



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 6 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 6 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-6-of-2025/>)

Publisher

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Chairman of Institute of Legal Education

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Maudhanda Kurichi, Srirangam,

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ANALYSIS OF UNFAIR LABOUR PRACTICES

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BEST CITATION – NIVEDHA MANI, ANALYSIS OF UNFAIR LABOUR PRACTICES, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (6) OF 2025, PG. 135-144, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT:

Unfair labour practices are defined in the Industrial Disputes Act, 1982, which also outlines specific acts that fall under this category. Addressing such practices is one of the key objectives of the Act. These practices are typically carried out by employers or trade unions and may result in the violation of the rights and protections provided under labour laws. If an employer, trade union, or worker engages in any unfair labour practice, they can be held accountable under the provisions of the Act, which includes penalties and restrictions against such actions. Whether a particular act qualifies as an unfair labour practice depends on the facts, circumstances, and judicial interpretation of each case. Moreover, state governments also implement their own legislation to curb unfair labour practices.

Keywords: Unfair labour practices, Industrial Disputes Act, Employers, Trade unions, Workers, Labour laws.

INTRODUCTION:

Unfair Labour Practices (ULPs) remain a persistent issue in the Indian labour landscape, hindering the development of fair and just employment relationships. These practices, carried out by employers or trade unions, are characterized by actions that violate workers' rights or disrupt collective bargaining mechanisms. ULPs cover a broad spectrum of unethical conduct, including discrimination, harassment, unjust dismissals, wage-related violations, and interference with union activities. Their widespread occurrence not only compromises the dignity and welfare of workers but also weakens the pillars of social justice and economic progress. Therefore, effectively addressing ULPs is crucial to creating a supportive environment for sustainable development, safeguarding labour rights, and fostering peaceful industrial relations. Unfair labour practices pose a serious challenge, impacting not only employees across various sectors and regions but also the overall economic progress of the nation. A strong and fair relationship between employers and

employees plays a vital role in enhancing productivity, profitability, and industrial growth. However, when this relationship is strained—due to issues like fair wages, job security, health and safety standards, working hours, social security, and proper compensation—conflicts are bound to arise. Any breach of these rights by employers or trade unions is regarded as an unfair labour practice. To address such concerns and promote harmonious industrial relations, the **Industrial Disputes Act, 1947** was enacted, aiming to protect the interests of both workers and employers.

HISTORY OF UNFAIR LABOUR PRACTICES UNDER INDUSTRIAL DISPUTE ACT, 1982

Prior to 1947, when the country gained its independence, there was no law in place to control or prohibit unfair employment practices. However, the Trade Unions (Amendment) Act, 1947 was introduced in 1947 and began to identify the following actions by recognised trade unions as unfair work practices:

1. The majority of trade union members participating in an unauthorised strike.

2. The action taken on behalf of the trade union executive to actively encourage, counsel against, or start any type of irregular strike.

3. The act of the trade union officer submitting false statements that are required by or under the Trade Unions (Amendment) Act, 1947.

The following actions by the employer were considered unfair labour practices: -The act of preventing, coercing, or interfering with workers when they exercise their rights to create, support, organise, or join a trade union, or to participate in coordinated actions for the sake of protection or mutual aid. -The act of hindering the trade union's creation or providing it with any kind of financial or other help. Discriminating against an officer of a recognised trade union based alone on his position is unacceptable. -The act of terminating or treating a worker differently just because he has testified or made accusations in a case involving any of the topics covered by Trade Union (Amendment) Act, 1947,

Section 28-F (1). -the noncompliance with Section 28 F's requirements.

The Trade Union Amendment Act of 1947 had not come into force and has ceased to exist. People were therefore bound to rely only on the judgments of the court, as there was no legislation concerning unfair business practices. The Code of Discipline, which was in effect in 1958, listed a number of actions and procedures that were considered unfair by the employer, Although a code of conduct existed to regulate the behavior of employers and trade unions, it functioned more as a gentleman's agreement and was never legally enforced. Recognizing the limitations of this informal arrangement, the National Commission on Labour in 1969 recommended the need for formal legislation to clearly define what actions by employers and trade unions would be considered unfair labour practices. In line with this recommendation, it was suggested that the Industrial Disputes Act, 1947 be amended without delay.

Due to the absence of central legislation at that time, the State of Maharashtra took the initiative by enacting the **Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971**. This legislation marked a significant milestone in the development of laws aimed at curbing unfair employment practices. Schedules II, III, and IV of the Act categorize various actions as unfair labour practices, outlining the specific conduct that falls under this definition. Furthermore, Chapters VI, VII, and VIII of the Act empower the Industrial and Labour Courts with the authority to adjudicate and resolve such cases.

DEFINITION:

Unfair Labour Practices (ULPs) encompass a range of actions or behaviors by employers or labour organizations that infringe upon employee rights or hinder the process of collective bargaining. These practices are harmful to workers' interests and disrupt the equitable relationship between employers and employees. ULPs are governed by labour legislation and can result in legal consequences or appropriate remedies.

According to **Section 186(2) of the Labour Relations Act 66 of 1995 (LRA)**, an unfair labour practice is defined as any unjust action or omission that occurs between an employer and an employee, including:

1. Unfair treatment by the employer regarding promotion, demotion, probation (excluding dismissals during probation), training, or the provision of employment benefits;
2. Unjust suspension or other disciplinary actions (short of dismissal) taken against an employee;
3. The employer's failure or unwillingness to reinstate or rehire a former employee as per any agreement;
4. Any occupational disadvantage, apart from dismissal, that violates the **Protected Disclosures Act, 2000**, due to

the employee having made a protected disclosure under that law.

In the case of **SAPU OBO Louw vs SAPS (2005)**, the arbitrator determined that the employer's decision to withhold a merit award from the employee constituted an unfair labour practice. This ruling contrasted with a previous decision by another arbitrator in the same forum, who had held that the payment or non-payment of merit awards does not fall under unfair labour practices. Under **Section 2(ra) of the Industrial Disputes Act, 1947**, an unfair labour practice is defined as any act listed in the **Fifth Schedule** of the Act. The Fifth Schedule is divided into two part:

Part I outlines unfair labour practices committed by employers and employer trade unions.

Part II specifies unfair practices carried out by workmen and their trade unions.

These provisions aim to maintain fairness in employer-employee relationships and ensure balanced and lawful conduct on both sides.

In the case of **Devendra Kumar C. Solanki v. State of Gujarat and Others (2016)**, the Gujarat High Court observed that the work carried out by the affected employees was on par with that of permanent staff, both in terms of duties and working hours. Despite this, a significant wage disparity existed between permanent and non-permanent workers. The Court noted that such a disparity could potentially be classified as an unfair labour practice under **Section 2(ra) of the Industrial Disputes Act, 1947**, as it undermines the principle of equal pay for equal work.

FORMS OF UNFAIR PRACTICES:

India's labour market continues to face a range of unfair labour practices, particularly affecting vulnerable and marginalized groups. These practices undermine labour rights, contribute to social inequalities, and pose a significant challenge to ensuring decent work conditions.

1. **Wage Theft**
Wage theft, including the non-payment

or underpayment of wages, remains a widespread issue—especially among migrant and informal sector workers. Employers often exploit gaps in labour laws or use informal contracts to avoid paying minimum wages, overtime compensation, and other statutory benefits.

2. **Discrimination**

Discrimination based on gender, caste, religion, ethnicity, or disability persists across various industries. Women, Dalits, Adivasis, and other marginalized groups often face unequal treatment in hiring, promotions, and access to decent employment, reinforcing social exclusion and inequality.

3. **Forced Labour**

Despite existing legal frameworks, forced labour continues in forms such as bonded labour, human trafficking, and debt bondage. Migrant workers, agricultural labourers, and domestic workers are particularly at risk, often subjected to coercive and exploitative working conditions by employers and intermediaries.

4. **Child Labour**

India remains one of the countries with the largest child labour population. Children are engaged in hazardous work across sectors like agriculture, constructions manufacturing, and domestic service. This denies them access to education, health care, and a dignified childhood.

5. **Harassment and Abuse**

Workplace harassment—including sexual harassment, bullying, verbal abuse, and intimidation—is a serious but often underreported problem. Victims frequently remain silent due to fear of retaliation, stigma, or lack of effective grievance mechanisms, leading to a persistent culture of impunity.

6. Denial of Labour Rights

Many workers are deprived of fundamental labour rights such as the right to unionize, engage in collective bargaining, or participate in industrial action. Employers may use anti-union strategies like blacklisting, intimidation, or unlawful dismissals to discourage organizing efforts and suppress workers' collective voice.

UNDERSTANDING THE SCOPE AND NATURE OF UNFAIR LABOUR PRACTICE:

Unfair labour practices continue to pose a serious challenge within India's labour market, affecting millions of workers across a wide range of industries. This essay aims to explore the nature and extent of these practices, examining their various forms and assessing their broader implications for employees, employers, and the national economy. By utilizing case studies, empirical evidence, and academic research, this analysis offers a comprehensive understanding of the intricate issues surrounding unfair labour practices in India.

Unfair labour practices refer to actions by employers, trade unions, or labour organizations that infringe upon workers' rights or obstruct collective bargaining efforts. In the Indian context, such practices are commonly observed in the forms of wage theft, workplace discrimination, forced labour, child labour, harassment, and the denial of basic labour rights. Contributing factors include the widespread nature of informal employment, ineffective law enforcement, and deep-rooted socio-economic inequalities. A thorough understanding of these practices is crucial for formulating targeted and effective policy measures to combat them and uphold the dignity, security, and rights of the Indian workforce. Unfair labour practices have far-reaching consequences for workers, employers, and the broader Indian economy. From a human rights standpoint, such practices violate the fundamental rights guaranteed by the

Constitution of India and international labour conventions, stripping workers of their dignity, autonomy, and economic stability (Chatterjee & Banerjee, 2020). These injustices also intensify social inequalities, deepen poverty, and reinforce cycles of exploitation and marginalization, particularly among already vulnerable populations (Chakraborty & Debnath, 2019). On an economic level, unfair labour practices weaken productivity, diminish employee trust, and strain industrial relations, all of which pose obstacles to achieving sustainable development and inclusive economic growth (Kumar & Aggarwal, 2018). Unfair labour practices in India cover a broad spectrum of unethical conduct, including wage theft, workplace discrimination, arbitrary terminations, and the denial of collective bargaining rights. A recent survey conducted by the International Labour Organization (ILO) revealed that approximately 74% of Indian workers have encountered some form of unfair treatment or exploitation during their professional lives (ILO, 2020). This alarming figure highlights the widespread and systemic nature of these issues and emphasizes the pressing need for comprehensive policy reforms and effective enforcement mechanisms to safeguard workers' rights.

UNFAIR LABOUR PRACTICES ON THE PART OF WORKMEN AND TRADE UNIONS OF WORKMEN:

1. To counsel against, actively promote, or incite any strike that this Act deems unlawful.
2. To force employees to exercise their right to self-organization, to join a union, or to abstain from joining any union. This includes:
 - a. Having a trade union or its members picket in a way that physically prevents non-striking employees from entering the workplaces;
 - b. Using force or violence, or threatening to use intimidation in connection with a strike against managerial staff or non-striking employees.
3. For an officially recognised union to decline to engage in sincere collective bargaining with the employer.

4. To engage in coercive actions that go against a negotiating representative's certification.

5. To organise, support, or incite coercive behaviours such as deliberate "go-slow" behaviour, squatting on the job site after hours, or "gherao" of any managerial or other staff personnel.

6. Hold protests in front of managers' housing or the houses of employers.

7. To encourage or engage in deliberate destruction of employer-owned property related to the industry.

8. To use force or violence against any worker or to threaten or intimidate him in order to keep him from showing up for work.

PROHIBITION OF UNFAIR LABOUR PRACTICES:

The Industrial Disputes Act, 1947, under Section 25T, explicitly prohibits any form of unfair labour practice. This section outlines the legal obligations that must be upheld by employers, employees, and trade unions—regardless of whether the trade unions are officially registered under the Trade Unions Act, 1926. Key provisions include:

1. **Right to Form Trade Unions**

Indian labour laws safeguard the right of workers to form and join trade unions and to engage in collective bargaining. Employers are legally bound to respect this right and must allow workers to organize without interference or intimidation.

2. **Ban on Discrimination**

Discrimination in the workplace based on gender, caste, religion, or any other personal attribute is strictly prohibited. Unequal treatment may include denial of promotions, training opportunities, or fair wages, all of which are considered violations.

3. **Protection for Union Participation**

Employees cannot be penalized or retaliated against for being involved in union-related activities. This protection

covers unjust dismissals, demotions, or any form of workplace reprisals due to union membership or participation.

4. **Obligation to Bargain in Good Faith**

Employers and trade unions are expected to participate in honest and constructive negotiations regarding working conditions. This includes the responsibility to make reasonable proposals, respond promptly, and conduct negotiations in a genuine and respectful manner.

ANALYSIS OF EXISTING LITERATURE:

The existing body of literature provides valuable insights into the multifaceted nature of unfair labour practices (ULPs) in India, shedding light on their underlying causes, far-reaching consequences, and the broader implications for workers, employers, and society. By reviewing a wide range of scholarly studies, case analyses, and empirical research, this discussion aims to deepen our understanding of the complex dynamics that shape ULPs and inform policy solutions and regulatory reforms to address them effectively.

A central theme in the literature is the structural and systemic factors contributing to the prevalence of ULPs in India. Various socio-economic and institutional elements—such as poverty, inequality, informality, weak enforcement, and power imbalances—have been identified as key drivers of these practices (Srivastava & Srivastava, 2018). The disparity in bargaining power between employers and workers, combined with a lack of legal awareness and limited access to justice among vulnerable worker groups, significantly heightens the risk of exploitation and abuse.

Moreover, empirical studies underscore the negative effects of ULPs on workers' well-being, livelihoods, and socio-economic status. Research has shown that workers subjected to ULPs experience increased stress, anxiety, and job insecurity, which not only harms their health but also results in reduced productivity (Chandrasekhar & Ghosh, 2019). These

practices also perpetuate poverty and social exclusion, particularly among marginalized communities, thereby exacerbating socio-economic inequalities and undermining efforts to achieve inclusive growth (Jhabvala, 2020).

In addition to addressing the challenges posed by ULPs, the literature offers several policy interventions and regulatory solutions to combat them. Scholars have suggested a variety of measures, including strengthening labor inspection systems, promoting collective bargaining rights, improving legal literacy for workers, and fostering dialogue and collaboration among various stakeholders (Kuruvilla et al., 2019). Furthermore, there is a growing recognition of the need for innovative solutions, such as social auditing, community monitoring, and technology-enabled grievance redressal mechanisms, to complement traditional regulatory frameworks and empower workers to assert their rights (Pandit & Mukherjee, 2021).

In conclusion, the literature offers a comprehensive understanding of the challenges posed by ULPs in India and suggests several potential strategies for addressing them. By synthesizing and analyzing these insights, this study aims to contribute to policy discussions and advocacy efforts that promote fair labour practices, protect workers' rights, and foster inclusive and sustainable development in India.

Gender Disparities and Discrimination in the Indian Labor Market

Gender disparities and discrimination remain a significant challenge in combating unfair labour practices in India. Despite the existence of legal provisions that prohibit discrimination based on gender, caste, religion, and ethnicity, gender-based inequalities persist across various areas of employment, including wages, promotions, and access to career opportunities. Data from the National Sample Survey (NSS) reveals that women in India earn approximately 35% less than men for performing similar tasks, highlighting the deeply ingrained gender biases

and structural inequalities within the labour market (NSS, 2020).

Furthermore, women are disproportionately concentrated in low-paying and informal sectors, where they are more vulnerable to exploitation and workplace harassment. To effectively tackle these issues, addressing gender discrimination requires a comprehensive approach, which includes legislative reforms, targeted interventions, and awareness campaigns aimed at promoting gender equality and empowering women within the workforce.

Weak Social Dialogue and Collective Bargaining

The lack of effective social dialogue and collective bargaining mechanisms significantly hampers efforts to address unfair labour practices in India. Although labour laws grant the right to collective bargaining, the practical implementation of this right is often obstructed by institutional barriers, power imbalances, and resistance from employers. A study by the Centre for Decent Work found that only 7% of workers in India are covered by collective bargaining agreements, indicating the limited influence and effectiveness of traditional labor unions in advocating for workers' interests (Centre for Decent Work, 2021).

Additionally, the growing reliance on contract labour and informal employment arrangements has fragmented the workforce, weakening the power of collective bargaining and diminishing solidarity among workers. To strengthen social dialogue and collective bargaining, it is essential to create an environment conducive to unionization, promote inclusive bargaining processes, and enhance the ability of trade unions to represent the diverse interests and voices within the labour market.

Policy Approaches to Addressing Unfair Labor Practices

Addressing unfair labour practices through effective policy measures is essential for creating a labour market that adheres to

principles of fairness, justice, and equity. In India, where labour rights and protections are integral to the socio-economic fabric, strong policy interventions are needed to effectively counteract unfair labour practices. This section critically explores various policy approaches aimed at tackling unfair labour practices in India, drawing on statistical data and empirical research to highlight key challenges, identify opportunities, and offer recommendations for policymakers, regulatory bodies, and other key stakeholders involved in labour governance.

Challenges in Combating Unfair Labor Practices

India's labour market is confronted with several pressing challenges, such as the dominance of informal employment, weak implementation of labour laws, and insufficient regulatory frameworks. According to the International Labour Organization (ILO), nearly 81% of Indian workers are employed in the informal sector, where they are often deprived of essential labour protections and rights (ILO, 2021). This high level of informality paves the way for exploitative practices, including low pay, hazardous working conditions, and inadequate access to social security.

Furthermore, the enforcement of labour regulations remains a major issue. Non-compliance is widespread, and existing mechanisms for legal redress are often ineffective. Research by the Labour Bureau of India indicates that only a small percentage of labour-related grievances are actually settled through formal procedures, pointing to serious barriers in accessing justice for affected workers. Compounding the problem are regulatory blind spots in sectors like domestic work, agriculture, and construction, where many labourers remain unprotected and at high risk of exploitation.

POLICY PERSPECTIVE AND STRATEGIC RECOMMENDATION:

Effectively tackling unfair labour practices in India necessitates a comprehensive, multi-

pronged strategy that integrates legal reform, institutional development, and inclusive stakeholder involvement. Policy interventions should emphasize the following key areas:

1. Reforming and Strengthening Labor Legislation

- Broaden the scope of labour laws to include informal workers and marginalized sectors, ensuring equitable protection for all.
- Implement clear standards for minimum wages, working hours, and occupational safety, to guarantee essential rights and decent work conditions.
- Introduce stricter punitive measures for violations of labor rights, such as financial penalties, regulatory sanctions, and potential criminal charges for severe offenses.

2. Enhancing Enforcement Capacity

- Provide training and resources to labour inspectors and enforcement bodies to improve their capacity to monitor and act against non-compliance.
- Leverage digital tools and platforms to enable easy reporting of labour violations, real-time tracking of enforcement actions, and to enhance overall transparency and accountability in labour regulation.

3. Fostering Social Dialogue and Empowering Collective Bargaining

- Promote collaborative frameworks where employers, labour unions, and government entities can jointly discuss and resolve labour-related issues.
- Support the establishment of efficient grievance redressal systems and independent arbitration bodies for swift and fair resolution of disputes.
- Encourage the formation and development of trade unions and workers' organizations, empowering

employees to engage in meaningful negotiations and advocate for their rights.

4. Improving Access to Justice for Workers

To effectively combat unfair labour practices, enhancing access to justice is essential. The following strategies are central to empowering workers and ensuring accountability:

- Expand legal aid availability and offer financial assistance to workers pursuing justice for labour rights violations, particularly those from economically disadvantaged backgrounds.
- Establish dedicated labour courts or tribunals aimed at expediting the resolution of employment-related disputes and delivering prompt justice.
- Raise awareness among workers regarding their legal rights and protections under labour laws through robust education programs, community outreach, and media campaigns.

Empirical data serves as a foundation for shaping informed and effective policy measures. A 2021 survey conducted by the Centre for Monitoring Indian Economy (CMIE) revealed widespread prevalence of unfair labour practices—such as wage theft, discrimination, and harassment—across multiple sectors, with informal workers reporting higher vulnerability to abuse and exploitation.

In addition, research has emphasized the economic repercussions of such practices. A study featured in the Journal of Development Economics found that reducing labour informality and unfair practices could significantly boost productivity and earnings among Indian worker. Complementing this, data from the World Bank (2019) indicates that nations with robust labor laws and enforcement mechanisms tend to exhibit lower income inequality and reduced social unrest, underscoring the broader societal benefits of fair labour practices.

Judicial Precedent:

Regional Manager, SBI v. Mahatma Mishra (2006)

In this landmark case, the respondent had been appointed temporarily for a period of 88 days beginning on May 3, 1982. However, their employment was prematurely terminated on September 3, 1982, before the official end of the appointment. The matter was brought before the Labour Court, which ruled in favor of the employee.

The Court held that the termination of employment constituted an unfair labor practice, as the respondent's dismissal occurred without following due legal procedures. It emphasized that although the appointment was labeled as temporary, the nature of the employment suggested a degree of permanence. The absence of a formal written notice of termination further strengthened the case for illegality under the provisions of the Industrial Disputes Act, 1947.

Moreover, the Court found that the employer, in this case, the State Bank of India, had engaged in unjust labour practices, thereby violating statutory labour protections. The judgment reinforced the principle that termination without due process and notice, especially in cases with elements of continued employment, is unlawful and constitutes unfair treatment.

General Labour Union (Red Flag), Bombay v. B.V. Chavan & Others (1984)

Citation: AIR 1985 SC 297, 1985 SCR (2) 64

In this case, the General Labour Union filed two complaints under the Industrial Disputes Act, alleging that the employer had engaged in a lockout and committed unfair labor practices.

Legal Issue:

The trade union contended that the company's closure was not genuine and was instead a strategy to avoid dealing with labour demands and union activity.

Judgment:

- After hearing arguments from both parties, the Supreme Court concluded that the company's decision The business had been facing ongoing financial difficulties.
- There was no practical prospect of recovery.
- The employer's intent to close the business was genuine and not motivated by anti-union sentiment.

Outcome:

to shut down operations was justified and legitimate. It found that:

As the company acted in good faith and had not indulged in any unfair labour practices, the Court rejected the union's allegations and upheld the legitimacy of the business closure.

Eveready Flash Light Company v. Labour Court, Bareilly (1961)

Citation: AIR 1962 All 70, 1961(2) FLR 421

In this case, a worker was hired by the company on a daily wage basis starting January 18, 1958, following a four-day trial period. Subsequently, on April 12, 1958, he was placed on probation, with the company reserving the right to extend this probation by another six months.

On September 9, 1958, the worker was elected as a member of the union's working committee. Just a day later, the company issued him a warning, alleging poor work performance despite earlier notices. Another caution followed on October 11, and eventually, his employment was terminated on November 21, 1958.

The labor court dismissed the union's challenge, stating that placing the worker on probation after his trial period was not justified. It also noted that the real intent behind the probation clause in the April 12 letter was to delay his confirmation as a permanent employee.

The company appealed the decision in the Allahabad High Court, which held that any employment contract granting the employer

unilateral power to indefinitely delay an employee's confirmation and limit opportunities for job security amounts to an unfair labor practice. The Court emphasized that an employer can be found guilty of such practices even based on a single unfair employment contract, without needing repeated offenses.

CONCLUSION:

To build a more just and equitable labour environment in India, it is imperative to effectively address unfair labour practices and enhance worker protections. Although India has made notable strides in establishing legal frameworks that safeguard labour rights, significant challenges remain—particularly in the areas of law enforcement, access to justice, and collaborative engagement among stakeholders.

Achieving a fair and balanced labour market calls for a coordinated, multi-dimensional strategy. This includes not only a strong legal structure but also the implementation of efficient enforcement systems, improved access to legal remedies for workers, and active participation from all relevant parties.

Governments must take the lead by formulating and rigorously enforcing labour laws that prevent exploitation and ensure worker welfare. This involves increasing investments in labour inspections, enhancing transparency and accountability, and supporting legal aid and justice accessibility so that workers can claim their rights and address violations.

Employers, too, bear a significant responsibility. They must ensure compliance with labour standards, offer fair wages, maintain safe working conditions, and provide opportunities for career development. By cultivating a work environment that values dialogue and respects legal obligations, employers contribute to a more inclusive labour ecosystem.

Furthermore, trade unions and civil society organizations have a critical role to play. Their advocacy helps amplify worker voices, brings public attention to labour-related concerns,

and keeps employers and policymakers accountable. Strengthening these collective efforts is essential for building a sustainable and equitable future for India's workforce.

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