



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

**DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL** **TEAM**

### **Raju Narayana Swamy (IAS ) Indian Administrative Service** **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

diploma in Public

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



### **Dr. Rinu Saraswat**

Associate Professor at School of Law, Apex University, Jaipur,  
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

### **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

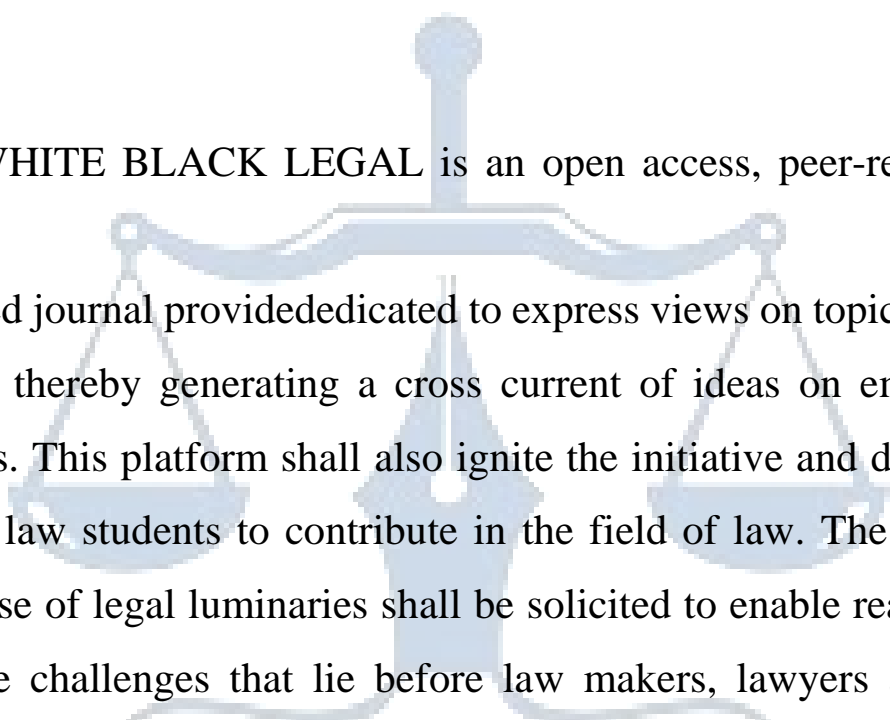


### **Subhrajit Chanda**

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## *ABOUT US*



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **“PROTECTING CONTRACT LABOUR IN INDIA THROUGH THE NEW INDIAN LABOUR CODES, WITH AN ATTEMPT TO MEASURE UP TO THE ILO STANDARDS”**

AUTHORED BY: RIDDHI KALAN

SCHOOL: Symbiosis Law School, Pune COURSE: B.A. L.L.B

YEAR, BATCH: 4<sup>th</sup> Year, 2021-2026

## **ABSTRACT**

Labour laws are also known as employment laws. They are the body of laws, administrative rulings, and precedents that address the legal rights and restrictions of working people and their organizations. Labour laws attempt to regulate the relationships between an employer or group of employers and their employees. This essay aims to establish the relationship between India's labour framework, and critically analyses the position and adaptability of the labour codes in India, with respect to standards set forth by the International Labour Organization (“The ILO”)<sup>1</sup>

## **INTRODUCTION**

Labor and employment law in India is generally categorized under the broader term "Industrial Law". Industrialization is widely recognized as a crucial driver of a nation's economic growth. The establishment and expansion of industries are not solely the efforts of employers; they also rely on the dedication and hard work of all industry stakeholders, including labourers, supervisors, managers, and entrepreneurs. With the emergence of the welfare state concept in the early years following India's independence, numerous legislative initiatives were introduced to promote welfare, equitable rights, social justice, social equity, and the equal participation of labour as a key stakeholder.<sup>2</sup>

A wide array of labour laws have been enacted to ensure the health, safety, and welfare of workers; to shield them from unfair terms, recognizing that individual workers are often

---

<sup>1</sup> <https://www.un.org/youthenvoy/2013/08/ilo-international-labour-organization/>

<sup>2</sup> Agarwal, T. (2014). Geschlecht und Kaste-ansässige Lohndiskriminierung in Indien: Einige Neue Beweise. Journal for Labour Market Research, 47(4), 329–14. <https://doi.org/10.1007/s12651-013-0152-z>

economically vulnerable with limited bargaining power; to encourage and support workers within organizations; to address industrial disputes; and to implement social insurance and labour welfare programs, among other objectives.<sup>3</sup>

### **Evolution of labour protection in India**

The history of British colonisation and employment laws in India are closely related. The main goal of the industrial and labour laws that the British government passed was to safeguard the interests of their employers. Naturally, British political economy played a major role in forming some of these early laws. The Factories Act was born. The textile magnates of Manchester and Lancashire exerted pressure on the British parliament in 1883 to introduce the Factories Act, which aimed to make labour in India more expensive.<sup>4</sup> It is widely known that Indian textile goods posed fierce competition for British textiles in the export market. As a result, India was the first country to enforce the eight-hour workday, outlaw child labour, prohibit women from working at night, and institute overtime pay for work that exceeds eight hours. Although this program was obviously welfare-oriented, protectionism was the true driving force behind it.

### **Constitutional provisions and limitations**

The authors of India's democratic Constitution, who prioritised the development of a welfare state that embodied a federal setup, were fully aware of these consequences. All three of the Constitution's lists contain entries pertaining to labour relations. The majority of them, however, fall under the concurrent list. These include labour and industrial conflicts, trade unions, and a host of social security and welfare issues, such as maternity benefits, provident funds, old age pensions, employer liability, and workers' compensation. Therefore, the concurrent list includes laws like the Employees' State Insurance Act of 1948, the Minimum Wages Act of 1948, and the Industrial Disputes Act of 1947.<sup>5</sup>

To address local needs, a few States have passed their own amendment Acts to some of the aforementioned laws. The objectives and principles stated in Part IV of the Constitution must be implemented in a way that respects the fundamental rights guaranteed in Part III of the Constitution. The protection of individual liberty and democratic values based on the equality

---

<sup>3</sup> The Building and Other Construction Workers' Welfare Cess Act. (1996).

<sup>4</sup> Alakh N. Sharma. (2006). Flexibility, Employment and Labour Market Reforms in India. *Economic and Political Weekly*, 41(21), 2078–2085. <http://www.jstor.org/stable/4418262>

<sup>5</sup> K. R. Shyam Sundar. (2005). Labour Flexibility Debate in India: A Comprehensive Review and Some Suggestions. *Economic and Political Weekly*, 40(22/23), 2274–2285. <http://www.jstor.org/stable/4416707>



of all members of society is the overarching goal of the fundamental rights. In this way, our Constitution's conscience is formed by the combination of its Fundamental Rights and Directive Principles, which together form its core. *“Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our Constitution”*<sup>6</sup> (Minerva Mills v. Union of India, 1789)

## **CONTRACT LABOUR IN INDIA AND ITS CHALLENGES**

A large percentage of the workforce in India is made up of contract labourers, who are described as employees who are engaged through an intermediary rather than directly by the major employer. Three important functions are served by modern employment laws. First of all, it creates a framework of laws that encourages fruitful labour partnerships and fosters a vibrant economy. Second, it promotes cordial industrial relations and workplace democracy by facilitating conversations on work-related matters between employers, employees, and their representatives. Finally, it protects fundamental rights and work values by making sure they are acknowledged, upheld, and recognised in a way that reflects their widespread social acceptance.

However, past experience has shown that labour laws can only successfully carry out these purposes if they are sensitive to the demands of the parties concerned as well as the state of the job market. The best method to guarantee that these circumstances and requirements are thoroughly considered is to involve the relevant parties in the legislative process through social dialogue activities. This kind of stakeholder involvement is crucial for creating a broad base of support for labour laws and for making them easier to apply both inside and outside of the officially established economic sectors.

### **Need for more flexible laws on labour**

India's employment laws have undergone modification as a consequence of much discussion. Research suggests that stringent labour rules force businesses to hire contract staff, stay small, or adopt capital-intensive technology<sup>7</sup>. However, labour rules are not to blame for the slow expansion of the Indian economy<sup>8</sup>. Among the primary issues with India's employment laws are:

---

<sup>6</sup> Air 1980 SC 1789; Minerva Mills v. Union of India

<sup>7</sup> Amirapu and Gecher, 2020

<sup>8</sup> Roy, Dubey, Ramaiah, 2020

**Foreign investment:** Because of rigid labour laws, India has not yet reached its full potential in luring foreign direct investment, despite its labour-intensive competitive advantage and a plethora of initiatives to facilitate business operations both technologically and financially. Complicated laws also make it difficult for international companies operating in India to comply with the framework and comply with legislation. One such example is the Contract Labour (Regulation and Abolition) Act, 1970<sup>9</sup>, which gives the government the authority to forbid such recruitment and limits the process of hiring contract labourers based on supply and demand.<sup>10</sup>

**Advanced economic growth:** Tight labour laws were cited as one of the primary obstacles to the Indian economy's ability to grow economically and as a need for reform<sup>11</sup>. India can unlock its economic potential, create jobs, and sustain a steady growth trajectory over time by tackling critical variables including job creation, improving employment possibilities, and raising productivity and competitiveness.

**Human capital formation:** Skill development is greatly influenced by industries. But as previously mentioned, labour rules prohibit businesses from hiring a lot of permanent employees and instead encourage them to hire more contract or casual workers. Because the companies don't spend in improving the skills of informal workers, there is a deficiency in the production of human capital.<sup>12</sup>

### **ILO standards for contract labour and India's labour codes**

A major overhaul of the nation's labour regulatory framework has recently occurred with the consolidation of India's labour laws into four comprehensive labour codes: the Code on Wages ("**Wage code**"), the Industrial Relations Code ("**IRC**"), the Occupational Safety, Health and Working Conditions Code ("**OSH**"), and the Code on Social Security ("**SS**"). These rules seek to strengthen the labour market by streamlining, modernising, and simplifying current legislation. However, these reforms show both similarities and differences when compared to the ILO norms, which act as benchmarks for global labour rights and safeguards.<sup>13</sup>

---

<sup>9</sup> Contract Labour (Regulation & Abolition) Act, 1970 & Rules 1971 [No.37 OF 1970]

<sup>10</sup> <https://www.ibef.org/economy/foreign-direct-investment>

<sup>11</sup> Basu and Maertens, 2007

<sup>12</sup> <https://labour.gov.in/labour-codes>

<sup>13</sup> <https://www.ilo.org/media/376766/download>

Since 1919, the International Labour Organisation has been the sole tripartite U.N. organisation. In order to establish labour standards, create laws, and create programs that support decent work for all men and women, it brings together governments, businesses, and employees from 187 member states.<sup>14</sup>

Numerous ILO criteria are applicable to "workers" in general rather than just "employees." The 1981 Occupational Safety and Health Convention applies to "employed persons" and encompasses work environments that are directly or indirectly controlled by an employer. The Private Employment Agencies Convention of 1997 covers organisations that employ people, sometimes through contract employment, to perform services for a third party. Different levels of protection are provided by more conventions than by draft contract labour rules. Therefore, it is essential to identify the protection gaps for contract workers in various scenarios and propose requirements that can be practically implemented globally in order to develop new international standards that are effective.

## **CRITICAL ANALYSIS OF INDIA'S LABOUR CODES**

### **Wage code**

According to the code, the central government would set a floor salary while taking workers' living standards into account. State governments may, however, compete to cut the minimum wage in order to draw in investment from the private sector. The interests of the workers are not served by this. The process for setting a suitable minimum wage is not outlined in the Code. It totally disregards the formula, which the Indian Labour Conference (ILC) overwhelmingly endorsed as well as the 1992 Raptakos Brett case verdict from the Supreme Court. This method states that wages should be determined by taking both additional and basic necessity costs into account. Additionally, the 2019 Code on Wages' modest penalties and fines may not be enough to deter businesses from breaking the law. Therefore, law can be regarded as superficial.<sup>15</sup>

### **"IRC" code**

The provision for fixed-term employment is the primary element of this code. Employers have the option to recruit personnel on a temporary basis and for a set period of time. However, a

---

<sup>14</sup> Mazumdar & Neetha, Crossroads & Boundaries, 54 ECONOMIC AND POLITICAL WEEKLY, 67 (2020).

<sup>15</sup> Report of the Second National Commission on Labour With Emphasis on Rationalization of Labour Laws & Unorganized Labour, 2002, (ThirtyNinth Session of the Indian Labour Conference New Delhi – October 16-18, 2003), [https://labour.gov.in/sites/default/files/39ilcagenda\\_1.pdf](https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf).

worker's rights could be impacted by an employer's unequal bargaining strength. Employees may be fired by their employers, which creates job insecurity. The kinds of jobs that fixed-term employees can be employed for are not limited by the code. As a result, they might be hired for positions that are open to permanent employees. Finally, the Code establishes a high bar for union recognition, requiring membership in a union from at least 51% of the workforce in order for the union to be acknowledged as a negotiation body. This requirement poses a challenge for smaller unions and may dilute the spirit of collective bargaining envisaged by the ILO.<sup>16</sup>

### **“OSH” code**

The primary requirements of this code are for businesses to maintain occupational safety standards, conduct routine health examinations, and guarantee safe working environments. Among other things, the Code forbids discrimination against individuals based only on their gender. The OSH Code does not, however, cover everyone, thereby leaving a sizeable portion of the workforce vulnerable.<sup>17</sup> It also does not recognise the microscale or agricultural sectors. It is also illegal to hire women who within six weeks gave birth, miscarried, or underwent a medical abortion. Many pregnant women will also be unable to work or get social benefits because maternity benefits may only be claimed if the worker has worked for at least eighty days prior to giving birth. This would exacerbate their issues and provide them with cover for similar behaviour, which, should their employer come to light, might result in legal action.<sup>18</sup>

### **“SS” code**

In India, the 2008 Act left behind a number of problems with the Social Security Code, most notably with relation to how it applied to the unorganised sector. The unorganised sector is defined narrowly, emphasising businesses with fewer than ten employees that are owned by individuals or independent contractors. Wage workers are recognised as unorganised workers under a different definition, thus so are not specifically included in this definition. Many workers who actually require social security payments may be left out by this stringent classification.<sup>19</sup>

---

<sup>16</sup> Shyam Sundar, Critiquing the Industrial Relations Code Bill 2019, 55 ECONOMIC AND POLITICAL WEEKLY, 32-33(2020).

<sup>17</sup> Chigateri, S. (2021). Labour law reforms and women's work in India: Assessing the new labour codes from a gender lens. Institute of Social Studies Trust, 42. <https://doi.org/10.2139/ssrn.3947175>

<sup>18</sup> Soumya Jha & Ulka Bhattacharya, With New 'Industrial Relations' Code, What Does the Future Look Like for India's Trade Unions?, (September 20, 2021), <https://thewire.in/labour/with-newindustrial-relations-code-what-does-the-future-look-like-for-indiastrade-unions>;

<sup>19</sup> Santosh Mehrotra & Kingshuk Sarkar, Social Security Code, 2020 & Rules

Similar to this, the SS Code's description of a "gig worker" is ambiguous, characterising them as people who make their living outside of the conventional employer-employee relationship. This approach may limit the advantages to gig workers while excluding unorganised sector workers because it does not align well with the idea of unorganised workers. The National Social Security Fund has also been mismanaged and underutilised, which highlights inefficiencies in the application of social security regulations. The Fund was created to offer financial support during situations like the pandemic.<sup>20</sup>

### **Issues of enforcement and compliance**

By implementing a web-based, random inspection system, the new labour rules aim to simplify labour inspections and lessen the possibility of corruption and arbitrariness. Nevertheless, the codes also grant authorities a great deal of discretion, which may result in uneven enforcement and even weaken workers' rights. The present Code mandates that "every establishment to which the code applies" be registered, ignoring the huge percentage of unregistered establishments (67.7%) in the unorganised sector.<sup>21</sup>

## **CONCLUSION**

The implementation of new labour codes in India is a major step in the modernisation of the labour laws of the nation and the expansion of worker rights. But when the codes are compared to ILO standards, several issues become apparent, especially when it comes to strong social security systems, efficient enforcement, freedom of association protection, and occupational safety coverage.<sup>22</sup> India must close these gaps with more lucid legislative provisions, efficient implementation plans, and robust enforcement mechanisms in order to get itself closer to ILO norms. To achieve this alignment and improve India's overall labour rights landscape, it would be imperative to guarantee the involvement of all stakeholders, including workers' representatives, in the ongoing evolution of labour legislation.<sup>23</sup>

---

<sup>20</sup> Gopal Guru, New Labour Codes & their Loopholes, 40 (2020), <https://www.epw.in/journal/2020/40/editorials/new-labourcodes-and-their-loopholes.html>;

<sup>21</sup> Mehrotra, Sarkar (2021) supra notes 9

<sup>22</sup> Shyam Sundar, Critiquing the Industrial Relations Code Bill 2019, 55 ECONOMIC AND POLITICAL WEEKLY, 32-33(2020).

<sup>23</sup> <https://webapps.ilo.org/public/english/standards/relm/ilc/ilc86/rep-vadd.htm#:~:text=Many%20ILO%20standards%20are%20applicable,all%20types%20of%20contract%20workers.>

## REFERENCES

### Articles, Reviews And Reports

1. *International Labour Review*, Vol. 146 (2007), No. 3–4
2. <https://www.ilo.org/media/376766/download>
3. Agarwal, T. (2014). Geschlecht und Kaste-ansässige Lohndiskriminierung in Indien: Einige Neue Beweise. *Journal for Labour Market Research*, 47(4), 329–14. <https://doi.org/10.1007/s12651-013-0152-z>
4. Alakh N. Sharma. (2006). Flexibility, Employment and Labour Market Reforms in India. *Economic and Political Weekly*, 41(21), 2078–2085. <http://www.jstor.org/stable/4418262>
5. K. R. Shyam Sundar. (2005). Labour Flexibility Debate in India: A Comprehensive Review and Some Suggestions. *Economic and Political Weekly*, 40(22/23), 2274–2285. <http://www.jstor.org/stable/4416707>
6. Mazumdar & Neetha, Crossroads & Boundaries, 54 *Economic And Political Weekly*, 67 (2020).
7. Report of the Second National Commission on Labour With Emphasis on Rationalization of Labour Laws & Unorganized Labour, 2002, (ThirtyNinth Session of the Indian Labour Conference New Delhi – October 16-18, 2003), [https://labour.gov.in/sites/default/files/39ilcagenda\\_1.pdf](https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf).
8. Shyam Sundar, Critiquing the Industrial Relations Code Bill 2019, 55 *ECONOMIC AND POLITICAL WEEKLY*, 32-33(2020).
9. Chigateri, S. (2021). Labour law reforms and women’s work in India: Assessing the new labour codes from a gender lens. *Institute of Social Studies Trust*, 42. <https://doi.org/10.2139/ssrn.3947175>
10. Soumya Jha & Ulka Bhattacharya, With New ‘Industrial Relations’ Code, What Does the Future Look Like for India’s Trade Unions?, (September 20, 2021), <https://thewire.in/labour/with-newindustrial-relations-code-what-does-the-future-look-like-for-indiastrade-unions>
11. Santosh Mehrotra & Kingshuk Sarkar, Social Security Code, 2020 & Rules (2021)
12. Gopal Guru, New Labour Codes & their Loopholes, 40 (2020), <https://www.epw.in/journal/2020/40/editorials/new-labourcodes-and-their-loopholes.html>

### **13. Indian and International Authorities**

14. UN International Labour Organization <https://www.un.org/youthenvoy/2013/08/ilo-international-labour-organization/>
15. India Brand Equity Foundation <https://www.ibef.org/economy/foreign-direct-investment>
16. Ministry of Labour and Employment <https://labour.gov.in/labour-codes>
17. Committee on Contract Labour, 86<sup>th</sup> session, Geneva, June 1998  
<https://webapps.ilo.org/public/english/standards/relm/ilc/ilc86/rep-vadd.htm#:~:text=Many%20ILO%20standards%20are%20applicable,all%20types%20of>
18. [%20contract%20workers.](#)

### **Statutory Provisions**

1. The Building and Other Construction Workers' Welfare Cess Act, (1996).
2. Contract Labour (Regulation & Abolition) Act, 1970 & Rules 1971 [No.37 OF 1970]

### **Indian Cases**

1. Air 1980 SC 1789; Minerva Mills v. Union of India