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CONSTITUTIONAL PERSPECTIVES ON
LABOUR RIGHTS IN THE 21ST CENTURY

Abraham S. | Aswathy Prakash G



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**EDITED BOOK ON
CONSTITUTIONAL PERSPECTIVES ON LABOUR RIGHTS IN
THE 21ST CENTURY**

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Privatization, Labour Law Reforms, and Constitutional Safeguards: A Critical Analysis in the Indian Context

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Abstract

This chapter critically analyzes the interaction between privatization, labour law changes, and constitutional protections in India. It discusses the theoretical foundations and real-world implications of economic liberalization for the rights of workers. Privatization has transformed labor markets, frequently undermining constitutional protections like the right to equality, right to livelihood, and the right to unionization. It analyzes the recent reforms to labour law, assesses their effect on the working class, and interrogates how constitutional protections have reacted or not reacted. The analysis is based on comparative legal traditions and international trends and concludes with policy prescriptions for reconciling economic efficiency and social justice.

Introduction

The emergence of liberalization, privatization, and globalization (LPG) in India, starting in 1991, was a turning point from state-led development to market-driven economic policies. Privatization of public sector undertakings (PSUs) has been one of the most salient aspects of this change based on arguments of efficiency, competitiveness, and fiscal consolidation. Nonetheless, privatization has often led to worker retrenchment, job security dilution, and the erosion of long-established employment benefits once protected under state ownership. For example, Air India's disinvestment in 2021 brought to light such conflict between economic objectives and labour rights.

In tandem with privatization, labour law reforms have also significantly changed. Between 2019 and 2020, the Indian Government amalgamated 29 central labour laws into four Labour Codes. Although these reforms were brought in as a way to simplify compliance and attract investment, most scholars contend that they dilute workers' protections by liberalizing the conditions of layoffs and strikes. The Industrial Relations Code, 2020, significantly curbs employees' right to strike by mandating a notice period of 60 days, thus casting doubt under Article 19(1)(c) of the Constitution.

These trends pose significant questions regarding the prematurity of constitutional protections like the right to equality (Article 14), freedom of association (Article 19), and right to livelihood (Article 21). Recent cases such as *Indian Public Service Employees Federation v. Union of India* (2023) show how the judiciary is attempting to reconcile economic policy with the protection of workers' rights.

Privatization in India: Context and Implications

Evolution of Privatization

Privatization in India was formalized in the economic reforms of 1991, undertaken as a reaction to a severe balance-of-payments crisis. New Economic Policy changed the economic strategy of India from state-dominated industrialization to liberalization and market-oriented reforms. Disinvestment, the central element of this policy, entailed the relinquishing of ownership and control of public sector undertakings (PSUs) into private hands, either in part or whole. The policy, over time, metamorphosed from passive sale of stakes to "strategic disinvestment" whereby management control, too, was handed over to private parties. A case in point was the privatization of Air India in 2021, which was sold to Tata Group, marking a new era of in-depth privatization and state retreat from commercial aviation (Press Information Bureau [PIB], 2021).

Privatization Objectives

The major motivation behind privatization has been to enhance economic efficiency and alleviate the fiscal burden of PSUs that incur losses. Governments have always contended that private ownership will lead to greater productivity, professionally managed firms, and competitive discipline. Further, privatization is likely to raise non-tax revenue, bring in foreign direct investment (FDI), and provide a level playing field across sectors. The Economic Survey (2020–21) highlighted that privatization would allow for optimal resource allocation and enable the government to concentrate on its core welfare functions.

Employment Impact

Privatization, notwithstanding economic reasons, has severe social and labour consequences. Its impact on employment security is a principal concern. Various studies have established that privatization tends to result in “labour shedding,” wage cuts, and contractualization of permanent employment. The transition from secure government jobs to flexible private contracts degrades job security and watered-down protections previously granted under PSU service rules. In *Bharat Petroleum Corporation Ltd. Employees Union v. Union of India* (2020), the Bombay High Court recognized workers’ fears over job security and post-privatization service terms but finally reaffirmed the right of the government to privatize, again projecting it as an issue of economic policy.

The absence of an all-encompassing social security system for displaced workers further aggravates these challenges. In the absence of effective legal safeguards in transition processes, workers’ rights and livelihoods are exposed to risks in a regime of privatization that values efficiency over equity.

Labour Law Reforms: A Critical Review

Historical Background

India's labour regulatory system has traditionally been plagued by fragmentation and complexity. Until the recent reforms, more than 40 central laws and over 100 state laws regulated labour relations, wages, industrial disputes, social security, and occupational safety. This multiplicity of laws put administrative and compliance pressures upon employers as well as enforcement agencies. Further, most of the laws, including the Industrial Disputes Act, 1947, and Factories Act, 1948, were seen as outdated in terms of contemporary economic realities, and the need for codification and simplification was felt.

New Labour Codes

In response to such issues, the Government of India passed four unified labour codes between 2019 and 2020: the Code on Wages (2019), the Industrial Relations Code (2020), the Occupational Safety, Health and Working Conditions Code (2020), and the Code on Social Security (2020). These reforms sought to streamline labour laws, enhance ease of doing business, and expand social security coverage. The Wage Code, for instance, brought in a single definition of wages, and the Social Security Code brought gig and platform workers under social security benefits a significant inclusion in the digital economy.

Key Concerns

Even with these progressive plans, a number of labour experts as well as trade unions have expressed concerns regarding the content as well as implications of the codes. First, raising thresholds for applicability (for instance, from 100 to 300 employees for retrenchment approvals) may exclude a huge majority of workers from security. Second, prohibitions on strikes like the requirement of 60-day advance notice are viewed as abridging the rights of laborers under Article 19(1)(c) of the Constitution.

Third, fixed-term employment and contract labour facilitation may erode job security and benefits of permanent employment (Sankaran & Madhav, 2021). In *All India Trade Union Congress v. Union of India*, the petitioners opposed the codes for diluting collective bargaining rights, although the Supreme Court refused interim relief, seeking to balance regulation and economic efficiency.

Informalization of Labour

India's labour market is still overwhelmingly informal, and almost 90% of the workers are without formal contracts, job security, or benefits (International Labour Organization [ILO], 2018). The critics point out that the new codes do not adequately address the vulnerabilities of the informal workers, especially in construction, domestic work, and gig work. While the Social Security Code mentions informal and platform workers, it is without any enforcement mechanisms or fiscal commitments from the state.

Constitutional Safeguards and Labour Rights

The labour rights are enshrined in the Indian Constitution under the umbrella of fundamental rights and directive principles. Article 14 ensures equality before the law as a fundamental safeguard against discriminatory labour practices. Article 19(1)(c) provides the right of workers to unionize or form trade unions, which is a linchpin of collective bargaining. Article 21, as interpreted liberally by the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation* (1985), encompasses the right to livelihood as part of the right to life, directly correlating economic security with constitutional dignity. Moreover, the Directive Principles of State Policy particularly Articles 38, 39, 41, 42, 43, and 43A are binding upon the state to advance social justice, humane working conditions, and workers' participation in industrial management.

Yet, privatization and labour law amendments have grown increasingly challenging to the tenacity of these constitutional safeguards. Retrenchments from privatization, such as the disinvestment of Bharat Petroleum and Air

India, have raised legal and moral questions about the extent of Article 21. Courts have tended to give precedence to economic policy over workers' rights, based on the claim that issues of privatization fall within the policy space of the executive. In *Balco Employees' Union v. Union of India*, the Supreme Court vindicated disinvestment, holding that it could not intervene in policy unless they compromised basic constitutional framework. Legal scholars contend that this deference at times degrades constitutional morality and weakens labour rights in practice.

Judicial Responses

The Indian judiciary has had a multifaceted and changing role to play in reconciling labour rights and economic reforms. On numerous occasions, the judiciary has reaffirmed and broadened the ambit of constitutional guarantees for labourers. In *Bandhua Mukti Morcha v. Union of India* (1984), the Supreme Court identified bonded labour as a breach of Articles 21 and 23, stressing the constitutional responsibility of the state to eliminate exploitative labor and uphold human dignity. Consequently, in *Olga Tellis v. Bombay Municipal Corporation* (1985), the Court ruled that the right to livelihood is a facet of the right to life under Article 21, thus confirming that economic security is a matter of constitutional concern and not just a matter of policy.

Despite this, however, the judiciary has also shown growing deference to executive economic policy, particularly in the post-liberalization era. In *Balco Employees' Union v. Union of India* (2002), the Supreme Court declined to interfere with the government's disinvestment policy, holding that decisions with regard to privatization fall within the policy domain of the executive, as long as they do not infringe any fundamental right. The Court reiterated that judicial interference with economic governance was not to be permitted unless there was a clear constitutional violation.

This two-pronged approach mirrors the judiciary's difficulty in balancing social justice and economic liberalization. Although it has sometimes enlarged labour protections, it has also sanctioned economic choices that

threaten to erode those same rights. Consequently, it is left to legislation and activism to guarantee that labour rights are not subordinated to concerns of efficiency and fiscal prudence.

International Labour Standards and India

India, being one of the founder members of the International Labour Organization (ILO), has bound itself to the enforcement of core labour standards in terms of the principles of freedom of association and the right to collective bargaining. These are codified in ILO Conventions 87 and 98, which constitute the ILO's eight core conventions (ILO, 2020). Although India has ratified a number of foundational conventions like those governing child labour and forced labour it has not ratified Conventions 87 and 98. The government of India has argued that it is concerned about the possible interference in public order through the extensive unionization of crucial services, especially that of government servants.

This part-way commitment indicates a gap between India's constitutional principles and global standards. Indian Constitution articles 19(1)(c) and 43A uphold the right to unionize and engage in management in keeping with ILO guidelines. Recent limits in the Industrial Relations Code, 2020, including the requirement of 60 days' notice for strikes and more stringent requirements for union registration, have been accused of lagging behind global best practices. Therefore, India's legislative and policy framework is still in need of substantial reform in order to meet global labour rights standards in full compliance.

Comparative Perspectives

Experience in labour rights under privatization and economic reform is not limited to India. In Latin America, specifically in countries such as Chile and Argentina, the privatization wave of the 1980s and 1990s under structural adjustment programs resulted in mass labour discontent and diminishing trade union strength. Collective bargaining structures were frequently circumvented through such reforms, leading to the deterioration of job

security and social protections for workers. The erosion of union strength, particularly in state-owned enterprises, reflected the Indian experience that has also tested organized labour in a similar manner.

The European Union (EU), on the other hand, offers a very different model. Even with liberalization and economic restructuring, the EU has maintained strong labor protections through institutionalized collective bargaining mechanisms, strong welfare policies, and the legal protections under the European Social Charter. For example, countries like Germany and Sweden maintained high standards of employment security and worker participation even while pursuing privatization. This reflects a commitment to integrating economic reform with social justice—something India has struggled to balance. These comparative experiences suggest that it is possible to pursue economic efficiency without compromising labour rights, provided the institutional will exists.

Privatization and Social Justice

Privatization, while often defended on grounds of efficiency, financial responsibility, and competition, has profound social and ethical implications. It is more than a technical reorganization of ownership; it is a reorganization of the state-capital-labour relationship. Economic policies, according to Amartya Sen (1999), should be assessed in the light of social justice, where human freedom and dignity, particularly of the most vulnerable, take precedence.

Labour is more than just an input to production but a source of citizenship, agency, and identity. The move from the public to the private sector usually results in job losses, benefit erosion, and diluted collective representation affecting the working poor and marginalized groups disproportionately. Such effects trigger serious distributive justice questions, especially in a nation like India where labour markets are unequal and informal.

Therefore, any privatization policy should not be measured by financial parameters like profitability or growth in GDP, but by its effect on equity, inclusion, and human rights. A framework based on human rights—

grounded in constitutional and international obligations—has been necessary to determine whether or not privatization promotes or erodes social justice.

Recommendations

In order to make privatization and labor reforms constitutional and conform to international standards, the following are major recommendations made:

- **Strengthen Labour Institutions:** Labour law enforcement agencies, including inspectorates and labour courts, need to be well-staffed, funded, and equipped to check for compliance and resolve disputes. Reducing inspection regimes under the new labour codes could undermine enforcement. Restoring effective grievance redressal mechanisms, particularly for informal workers, is essential to make legal rights more than symbolic.
- **Universal Social Security:** India needs to extend the ambit of social protection to cover gig economy and informal workers, who constitute more than 90% of workers (ILO, 2018). The Code on Social Security, 2020, gives a framework, but that has to be implemented with strong digital infrastructure, inclusive data banks, and contributory support for low-wage workers.
- **Tripartite Consultations:** Inclusive policymaking is important. Tripartite consultations between employer organizations, trade unions, and state actors should be institutionalized, as stipulated by ILO Convention 144. The recent reforms have been accused of bypassing meaningful dialogue, disempowering democratic participation (ILO, 2020).
- **Restrict Arbitrary Privatization:** Privatization should not be motivated solely by financial considerations. An open policy environment should review the social and distributive consequences of disinvestment, especially in sensitive areas such as health, transport, and education. Labour displacement, access to public services, and regional differentials should be part of impact assessments.

- **Judicial Oversight:** Courts need to be more proactive in examining economic policies that impact constitutional rights like equality, livelihood, and unionization. The test established in *Olga Tellis* (1985) and *Bandhua Mukti Morcha* (1984) should be the guiding principle in examining policies that negatively impact the working class.

A rights-based, inclusive, and socially responsible approach to economic reform will more suitably align India's growth trajectory with its constitutional promise of justice and dignity.

Conclusion

Indian labour reforms and privatization are not distinct economic policies but integral to a political and constitutional debate. These reforms have far-reaching effects on the rights, security, and dignity of the workforce—particularly in a country where most are informally employed. While growth and efficiency can be contributed by economic liberalization, it should not be at the cost of constitutional safeguards like the right to equality (Article 14), the right to freedom of association (Article 19), and the right to livelihood (Article 21) (*Olga Tellis v. Bombay Municipal Corporation*, 1985).

The new labour codes and pushful disinvestment strategy are symptoms of a pivot towards a market-oriented model of governance. But, in the absence of effective legal protection and participative consultation, these transitions have the potential to exacerbate inequality and erode social justice. A rights approach—tuned to both domestic constitutional mores and international labor norms—is critical to reconcile growth with equity.

Finally, India's democratic promise has to be expressed not only in electoral politics, but also in the way it organizes its economy and its workers. Reforms have to be shaped with compassion, responsibility, and constitutional imagination that is committed to both development and dignity.

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