance, worker protection against unemployment relies on the formal protection of employment against redundancy and payment of legal compensation. As already outlined, legal employment protection in India is regarded as one of the most restrictive in the world. The 1947 Industrial Dispute Act, which covers individual and collective dismissal, provides for administrative authorisation in the event of dismissal. This is the main reason why Indian law is considered too inflexible, particularly according to the OECD consolidated indicator<sup>(39)</sup>. However, this law remains in fact relatively ineffective and rarely respected, just like labour legislation in general. In its annual report for 2009-2010, the Ministry of Labour listed only 12 firms that had officially received authorisation to lay off a total of 2,146 workers. The same applies to the use of temporary workers, which is also officially regulated<sup>(40)</sup>.

Faced with demands for greater legal flexibility, the development of unemployment insurance would appear necessary to secure career paths rather than protect jobs. However, labour law reform is at a standstill in India, given the mutual distrust between social partners and between workers' representatives and the central Government.

For lack of legal reform, worker unemployment protection is thus increasingly based on a multitude of *ad hoc* assistance schemes aiming to guarantee minimum income for the most destitute workers through employment support or public works programmes. Examples include the National Rural Employment Guarantee Act (NREGA), introduced in 2005, which guarantees 100 days of paid work per year or replacement income for rural workers<sup>(41)</sup>. While they do provide greater protection for workers against extreme poverty and insecurity, the growing number of these schemes also reflects the difficulties facing labour market institutions in making structural reforms that truly safeguard careers. In addition, these programmes deliberately pay such low wages<sup>(42)</sup> that they can hardly be more than a temporary solution until employment and/or better worker protection is found. Under the NREGA, the daily wage is a little less than 90 rupees<sup>(43)</sup>, i.e. below the minimum legal wage.

Lastly, the more "technical" obstacles to implementing a contributory insurance system in India must not be overlooked. Generally speaking, and as in other emerging countries such as South Africa, access to social protection is hindered in India by population census difficulties and the small proportion of the population with access to banking services. Only 40% of Indians have a bank account and only 5% of villages have a commercial bank<sup>(44)</sup>. To overcome these difficulties, the Government has recently launched two initiatives: the Swbhimaan programme designed to encourage rural populations to open a bank account and, since January 2012, the rollout of 30,000 computers for a voluntary census survey. But these incentive schemes will only be truly successful if the banking market develops in response to demand and if the Indian Government effectively follows up census applications.

[38] Five years until 2009, when the law was relaxed in the context of the Great Recession.

[39] OECD (2011), *Ibid.*

[40] Contract Workers (Regulation and Abolition) Act (1970) and Contract Labor and Inter-State Migrant Workers Act (1979).

[41] For further details, see OECD (2011), *Ibid.*

[42] The level of pay under this kind of scheme is generally deliberately low to avoid being a disincentive to finding regular salaried employment.

[43] National Sample Survey Office (2011), *Ibid.*

[44] The French Embassy in India (2012), *La protection sociale dans les pays émergents - Le cas de l'Inde.*

## ➤ CONCLUSION

In India, the need to reform labour law and worker protection so as to provide better coverage for the 93% of informal workers is nothing new. Indian labour law has always been rarely enforceable or enforced, owing to the profusion of employment categories and relations. This heterogeneity makes it difficult to enforce universal standards and not only reflects the reality of the labour market but is also maintained by the law itself. Most substantial reforms intended to extend the coverage of labour and social protection laws have become virtually impossible with a broken down social dialogue since the 1980s and against a backdrop of economic liberalisation and growing job insecurity. In recent years, faced with growing social protest and organised action to defend the most vulnerable workers, the Government has stepped up its efforts to strengthen protection for the most destitute, with some original initiatives (NREGA, law on social security for the informal sector, etc.). But such welfare systems targeting the poorest of the poor can only provide a temporary solution considering the growing number of vulnerable workers and the poor coverage of social rights.

## APPENDIX 3 - INDIA

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