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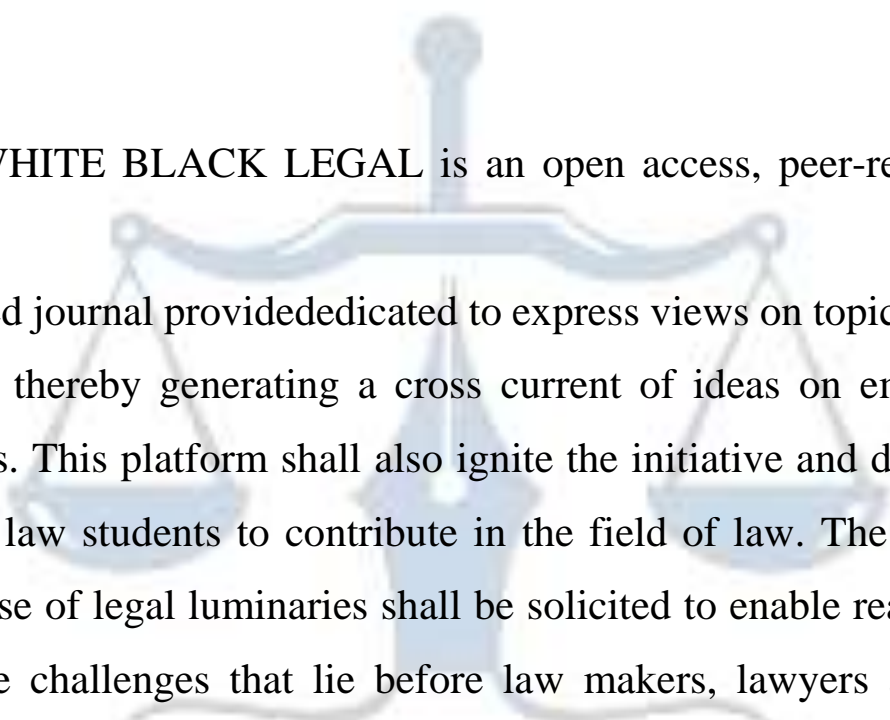


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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

TRENDS IN THE APPLICATION OF LABOUR LAW TO MEDIUM-SIZED ENTERPRISES

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ABSTRACT

Micro, small, and medium-sized businesses (MSMEs) and independent contractors make up the majority of economic units and the largest portion of employment globally. Nonetheless, several nations exempt these economic entities from certain of their national labour rules because they think that doing so would hinder the expansion and success of their businesses. The primary goal of this study is to enhance knowledge of current trends and advancements in this field by examining how various nations govern the labour rights of MSME employees. Brazil, China, Colombia, Costa Rica, Egypt, Germany, Mexico, Nepal, Peru, the Russian Federation, South Africa, Spain, Sri Lanka, Sweden, Turkey, and the United Republic of Tanzania are among the 16 nations that are included in the study.

INTRODUCTION

In Nepal, a low-income nation, the most extensive reform to broaden the application of labour rules to MSME workers was carried out in 2017. Since businesses with less than ten employees were exempt from the old labour law, this legislative reform required a broad enlargement of workers' rights. This example demonstrates how developing economies are attempting to cover employees at smaller businesses as well. Furthermore, other nations, like China, have continued to fully implement the labour law for smaller businesses. This analysis found that

within the same time period, there were more legal amendments to broaden the scope of labour law for MSMEs than there were cases of backsliding. The vast majority of legislation reforms were made to extend coverage, with Egypt being the only country where MSME workers' coverage was reduced. Nonetheless, some legislative exclusions still exist, depriving particular worker groups of equal protection. Specifically, domestic and agricultural workers continue to be excluded from the enforcement of some or all labour laws in many countries. The attainment of the SDG objective on the formalisation of MSMEs and decent work are currently seriously hampered by these exemptions.

Formalizing informal workers at MSMEs through tax incentives

The vast majority of legislation reforms were made to extend coverage, with Egypt being the only country where MSME workers' coverage was reduced. Nonetheless, some legislative exclusions still exist, depriving particular worker groups of equal protection. Specifically, domestic and agricultural workers continue to be excluded from the enforcement of some or all labour laws in many countries. The attainment of the SDG objective on the formalisation of MSMEs and decent work are currently seriously hampered by these exemptions.

Formalization of small enterprises in Colombia

The vast majority of legislation reforms were made to extend coverage, with Egypt being the only country where MSME workers' coverage was reduced. Nonetheless, some legislative exclusions still exist, depriving particular worker groups of equal protection. Specifically, domestic and agricultural workers continue to be excluded from the enforcement of some or all labour laws in many countries. The attainment of the SDG objective on the formalisation of MSMEs and decent work are currently seriously hampered by these exemptions. A study on how this law has affected informal work in general, however, indicates that the outcomes have fallen short of expectations. Between April and June of 2010 and April and June of 2011, the country's informality rate was 65.7% and 65.6%, respectively. The same study also found that enterprises registered under this formalization programme paid social security contributions for just 1,584 employees out of the total of 11,599 employed¹. Therefore, it might be argued that tax incentives alone are insufficient to encourage significant job formalisation. Similar findings were reported by other studies carried out a number of years after the law's passage,

¹ Farne, Stefano, Norma Baquero, and Claudia Álvarez. 2012. "La Ley 1429 de 2010 ha formalizado el empleo en Colombia?", Boletín del Observatorio del Mercado de Trabajo y la Seguridad Social No. 13. Universidad Externado de Colombia.

which came to the conclusion that the new law had no discernible effect on the formalisation of employment or the decline in rates of informality. The establishment of formalisation programs connected to tax incentives is common. The Colombian example, however, demonstrates that formalising employment is a difficult process that calls for far more than tax breaks.

A single-tax regime for micro and small enterprises in Brazil

For many years, Brazil has tried out different policies and regulations to encourage the formalization of own-account workers and micro and small enterprises². One of the most relevant initiatives in this regard is the Integrated System for the Payment of Taxes and Social Security Contributions by Micro and Small Enterprises (SIMPLES) created by Act No. 123 of 2006. The single-tax regime introduced under SIMPLES harmonizes and lowers the rate of taxes and social security contributions for micro and small enterprises.³ The fact that firms pay social security contributions based on their profitability rather than the number of employees is a key component of this approach. This provision was intended to encourage businesses to acquire new staff members and to formalise those who were already working informally. Additionally, in 2008, the government introduced the Individual Micro-Entrepreneur (MEI) initiative, a unique legislative framework for own-account workers and entrepreneurs with up to one employee. By 2017, the MEI program and the SIMPLES fiscal regime had covered almost 12 million workers. According to some of the encouraging findings, SIMPLES has extended social security entitlements to businesses that would not otherwise be subject to the law and has assisted in lowering worker informality. According to a recent SIMPLES study, 5 million micro and small businesses enrolled for the single-tax system, whereas 7.7 million businesses registered for the MEI program. One crucial takeaway from SIMPLES is how to get business owners to take part in formalisation initiatives. "Access to social security, to be able to formalise the enterprise, and to be able to issue formal invoices" were the primary driving forces in this instance. Critics point out that the Brazilian government has spent a lot of public money on the management of these programs and has not been able to collect a significant amount of fiscal revenue. According to one academic, SIMPLES had little influence on the formalisation rates of smaller businesses. According to a different study, formalisation rates

² Silas, Santiago, Mauro Oddo Nogueira, Sandro Sacchet de Carvalho, and Judith van Doorn. 2019. *Simples National, the Monotax Regime for Own-Account Workers, Micro and Small Entrepreneurs: Experiences from Brazil*. ILO.

³ Microenterprises have a gross annual income not exceeding 240,000 reais, while that of small enterprises is between 240,000 and 2.4 million reais.

rose among retail businesses, but they had no effect on the manufacturing, transportation, construction, or service industries. Another critique of the program is that the Brazilian government is losing a significant amount of its revenue because, at US\$1 million, it has a very high-income ceiling compared to other nations (in the UK, it is US\$114,000). Additionally, some companies have used the MEI program to reduce the wages of their employees who are now registered as micro-entrepreneurs.

Providing security for workers through national insurance

In several of the nations under study, there is a general tendency towards shifting the burden of paying employees during maternity and sick leave from companies to public insurance programs. Since it is more difficult for small enterprises to afford such payments, this relieves them of a significant load. Both high- and low-income nations can see this trend. The Federal Constitutional Court of Germany ruled that maternity leave benefits under the national insurance program ought to be available to all businesses, regardless of size, so that neither big nor small businesses are discouraged from hiring women. A recent legal change in Nepal transferred the burden of paying for work-related injuries and disabilities from the employer to a government insurance program. Since MSMEs employ the majority of women worldwide, having maternity leave benefits that cover smaller enterprises is essential⁴. However, because smaller businesses are less able to adjust their workers, offering maternity leave may be more difficult. Having maternity leave funded by insurance plans is a significant step in bolstering both men's and women's rights to take time off from work to care for their children. Additionally, this guarantees that hiring women is not financially discouraged for smaller businesses. Parental leave benefits are provided by national insurance programs in a number of countries, including Mexico, Colombia, Peru, Brazil, Sweden, the Russian Federation, South Africa, and Spain. Maternity leave in South Africa is covered by the unemployment insurance program. In other countries, the salary during maternity leave is paid partly by the national insurance scheme and partly by the employer. This is the case in Costa Rica, where employers and the national insurance scheme each pay 50 per cent of the employee's salary. By comparison, in the United Republic of Tanzania, China, Nepal and Sri Lanka, maternity leave is paid for by the employer. Consolidating maternity leave rights through national insurance can help MSMEs to promote gender equality. Some scholars argue for universal coverage,

⁴ Stumbitz, Bianca, Suzan Lewis, and Julia Rouse. 2018. "Maternity Management in SMEs: A Transdisciplinary Review and Research Agenda." *International Journal of Management Reviews* 20 (2): 500–522.

pointing out the necessity to shift the mindset that associates social protection with conventional subservient labour. Covering all employees, regardless of the size of the business, is a crucial objective since social security is necessary for decent work and poverty reduction.

Extending rights to self-employed workers

Globally, the number of self-employed people defined as independent contractors without employees is increasing. The laws of many of the nations in this research have been modified to grant self-employed workers employment and worker rights. Self-employed people can join trade unions and get the assistance of union officials in nations like Germany, Sweden, and Spain. Even self-employed people must make social security contributions in the Russian Federation, Colombia, Sweden, Germany, Brazil, and Peru; in certain situations, they are exempt from this need. In contrast, self-employed people in South Africa are still not covered by social security and are responsible for securing their own health and pension insurance. It is crucial to discover innovative ways to extend social security coverage to this group of workers, who are frequently self-employed, given the surge in employment through digital labour platforms that link clients and service providers. Additionally, Brazil has a unique program called the Individual Micro-Entrepreneur (MEI) program for independent contractors and micro-business owners who employ one or fewer people. Compared to 11% under the SIMPLES program for micro and small businesses, social security contributions under this program are just 5% of the minimum wage. Since the MEI program offers maternity benefits, health insurance, and a basic public pension, among other benefits, it has drawn a lot of independent contractors. According to a recent analysis of this initiative, granting access to social security as one of the related advantages is crucial to formalising self-employment and micro and small businesses. But according to the study's authors, low-income groups should be the focus of subsidised systems for independent contractors and micro and small businesses, like the Brazilian MEI program, "to avoid abuse by others with a higher payment capacity who are attracted to the regime due to the large difference in tax and social security payments." Another trend that is being supported in several nations to guarantee conformity with the principles of freedom of association is allowing independent contractors to become members of trade unions. In Spain, anyone who work for themselves, are unemployed, or have stopped working due to retirement or incapacity are all eligible to join union organisations. Small business employees in Sweden have the option to join sectoral labour unions in order to guarantee that their rights are upheld. Additionally, self-employed individuals in Sweden have

the option to enrol in and receive additional unemployment insurance. A 2019 legislative change in Egypt expanded pension benefits for independent contractors (one-person businesses).

Conclusion

According to the current survey, the most popular strategy, irrespective of a nation's financial level, is to apply labour rules uniformly to all businesses but selectively exempting others from certain requirements. MSMEs are not entirely exempt from the implementation of labour regulations in any of the sample nations. Furthermore, Latin American nations frequently implement separate regimes for social security issues, typically as a component of broader initiatives to formalise the unorganised sector. Over the past 15 years, there has been a general trend to include MSMEs in the scope of employment regulations. Brazil, Colombia, Egypt, Germany, Nepal, and Spain were found to have implemented reforms to increase coverage for employees in smaller businesses. In 2017, Egypt was the only country whose MSME workers' coverage was reduced. The most significant change for small businesses was in Nepal in 2017 when a new labour law was passed, extending coverage to previously uninsured businesses with fewer than ten employees. The numerous formalisation programs in Latin America that offer incentives and special treatment for smaller businesses are another illustration of initiatives to broaden coverage for MSME workers. The rise in legal reforms and initiatives aimed at extending the scope of labour legislation to self-employed or own-account workers is another trend. Brazil, Colombia, and Egypt are a few countries that have implemented similar legal reforms. On the other hand, self-employed workers have a longer history of coverage in nations like Sweden, Germany, and Spain. It is anticipated that self-employment will continue to expand due to the increase in employment through online platforms that link clients and service providers (commonly referred to as the "gig economy"). As a result, more nations could need to modify their laws to reflect this new social reality.