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India's Weakened Unions Face a Push for Reform

EMMANUEL TEITELBAUM

Labor Shifts

Seventh in a series

In 2014, the Hindu nationalist Bharatiya Janata Party (BJP) became the first party other than the center-left Indian National Congress to win an outright majority in India's lower house of parliament, the Lok Sabha. Currently the BJP holds 282 of the Lok Sabha's 545 seats on its own and controls 339 seats in conjunction with other members of its ruling National Democratic Alliance (NDA) coalition. The NDA's electoral success was widely attributed to the popularity of BJP leader Narendra Modi and his promise to deliver, as prime minister, the same economic growth he had achieved during his tenure as chief minister of the state of Gujarat. The Modi government has promoted an aggressive economic reform agenda and a "Make in India" campaign that emphasizes the need to improve the investment climate in order to generate jobs in the manufacturing sector and accelerate the country's development.

Many predicted that Modi's pro-business stance would translate into policies that would undermine the position of organized labor. It was widely anticipated that the government would quickly move to reform the complex amalgamation of labor laws that economists and employers' organizations have characterized as "pro-worker" and an impediment to hiring and investment in the formal manufacturing sector. Yet progress has been slow and uneven. The government introduced a series of labor-reform measures early in its term, only to put them on hold in late 2015 due to fierce opposition from trade unions, including the BJP-affiliated Bharatiya Mazdoor Sangh (BMS).

Since then, the Modi government has indicated that it would seek to "build greater consensus" on the reforms. To this end, it established a national panel on labor policy and pushed through what some have described as "populist" pro-labor reforms, including an amendment to the 1965 Payment of Bonuses Act that expanded the number of workers eligible for bonus payments and raised the limit on the size of bonuses. Meanwhile, insuring against the possibility that its more pro-business legislation might fail to pass at the national level, the government pursued a strategy of what it calls "competitive federalism," encouraging the legislatures of BJP-controlled states like Rajasthan and Madhya Pradesh to amend their labor laws in hopes that doing so would spur reforms in other states.

In February, Labor Minister Bandaru Dattatreya announced to members of the Associated Chambers of Commerce that the government would reintroduce its previously tabled reform measures on industrial disputes and wages. What are the prospects for passage of the reforms this time around? Has the Modi government done enough to build the necessary consensus?

On one hand, recent polling conducted by *India Today* suggests that Modi's approval rating remains high despite controversy over the implementation of his highly questionable demonetization policy, which suddenly removed most of the nation's cash from circulation in late 2016 in the name of combating tax evasion and other illicit activities. His enduring popularity, combined with a softer image among workers resulting from

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the recent pro-labor reforms, could help him overcome opposition from organized labor. On the other hand, the Congress-led United Progressive Alliance (UPA), which has so far clearly signaled unwillingness to go along with most major NDA reform initiatives, maintains considerable influence in the upper house of parliament, the Rajya Sabha. So long as organized labor opposes labor reforms and the UPA wields a de facto veto, the Modi government will likely face an uphill battle in getting them enacted.

None of this means, however, that organized labor is in a strong position in India. The fact that India's trade union movement retains political influence is somewhat surprising, considering its declining membership and weakness in the collective-bargaining arena. Like trade unions around the world, the organizational capacity of India's unions has been seriously undermined by increased competition in product and labor markets, outsourcing, and investments in labor-saving technologies. Union membership is heavily concentrated in public-sector industries, but most workers are in the informal economy. Ironically, the interests and objectives of union leaders may align with those of the ruling coalition: employment growth in the organized sector is essential to the labor movement's survival in the coming decades, just as it is for the survival of the Modi government.

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Jobless growth

By 2030, the size of India's workforce is projected to surpass that of China, and by 2050 it will have peaked at nearly one billion. A crucial question for the world's largest democracy is whether it can leverage its "demographic dividend" in this short window. Generating low-skilled manufacturing jobs is especially important for equitable growth that will benefit the poor, relatively unskilled population and ensure the long-term stability of the political system. Yet there is tremendous uncertainty as to whether employment growth in the organized manufacturing sector will match the expectations set by the government's "Make in India" campaign, or whether India will miss its chance to achieve broad-based participatory development.

At issue is the phenomenon of "jobless growth." For at least three decades, high rates of growth in output have been accompanied by stagnating employment growth in the formal manufacturing sector. A variety of factors contribute to jobless growth, including weak infrastructure, barriers to land acquisition, and corruption. But some scholars have concluded that employers substituted capital for labor primarily in response to strict labor protections introduced at the state level in the 1970s and 1980s. In the political sphere, labor reform has consistently been a hot-button issue since India's leaders committed to a path of economic reform and openness in the early 1990s.

Some policy makers argue that the large body of protective labor legislation is the single biggest barrier to sustained, rapid economic growth in the industrial sector. India's web of labor law is highly complex—some would even say byzantine. By one estimate, there are between 25,000 and 35,000 rules and regulations governing the labor market. Academic and policy discussion about the role of labor regulation in producing jobless growth tends to focus on three key laws: the 1926 Trade Unions Act (TUA), the 1970 Contract Labor Act (CLA), and the 1947 Industrial Disputes Act (IDA).

The basic purpose of the TUA is to establish the process by which unions can obtain legal recognition by the government, and to regulate the collection, use, and reporting of union finances. While there is nothing radical about this law, critics argue that a provision permitting any seven workers in an enterprise to form a union has fragmented the labor movement. Some also contend that the law has led to political divisions among unions because it allows politicians to serve as union leaders.

The CLA is a more aggressive piece of legislation than the TUA. It was designed not just to regulate but ultimately to abolish the use of temporary or "contract" workers. The law applies to establishments in which 20 or more contract workers were employed for one or more days in the preceding 12 months. It provides basic protections, such as the provision of first-aid and canteen facilities, for workers hired on a temporary basis. In some states it requires that wages and benefits of contract workers match those of permanent employees when they are doing the same work. The CLA makes it exceedingly difficult to hire contract labor, requiring employers to apply for a license to employ temporary workers and to obtain a certificate of registration. It also gives the labor ministry the power to prohibit the use of contract labor if the work is deemed to be perennial in nature, if the temporary employees are doing the same work as permanent employees, or if the work is deemed to be essential to the industry. The basic idea behind these provisions is to force employers to make temporary workers permanent employees when they are employed on a long-term basis and when their services are essential to the enterprise.

The Industrial Disputes Act has received far more attention than any other legislation governing the employment relationship in India, and in many ways it is at the heart of debates over labor reform. In particular, Chapter V-B of the IDA has been the target of much scrutiny due to the restrictions it imposes on companies that wish to downsize their workforces. Initially, Chapter V-B required that any industrial establishment employing 300 or more workers seek the government's permission to lay off workers or close a factory. A 1982 amendment lowered the threshold to 100 workers, substantially expanding the number of establishments covered by its provisions. The courts have also expanded the reach of Chapter V-B through their strict interpretation of the meaning of the word "retrenchment," which ensures that discharging a worker for just about any reason is covered under the act. Moreover, since industrial relations are jointly governed by New Delhi and the states, many state governments added their own amendments to enhance penalties and augment enforcement in the early-to-mid 1980s.

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Despite more than two decades of scholarship on the subject, there remains substantial disagreement over the impact of India's labor protections on economic performance and, in particular, on the extent to which manufacturing would benefit from labor reform. For example, some econometric studies purport to show that state-level "pro-worker" amendments to the IDA were largely responsible for jobless growth in manufacturing in the 1980s and early 1990s. However, legal wrangling has resulted in the uneven implementation of Chapter V-B across states, while available evidence suggests that enforcement of the chapter's key provisions in the period since India's watershed 1991 economic reforms has been lax, effectively allowing employers to hire and fire at will. There is also evidence that the Contract Labor Act has gone unenforced in recent years, enabling employers to hire temporary workers as they see fit.

COMPETITIVE FEDERALISM

While Modi's government has made efforts to push forward a number of economic reform initiatives such as deregulating the pricing of fuel and agricultural products, improving the state's ability to acquire land for industry and infrastructure projects, and implementing a nationwide goods and services tax, it has until very recently backpedaled on its proposed labor reforms.

The government started out ambitiously. In the spring of 2015, it proposed consolidating the country's 44 labor laws into four labor codes covering wages, conditions of employment, social security, and industrial relations.

As part of this program, the government called for some major changes to the current laws, including: 1) raising the employment threshold at which companies must seek permission from the government to lay off workers from 100 to 300 workers (reversing the 1982 amendment to the IDA), but at the same time doubling retrenchment compensation; 2) establishing a national minimum wage that the states could increase based on local market conditions; 3) making it more difficult for workers to form unions by raising the percentage of workers who must vote to take that step (currently, 15 percent of workers must vote for a union to authorize it to represent the workforce at a given factory); 4) prohibiting politicians from becoming union leaders in the organized sector; and 5) increasing the social safety net for informal-sector workers.

The government has also circulated a draft of a bill that would exempt small factories employing fewer than 40 workers from 14 central labor laws, including the IDA and the Payment of Wages Act. It would allow them to purchase private insurance and provide their own retirement packages for workers rather than requiring them to participate in the central government's Employees' Provident Fund and Employees' State Insurance schemes. Finally, while the government has not offered any proposals for amending the CLA, employers' organizations have called for raising the threshold for the number of employees to which the law applies and loosening the provisions that require employers to adopt casual workers as permanent employees.

So far, the Modi government has failed to move these reforms through Parliament. Instead, the government has emphasized the role of "competitive federalism," promoting state-level reforms that will facilitate labor-market flexibility and employment growth. Rajasthan has been the first mover in this regard. Under Chief Minister Vasundhara Raje, Rajasthan has amended the IDA by raising the threshold at which employers must seek permission to retrench workers from 100 to 300 workers. It has also amended the TUA to require that 30 percent of the employees in a workplace must support a union before it can represent workers in negotiations with management. Proponents say that these efforts have helped to attract new investment from multinationals including Honda, Saint-Gobain Glass, and JCB (which makes construction equipment).

A number of other state governments have emulated Rajasthan's example by proposing or enacting reforms of their own. The government of Madhya Pradesh enacted an even more aggressive set of reforms than Rajasthan's, substantially loosening restrictions on layoffs while requiring a more generous three-month compensation package for retrenched workers and allowing more overtime and night shifts for women. The Maharashtra state government is working on a similar set of reforms and amended the CLA so that it applies only to establishments employing more than 50 workers (compared with 20 under the national law). Other states contemplating labor reforms include Gujarat, Haryana, Jharkhand, Telangana, and Andhra Pradesh. This provides some evidence that competitive federalism may be inducing other state governments to amend their labor laws. However, it is worth noting that with the exception of Telangana, the legislatures in these states are dominated by the BJP.

ENTRENCHED OPPOSITION

On February 9, Dattatreya, the labor minister, announced that the Modi government would reintroduce the proposed labor codes covering wages and industrial relations for consideration by Parliament. Despite the government's efforts over the past two years to build consensus behind these bills, the proposal is likely to encounter substantial resistance from trade unions as well as from the Congress-led opposition in the upper house, various regional parties, and state governments.

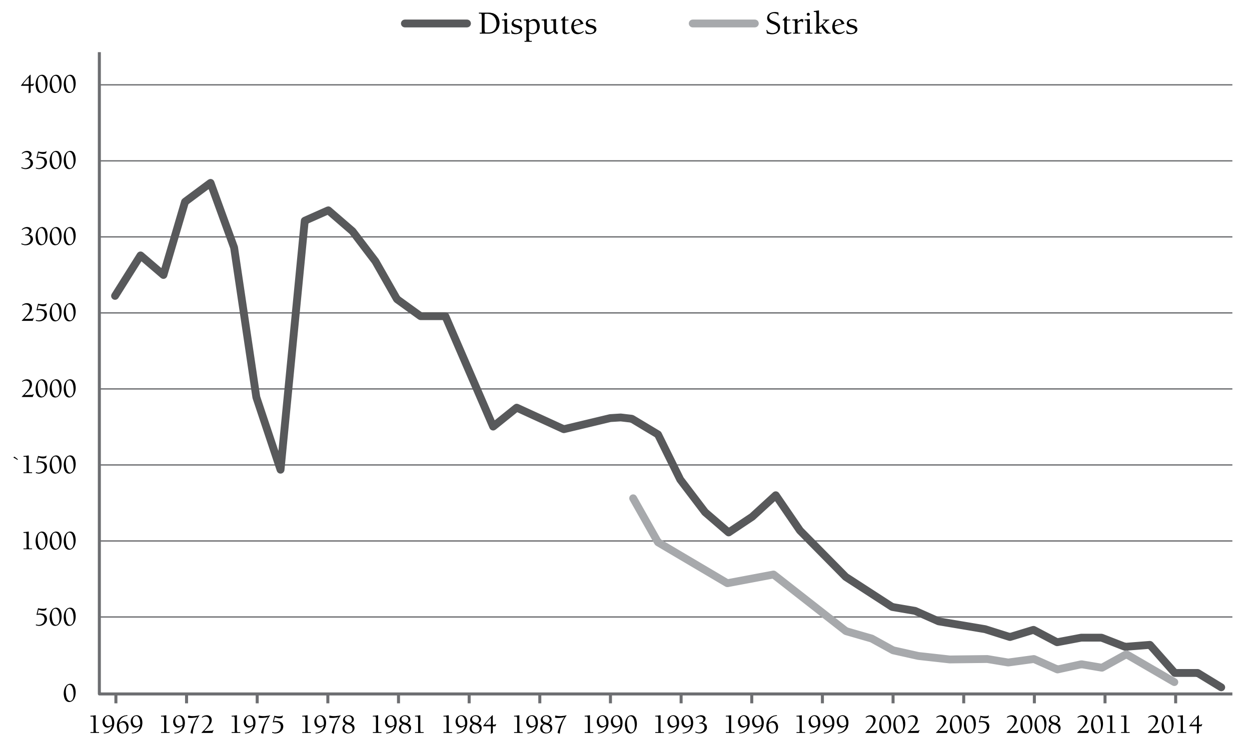
Trade unions can exert influence over policy in a variety of ways. The main mechanism is the overlapping leadership structures of unions and political parties. Every major political party in India has an affiliated trade union run by party members. The BJP's affiliated union is the Bharatiya Mazdoor Sangh (BMS); the Indian National Trade Union Congress (INTUC) is affiliated with the Congress party. While no one knows for sure how large these federations are, INTUC is the biggest, boasting more than 33 million members, followed by the BMS, which claims more than 10 million members.

Unions can also draw attention to an issue by calling a general strike—a very powerful weapon in India. A general strike called on September 2, 2016, to protest Modi's economic policies was billed as "the largest strike in human history"; according to some reports, it drew between 150 and 180 million participants. A lesser-known way that trade unions can potentially influence policy is through their political funds. They can be used to cover expenses associated with political campaigns and meetings or rallies held in support of specific political candidates, as well as covering the expenses of an elected official or the costs of holding political meetings of any kind.

While the NDA has a large majority of seats in the Lok Sabha, it controls just 74 of the 245 seats in the Rajya Sabha. The UPA controls 65 seats in the upper house (59 of which are held by its own members). An additional nine seats are held by a pair of communist parties that staunchly oppose Modi's reform agenda. A number of unaligned regional parties control the remaining seats, and many of them have their own trade-union federations that would oppose many of the proposed changes. A substantial shift in the composition of the Rajya Sabha is unlikely in the near term. Only eleven seats are up for election in 2017, and six are from West Bengal, where the BJP has not traditionally been dominant.

Even if the government does manage to implement its reforms at the national level, they are likely to face long-term opposition from state governments. Labor regulation falls on the "concurrent list" of India's Constitution, meaning that it is an area jointly governed by states and New Delhi. So far, state-level reforms have validated the government's strategy of using competitive federalism to drive reforms in a pro-employer direction, but this

Figure 1: Industrial Disputes and Strikes, 1969–2016



Notes: Industrial disputes include strikes and lockouts. The data on industrial disputes come from the Ministry of Labour and Employment, Government of India. The strike data were reported in the Lok Sabha, December 2012.

is primarily because reforms have been undertaken in BJP-dominated states. In the future, opposition parties could seek to undo any national reforms with state-level legislation to satisfy the unions that they rely on for support in state elections.

NEW ALIGNMENT?

Even if trade unions succeed in blocking Modi's proposed labor reforms, this would ultimately constitute a hollow victory, since it would not help to strengthen organized labor in any meaningful way. A bigger concern for labor than Modi's reforms is the continued weakening of its bargaining power in the industrial-relations arena. Since the late 1970s, unions have seen a steady decline in their ability to call strikes.

Figure 1 presents the trend in industrial disputes (strikes and lockouts) from 1969 to 2016 and of strikes from 1991 to 2014 (all the years for which data are available). Typically, strikes account for somewhere between 50 and 70 percent of industrial disputes in India. At the height of organized labor's bargaining power, before the 1975–77 Emergency, India experienced 3,330 industrial disputes involving 2,545,602 workers and resulting in 20,656,253 lost worker-days. In 2016, by contrast, the labor ministry reported just 42 industrial disputes involving 233,791 workers and resulting in 396,332 lost worker-days.

A related concern is the restricted scope of the union movement's membership base. According to the International Labor Organization, union density in India is 12.8 percent; this figure refers to the percentage of organized-sector workers who are union members, but more than 90 percent of India's workforce is now in the informal sector. According to the labor ministry, Indian trade unions have about nine million verified members, which would constitute less than 4 percent of the nonagricultural labor force. It should be noted, however, that only about 30 percent of unions submit their annual returns to the government, so the numbers could be somewhat higher. The labor ministry is currently conducting a trade-union survey at the behest of the major union federations, which claim that their membership has grown rapidly following the 2008 financial crisis.

A number of factors help to account for the long-term decline in the bargaining power of organized labor and unions' difficulty in attracting and retaining members. To begin with, rural development policy in the 1970s and 1980s provided incentives for small-scale producers in rural areas and undercut large- and medium-scale industries in urban areas where unions were strong. Subsequently, the Congress-led government began to dismantle India's "License-Quota Raj" (its infamous system of permits and restrictions on production) and instituted the watershed economic reforms of 1991, injecting higher levels of competition in product markets, which further limited the pricing power of manufacturing firms in the organized sector. These trends in turn led to an acceleration of capital investment in industry, the shedding of labor, and a decline in labor's share of value added in the 1990s and 2000s. In recent years, these trends have been further fueled by the casualization of labor as employers seek to hire more temporary workers to get around the stringent requirements of the IDA.

In short, the problem for unions is jobless growth in industry. Unions will continue to face difficulties in maintaining membership and collective bargaining leverage so long as most employment remains primarily outside the formal manufacturing sector, in low-paying, unregulated, small- and tiny-scale factories. While unions have made some inroads with informal-sector workers by improving access to basic services such as ration cards, they tend to have more difficulty in pushing bread-and-butter trade-union issues where employment is precarious.

Consequently, the interests of organized labor align with those of the Modi government. As part of his "Make in India" campaign, Modi has set a goal of transforming India into a global industrial hub by raising manufacturing's share of gross domestic product to 25 percent, from its current level of 16 percent. As previous research has demonstrated, unions and their members tend to do quite well under conditions of high foreign direct investment, particularly when the employment relationship is managed by parties sympathetic to the concerns of organized labor.

It might therefore be in the interest of unions to begin to think more about the terms on which they would hope to engage capital, and especially foreign capital, rather than playing a simple obstructionist role against Modi's reforms in Parliament. A lot of ink has been spilled on how India's labor laws have affected investment, employment, and output by Indian firms in historical perspective, but not much thought has been given to how these laws might affect prospective investors and particularly multinational companies. Although Indian companies can find workaround solutions to the country's thick web of rules, regulations, and compliance procedures, such an adverse regulatory environment may still deter foreign firms from seriously considering India as an investment destination in the first place. Trade unions would benefit from a more robust dialogue on how to engage foreign capital in a way that provides secure employment while also facilitating better labor standards for India's vast workforce. ■