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## THE PARADOX OF FORMALISATION IN INDIA'S LABOUR CODES

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### Abstract

India's sweeping labor law overhaul is a big deal. By rolling twenty-nine separate laws into just four codes, the country has completely changed the way it handles work and workers. The headline goal is pretty clear: shift more jobs from the messy informal market into the formal economy. Now, gig workers, people who pick up shifts through apps, and inter-state migrants finally get legal recognition. Sounds like progress, right? But there's a catch—while the new laws expand who counts as a "formal" worker, they're also rolling back serious protections. Say goodbye to some of the old guarantees stuff like job security, real bargaining power, and tough government oversight.

This paper gets into that mess. Bottom line, the new codes pull off a strange trick: they list more people as "formal," but strip away the kinds of rights that actually matter to workers. In the end, workers get paperwork, not real security. Using legal analysis and data, this study digs into whether these codes will actually fix informality or just dress it up in new clothes. Turns out, without stronger enforcement and better protections, these reforms risk making informality the new normal just with a stamp of approval instead of any real change.

### I. Introduction

In India, most people work off the books—about 90 percent aren't part of the formal, organized sector. No contracts, no social security, no real safety net if things go wrong. This deep-rooted informality frustrates anyone who cares about fair labor standards. To shake things up, the government decided to ditch the old mess of twenty-nine labor laws and replace them with four new codes: the Code on Wages (2019), the Industrial Relations Code (2020), the Code on Social Security (2020), and the Occupational Safety, Health and Working Conditions Code (2020). The plan is simple: streamline the rules, boost compliance, help businesses breathe a little easier, and above all, nudge more work into the "formal" world.

On the surface, the new codes seem like progress. Suddenly, groups of workers who never had legal backing like gig and platform workers are brought inside the tent. But look

closer, and it's not all good news. There are quiet changes in the fine print employers now have more leeway to fire workers or clamp down on strikes. Those moves chip away at worker protections that used to be basic.

So, do these reforms really get India closer to real formalisation? Or is it mostly for show, while protections quietly slip away? This paper tackles that question directly and argues that while the new codes spread wider, they protect less. It's a contradiction that leaves us wondering what "formal" really means in today's India.

### II. Methodology

This study takes a close look at the four main labour codes, breaking down what these laws actually mean for formalisation and worker protection. It zeroes in on things like who counts as an employee, how retrenchment works, what social security covers, and the ways workers can organize. But it's not just about studying the law. The research pulls in data from the Periodic

Labour Force Survey, NITI Aayog, and ILO reports to get a real sense of what informality looks like and how jobs are changing in India.

There's also a section where important court cases are unpacked to see how judges have put worker welfare at the forefront. All of this helps show what labour protection really looks like when the rules hit the ground.

### III. Literature Review

Recently, a lot of research on India's labour law reforms zeroes in on this tug-of-war: making work more formal versus loosening employment rules. Ever since the government bundled twenty-nine old laws into just four new labour codes, academics and policy groups have been busy debating what it all means. Some say these new codes are a major leap forward, arguing that expanding legal protection widens fairness and strengthens the system. Organizations like NITI Aayog and the International Labour Organization bang the drum for modernizing labour laws, especially to cover the fast-growing gig and platform economy<sup>826</sup>. So when the Code on Social Security, 2020 officially brought gig and platform workers under its umbrella, plenty of people called it proof that the law is finally catching up to the real world.<sup>827</sup>

But that optimistic take doesn't convince everyone. There's no shortage of critics who see these reforms as mostly benefiting employers. People like K.R. Shyam Sundar have flagged how the Industrial Relations Code, 2020 particularly its rules on retrenchment, fixed-term work, and strikes leans heavily in favour of businesses<sup>828</sup>. Actual surveys and studies back this up: informal jobs haven't disappeared, even with the new legal changes<sup>829</sup>. Just recognizing people in the law hasn't magically fixed job

insecurity or bad working conditions. This has sparked talk about "informalisation within formality" basically, people are now technically under the formal system, but that doesn't translate to the protections and security they're supposed to get.

Usually, Indian courts side with workers in big cases. Look at landmark judgments like *Bangalore Water Supply and Sewerage Board v. A. Rajappa* or *Olga Tellis v. Bombay Municipal Corporation* both defended labour rights and reinforced the right to livelihood. Still, when you read the literature, most of it either highlights the broadening of legal coverage or the erosion of protections<sup>830</sup>. What's missing is a real discussion about how both trends are happening together and shaping each other. That's what this paper tackles. It explores the paradox at the heart of the new labour codes: more people get covered, but the safety and security promised by these laws keep fading. So you end up with "formalisation without security" the legal net looks impressive, but it's full of holes.

### IV. Expanding Coverage: Legal Inclusion

The new labour codes really open the door for a lot more people. For the first time, the Code on Social Security, 2020, actually recognizes gig and platform workers. That's a big break from the old system<sup>831</sup>. NITI Aayog says India had about 7.7 million gig workers in 2020–21, and that number is expected to shoot up to 23.5 million by 2029–30<sup>832</sup>.

Then there's the Code on Wages, 2019 it finally brings minimum wage laws everywhere, so workers aren't falling through the gaps anymore<sup>833</sup>. The Occupational Safety Code even ropes in inter-state migrant workers, promising them better protections<sup>834</sup>. You can see what's happening: groups that always got left out

<sup>826</sup> NITI AAYOG, *INDIA'S BOOMING GIG AND PLATFORM ECONOMY* 5–12 (2022); INT'L LABOUR ORG., *WORLD EMPLOYMENT AND SOCIAL OUTLOOK 2021: THE ROLE OF DIGITAL LABOUR PLATFORMS IN TRANSFORMING T*

<sup>827</sup> Code on Social Security, 2020, No. 36 of 2020, § 2(35) (India).

<sup>828</sup> K.R. SHYAM SUNDAR, *LABOUR LAW REFORMS IN INDIA: ALL IN THE NAME OF EMPLOYMENT* (2020); Industrial Relations Code, 2020, No. 35 of 2020, §§ 77–83 (India).

<sup>829</sup> MINISTRY OF STATISTICS & PROGRAMME IMPLEMENTATION, *PERIODIC LABOUR FORCE SURVEY 2022–23* (Gov't of India).

<sup>830</sup> *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, A.I.R. 1978 S.C. 548; *Olga Tellis v. Bombay Municipal Corporation*, A.I.R. 1986 S.C. 180.

<sup>831</sup> Code on Social Security, 2020, No. 36 of 2020, § 2(35) (India).

<sup>832</sup> NITI AAYOG, *INDIA'S BOOMING GIG AND PLATFORM ECONOMY* 12 (2022).

<sup>833</sup> Code on Wages, 2019, No. 29 of 2019, § 3 (India).

<sup>834</sup> Occupational Safety, Health and Working Conditions Code, 2020, No. 37 of 2020, §§ 2(z), 21 (India).

before are finally being counted. But let's be real just mentioning them in the law doesn't guarantee they actually get these protections in practice.

#### V. Shrinking Protection: Dilution of Safeguards

At the same time, the new codes blur out some important safeguards workers used to rely on. Look at the Industrial Relations Code, 2020. Now, only companies with more than 300 workers need government approval to carry out layoffs before, it was 100<sup>835</sup>. Basically, this gives bosses a lot more freedom to let people go. Fixed-term employment is now the norm, too. On paper, these jobs come with certain benefits, but without a promise of stability, workers are left on shaky ground. Strikes? Now workers have to give advance notice, which takes away some of their leverage when negotiating with employers. Courts used to step up for workers. In *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, the Supreme Court said "industry" has a broad meaning, so more people could get protection<sup>836</sup>. In *Olga Tellis v. Bombay Municipal Corporation*, they even linked the right to work closely with the right to life<sup>837</sup>. But these new codes drift away from that mindset. They tilt more towards helping employers stay flexible than really giving workers lasting security and power.

#### VI. Persistence of Informality

##### A. Continued Dominance of Informal Employment

Even after the introduction of the four new labour codes, informal work still rules India's job market. The numbers make it clear—according to the latest Periodic Labour Force Survey (2022–23), over 80 to 85% of non-agricultural workers are still in informal jobs. If you include people working in agriculture, that number

shoots up to almost 90% of the entire workforce.<sup>838</sup>

So what's holding things back? These labour codes haven't touched the real reasons for informality. Most firms in India are just small operations, always watching their expenses and struggling with low productivity. They don't have the money or even the need to stick to formal regulations, pay into social security, or offer proper benefits. It's just easier and cheaper for them to hire casual or contract workers, or outsource when they need to, and keep things flexible.<sup>839</sup>

The new laws mostly try to simplify what's already there, maybe making it a bit easier for some businesses to comply. That helps a little, but it doesn't tackle the core issues. There just aren't enough formal jobs out there. The economy isn't growing fast enough, and more people are looking for work than there are steady, well-paid positions. So even with new reforms on paper, informal work stays right where it is.<sup>840</sup>

##### B. Informality Within Formal Employment

Informality isn't just an issue in the unorganized sector—it's everywhere, even in formal jobs. Take a look at the PLFS numbers: around **55% of regular wage or salaried workers don't have a written contract**, and a majority lack access to basic social security benefits such as provident fund, pension, or health insurance.<sup>841</sup>

People call this "informalisation within formality." These workers may appear formal on paper, but in practice, they face the same insecurities as those in the informal sector. Employers frequently rely on short-term contracts, deny statutory benefits, and provide limited avenues for grievance redressal. The

<sup>835</sup> Industrial Relations Code, 2020, No. 35 of 2020, § 77 (India).

<sup>836</sup> *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, A.I.R. 1978 S.C. 548.

<sup>837</sup> *Olga Tellis v. Bombay Municipal Corporation*, A.I.R. 1986 S.C. 180.

<sup>838</sup> MINISTRY OF STATISTICS & PROGRAMME IMPLEMENTATION, *PERIODIC LABOUR FORCE SURVEY 2022–23* (Gov't of India).

<sup>839</sup> INT'L LABOUR ORG., *WOMEN AND MEN IN THE INFORMAL ECONOMY: A STATISTICAL PICTURE* 3–5 (3d ed. 2018); NITI AAYOG, *STRATEGY FOR NEW INDIA @75* 98–102 (2018).

<sup>840</sup> INT'L LABOUR ORG., *INDIA WAGE REPORT: WAGE POLICIES FOR DECENT WORK AND INCLUSIVE GROWTH* 45–50 (2018); NITI AAYOG, *INDIA'S BOOMING GIG AND PLATFORM ECONOMY* 8–10 (2022).

<sup>841</sup> MINISTRY OF STATISTICS & PROGRAMME IMPLEMENTATION, *PERIODIC LABOUR FORCE SURVEY 2022–23* (Gov't of India).

increasing use of contractual labour and outsourcing arrangements enables firms to avoid direct legal responsibilities, thereby reinforcing precarious working conditions.<sup>842</sup>

The new labour codes have not adequately addressed this issue. In fact, the formal recognition of fixed-term employment under the Industrial Relations Code, 2020 may further institutionalise such insecurity. Although fixed-term employees are legally entitled to benefits comparable to permanent workers, the absence of long-term job security undermines these protections.<sup>843</sup> Employers may continue to rotate workers through successive short-term contracts without offering permanency, thereby maintaining a workforce that is formally compliant but substantively insecure. This blurring of the distinction between formal and informal employment ultimately undermines the objective of labour formalisation.

### C. Gig Economy and Structural Precarity

The gig and platform economy really reshapes how labour law is understood in India. The Code on Social Security, 2020 formally recognises gig and platform workers for the first time. This is an important step, but the framework largely stops at definitional inclusion without clearly laying down enforceable rights or protections.<sup>844</sup> While the statute identifies gig workers as a distinct category, it does not establish a comprehensive regime of entitlements comparable to traditional employment relationships.

According to the NITI Aayog, India had approximately **7.7 million gig workers in 2020–21**, and this number is projected to increase to **23.5 million by 2029–30**, driven by growth in sectors such as ride-hailing, food delivery, and logistics.<sup>845</sup> Despite this rapid expansion, gig workers continue to be classified as

independent contractors rather than employees. This classification allows platform companies to avoid obligations relating to minimum wages, social security contributions, and job security, thereby maintaining a high degree of flexibility at the cost of worker protection.<sup>846</sup>

Although the Code on Social Security, 2020 provides for the creation of social security schemes for gig and platform workers, the implementation of these provisions is contingent upon future rule-making and the establishment of welfare funds. There are no clearly defined timelines, contribution structures, or enforcement mechanisms specified in the statute.<sup>847</sup> As a result, these provisions remain largely aspirational. Empirical studies indicate that gig workers frequently face **income volatility, lack of health insurance, absence of paid leave, and no retirement security**, reflecting the precarious nature of platform-based work.<sup>848</sup>

Consequently, while the law formally recognises gig workers, their material conditions remain largely unchanged. This creates a disconnect between legal inclusion and actual protection. In practice, gig workers continue to operate under conditions characterised by uncertainty and financial instability, reinforcing the broader pattern of “formalisation without security” within India’s labour framework.

### D. Weak Enforcement and Institutional Constraints

A major reason informality continues to persist in India is the weakness of enforcement mechanisms. Labour regulation has long been characterised by limited inspection capacity, bureaucratic inefficiencies, and fragmented administrative structures. Although the new labour codes introduce provisions for digitised compliance systems and “facilitator”-based

<sup>842</sup> INT’L LABOUR ORG., *NON-STANDARD EMPLOYMENT AROUND THE WORLD: UNDERSTANDING CHALLENGES, SHAPING PROSPECTS* 21–25 (2016).

<sup>843</sup> Industrial Relations Code, 2020, No. 35 of 2020, § 2(o) (India); K.R. SHYAM SUNDAR, *LABOUR LAW REFORMS IN INDIA: ALL IN THE NAME OF EMPLOYMENT* (2020).

<sup>844</sup> Code on Social Security, 2020, No. 36 of 2020, §§ 2(35), 2(60), 114 (India)

<sup>845</sup> NITI AAYOG, *INDIA’S BOOMING GIG AND PLATFORM ECONOMY* 12–15 (2022).

<sup>846</sup> INT’L LABOUR ORG., *WORLD EMPLOYMENT AND SOCIAL OUTLOOK 2021: THE ROLE OF DIGITAL LABOUR PLATFORMS IN TRANSFORMING THE WORLD OF WORK* 37–45 (2021).

<sup>847</sup> Code on Social Security, 2020, No. 36 of 2020, §§ 109–114 (India).

<sup>848</sup> INT’L LABOUR ORG., *WORLD EMPLOYMENT AND SOCIAL OUTLOOK 2021*; JANINE BERG ET AL., *DIGITAL LABOUR PLATFORMS AND THE FUTURE OF WORK* (ILO 2018).

inspections, their practical effectiveness remains uncertain.<sup>849</sup> On paper, these reforms aim to simplify compliance and improve transparency, but there is little evidence so far to suggest that they significantly strengthen enforcement on the ground.

Most state labour departments lack the personnel and financial resources required to monitor compliance across millions of establishments. India's labour inspection system has historically been understaffed, with a low inspector-to-establishment ratio, making effective oversight difficult.<sup>850</sup> The shift towards self-certification and reduced inspections—intended to promote ease of doing business—has further weakened regulatory scrutiny. While such measures reduce compliance burdens for firms, they also lower the probability of detection and penalties. In the absence of credible enforcement, employers have little incentive to transition from informal to formal arrangements, thereby reinforcing existing practices of casualisation and contract labour.<sup>851</sup>

The problem is further compounded by the federal structure of labour governance. While the central government enacts the labour codes, state governments are responsible for framing rules and implementing the provisions. This division of responsibilities results in uneven enforcement across states, depending on administrative capacity and political priorities.<sup>852</sup> Some states may effectively implement reforms, but others particularly those with weaker institutional frameworks struggle to do so. Consequently, regional disparities in labour standards persist, and in some cases, may even widen under the new regime.

<sup>849</sup> Occupational Safety, Health and Working Conditions Code, 2020, No. 37 of 2020, §§ 122–125 (India); Industrial Relations Code, 2020, No. 35 of 2020, § 99 (India).

<sup>850</sup> INT'L LABOUR ORG., *LABOUR ADMINISTRATION AND INSPECTION IN INDIA* (2015).

<sup>851</sup> NITI AAYOG, *STRATEGY FOR NEW INDIA @75* 98–102 (2018).

<sup>852</sup> S. DEAKIN & P. SARKAR, *INDIAN LABOUR LAW AND ITS EVOLUTION* (2020).

### E. Structural Limits of Legal Formalisation

The persistence of informality reflects the structural limits of legal formalisation. Formalisation is not merely a matter of enacting new legislation; it requires broader economic transformation, including the creation of stable, productive, and regulated employment opportunities. In the absence of such structural changes, legal reforms alone have limited impact on labour market outcomes.<sup>853</sup>

This limitation is captured in the concept of “informalisation within formality.” While workers may be formally brought within the ambit of labour laws, their actual working conditions often remain precarious due to weak enforcement, employer practices, and broader economic constraints.<sup>854</sup> As a result, formalisation under the labour codes tends to be procedural rather than substantive, focusing on registration, classification, and compliance rather than ensuring meaningful improvements in wages, job security, and working conditions.<sup>855</sup>

This forms the central argument of the present study. Although the labour codes appear to expand legal coverage and enhance inclusivity, their practical impact is limited to formal recognition without corresponding protections. Consequently, formalisation becomes a legal label rather than a transformative process, reinforcing a paradox in which workers are technically classified as “formal” yet continue to lack substantive security and welfare.

### VII. The Paradox of Formalisation

The new labour codes in India are kind of confusing because they try to cover more workers but end up making protections weaker in real ways. Like, now gig workers and those on platforms get some official recognition, which sounds good at first. But the actual help they

<sup>853</sup> INT'L LABOUR ORG., *WOMEN AND MEN IN THE INFORMAL ECONOMY: A STATISTICAL PICTURE* 3–6 (3d ed. 2018).

<sup>854</sup> INT'L LABOUR ORG., *NON-STANDARD EMPLOYMENT AROUND THE WORLD: UNDERSTANDING CHALLENGES, SHAPING PROSPECTS* 21–25 (2016).

<sup>855</sup> K.R. SHYAM SUNDAR, *LABOUR LAW REFORMS IN INDIA: ALL IN THE NAME OF EMPLOYMENT* (2020).

get is not as strong as before. It feels like the focus has shifted to just putting everyone on paper legally, instead of really improving things for workers' welfare. I think that's the paradox here.<sup>856</sup> In the past, labour laws were more about protecting people no matter what. Take that old case, *Dharangadhra Chemical Works Ltd. v. State of Saurashtra*, where the court said to look at control and supervision to make sure workers weren't left out just because of some technical label.<sup>857</sup> Then there's *Hussainbhai v. Alath Factory Thozhilali Union*, where the Court adopted a substance-over-form approach and held the real employer responsible even when intermediaries were involved.<sup>858</sup> These rulings pushed the idea that labour law should prioritise workers rather than formal contractual labels.

But now with these codes, it seems different. The Industrial Relations Code, 2020 raises the threshold for retrenchment and legitimises fixed-term employment, giving employers greater flexibility in managing labour.<sup>859</sup> And the Code on Social Security, 2020 recognises gig workers, but does not impose clear and enforceable obligations on platform companies, leaving workers without substantive protections.<sup>860</sup> This whole setup leads to what some describe as "formalisation without real security." Workers are included within the legal framework on paper, but continue to face precarious employment, lack of social security, and weak bargaining power. The distinction between formal and informal work becomes blurred, undermining the objective of formalisation. In effect, the labour codes expand the reach of law while diluting its protective core, making formalisation more procedural than transformative.

<sup>856</sup> K.R. SHYAM SUNDAR, *LABOUR LAW REFORMS IN INDIA: ALL IN THE NAME OF EMPLOYMENT* (2020).

<sup>857</sup> *Dharangadhra Chemical Works Ltd. v. State of Saurashtra*, A.I.R. 1957 S.C. 264.

<sup>858</sup> *Hussainbhai v. Alath Factory Thozhilali Union*, A.I.R. 1978 S.C. 1410.

<sup>859</sup> Industrial Relations Code, 2020, No. 35 of 2020, §§ 77–83 (India).

<sup>860</sup> Code on Social Security, 2020, No. 36 of 2020, §§ 109–114 (India).

## VIII. Recommendation

- A. One way to make things better for workers is to beef up the labor department so they can actually check on companies more often. That means hiring more people and making sure inspections happen without excuses. And if companies don't follow the rules, there should be real penalties, like fines that hit hard enough to make them think twice.
- B. Platform companies, you know the ones like Uber or whatever, they need to be forced to give gig workers some basics. Social security, insurance, and a minimum pay that actually covers living costs. It's not fair otherwise, right? I mean, these workers are out there hustling but get nothing solid.
- C. The rule about retrenching 300 workers seems off to me. Maybe reassess it so employers have some room to adjust, but not at the cost of leaving people jobless overnight. Balancing that flexibility with security feels tricky, but it has to be done somehow.
- D. Strikes are too locked down now, I think. Loosen those restrictions a bit, and help trade unions get stronger. That way, workers can bargain together without everything falling apart. Collective power is key, or else nothing changes.
- E. Then there's the big one, a social security system that works for everyone. Formal jobs, informal stuff, even gig work. It should be portable, so if you switch jobs or whatever, you don't lose out. Covering all those groups would make a real difference, though I'm not sure how easy it is to pull off.

## IX. Conclusion

The labour codes in India are trying to update the old labour laws to fit with how the economy is changing now. The new rules will apply to additional workers who include both gig workers

and those who work in informal jobs. The solution addresses the significant problem that arises from excessive informal employment. The current situation makes it seem like they are reducing the standard worker protections which existed before to improve employment market flexibility. The whole situation creates a strange situation which prevents proper handling of formal employment. The legal system will attract more workers to its framework which appears beneficial. The advantages that formal employment offers, which include job security and social security benefits and collective bargaining rights, have diminished over time. The process of formalization will only create an official designation which fails to enhance worker conditions.

The success of these reforms hinges on our ability to extend legal employment rights beyond their current limits. The process requires three essential actions which include better rule enforcement and precise employer duty guidelines and universal social security service access. Informality will continue because those factors remain unresolved. The concept of formalization offers improved security and welfare benefits but those advantages will not materialize without implementing essential procedures. The process becomes complicated when trying to understand that specific aspect.

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