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DISCUSSION PAPER

LABOUR REFORMS IN INDIA: THE NEED FOR REFOCUSING DISCOURSE AND POLICY

NEYMAT CHADHA AND JITENDRA BISHT



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In picture: Tobacco dealer and cigar maker Varanasi Benares India

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ABSTRACT

The issue of labour law reforms has been at the core of the conventional discourse on industrial investments and job creation in India, wherein these laws are seen as restrictive and complex. The series of labour law changes made by several state governments in May 2020 also had the rationale of driving industrial and employment growth in an economy hit by the Coronavirus-induced lockdown. This paper looks at the problems inherent in the current discourse on industrial growth and labour law reforms by analysing enterprise level data. It shows that the current labour law regime has a marginal impact on industrial growth as well as labour welfare. It further argues that there is a need to shift the focus of the current discourse from the issue of labour laws to longstanding structural issues affecting new industrial investments, job creation as well as formal employment in the country.

CONTEXT

The COVID-19 pandemic led to, arguably, the most significant set of changes to India's labour regulation regime in recent times. Beginning in early May with Uttar Pradesh and Madhya Pradesh, a total of seven states¹ made 'minor' and 'major' changes to their labour laws. Most of these states increased the daily and weekly working hour limits under the Factories Act 1948 (Ram 2020). Uttar Pradesh, however, passed an ordinance that exempts industrial units from most labour laws for three years (The Uttar Pradesh Temporary Exemption From Certain Labour Laws Ordinance, 2020). Passing the UP Temporary Exemption from Certain Labour Laws Ordinance 2020, the government released a statement saying,

“The covid-19 pandemic has impacted economic activities and industrial activities badly. Because of which the workers welfare has also got a hit. To bring the economic activities back on track, new industrial investments opportunities will have to be created and old industrial activities need to be given a boost.” (Nanda 2020).

Thus, the Uttar Pradesh government, in a bid to boost the halted economic and industrial activities, opted to exempt industries from labour laws that seek to secure workers' rights. One can infer that the Uttar Pradesh government saw the two issues of workers' rights and industrial growth as incongruent.

Some experts hailed these changes to labour laws as the most important set of reforms since the economic liberalisation of 1990, that have become necessary for enabling greater investment and increasing formal employment (Kant 2020; Pai 2020). Others have opined that reforming restrictive labour laws provide India with a chance to attract the flight of manufacturing jobs from China and compete with countries like Vietnam which have already made similar bold labour reforms (Jha 2020).

Critics, however, have noted that these labour law reforms will lead to “anarchy in the labour market” with an erosion of labour securities in the formal sector as well as a decrease in female workforce participation due to increase in working hours (Sundar and Sapkal 2020). Others have highlighted the fact that labour laws are only one factor amidst a list of issues plaguing the business regulatory environment in India and may not be enough to attract long-term investments (Rajan and Tikku 2020).

¹ The rest being Rajasthan, Gujarat, Punjab, Himachal Pradesh, and Odisha.

THE CENTRAL GOVERNMENT'S RATIONALE

It is worth noting that many states have been making gradual changes to labour laws over the past few years. Data from the Ministry of Labour and Employment shows that till March 2020, significant changes had been made to a total of 15 central government labour laws by various state governments (Ministry of Labour & Employment 2020). These include key laws such as the Payment of Wages Act, Factories Act, Industrial Disputes Act, Contract Labour Act, Trade Union Act, Minimum Wages Act, and Employees Compensation Act, among others. This indicates that reforms in labour laws is a process occurring over a period of time rather than a single policy action with immediate impact. One of the reasons for that is the sheer number of labour laws in India. Currently, there are 44 central government labour laws and more than 100 other state government laws, which are said to encourage non-compliance and contribute to informal employment (NITI Aayog 2020).

One of the key projects of the current government under PM Modi, since 2014, has been the simplification of the central labour laws into four labour codes. First recommended by the 2nd National Labour Conference in 2001, the labour codes are outlined in Table 1, accompanied by the progress made in terms of its legislation since the government came to power. Evidently, progress has been gradual on this front as the Parliament has passed only one out of the four codes.

Table 1: Proposed Labour Codes and their status

Labour Code	No. of Laws Subsumed	Status of Legislation
Code on Wages	4	Passed by the Parliament in August 2019
Code on Industrial Relations	3	Introduced in the Lok Sabha in 2019 and currently pending with the Standing Committee on Labour
Code on Social Security and Welfare	10	Pending with the Standing Committee on Labour
Code on Occupational Safety, Health and Working Conditions	13	Pending with the Standing Committee on Labour

Source: Ministry of Labour & Employment 2019: 4; Ministry of Law and Justice 2019; Sharma 2020

The stated objective of the government's codification exercise, as well as other governance measures is "strengthening the safety, security, health and social security for every worker and bringing ease of compliance for running an establishment to catalyse generation of employment opportunities" (Ministry of Labour & Employment 2019:3).

Hence, at the core of the central government's idea for labour law reforms are two seemingly incongruent issues—safeguarding rights of workers, while simultaneously fuelling industrial investments (and job creation) by making labour law compliance easier. The second part of the idea is based on an oft-repeated assertion that India's labour laws have held back new investments (particularly in the manufacturing sector) and thus, employment growth in a significant way. However, available evidence suggests that this assertion as well as the discourse surrounding labour reforms are flawed and need to be repositioned.

THE SCOPE OF LABOUR LAW REFORMS

There is an implicit assumption surrounding labour laws that they are aimed towards the protection of all workers. However, roughly 90% of India's workforce and more than 50% of the Gross Value Added (GVA) to the economy are accounted for by the informal or unorganised

sector (Murthy 2019: 2-3). Most labour laws do not apply to the informal sector, meaning only around 10% of workers are actually protected under the current labour law regime. As per the Economic Survey of 2018-19, the Minimum Wages Act 1948 does not cover all wage workers because of which "one in every three wage workers in India has fallen through the cracks" (Ministry of Finance 2019: 199). Available data on employment conditions in the informal sector shows that even among regular wage/salaried workers engaged in non-agricultural activities, 71.1% have no written job contract, 54.2% are not eligible for paid leave, and 49.6% are ineligible for social security benefits (National Statistical Office 2019: 69-72).

There is no conclusive empirical evidence to support the assertion that rigidity of labour laws is a major factor restricting industrial investments and employment growth. Enterprise surveys that rely on primary data to study ease of doing business show that though enterprises find compliance difficult, other regulatory roadblocks affect them much more than labour laws. One of the more recent enterprise surveys conducted by the NITI Aayog and IDFC Institute revealed that a majority of firms in labour-intensive sectors such as Textiles, Food Products, Metal Fabrication, Leather, Machinery, etc. find compliance with labour laws difficult. In particular, these firms encounter problems in finding skilled labour (a crucial finding discussed later), employing contractual workers, and firing employees (NITI Aayog and IDFC 2017: 75).

However, the same survey also shows that overall, enterprises spend more time in land allotment (156 days on average) and in getting construction permits (112 days on average) as compared to labour-related approvals and renewals (74 days on average) (NITI Aayog and IDFC 2017: 28-29). This is the case even in labour-intensive sectors, as shown in Figure 1 below.

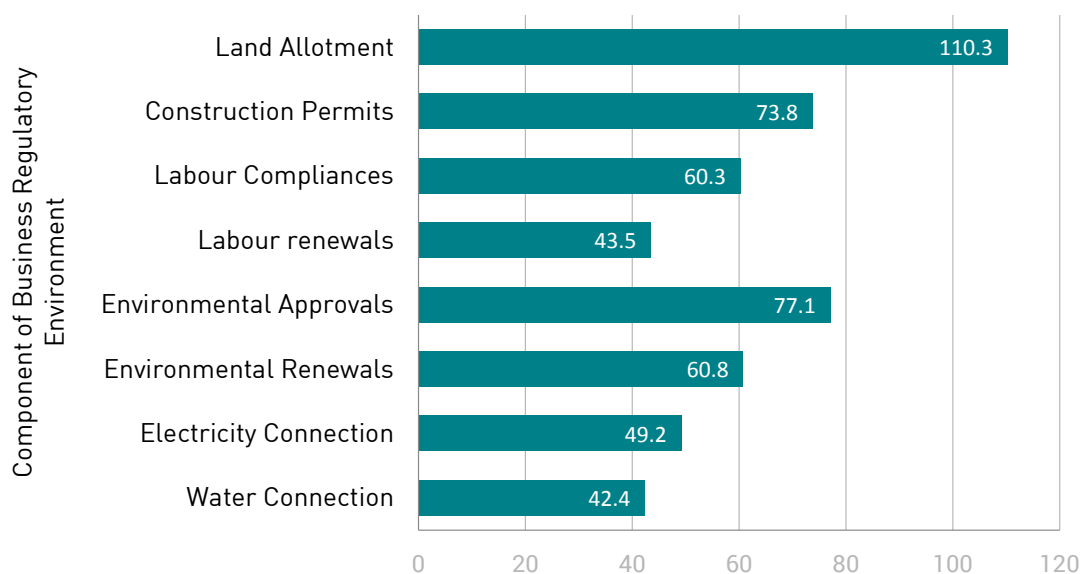


Figure 1: Average time taken (in days) by labour-intensive enterprises across components of business regulatory environment

Source: NITI Aayog and IDFC 2017

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Photograph by Utpal

Clearly, enterprises seem to spend more time at the very first stage of setting up a firm which involves acquiring land and construction permits, which could be a critical discouraging factor when it comes to new investments.

The World Bank's 2020 Ease of Doing Business rankings corroborate these findings. As per the survey, even though India has reached its highest-ever overall ranking of 63 out of 190 countries, it still ranks poorly in terms of starting a business (136th) and registering property (154th) (World Bank 2020: 4). In fact, most enterprise surveys have concluded that infrastructural bottlenecks, land acquisition, red-tapism, and tax policies affect new investments more than labour laws (Sharma n.d.).

So, on the one hand, labour laws do not cover most of India's workforce. On the other, there are issues like land acquisition, environmental clearances, and construction permits that affect businesses to a greater degree. The inference here is that labour laws have, at the most, a marginal effect on the current state of investment and employment growth in India. The discourse on labour reforms, thus, needs to focus on the more pressing structural issues plaguing India's labour market and how labour law reforms affect them. We discuss some of them in the next few sections.

INFORMALISATION AND DECENT WORK

The beginning of the previous section stated that a majority of India's workforce does not fall under the ambit of labour laws on account of being engaged in the informal sector. Workers in the informal sector have "no written contract, paid leave, health benefits, or social security" (Murthy 2019: 3). Table 2 shows trends in informal and formal employment in the country over a six-year period. While the overall share of informal workers seems to have gone down, the unorganised sector has seen an increase in the share of informal workers.

Table 2: Trends in Informal and Formal Employment

Worker	2011-12			2017-18		
	Unorganized	Organised	Total	Unorganized	Organised	Total
Informal	82.6	9.8	92.4	85.5	5.2	90.7
Formal	0.4	7.2	7.6	1.3	7.9	9.3
Total	83.0	17.0	100.0	86.8	13.2	100.0

Source: Murthy 2019

Informalisation has long been recognised as a major barrier to higher productivity, better wages, working conditions, and improved quality of life for a majority of India's working-age population. Wages in the informal sector can be as little as 1/20th of those in the formal sector (NITI Aayog 2018: 14). In the manufacturing sector, even though real wages have improved across formal and informal units over the years, the gap between the two is stark (Bisht and Chetia 2019: 5). Thus, there is a need for increased formalisation, and simultaneously, improved labour absorption in the formal sector to provide decent and productive work to a large chunk of India's workforce, as also targeted under the Sustainable Development

Goal 8².

The central government's rationale of simplifying labour laws to ease compliance is one of many ways that formalisation can be increased. However, whether an enterprise would be willing to take on the additional cost of providing social security, health benefits, paid leaves, and higher wages to employees as part of formalisation is up for debate. Between 2000-01 and 2015-16, the share of contractual workers in total employment increased from 15.5% to 27.9% while the share of directly hired workers decreased from 61.2% to 50.4% (Kapoor and Krishnapriya 2019: 2). The rise of contractual workers over the last two decades certainly shows that firms are more likely to offset additional costs on account of formalisation by opting for employees with short-term contracts at a lower cost who can be fired easily. Hence, the impact of the government's simplification and codification drive for easier compliance of labour laws on formalisation and employment growth remains to be seen. While the added cost of formalisation is a barrier, there is another structural problem in the form of a large unskilled labour force in India that seems to have remained unaddressed even after a policy push towards skill development.

UNSKILLED LABOUR

As mentioned earlier, hiring skilled labour is one of the key obstacles faced by enterprises, particularly in the labour-intensive sector.

Only about 4.69% of India's total workforce has had formal skill training, which is much lower than other major economies like China (24%), USA (52%), and South Korea (96%) (Ministry of Skill Development and Entrepreneurship 2015: 6). This dearth of skilled labour pushes enterprises away from labour-intensive sectors (NITI Aayog and IDFC 2017: 75). This, in turn, impacts job creation as enterprises, particularly in manufacturing, opt for capital-intensive production that requires less manpower. Hence, the presence of a large skilled workforce is necessary to attract new investments in labour-intensive manufacturing. However, according to the India Skill Report 2020, only 46% of youth graduating from higher educational institutions are employable or job-ready (Wheebox 2020: 28). The report also records a stagnation in the overall employability of students over the last three years after significant growth during 2014-2017 (Figure 2 below).

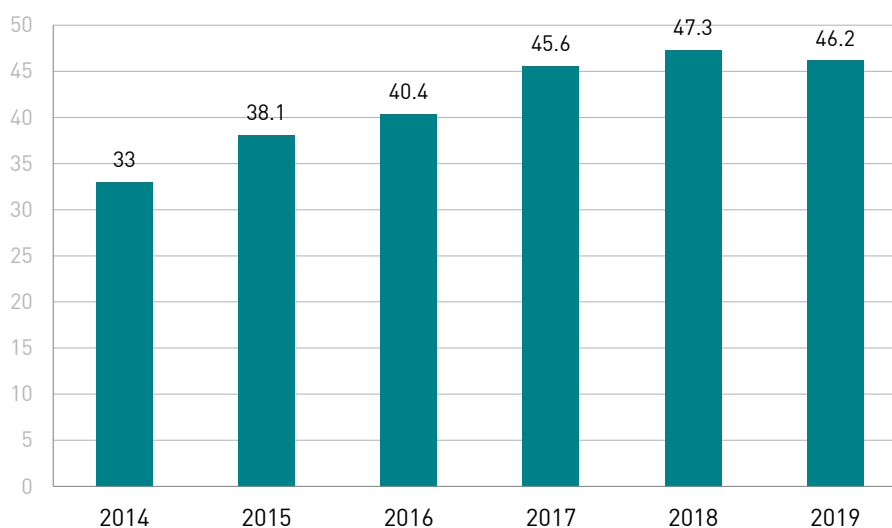


Figure 2: Share of Employable Youth in Higher Educational Institutions in India (in percentage)

Source: Wheebox 2020

² Sustainable Development Goal 8 is to "Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all".

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Photograph by Akarsh Simha

The government's flagship skill development scheme, the Pradhan Mantri Kaushal Vikas Yojana (PMKVY) that was launched with the aim to skill one crore people during 2016-2020, has also yielded moderate results. As can be seen in Table 3 below, only around 26% of the total certified trained individuals under PMKVY were able to get placements till FY2018.

Table 3: Progress under PMKVY till 2018

Category	FY 2016-17	FY 2017-18	Total
Total Enrolled	5,97,214	24,08,442	30,05,656
Total Trained/Oriented	2,23,809	21,54,760	23,78,569
Total Certified	85,104	16,21,214	17,06,318
Total Placed	281	4,52,828	4,53,109

Source: National Skill Development Corporation 2018

WOMEN IN THE LABOUR FORCE

In 2018, the government's premier policy think tank, NITI Aayog, published a blueprint for India's future development plans called 'Strategy for New India @ 75'. One of the issues of concern identified in the document was India's declining female labour force participation rate (FLPR). Over the last six decades, India's FLPR declined from 24.1% to 17.5%, as can be seen in Figure 3 below (Nikore 2019). The decline has been particularly constant since 2004.

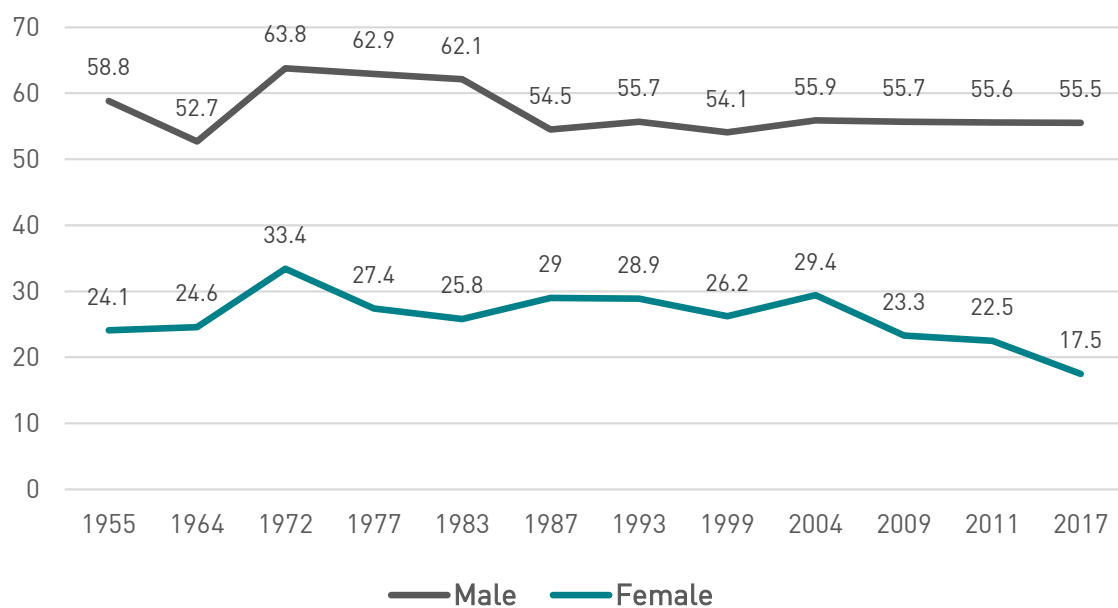


Figure 3: Labour Force Participation Rate in India - Male vs Female
Source: Nikore 2019

This decline has been even more pronounced in rural areas (Figure 4 below), possibly because of a general flight of labour out of the agriculture sector, which is dominated by women workers (Ministry of Statistics & Programme Implementation 2020: 78).

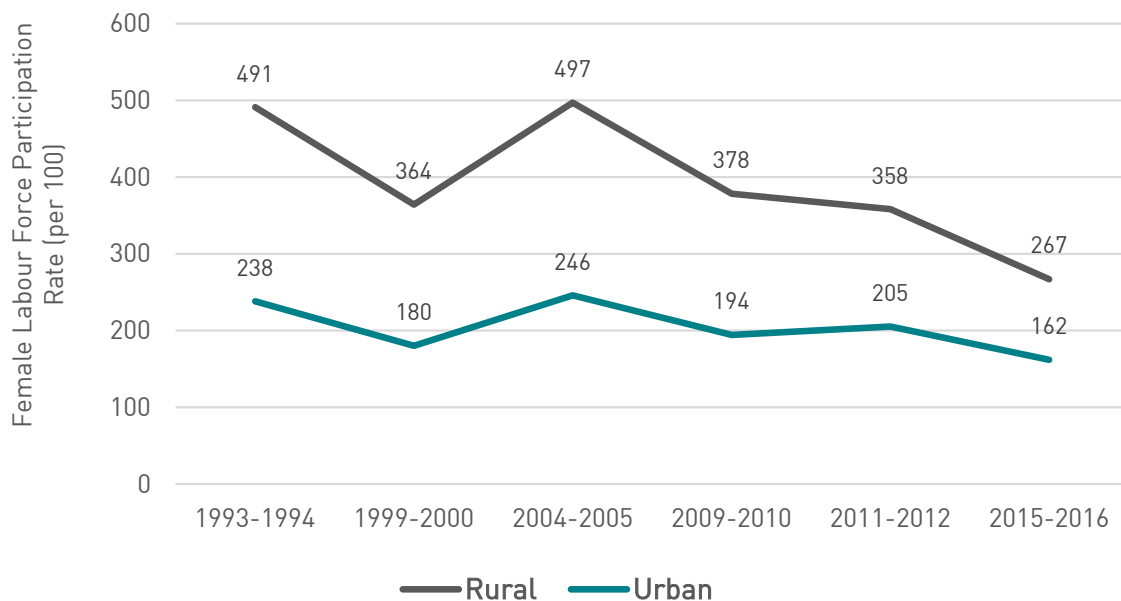


Figure 4: India's Female Labour Force Participation Rate - Rural vs Urban
Source: NITI Aayog 2018

The under-representation of women in the formal workforce means that a significant part of India's working-age population is engaged in unpaid or underpaid work in the informal sector (NITI Aayog 2018: 151). Estimates suggest that India's GDP could grow an additional 1.4% if as many women were in the formal sector as men (ibid.). Gender-sensitive interventions are thus required to overcome this gap.

More importantly though, labour laws and their reforms also need to be gender-responsive to create conditions for higher participation of women in the labour force. For instance, as of March 2020, no less than 13 states across the country had amended the Factories Act, 1948 to allow night work for women workers (Ministry of Labour & Employment 2020). However, while on the one hand this could be seen as a step in creating a gender-inclusive workforce, on the other hand, without additional steps to ensure safety for women workers, for instance, while commuting during late working hours, such changes in labour laws might discourage women from taking up jobs where night work is mandatory. This becomes particularly important when one considers the fact that in both rural and urban areas, women constitute a higher share of workers in the manufacturing sector (Ministry of Statistics & Programme Implementation 2020: 78). Thus, without adequate safety nets, provisions for allowing night work and increased working hours could become additional barriers for women's workforce participation.

CONCLUSION

There is no denying that India's existing labour regulation framework is rife with complexities and needs to be simplified to encourage compliance on the part of businesses. The central government's codification exercise as part of labour law reforms represents tangible policy action on this front. However, data from various enterprise-level surveys belie the centrality accorded to labour laws in the dominant policy discourse on India's business regulatory environment. There are infrastructural bottlenecks, red-tapism and other clearances that play a greater role in making the regulatory environment tougher for new enterprises. On the other hand, because only around 10% of workers are covered under labour laws, periodic reforms have virtually no positive impacts on the working conditions and wages of a majority of workers.

In light of this, in all probability, the temporary exemption from certain labour laws given by UP to industries as well as similar changes implemented by other state governments will have a marginal or insignificant impact on new industrial investments in these states. In fact, exemption from labour laws carries the potential to increase informality or contractual employment in the formal sector, weakening standards for social security and wages in the long run.

Thus, there is a need to shift the focus of the labour reforms discourse in India towards the structural issues plaguing the labour market. Policy action to change labour laws and their application should be aimed at addressing issues like informality and low representation of women in the workforce. Decreasing informality by expanding the share of formal enterprises and employment features prominently on the government's agenda. Although the rise in contractual employment, as well as lack of skilled labour, are two major roadblocks in the completion of that agenda. In the worst-case scenario, India might have to contend with a large informal sector for years to come, and consequently, low wages and poor working conditions for most of its workforce. Thus, in the near term, the government needs to prioritise the delivery of better outcomes under the skill development programme to drastically increase the number of formally skilled workers, while simultaneously, incentivising the process of formalisation for enterprises.

As regards India's low FLPR, the NITI Aayog's Strategy for India @ 75 document has set a target of increasing the same to 30% by 2022-23 through certain interventions (NITI Aayog 2018: 12). These include specific legislation for women in the informal sector, regulations that encourage women to return to the workforce after a break, tax benefits for enterprises with more than 30% women employees, and promotion of skill development among women for traditionally male-dominated jobs (electricians, plumbers, taxi drivers, etc.), among others (NITI Aayog 2018: 152-153). Certainly, these interventions need to be taken up on a war footing.

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