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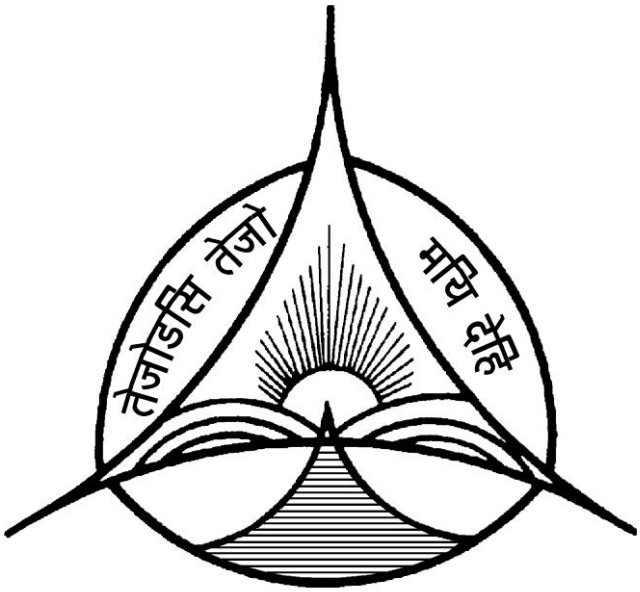

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PASSING THE POST IN POSTCOLONIALITY: PRECEDENTS AND PROSPECTS OF LABOUR LAWS IN INDIA

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Introduction

A crisis is clearly evident for the labour movement across several erstwhile colonies in Asia, Africa and Latin America. One of the important indices of this growing crisis is the rapidly changing content of labour laws. Of course, labour law has rarely acted as a tool of 'protection' of the collective rights or *class interests* of workers. In reality, labour law is the law of dependent or subordinated labour since its foundational logic is driven by the inequality between the supplier and purchaser of labour power, as well as by the divisions within the working class. The law has consistently eluded a large section of workers who have been denied rights and benefits on the pretext of less regular work contracts, length of employment, nature of establishment (seasonal or perennial), etc. It is only a minuscule section of (organised) workers who have been granted the same.

Nevertheless, the present conjuncture in postcolonial economies is characterised by a new and more offensive attack on labour by capital. While the law continues to elude workers of various kinds of industrial and commercial establishments, capital is now pressing for reforms in laws that offer some 'protective' cover to the workforce of larger establishments

Expectedly, the prominent discourse on labour law sees it as a fetter on the development of the free market, and the clamour for legal reforms that further unleash the productive forces of capitalism has now reached a feverish pitch.[1]

Laws that offer some 'protective' cover to the workforce of larger establishments are projected as against labour since the so-called high levels of regulation they facilitate are seen as preventing alterations in the use of labour in enterprises. This in turn is used to explain the hesitation of employers to expand production, and thereby, employment. The existing 'protection' of existing jobs is seen as affecting the creation of 'future' employment. Increasingly, even government reports are shifting a lot of the blame for slow growth in industrial production and low foreign direct investment (FDI) onto 'inflexible' labour markets.

However, employers' claims about the lack of labour market flexibility in India are unsustainable, given the high levels of employment of contract labour in all kinds of industrial and commercial establishments, steady growth of the informal sector, high labour turnover, the pattern of extended overtime put in by majority of workers, the growing presence of apprentices and 'fixed term' workers in industrial enterprises, the pattern of deskilling or high-skilled workers entering lower-skill segment jobs, as well as the presence of a weak trade union movement which is unable to prevent retrenchment or even retrenchment with stipulated compensation.

The precarity of labour is not just evident in growing informalisation of work across the board, deskilling, lengthening of the average workday/shift-time as well as the work-week. Precarity is

also reflected in the growing intolerance towards trade union formation in the majority of industrial belts and enhanced use of the criminal law framework by governments to settle labour disputes. In fact, given these entrenched precarious conditions, the withdrawal of effective state regulation in the form of inspections, and the fact that the organised presence of labour is steadily being clamped on, it is highly improbable that the state's new social welfare measures, such as extension of social security to the informal sector workforce, will be effective on the ground.[2]

The question that emerges is, how can we explain the current situation in which labour persistently finds itself on the back foot? To better comprehend the crisis and the (in)ability of labour to resist the new onslaught of capital, it is essential to engage with the foundational logic of labour law. It is thus important to examine the late colonial period that witnessed the evolution of several key labour legislations. As will be shown in the context of India, a consensus on regulation of labour was shared between the colonial and native political elite. The crux of this consensus was well engrained in the manner in which our 'nation-builders' came to formulate labour policy and labour law, as well as in the tenuous relationship that the mainstream nationalist movement and liberal politics have shared with the Indian labour movement.

Immediately following decolonisation, the overriding concern of the Indian state with political unity and economic development manifested itself in the perpetuation of highly interventionist approaches to industrial relations that had already developed during World War II (WWII), as well as in tighter controls over trade unions. From the mid-1980s, however, economic

liberalisation led to the steady withdrawal of the state from whatever pro-labour regulation of the labour market existed on paper. In the liberalisation era, the Indian state has openly developed an anti-labour stance.

Despite virulent propaganda by foreign and Indian capital that the state has failed to deliver and India's labour laws are restrictive and obsolete, adequate flexibility and innovation have been introduced into the system of labour regulation at the behest of executive orders of the central and state governments. Typically, the few pro-labour legislations that exist are eroded by executive orders, and finally their potential is destroyed by legislative amendments. These innovations have created greater obstacles for organisation building among workers and for creating working-class unity across various segments of the labour market, industries and regions. Hence, by engaging with certain historical trends in India's postcolonial industrial and labour policy and particular labour legislations, this article proceeds to establish that law is a colonial legacy which the postcolonial state has perpetuated, as well as significantly modified in order to free capital from the 'fetters' of concessions that the working class in the past wrested from it.

Situating postcolonial trends in labour regulation

When India achieved Independence in 1947, national consensus was in favour of rapid industrialisation of the economy which was believed to be essential not only for economic development, but also for economic sovereignty or self-sufficiency. India's industrial policy was enforced using the principles of federalism or divided jurisdiction, and (strongly interventionist)

state regulation of industry, and certain segments of the labour force became the thrust of the country's overall economic policy.

The first Industrial Policy Resolution announced in 1948 was a product of earlier discussions among leading Indian industrialists who had prepared the so-called Bombay Plan in 1944–45, in which they recommended government support for industrialisation, including a direct role in the production of capital goods. This Resolution made an important distinction between industries to be kept under the exclusive ownership of government, i.e., the public sector, and those reserved for the private sector and the joint sector. Subsequently, the Industrial (Development and Regulation) Act (IDR Act) was enacted in 1951 with the objective of empowering the government to take necessary steps to regulate the pattern of industrial development and to control the activities, performance and results of industrial undertakings in the public interest through licensing.[3]

In this way, government regulation of industrial production emerged as the norm and complemented the structure of labour laws that allowed for considerable state intervention in work relations. Many scholars identify these decades up until the 1980s as representative of centralised federalism, whereby planned development and certain unitary features of the Indian Constitution ensured central dominance while states were given a subordinate position.

However, this concentration of economic power and operations of industrial licensing under the IDR Act, 1951, triggered a trend whereby big business houses began obtaining a disproportionately larger share of licenses. At the same time, a rank of regional bourgeoisie had

emerged in stiff opposition to the big/All India bourgeoisie.[4] In this way, the postcolonial period from the 1960s to the 1980s witnessed heightened conflicts between different sections of the Indian bourgeoisie under the aegis of the federal form of state. It is precisely in this context that the phrase 'License-Raj' developed negative connotations, with regional capital increasingly claiming that a nexus existed between governments at the centre and large capitalist lobbies.

From the mid-1980s, or with the launch of the Seventh Five Year Plan (1985–1990), policy measures began to move in the direction of withdrawal of strict government regulation of industrial production. The Indian economy began to undergo a process of major transformation, which is broadly identified as liberalisation or 'neo-liberalism'.[5] This increasingly open and competitive economic environment paved the way for more and more deregulation.

By 1991, licensing regulation was substantially reduced, tariff and duties were lowered, and the Indian economy was opened up to international trade and investment. Given that the federal structure pushes the states to maintain independent sources of revenue and control their finances, the process of economic liberalization has nurtured intense competition among the different state governments for foreign and domestic investment in their own individual state. In other words, the period of neo-liberalism has witnessed the process of deregulation unfold in the form of competitive federalism.

In this neo-liberal postcolonial context, capital has in an aggressive vein ensured that labour law is increasingly facilitating greater labour market flexibility by legitimising changing production arrangements as well as (newer) modalities of work and employment relationships which have

evolved around increased casualisation and informalisation. This offensive has been possible due to the steady defeat of socialism across the world; the resulting retreat of the labour movement; the growing global consensus between national blocks of capital and international capital; and the gradual overcoming of contradictions within various sections of capital on the domestic front.

With the setting in of a neo-liberal politico-economic regime in India, competitive federalism has taken firm root. Intense competition among the different state governments for foreign and domestic investment in their own individual state has nurtured a paradigm of labour–capital relations which is based on reduced state intervention and assertion of the principle that the work contract constitutes a *private, individual* matter between employer and employee. With similar interests of propagating free trade and expanding the role of private and foreign investment in the economy, successive central governments have also contributed to the making of the new paradigm.

An apt expression of the growing legitimacy of this new paradigm of labour–capital relations is the persistent effort of successive central governments to sponsor specialised studies via special committees, the Planning Commission, working groups, etc., that focus on putting an end to the so-called 'Inspector-Raj' and changing the nature of labour inspection. It is in this light that labour inspection has shifted towards the self-certification system, whereby, instead of government officials examining and reporting about the compliance of industrial enterprises with labour laws, employers themselves will report on the same! Apart from this, the evolving paradigm has also paved the way for reduction in the powers of the labour inspectorate. Factory

inspections have been steadily declining in the post-liberalisation era due to acute staff shortage in the labour inspectorate, but more importantly, due to the enforcement of executive orders released by state governments to restrict inspections. In this light, self-certification by companies and random selection for inspection merely complement the process of declining state regulation rather than improving the conditions of work.

The tussle over the amendments to the Contract Labour (Regulation and Abolition) Act is also indicative of the employer lobby's efforts to restrict the fixing of the work contract's terms to the private domain, i.e., to a matter between an individual employer and individual worker. Earlier restrictions on use of contract labour in core production/manufacturing processes sought to be lifted so as to facilitate supply of easily hired and fired workers, depending on the *individual* employer's (fluctuating) needs for labour on the shop floor. Similarly, the Factory Act has increasingly been at the centre of the storm due to employers' concerted efforts to introduce greater flexibility within the concept of the 'workday', and as a result, enable individual employers to introduce longer work hours on a regular basis for individual workers. With the dismantling of the earlier fixed notion of the workday, night work for women workers has also won greater legitimacy. However, given the exploitative and oppressive work regime on the factory shop floor, the overall lack of regulation via safety audits of workplaces and the lack of anti-sexual harassment committees in most workplaces, it is highly unlikely that legalising night shifts for women in the manufacturing sector will benefit the female workforce.[6] Night shifts for women will expose a large number of women in the manufacturing sector to greater risk:

unemployment on the one hand if they refuse night work, and on the other hand, a greater threat of sexual assaults in the workplace or during their daily commute.

With the intention of minimising external intervention—be it state intervention or trade union action—the employer lobby has steadily attacked the 'protective' provisions of the Industrial Disputes Act—namely, Chapter VB that prevents easy lay-off of workers. The withdrawal of such provisions has meant greater generation of informal labour across industries, as well as easy hiring and firing practices to the detriment of the entire workforce.

The undeniable growth of the informal sector, i.e., small and microenterprises, as well as of informal work contracts across larger industrial enterprises, is a product of considerable interlocking of small capital with the interests of large capital, both Indian and multinational.[7] Importantly, in the post-liberalisation era, this interlocking has been possible with big capital driving down production costs by subcontracting certain operations, such as the production of auxiliary parts, to small capital.[8] This is clearly evident since production has moved in a big way to slums, small, and microenterprises. Subcontracting has meant that small capital has been steadily reduced to a dependent client status, and therefore, can generate the average rate of profit only by driving down labour costs. Expectedly, the new paradigm of labour–capital relations also suits the interests of small capital, which seeks to conceal the (over)exploitation of labour it employs via exemption from a series of key labour laws.[9]

Development of a consensus on labour unrest and goals of 'legitimate', constitutional unionism

It is a well known fact that industrial workers caught the attention of colonial officials and became objects of concern for the educated Indian elite in a completely new light, post World War I (WWI). A cursory survey of the international context will show that Indian labour legislation post WWI was part of a global concern regarding growing militancy of workers. The War soon displaced the initial patriotism of the working masses across the world, and bred a whole era of militant strike waves across many industries, as well as fuelled the creation of socialist-oriented international forums of working class organisations.

In some parts of the world, the extremities of war and the growing discontent of the working masses created the ground for revolutionary conditions which brought proletariat organisations into power. For instance, workers organised in bodies such as Soviets, seized power from the Russian provisional government in October 1917, creating a new socialist state under the leadership of the Bolshevik party. The October revolution had long term repercussions vis-à-vis the approach of advanced capitalist states to labour issues. The new approach to labour was undeniably reflected in the Paris Peace Settlement or Treaty of Versailles.

World War I ended leaving in place new but ineffectual institutions of diplomacy that soon collapsed as imperialist designs of advanced capitalist nations unfolded almost from the moment of reconstruction. Among one of the new institutions created in the process of the drafting and negotiating of the peace settlement was the International Labour Organization (ILO). Importantly, it is the only institution created by the peace settlement to survive to this day.

One of the key initiatives of international bodies like the ILO was to press for the introduction of new laws that replaced the earlier penal provisions of the 18th and 19th centuries. Across the world, although most of the 19th-century contracts were based on a supposedly voluntary agreement to enter the contract, the insertion of the principle of adherence ensured that the contractual relationship came to be governed by pre-existing rules or by the authority of a dominant partner.[10] In other words, the notion of contract, for the most part, enforced compulsory service on the part of labouring groups, and so this contract ideology worked mostly in the form of penal contracts. In this way, the state's legislations of this period enforced a form of contract that permitted employment to operate entirely at the employer's discretion, while imposing criminal sanctions on labouring groups for breaking the contract. In India, one such important piece of penal legislation was the Workmen's Breach of Contract Act, 1859, which was applied in the case of contracts where money had been advanced.[11]

However, by the start of the 20th century, there was a significant reformulation of contract, which came to be based on the logic that the contracting parties are free to withdraw and make more beneficial arrangements once their minimal commitments are fulfilled. The *collective* evasion of the work contract by workers was increasingly perceived as indicative of their mere withdrawal to change the terms of contract, rather than a breach of contract. Workers by now were no longer considered primarily culpable, and were projected as legal subjects with certain prescribed, inviolable rights. In this process, the ILO played a crucial role. It became the cornerstone in the dissemination of certain paradigmatic ideas on labour concerns throughout the

world. Of course, the perceived threat of spreading Bolshevism convinced governments to adopt several such ILO deliberations, and to engage with labour as a *distinct social category*.

In tandem with such developments, a Labour Bureau was set up in May 1920 to collect, classify and tabulate information on labour conditions in India. Activities of government departments such as Industries and Labour were also focused on collecting and assessing labour legislations of industrialised countries. This growing interest of the government in labour was clearly the logical outcome of a countrywide outburst of labour unrest, and the mushrooming of trade unions all over India due to the ravages of war and subsequent nationalist agitation. What troubled the colonial state about these struggles was "outside" leadership headed by "politically motivated" persons, and soon enough 'extremist' communist leaders. By 1920–21, both the central and provincial governments were quickly setting up inquiries and publishing bulletins addressing issues of healthy trade unionism based on economic lines.[12] The main conclusion reached in such government inquiries was that organisation on behalf of workers was inevitable and was to be encouraged as long as direct action by workers was constitutional and supported by public sympathy.

The initial approach of least intervention in disputes by the state was modified to this effect. By the 1930s, governments of provinces that had witnessed significant industrial growth and corresponding industrial strife were supportive of active intervention to ensure not just prevention, but also adherence to constitutional forms of collective action. In a circular advocating a new approach to industrial disputes, the Bombay government argued that: "from the

point of view of the prevention, if possible, of such disputes, and their early settlement…it is the intention of Government to endeavour to maintain industrial peace throughout the Presidency."[13]

Interestingly, however, the discourse of the colonial state did not reflect an outright intolerance for the outside sympathiser of labour. Such intolerance was reserved for communist trade unionists who emerged in places like Bombay post the 1924 general strike in textile mills. The colonial state was clearly interested in encouraging certain moderate and reformist trade union leadership till the time workers supposedly learnt the art of 'genuine' trade unionism.[14] Promotion of moderate and reformist unions was, of course, supported by coercive police action against those suspected of radicalising workers.[15]

The prominent discourse on labour unrest and 'legitimate' organisations of workers found acceptance even among several philanthropists, intellectuals and left-wing nationalists. In a sympathetic vein, philanthropists and intellectuals of the time highlighted the plight of workers, government apathy, and the need for certain protective and welfare legislations. However, contemporary discussions on the working class show that the educated middle class sympathisers of labour were also quite averse to workers' violence and emergent 'left-menace'. The frequent strikes were seen as the weakness of the working class movement in India. As noted by a well known Congress leader, "A strike in the western countries is the last [resort], while in India it is the first weapon of redress".[16]

Publications by intellectuals and philanthropists also reveal a lot about the developing (shared) consensus on labour conditions, labour organisations and regulation of industrial conflict. For example, arguing for trade union legislation, a Servants of India publication read: 'What the law really does is to allow both sides a free hand for a fair fight'.[17] Such research clearly emphasised how trade union legislations enable the growth of more accountable and 'genuine' trade unions by introducing certain obligations of registry (submission of annual reports to the government, filing their rules and regulations, etc.).

These intellectuals and reformers also emphasised the increasingly 'political' nature of trade unions which they attributed to weak initiatives of social reformers to control trade unions, and the subsequent capturing of them by the lawyer-politician class.[18] Gandhian nationalism, for example, asserted that a large number of "outsiders" acting as working class leaders were not really interested in the welfare of workers. [19] By the 1920s, a brand of trade unionism emerged in the mills of Ahmedabad under the watchful eye of Gandhi.

It was with the express purpose of welfare work among the textile workers that Gandhi helped form the Ahmedabad Textile Association or TLA. The structure and functioning of the TLA was characterised by Gandhian views which prioritised non-violence and peaceful settlement of industrial disputes through arbitration, in addition to mobilising workers on strictly workplace-related economic issues. Not surprisingly, Gandhi never allowed the TLA to be part of the All India Trade Union Congress (AITUC). Indeed, the TLA was often recognised as a model trade union by colonial officials, and this, despite the fact that it continued to exist as an unregistered body of unions till well into the mid-1930s. The decision not to register allowed, of course, the

central union or TLA's Executive Committee to comprise completely of office-bearers and members who were 'outsiders'—something which the government conveniently overlooked as it perceived these 'outsiders' as "disinterested".[20]

The intervention of educated, middle class philanthropists in the trade union movement is also reflected in the endeavours of the welfare body, Servants of India. The Servants of India or Social Service League, headed by N.M. Joshi, had no avowedly political aims. The League looked forward to the establishment of formal machinery to lessen the conflict between capital and labour and hoped to encourage the development of trade unions to represent workers' interests in this process. The mill agents, on the other hand, saw welfare workers as a double insurance against strikes; philanthropy was expected to reduce discontent in the workforce while the League's officials were expected to act as intermediaries in resolving disputes if they arose. Many big cotton mills of Bombay entered into an agreement with the League in order to constitute factory committees, only to abandon them quickly in the process of the 1924 general strike.

Soon after the 1924 general strike, members of the League went onto form a trade union on British lines. In 1926, the Bombay Textile Labour Union (BTLU) was formed with Joshi as president. The BTLU sought to "obtain fair conditions of life and service…settle disputes between employers and employees amicably" in order to avoid strikes, and in the last resort, "render aid to the members during any strike or lockout brought about by the sanction of the Union".[21] In the build up to the massive general strike of 1928 in Bombay, N.M. Joshi and the BTLU continued to treat the strike simply as an extension of welfare responsibilities towards the

millhands. For Joshi and moderate trade unionists, political affiliations of a trade union were taboo.

Meanwhile, militant struggles of workers grew in industrial centres like Bombay under the influence of communist leaders. In engagement with growing communist intervention in the labour movement, voices even from the non-Brahmin movement began to emerge on questions of 'healthy' trade unionism.[22] At the All India Depressed Classes Conference held in Madras in early 1929, B.C. Mandal, presiding officer, argued that, "it is through education, education and nothing which could eradicate the problem of India's working class." He further stated that: "…There are many communists who pose themselves as great friends of labour. Beware of these friends. They want to spread communism in the name of the trade union movement by fomenting strikes with the help of Moscow money." In this speech he went on to advise the workers to join "the constitutional labour movement" to get what they wanted.[23]

Similarly, writing in the *Bahishkrut Bharat* on 3 May 1929, B.R. Ambedkar argued that a genuine trade union movement must be distinguished from the alien communist movement, which was a political movement and supported the use of violent means to do so.[24] Ambedkar's competition with other political forces for a foothold in the labour constituency is clearly evident in his decision to launch the Independent Labour Party prior to the 1937 election,[25] as well as in his changing position on the introduction of new industrial disputes legislation. In the case of the latter, it is important to note that the period of WWII, in which Ambedkar was labour minister, was one of simmering labour disputes which were successfully contained by the colonial state through its introduction of a slew of special measures. Ironically, Ambedkar came to support the

highly regulative labour law regime that was introduced via Rule 81-A of the Defense of India Rules and which propagated the principle of compulsory arbitration.[26]

Not only did Ambedkar defend such legislation as a temporary necessity of war, but also actively promoted it as a model for regulation of labour relations in peace time. Secondly, it is important to note that while Ambedkar spoke of compulsory arbitration as a boon for workers, the same principle was strongly opposed by him barely four and half years earlier when the communists in Bombay called for a general strike against the original Trade Disputes Act of 1938 which, interestingly, embodied the *same* principles regarding disputes settlement and standing orders pertaining to various aspects of employment. Indeed, the 1938 strike culminated on 7 November with a public meeting of over 100,000 workers addressed by both S.A. Dange (an established communist labour leader) and Ambedkar. Given this shift in Ambedkar's position vis-à-vis labour legislation on trade disputes settlement, it is evident that when he initially opposed the principles embodied in the draconian 1938 Bombay Trade Disputes Act brought into force by the provincial Congress government, it was more due to his anti-Congress politics than to a committed understanding of the crippling effect of such law.

Importantly, the aforementioned discourse on 'constitutional' or 'legitimate' trade unionism shared by the colonial officials and native political elites worked in tandem with the introduction of laws that authorised workers to articulate and advance their interests through self-organisation, yet carefully regulated and dampened workers' collective action. Through its evolving legal paradigm that bestowed legal subjecthood on the individual worker as well as on *certain kinds* of workers' unions, the colonial state strove to channelise collective action into

narrow, institutionalised forms which posed less of a threat to capital's mobilisation of large numbers of workers for new labour processes. It was with this purpose that the Trade Union Registration Act was introduced in 1926.

Another crucial aspect of the evolving legal machinery that significantly contributed to the nurturing of a fragmented labour movement is the law's intrinsic connection with labour market segmentation. Indeed, since the law's inception, new statuses have been bred by the capitalist system in terms of the privileged position bestowed on certain sections of the workforce, such as organised public sector employees who draw higher wages and accrue a larger package of social benefits than other sections of the workforce, namely, unorganised industrial workers. Of course, the (higher) status-like position enjoyed by organised public sector employees is not derived from the status of birth, community ties, etc.[27] It is, instead, derived from the inner workings of the capitalist labour market that grants a wider ambit of concessions to a small proportion of the working class in order to protect the long-term interests of capital. The fact that the law fed into prevailing labour market segmentation and (indirectly) contributed to the creation of differential status among different segments of workers is best comprehended if we study some important welfare legislations.

Welfare legislation and perpetuation of labour market segmentation

The colonial state's efforts at labour welfare took off in a major way post WWI. Among the plethora of such legislation enacted in the 1920s and 1930s, the Workmen's Compensation Act,

1923, is particularly important, given its definition of 'workman', including various grades of workers covered by the Act, as well as the specifications about the duties of employers. The Act's definition of 'workman' is clearly reflective of the state's concern with organised labour. From its very inception, this legislation has consciously covered a limited proportion of workers— namely, those in more organised industries like the railways, mines, factories, dockyards, fire department, post and telegraph.[28] Quite naturally, the Act came to exclude a whole host of work relations from the purview of the legislation. For example, although the legislation spoke of dock labourers, it excluded a significant number of labourers employed for chipping and painting of ships. A large number of those employed for chipping work were children, who were consciously employed by labour contractors at extremely low wages and without any protective gear whatsoever.[29]

The logic of segmentation that prevails within the workforce is also written into this Act in terms of the indices used for fixing the amount of compensation claimed. The amount payable to the workers depends on factors like the age of the injured worker and his or her average monthly wage. For example, based on the factor of age, injured child labourers that fell within the 'protective' jurisdiction of the Act came to be assigned a *lower rate* of compensation than adult labour.

Currently, the Workmen's Compensation Act has been complemented by another piece of legislation that applies to workers not covered by it. The Employees' State Insurance (ESI) Act,

1948, was a landmark legislation which was a product of the turbulent 1940s, i.e., the period of massive strike waves and pitched nationalist agitations. By 1946, the Workmen's State Insurance Bill was in circulation, and in 1948, it was passed by the Government of India. Again, although the Act provides for a relatively comprehensive scheme of accident, maternity and sickness insurance for workmen, it is applicable to *perennial* factories, i.e., undertakings working more than 180 days per year. Hence, as of now, the Act is applicable in all power-using factories, other than seasonal factories, wherein ten or more persons are employed. The Act was extended to non-power using factories, but again a cap of twenty or more workers was fixed for its applicability. Clearly, in its given form, even the ESI Act leaves out a large segment of workers who are employed in small workshops, small and micro industrial enterprises.

Having discussed how colonial labour welfare legislation worked within the logic of labour market segmentation, I go on to discuss how trade union legislation evolved around similar calculations.

The Trade Union Registration Act, 1926: launching of the new legal machine

From the very moment the Act was formulated, debated and passed by the colonial state in the 1920s, the focus remained on preventing the politicisation of the agenda and objectives of trade unions, in addition to facilitating the government's regulation of emerging trade unions through the process of registration and filing of returns and membership details with the Office of the Registrar of Trade Unions. In reality, the process of registration and filing of returns has been far

from just a disciplining tool to create 'legitimate' and 'accountable' trade unions. As pointed out by workers' organisations like the AITUC as early as the 1920s, the provision requiring the union to submit a list of its members to the Registrar was bound to lead to victimisation and union busting by employers.[30] With comprehensive lists of names of union members going back and forth between the Registrar and employer, little else can be expected.

Importantly, although registration was not made compulsory, the state ensured that registered unions were given certain privileges over non-registered ones. This granting of legal immunities, privileges and rights exclusively to registered organisations represents the characteristic approach of the state to labour, i.e., granting rights and privileges to the more organised and better-positioned sections of workers employed in large enterprises who are able to form unions more easily and can abide by the rigours of registration, while simultaneously denying the same to the mass of (more vulnerable) unorganised workers.

In order to curb the politicisation of trade unions, the Trade Union Registration Act since its inception comes down hard on *general* and *sympathetic* strikes and on the use of union funds for *political* purposes or non-plant issues. An effective way this law curbs sympathetic strikes is through strict regulation of trade union funds. Taken together, Sections 15, 16 and 18 of the Act: (i) restrict the expenditure of union funds on disputes of *another* union or disputes of non-organised workers; (ii) limit union expenditure on political goals by safeguarding the *individual* right of union members *not* to contribute political funds;[31] and (iii) permit expenditure of a

union's funds on 'general' issues of workmen *only on certain terms and conditions*— namely, that such expenditure does not at any time exceed one-fourth of the combined total of the union's gross income for the year. Section 18, in particular, extends immunity only to the actual parties to a dispute and *not* to unregistered unions and non-unionised workers that join a dispute in the form of sympathetic strikes.

As a measure of further safety against the possibility of any radical turn in the trade union form of struggle, the Trade Union Registration Act has outlined the number of 'outsiders' who can be part of a union's executive committee.[32] Prior to the amendment in 2001, the Act allowed for up to half the office bearers of a union to be 'outsiders'. In 2001 the central government amended the Act to limit the presence of 'outsiders' to just one-third or five, whichever is less. For this purpose, the Act has also fixed a strict figure of minimum membership required for registration. As amended in 2002 by the former National Democratic Alliance (NDA) government, the Act states that for registration of a union a minimum membership of 10 per cent or 100 workers and definitely not less than seven workers is compulsory. A measure like this has ensured that union formation across enterprises, especially so in small and medium enterprises of the informal sector, is severely hampered, and the scope for company unions (which can easily show large membership on paper) is enlarged in the case of larger industrial establishments. In this way, the labour movement has been severely crippled by the restrictive laws of association that are based on a notorious game of numbers and poorly thought-out registration procedures which facilitate victimisation and union busting.

Moreover, the postcolonial state has been using the law on unions to curb the more radical initiatives of workers by making trade unions the *principal* form through which they address their concerns, and by making workers heavily dependent on trade union leaders, lawyers, labour philanthropists, etc,. who can supposedly make more sense of the intricate web of legal protocols. This is an observation supported by some of the labour leaders themselves. In an important sociological study of trade union leaders, a labour leader, when explaining the approach of the ordinary member to the union, went on record saying that the need for legal skills in the leadership stemmed from pressure from below. He said, 'If we did not develop legal skills, members would have faith in the lawyer, not the leader'.[33]

In a similar vein, several union leaders created no illusions about the restraint imposed by the law. One leader claimed: "I am fed up with tribunals and lawyers. I have had bitter experience with lawyers….*Litigation is the opium of the trade unions*".[34] The latter comment, in particular, reflects the fact that no matter what the discomfort with using the legal machinery, the legal framework had become a predominant part of unionism. It indicates that the legal machinery has become a self-maintaining system in that leaders were steadily drawn to it as a viable alternative to direct action.

In the process, of course, what emerges is not so much a layer of trade union *activists* who use the trade union form of struggle to create some ground for a politically conscious working-class movement, but seasoned negotiators or trade union bureaucrats who vacillate between activism

and quiescence. This has eventually created the need for elitist leadership in the union, from which the "trade union boss" emerged, i.e., a bureaucrat who increasingly came to use unionism as a lucrative business and for political mileage in municipality or legislative assembly elections. The phenomenon was noted as early as the 1960s.[35]

It is also worth noting that the trade union organisational form provides employers ample opportunities to co-opt workers and their leaders. Even today, workers and their leaders are easily pushed into acquiescence by employers who promise periodic renewal of work settlements if the union assures its adherence to industrial peace. In return for a union office and certain tangible rights and privileges, employers often lure trade union leaders into a position of managing the rank-and-file workers. Another process by which this co-option plays itself it out is in the process when employers push trade unions to become representative bodies of permanent workers rather than the entire workforce.

Importantly, in the process of their interface with bourgeois labour law, workers themselves have contributed to the making of a trade union bureaucracy. Contrary to popular perceptions that have uncritically accessed rank-and-file militancy as well as rank-and-file participation in union work, workers themselves have helped to reproduce the constituting logic of internal trade union hierarchy by uncritically accepting it. We find that increasingly unions emerging from recent workers' struggles are restricting themselves and the workers to the question of union registration and recognition. Workers' initiatives are tied down to the endless search for the

'right' kind of leadership or those well-versed with the spirit of the law, rather than strengthening the internal structure of their unions, enforcing rank-and-file democracy, and uniting with the larger workforce outside their individual plant on common demands like the eight-hour workday, prohibition of contractualisation, etc.

Workers have come to assume that once they have a registered and recognised trade union they can force employers and the state to come to the negotiating table.[36] To quote a forthcoming statement by a trade unionist:

> Workers have developed a tendency that everything will be done by the union and whatever legally is possible should *automatically* be available through the union; *they forget their own role*—they forget the limits of the law and expect the union to achieve beyond those limits and thus the main thing (worker's role) of militancy and collective strength is completely lost…after the Bonus Act those getting 20 per cent started saying—*law has given us Bonus*—why pay to the union.[37]

With time, radical currents in the labour movement have found it difficult to circumvent the evolving legal paradigm. Endeavours of communist and socialist leaders have been beaten back due to pressure from belligerent employers and apathetic state officials who strategically made registration and then even the representative status of a union the grounds for its inclusion in the negotiation procedure. Nevertheless, the compulsion for communist and socialist-led unions to register and seek recognition was (and continues to be) a product also of pressure asserted from

below, i.e., from the rank-and-file of the unions. The refusal to comply with the pressure from below has increasingly meant losing out to other unions in the fray since desperate workers have reflected the potential to gravitate to organisations which they believe are better capable of resolving impending industrial disputes.

Disputes legislation and the obstacles for workers' organisations

Legal intervention with respect to state regulation of trade disputes did not have to wait long post the enforcement of the Trade Union Registration Act. Starting from the first Trade Disputes Act, 1929, disputes legislations have evolved in a manner which significantly curbs the right to strike, i.e., by prescribing strict rules for *striking with notice*, as well as crippling rules for the investigation and settlement of disputes—one of which includes prohibiting strikes not just during the pendency of conciliation and adjudication proceedings, but even for a stipulated period *after* the release of an award by the labour courts or tribunal. Many of these clauses have stemmed from workers' subversion of the legal paradigm at various moments of time, which has pressed the state into widening the scope of the law.

Apart from this, the highly regulatory clauses in disputes legislations also stemmed from the draconian provisions that were part of the Defense of India Rules introduced by the colonial government during WWII. These provisions were emergency measures that were to be withdrawn once the threat of war passed. However, they were never withdrawn and were instead

inserted into successive legislations that were introduced by provincial governments and the Government of India for regulation of trade disputes.

Pressured by large-scale industrial unrest immediately post WWII,[38] and emboldened by the colonial government's decision to extend the Emergency Provisions after the War,[39] the provincial Congress government in Bombay deftly pushed through one of the most controversial pieces of disputes settlement legislation, in that it had an even wider implication for industrial relations than prior legislations.[40] This landmark legislation was the Bombay Industrial Relations Act (BIRA) and was enforced in the province in 1946. It was a comprehensive piece of legislation geared towards facilitating the growth of 'sound' organisations that would uphold the official policy of compulsory conciliation and arbitration in the cotton, wool and silk textile industries where industrial strife was prominent.[41]

The Act notoriously introduced a category of approved unions which appeared in a special list. Committed to meeting certain obligations specified in Section 23, these unions were offered in return certain rights and privileges (Section 25). They alone enjoyed the right to represent the workers in arbitration proceedings; were empowered to hold discussions on the premises of the undertaking with members for the purpose of the prevention or settlement of an industrial dispute; to meet and discuss with the employer the grievances of its members employed in the undertaking; collect subscriptions from members on the premises of the establishment where wages were paid; etc.

To qualify, trade unions had to renounce the option to strike until all other means of resolution had been exhausted, and they had to undertake not to initiate action unless it was sanctioned by a majority vote by secret ballot. An approved union was also obligated to proceed to arbitration if a settlement was not reached during conciliation. Taken together with the clauses pertaining to the fact that only one kind of union could be registered in a local area, the provisions on approved unions and representative unions worked towards seriously delegitimizing the claims of other unions in the industry whose combined membership exceeded that of a representative or approved union. In other provinces too the concept of approved or representative unions gained ground. In the postcolonial period, private employers as well as state governments have laid down detailed rules for the grant of short-term recognition to unions. By and large, recognition revolves around a fixed minimum percentage of membership and whether unions reflect a certain degree of accommodation and preference for industrial peace.

The 1946 Act also came down hard on direct action. Strikes and lockouts were made illegal in various kinds of circumstances (Sections 78 and 98). BIRA is, however, better-known for its introduction of a new institution; namely, labour courts. This seemingly pro-labour development has, however, nurtured a process which has consistently redirected workers and their organisations from pursuing collective bargaining based on direct action or direct trials of organisational strength.

In other words, greater regulation of the work relation has coincided with the proliferation of institutions of arbitration such as specially appointed courts, which have paved the way for two crippling effects on the working class. First, workers have been increasingly reduced to litigants dependent on union officials and others well versed in the new copious laws. Second, their organisations have increasingly lost their class character and potential for class struggle in the process of becoming stakeholders in the functioning of the official machinery for disputes settlement. As stakeholders with guaranteed rights in the proceedings of conciliation and arbitration, the majority of workers' unions have moved closer and closer to 'constitutional' trade unionism, and even in their most spectacular moments of collective action, many trade union struggles have been characterised at best by sheer syndicalism.

Taking a cue from the restive labour situation in the period between 1946 and 1947, as well as from provincial governments like Bombay that had constituted comprehensive industrial relations legislation, the Government of India (the interim government led by Congress leaders) also moved to introduce the Industrial Disputes Bill. The Bill drew on several principles of war-time legislation, but also on the Congress Working Committee's resolution.[42]

The Industrial Disputes Act, which was finally passed in 1947, and has since then been enforced as a pan-Indian legislation, introduced two new institutions for prevention and settlement of industrial disputes. These include the works committees which consisted of representatives of employers and employees, and the Industrial Tribunals which consisted of one or more members

qualified for appointment as judges of a High Court. Along with the Trade Union Registration Act, the Industrial Disputes Act has witnessed crucial amendments in the postcolonial period.

Since its enforcement, the Industrial Disputes Act, 1947, has been subjected to continuous amendments. The period of the 1950s witnessed the introduction of several important amendments that grew from the necessity of given conjunctures in policy-making and from the challenges thrown up by the labour movement.[43] One such crucial amendment was with respect to lay-offs and retrenchment. The amending Act XLIII of 1953 inserted a provision within the original Act that regulated lay-offs and retrenchment by an employer. The Act has since then entitled a worker to compensation for the period of lay-off if he is *not* a *badli* (temporary replacement) or *casual worker*, and if he has not had less than one year's continuous service, and his name appears on the muster rolls of the undertaking. However, compensation for lay-off is not admissible in all industries and establishments covered by the Act. It can be claimed only in the specifically defined establishments, i.e., factories as defined in the Factories Act, mines as defined in the Mines Act, and plantations as defined in the Plantations Labour Act. Moreover, compensation for lay-off cannot be claimed in industrial establishments which are of a seasonal nature and in which less than fifty men on an average per working day have been employed in the preceding calendar month.

Another significant amendment to the Industrial Disputes Act is Chapter VB, which contains clauses prohibiting employers from laying-off, retrenching workers, and from pressing forward

with closure of an establishment without notifying the appropriate government or such authority.[44] On the surface this legislation may come across as a major concession won by the labour movement. But this is a hasty assumption to make, considering the fact that Chapter VB was actually introduced as an amendment during the imposition of Emergency by the then Indira Gandhi government.

Ironically, at a time when larger democratic rights were being crushed, the labour movement was granted a huge concession against lay-off and retrenchment. The concession emerged as a possibility at this particular conjuncture, given that industrial unrest was on the rise and there was a growing wave of anti-incumbency that drew on working-class radicalism. To diffuse the radical potential of the workers' movement by co-opting workers of large enterprises who were more organised, the central government strategically introduced Chapter VB in 1976 which made it compulsory for the employers to give ninety days' notice to the government before closure, retrenchment and layoff in enterprises engaging 300 or more workers.

Labour law reforms and liberalisation: repercussions on the labour movement

From the mid-1980s, and more so from the early 1990s, the Indian economy underwent a process of rapid liberalisation. From then onwards, the manufacturing sector has rapidly laid-off workers. Despite the labour movement's ability to wrest an important concession from the state in the 1980s, i.e., an amendment to Chapter VB of the Industrial Disputes Act which was subsequently

extended to enterprises engaging 100 or more workers, high job losses were reported throughout the 1980s and 1990s. Ironically, the 1984 amendment was introduced in the context of rampant job losses triggered by the relocation of Bombay's cotton textile mills during the pendency of a lengthy general strike of millworkers on the issue of wage increase and bonus. The amendment was a way to pacify the organised workers' movement and to ensure that despairing workers did not transcend the legal paradigm. In terms of 'protecting' the interests of workers, the amended Act failed miserably in Bombay.

Importantly, the seemingly pro-labour amendment to Chapter VB was eventually neutralised altogether by the redefinition of retrenchment. Section 2 (oo) came to exclude termination of service due to non-renewal of contract, which has since then encouraged the employment of 'fixed term workers' who are employed strictly on tenure basis. 'Fixed term employment' has also been recognised as a legitimate practice by a 2003 amendment to the Employment (Standing Orders) Act, 1946. By allowing employers to employ workers for fixed periods of time, such amendments have basically facilitated flexible hiring and firing practices.

Thus, from the early 2000s, we can map a continuous and more rapid decline in formal or direct employment. Interestingly, there has been a corresponding growth in contractual employment.[45] The phenomenal growth of contract labour is, indeed, a huge anomaly and reflects the complete failure of the Contract Labour (Regulation and Abolition) Act, 1970, to curb and eventually remove the utilisation of such labour.

Due to labour being part of the concurrent list, state governments have been actively amending central labour laws so as to facilitate greater labour market flexibility, and hence, attract more investment in their respective states. For example, in 2006, the Andhra Pradesh government amended Chapter VB of the Industrial Disputes Act to make it applicable only on establishments employing 300 or more workers. In 2014, the Rajasthan government too adopted the same amendment to Chapter VB. Similarly, Gujarat inserted a Chapter VD in the Industrial Disputes Act which exempts Special Economic Zones (SEZs) from provisions under Chapters VA and VB of the Industrial Disputes Act.

Of course, the neo-liberal onslaught of capital, which has brought with it stagnation in wages, reduction in regular employment and contractualisation, has triggered several strikes. However, very often the successful struggles of the organised workforce in large and medium industrial enterprises have facilitated *no* spillover effect of wage hikes. Hence, individual trade union victories have not automatically triggered the tendency of (working-class) wages to move closer to the average. Indeed, the widening gap between the specific rate of (over)exploitation borne by lower segments of workers and the average rate of exploitation within the organised and more skilled workers is the underbelly of many successful trade union struggles in the organised sector.

Given the dispersed production process or chain of value creation within capitalism, it is inevitable that capitalists pass the burden of wage and other forms of work-related concessions

granted to their workforce onto other sections of the working class which are positioned at various other points in the labour market. Typically, when unionised workers have wrested a substantial wage hike, their wage enhancement has led the concerned capitalist to cut costs in two significant ways. One, by increasing the number of contract workers in the 'troublesome' plant (often after replacing older contract employees who were part of the collective action) and offering them pre-strike, or even lower wages.[46] Second, by pressurising its suppliers to reduce prices for parts and services they provide, the big capitalist triggers a chain of cost reduction at different levels of the production process, thus depressing wages and increasing the workload of other (especially contract) workers, both within and beyond the concerned industry.

Compelled to adhere to the low prices set by big capitalist firms, other enterprises (particularly ancillary units) lose a certain share of the profit, leading them to over-exploit their workers in order to achieve the average rate of profit. In this process, big capitalists acquire some extra income, which they can concede to their workforce in terms of wage hikes. Thus, the share of profit conceded by the big capitalist to his workforce represents what he owes to other workers employed in small and medium capitalist enterprises. When capitalists surrender a part of their increased profits to unionised workers, not only are more working class youth thrown into the trap of contractual employment, but the heightened exploitation of non-unionised and the most vulnerable sections of workers by the entire capitalist class grows exponentially.

Given this reality of capitalist accumulation, it is expected that the nurturing of labour market segmentation by the law and its perpetuation of economistic, plant-based trade unionism is continuously breeding disunity among workers. By bestowing differential status on different segments of workers, the law supports a paradigm of politics which is fuelled by the logic that one worker's privileges are another worker's aspiration. In other words, the struggles of lower segments of workers are reduced simply to the endeavour to enter the ranks of higher segments of workers, while better-placed workers continue to struggle in isolation for greater privileges and concessions. The two realms of struggles *do not* lead to the much-desired unity between the segmented workforce.

Conclusion: past the post?

The state's labour laws have consciously come to provide trade unions a legal subjecthood by providing them a plethora of rights at the negotiating table. In the process, the majority of trade unions integrate workers' struggles with the form of politics provided by the state, i.e., a state dominated by the interests of the capitalist class. This is why increasingly unions emerging from recent plant-based workers' struggles are restricting themselves and the workers to the question of union registration and recognition rather than strengthening the internal structure of unions and raising the common demands of different segments of labour.[47] Despite being hailed as harbingers of a new, 'spontaneous' tendency in India's trade union movement, these recent plant-based workers' struggles are hardly autonomous from the form of politics which is characteristic of central trade unions.

For instance, several contemporaneous struggles are characterised by an insular approach within the leadership and rank-and-file, i.e., the unwillingness to connect with common demands of fellow workers of other industrial enterprises in any sustained manner. In this context, the desire, and finally, the decision to seek solidarity emerges only when negotiations led by a union fail. Finally, the trade union form of politics creates a tendency in workers to dangerously depend on charismatic leaders, rather than on their collective will/intuition and abilities to mobilise.

Furthermore, recent struggles for registration of newly formed unions have been easily compromised. This has happened despite the forging of unity among workers with more permanent contracts and the contractual workforce in the given enterprise. In most cases, it is permanent workers (i.e., the better paid, skilled and more assertive segment of workers) who take to unionisation. At the initial stages of this process, especially during the first collective action, the permanent workers often approach their non-permanent colleagues (who are mostly semi-skilled and unskilled workers) to become part of the union struggle. However, such solidarity measures prove to be temporary because unions rarely proceed to protect the interests of each segment of labour in the given enterprise, and to negotiate the best collective deal. Subjected to numerous rounds of hostile negotiations and the brutalities of industrial conflict, as well as coercive clamp downs by state organs like the police, the spirit of solidarity fleetingly expressed between different segments of workers in an industrial enterprise is quick to dissipate.

Having said this, the working class has not always produced a homogenous response to the evolving legal paradigm and onslaught of capital. Since the emergence of the organised labour movement in the late colonial period, there has always been a tendency in the movement which surrenders trade unionism to the paradigm set by the state for workers' agitation and organisation. Yet, a counter-tendency also existed in the movement, which has consistently fought co-option by the state.

While the colonial period witnessed the tendency towards pacification of the (radical) counter-current in a more embryonic form, the period of the 1950s onwards was characterised by its steady marginalisation, as is evident in the emergence of the trade union *babu* and declining rank-and-file initiative and democracy. More recently, the marginalisation of the (radical) counter-current is evident in the predominance of plant-specific struggles over more collective (industry-wide and region-wise) struggles on common interests of the working class. As amply shown by the postcolonial crisis of retreating labour rights; regular infusion of neo-liberal economic reforms that push a larger section of the working class into precarity; the dominance of economistic trade union struggles; and absurdly low levels of unionisation across various industries, the working class has been unable to fundamentally change the form of politics and the social order of the day.

Militancy grows and militancy ebbs; and workers continue to be compelled into adherence with the form of trade unionism laid out by the legal regime. In the colonial context, one can view this

adherence as a tragedy. Since then, hesitantly, it has become a farcical repetition with the labour movement remaining fettered by the tendency to jealously protect rights and 'progressive' labour legislations that it (supposedly) won, instead of raising the issue of unequal access to the law for different segments of workers. In reality, many of these legislations by their intrinsic nature have been preventing the movement from breaking free of bourgeois political forms.

The recent trajectory of labour law 'reforms' seeks to return to a legal paradigm which existed in the (early) colonial period and was driven by the logic that social relations between labour and capital fall within the private domain. In the contemporary context in India, this is most evident in private capital's vigorous campaign against the Contract Labour (Regulation and Abolition) Act and Chapter VB of the ID Act—the former gives scope to the state to intervene *between* labour and capital to regulate the contract, while the latter has facilitated the ability of *collective* labour to shape the contours of contract, albeit for a given segment. In this given context, isolated trade union struggles amidst a sea of unorganised workers are unable to resist the onslaught of capital. This conjuncture can be seen as the end of labour law as we have seen it for most part of the 20th century since the newly emerging legal paradigm or legal ideology poses a serious threat to the collective existence of labour in the public arena. The recent reforms represent the evolution of a de-collectivised and de-regulated neo-liberal labour law.

There is a tendency to look back in nostalgia at the model of Keynesian–Nehruvian welfare capitalism which had sustained the earlier labour law regime. However, as rightly stated by

Hegel, a historical reflection is supposed to paint the 'grey in grey' and indicate that "one form of life has become old, and by means of grey it cannot be rejuvenated, but only known. The owl of Minerva takes its flight only when the shades of night are gathering".[48] In the context of the changing labour law regime, will there be a new dawn which will not simply embody repetition, but the struggle for law, both, for within and beyond capitalism?

Notes

[1] For elucidation of such arguments, see Basu (1995). Also see Basu, Fields and Debgupta (1996). For a more popular appropriation of the pro-industry assessment, see Rao (2012). For a critical appraisal of this pro-industry position, see John (2012).

[2] Here I am referring to such recent legislations like the Unorganized Workers Social Security Act, 2008.

[3] A license is a written permission from the government to an industrial undertaking to manufacture specified articles included in the Schedule to the Act.

[4] In some parts of the country, the roots of the regional bourgeoisie lay in the transformation of property forms held by the rank of rich peasants. See Damodaran (2008: chp 4 and 7).

[5] The term neo-liberalism has changed in meaning from its initial deployment in the 1930s to its current meaning which emerged in the 1970s and early 1980s. For an overview, see Taylor and Gans-Morse (2009).

[6] In a context where the larger dynamics of the work contract and working conditions actively determine the scope/outreach of all labour laws, the chances are minimal that gender-related rights, such as the right to a workplace free of sexual harassment/violence, etc., envisaged in Section 66 of the Factories Amendment Bill, will miraculously exist in spite of everything else. For more on this point, see John (2014).,

[7] Government statistics and specialised studies indicate that India's workforce is concentrated in the informal sector and over time even the public sector has witnessed the informalisation of jobs. See *Report of the Committee on Unorganized Sector Statistics*, National Statistical Commission, Government of India, 2012, p. 29, http://mospi.nic.in/mospi_new/upload/nsc_report_un_sec_14mar12.pdf (accessed on 5 January 2015).

[8] The auto firm Maruti Suzuki, for example, has more than 100 main subcontractors and nearly 90 per cent of its components (seats, instrument panels, glasses, steering system, axels, thermostats,) are made locally. Importantly, more than half of Maruti's suppliers are from the small and medium enterprises (SME) sector and the Company has adopted the strategy of developing ancillary units near the Maruti plants so that components can be procured according to a speed that suits the Company. The Company has developed vendors across the country who can cater to its production plans with much agility. See Humphrey and Salerno (2000).

[9] For details, see the newly amended Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act. It exempts small establishments from a greater number of labour laws, and also amends the definition of 'small' establishments to cover units employing a larger number of workers than the original piece of legislation, thereby pushing a greater number of workers outside the fold of the 'protective' cover of the law.

[10] For elaboration of this point, see Anderson (2004).

[11] The Workmen's Breach of Contract Act empowered the master or employer to file a complaint with a magistrate against an artificer, workman or labourer who refused to work. Before amendments made to the Act in the early 20th century, the Act of 1859 originally obligated the magistrate to order the artificer, workman or labourer to repay the money advanced or at least some part of it, or else to perform the work according to the terms of the contract. If the accused failed to comply with the order, the magistrate could sentence him to imprisonment with hard labour for three months.

[12] See 'Foreword' by Governor General of Bombay, *Labour Gazette*, I, 1: 15 (September 1921).

[13] The Government of Bombay, Political and Reform Department, 10 February 1937, Home (Political), 550-H, Maha*Rashtra* State Archives (MSA), Mumbai.

[14] For an early illustration of this concern, see 'Report of the Industrial Disputes Committee', *Labour Gazette*, I, 8 (April 1922).

[15] For example, a measure used to physically separate radical 'outsiders' from workers was the enforcement of externment orders under Section 144 of the Criminal Procedure Code, which prohibited particular labour leaders from entering and staying in the working class areas. Similarly, trade union leaders were also incarcerated on charges of sedition and treason, as is evident in the Kanpur Conspiracy Case, the Meerut Conspiracy Case, etc.

[16] See Nanda (1920–22: 464). The writer was a labour leader and later became Minister of Labour in the provincial Congress ministry.

[17] See 'Practical Experience'. 1921. *Trade Union Legislation by a Labour Advocate* , p. 30. Bombay: Servants of India Publication.

[18] Burnett-Hurst (1920–22: 492-95).

[19] See articles and speeches by M.K. Gandhi in Hingorani (1998).

[20] It was when the Government of India Act of 1935 was passed that the TLA was registered before the end of the year. It was perhaps, as C. Revri says, 'lured to do so, purely owing to the probable decision of the Delimiting Committee to make registered unions in Ahmedabad a basic constituency for the return of labour representatives to Bombay Legislative Assembly, which would come into being as result of the new Government of India Act' (See Revri (1972: 214). As expected, two trade unionists, Gulzarilal Nanda, the Parliamentary Secretary for Labour, and Khandubhai Desai were successfully elected from the labour constituency as representatives of the TLA, Ahmedabad.

[21] As quoted in Newman (1991: ch 5, 161). .Apart from pointed economic aims, the BTLU's organisational structure was such that its managing committee's members, i.e., N.M. Joshi, Bakhale, among others, controlled the majority of negotiations between mill committees and employers. It was enforced that the function of the mill committees was to forward complaints about wages or conditions or the treatment of individual members. For details on the BTLU's mill committees, see BTLU Constitution and Minute Book of Managing Committee (*passim*), *N.M. Joshi Papers*, Nehru Memorial Museum and Library (NMML), New Delhi.

[22] see John (2011: 19).

[23] See Home Department (Public), File 229/1929, National Archives of India (NAI), New Delhi.

[24] see Ambedkar (2007).

[25] With the introduction of the Government of India Act, 1935, industrial centres in Bombay and Bengal became hotbeds of ideological contestation and appeasement of labour. This was due to the increased labour representation provided by the Act. It is worth noting that increased representation of labour, as well as the provision of electoral representation to the 'untouchable' community was based on the property criterion. This form of enfranchisement resulted in exclusion of the vast majority of the working class component across communities.

[26] On this point, see Ambedkar's speech in *Central Legislative Assembly Debates 16 March 1944*, Vol. II, pp. 1187–91. Delhi: Manager of Publications.

[27] This is evident in the fact that with time, the social composition of public sector employees came to be constituted of the well-placed, middle class of almost every caste, including the oppressed 'backward' and 'untouchable' castes.

[28] For details of the responses collected on the draft Bill, see File No. 37-56, Proceedings A, Legislative Department, June 1923, NAI.

[29] See *Times of India*, 11 December 1949. The predominance of children in such work including their presence in the docks in the continuous search for on-the-hand work, also goes to show that employment of casual labour was much desired due to the wide seasonal fluctuations in port traffic.

[30] See 'Seventh Session of the Trade Union Congress', *The Indian Quarterly Register*, Vol. I, 1927, p. 438.

[31] Such inbuilt restrictions are intrinsic to the law since the (bourgeois) form of the law in many ways corresponds to the fetishised manifestation of the structure of capitalist production. The law helps the state–employer combine to trap workers into being oblivious of social relations that bind them and their interests to other workers. Hence, the repetitive assertion in law of the *individual* right not to contribute to a union's political fund or to participate in a strike.

[32] The term 'outsider' refers to those who are not engaged or employed in the industry with which the trade union is connected.

[33] Munson and Nanda (1996: 15).

[34] Ibid.: 8, emphasis added.

[35] See 'Portrait of a Trade Union Boss', *People's Democracy*, I, 10 (29 August 1965). The article is a sharp critique of established trade union leaders belonging to the Communist Party of India (CPI). It appeared in the party organ of the Communist Party of India–Marxist (CPM), which had recently broken away from the CPI on various political grounds. Ironically, however, over the years the CPM itself fell prey to such criticism since unions influenced by its leadership have also come to nurture similar bureaucratic tendencies and espouse revisionist ideology on class struggle.

[36] For an elaboration of this point, especially in the context of recent trade union struggles, see John (2012).

[37] Cited in Munson and Nanda (1966: 16). Emphasis added.

[38] Immediately following the conclusion of WWII, an unprecedented strike wave emerged across the country. See *Labour Gazette*, 27, 11: 1491 (July 1948). Work stoppages were not just numerous but also more widespread and prolonged.

[39] The Government of India extended the emergency provisions via the Emergency Provisions (Continuance) Ordinance, 1946, which simply modified Rule 81A of the Defense of India Rules while preserving the substance of that Rule.

[40] Interestingly, many of India's labour laws introduced in this formative period were the handiwork of Congress provincial governments that sought to tie the trade union movement down to constitutional forms of struggle on 'genuine' labour issues.

[41] In 1946, the textile mill industry accounted for 38.7 per cent of the total disputes and 41.7 per cent of man-days lost. By 1947, the textile mills accounted for 44.7 per cent of man-days lost. For strike figures in the textile mills, see *Labour Gazette*, 27, 11 (July 1948).

[42] The Resolution emphasised that that labour unrest was causing heavy material loss to the country, that labour should be freed from interested sections and individuals, and that all disputes should finally be settled by arbitration and adjudication. For details of the 13 August 1946 resolutions, see Myers and Kannappan (1970: 205).

[43] For details of the relevant amendments discussed below, see Seth (1966). Also see Malhotra (1998).

[44] In reality, this seemingly pro-labour clause of seeking permission for retrenchment does not prevent employers from indulging in retrenchment and only requires them to take local authorities into confidence.

[45] For details, see Sahu (2012). Also see Sharma and Sasikumar (1996).

[46] Recent strikes in the automobile industry have been followed by enhanced contractualisation of work such that in companies like Honda Motors, Rico, etc., the permanent workforce has reduced into an absurd minority while the figures of contract workers have skyrocketed. For an illustration of this point, see *Faridabad Majdoor Samachar*, (February 2012).

[47] For further elucidation see, John (2012).

[48] G.W.F. Hegel, 'Preface', *Philosophy of Right*.
https://www.marxists.org/reference/archive/hegel/works/pr/preface.htm#xxx (accessed 5 January 2015).

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