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BETWEEN CODE AND CONCRETE: IMPLEMENTING INDIA'S LABOUR REFORMS IN REAL ESTATE AND CONSTRUCTION

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Abstract

In consolidating twenty-nine labor statutes into four comprehensive Codes, India has embarked upon the most ambitious labor law reform project in its post-Independence history. The enactment of India's four Labour Codes between 2019 and 2020 represents the most far-reaching reconfiguration of labor regulation since Independence. Conceived as a project of legislative consolidation, the Codes promise greater uniformity, administrative efficiency, and ease of compliance. Yet their application to the real estate and construction sector raises serious legal, constitutional, and regulatory concerns. This sector is marked by endemic informality, extensive reliance on migrant and contractual labor, multilayered subcontracting arrangements, and heightened occupational risk, the structural characteristics that historically warranted sector-specific and welfare-oriented legislative protection.

Against this backdrop, this paper undertakes a doctrinal, constitutional, and jurisprudential examination of the implementation of the Labour Codes in the real estate and construction industry. It argues that consolidation, when pursued without sector-sensitive interpretation and robust enforcement, risks weakening substantive worker protections rather than strengthening them. The paper contends that the formal unification of labor law may inadvertently reproduce pre-existing patterns of informality and precarity under a seemingly streamlined statutory framework.

Drawing upon Supreme Court jurisprudence, constitutional labor guarantees under Articles 14, 21, and 23, and labor law theory articulated by scholars such as Otto Kahn-Freund, Upendra Baxi, and Amartya Sen, the analysis foregrounds the role of judicial continuity in preserving the protective ethos of labor law. It demonstrates that purposive judicial interpretation is essential to prevent the dilution of worker dignity, safety, and social security in a sector where bargaining power remains deeply asymmetrical.

The paper further examines the practical implications of the Labor Codes for construction labor by analyzing statutory definitions, employer obligations, occupational safety norms, and social security mechanisms. Particular attention is paid to enforcement deficits arising from project-based employment, fragmented regulatory oversight, and complex contracting chains. In doing so, the paper evaluates whether the Labor Codes meaningfully balance labor protection with economic efficiency or instead privilege formal compliance over substantive justice.

The article concludes by advancing reform-oriented legal and policy recommendations aimed at aligning the implementation of the Labor Codes with constitutional values and sectoral realities. It argues that without a context-specific regulatory approach grounded in judicial oversight and constitutional commitment the promise of labor reform risks remaining illusory for millions of workers in India's real estate and construction sector. The future of worker protection in India's construction economy will ultimately depend not on statutory consolidation alone, but on the willingness of courts and regulators to translate constitutional promises into lived workplace realities.

Keywords: Labor Codes; Construction Workers; Real Estate Sector; Informal Labor; Judicial Interpretation; Occupational Safety; Social Security; Constitutional Labor Rights

1. Introduction

The real estate and construction sector occupies a central place in India's political economy, contributing approximately 7–8 per cent of national GDP and providing employment to over fifty million workers. Despite its economic significance, the sector remains one of the most precarious labor markets in the country. Construction work in India is characterized by pervasive informality, heavy reliance on migrant labor, project-based and seasonal employment, and multilayered contracting arrangements that obscure legal accountability. These structural conditions produce a workforce marked by insecurity, limited bargaining power, and chronic exclusion from social protection, aptly captured by Jan Breman's description of construction workers as "footloose labor without rights."

Against this backdrop, the enactment of the Code on Wages, 2019; the Industrial Relations Code, 2020; the Occupational Safety, Health and Working Conditions Code, 2020; and the Code on Social Security, 2020 represents an unprecedented attempt to overhaul India's labor regulatory framework. By consolidating numerous sector-specific and welfare-oriented

statutes into four comprehensive Codes, the reform agenda seeks to simplify compliance, harmonize regulatory standards, and enhance ease of doing business. From a governance perspective, this legislative restructuring signals a decisive shift towards formal rationalization and administrative efficiency.

However, labor law reform cannot be assessed solely through the lens of regulatory streamlining. As Otto Kahn-Freund famously cautioned, labor law is not a neutral instrument of market regulation but a deliberate “countervailing force against inequality of bargaining power inherent in the employment relationship.” This insight assumes particular significance in the construction sector, where employment relationships are fragmented, employer identities are diffused, and workers’ capacity to assert rights is structurally constrained. In such contexts, legislative consolidation risks flattening legal nuance and erasing the justification for heightened sectoral protection.

This paper therefore interrogates whether India’s Labour Codes, as applied to the real estate and construction sector, meaningfully fulfil labor law’s countervailing function or whether they inadvertently entrench structural inequality through formal legal simplification. It argues that without sector-sensitive interpretation, robust enforcement, and continuity in judicial reasoning, the Codes may reproduce longstanding patterns of informality and precarity within a modernized statutory framework. By situating the Labour Codes within constitutional principles, judicial practice, and labor law theory, the paper seeks to evaluate whether the promise of reform translates into substantive protection for one of India’s most vulnerable workforces.

2. Structural Realities of Construction Labor

Construction employment in India departs fundamentally from the classical employer–employee paradigm that underpins much of labor legislation. Work in this sector is typically mediated through complex chains of contractors and sub-contractors, with workers recruited informally at worksites, labor nakas, or through village-level intermediaries. Written contracts are rare, employment is discontinuous and project-specific, and wages are commonly paid on a daily, task-based, or piece-rate basis. These arrangements are deliberately structured to evade statutory obligations relating to job security, social security contributions, and occupational safety, while simultaneously diffusing legal responsibility across multiple actors.

Migrant workers constitute a substantial proportion of the construction workforce and face heightened vulnerability within this fragmented labor market. Seasonal and circular migration, coupled with the absence of local identity documentation, restricts access to welfare schemes, grievance redressal mechanisms, and trade union representation. Language barriers, frequent movement across worksites, and dependence on contractors for housing, wages, and continued employment further weaken workers' capacity to assert legal rights. The result is a condition of legal and social invisibility, in which labor exists within the economy but outside the effective reach of regulatory protection.

Karl Polanyi's concept of labor as a "fictitious commodity" provides a critical lens through which to assess these realities. Polanyi cautioned that treating labor as an ordinary market commodity divorced from the social and human contexts in which it is embedded inevitably generates social dislocation and exploitation. In the construction sector, this commodification is reinforced by regulatory frameworks that presume stable, identifiable employment relationships and place primary compliance obligations on clearly defined employers.

The Labour Codes, by largely retaining these assumptions, struggle to accommodate the fluidity and informality that characterize construction work. Statutory definitions of "employee," "employer," and "establishment," along with compliance mechanisms tied to formal registration and documentation, create enforcement blind spots in a sector where employment relationships are deliberately obscured. Consequently, workers who are most in need of protection often fall outside the effective coverage of the law, not because protections are absent on paper, but because the regulatory design fails to engage with ground-level labor practices.

This disjuncture between legal form and lived reality underscores the central challenge of labor reform in the construction sector: without regulatory frameworks that recognize informality as a structural condition rather than a transitional anomaly, legal consolidation risks normalizing precarity rather than remedying it.

3. Overview of the Labor Codes and Sectoral Impact

3.1 Code on Wages, 2019

The Code on Wages, 2019 seeks to universalize minimum wage protection by extending statutory wage guarantees to all employees, irrespective of sector, and by introducing the

concept of a national floor wage. This reform carries clear constitutional significance, particularly in light of the Supreme Court's consistent recognition of minimum wages as intrinsic to the prohibition of forced labor under Article 23 of the Constitution. In principle, the Code represents a move towards harmonizing wage standards across India's fragmented labor markets.

In practice, however, the effectiveness of wage protection in the construction sector remains severely constrained. Weak inspection and enforcement mechanisms, the persistence of cash-based wage payments, and limited worker awareness of statutory entitlements undermine compliance. The diffuse nature of employment relationships often mediated through contractors, further obscures accountability for wage violations. Drawing on Amartya Sen's capability approach, the mere existence of wage entitlements cannot be equated with the expansion of substantive freedom. Legal rights that cannot be accessed, enforced, or meaningfully claimed remain normatively hollow, offering symbolic assurance rather than material improvement in workers lived conditions.

3.2 Industrial Relations Code, 2020

The Industrial Relations Code, 2020 introduces fixed-term employment as a legally recognized form of engagement across sectors, ostensibly aligning labor regulation with the project-based and time-bound nature of construction work. While this recognition reflects the operational realities of the industry, the Code simultaneously raises thresholds for the application of key protective mechanisms, including requirements relating to standing orders, collective bargaining, and prior governmental approval for retrenchment.

These changes significantly weaken labor's negotiating power in a sector already marked by asymmetrical bargaining relationships and low union density. By privileging flexibility and managerial prerogative, the Code risks normalizing employment insecurity rather than regulating it. Otto Kahn-Freund's caution against the uncritical transplantation of market logic into labor relations is particularly apposite in this context. Where collective voice is structurally constrained, the dilution of institutional safeguards exacerbates workers' vulnerability and undermines labor law's foundational role as a counterweight to economic power.

3.3 Occupational Safety, Health and Working Conditions Code, 2020

The incorporation of the Building and Other Construction Workers (Regulation of Employment

and Conditions of Service) Act, 1996 into the Occupational Safety, Health and Working Conditions Code, 2020 constitutes one of the most contested aspects of India's labor law reform. The BOCW Act was a sector-specific, welfare-oriented statute that explicitly acknowledged the exceptional hazards, informality, and migratory nature of construction work. It provided a distinct regulatory framework, including welfare boards and cess-based funding mechanisms, tailored to the sector's unique risks.

By subsuming the BOCW regime within a generalized OSH framework, the Code risks diluting the sectoral specificity that justified heightened protection. The shift from a welfare-centric model to a compliance-oriented safety regime may weaken enforcement and erode institutional accountability. In this sense, the reform exemplifies what Upendra Baxi has described as "symbolic legislation", laws that appear progressive in form but fail to deliver substantive outcomes due to design and implementation deficits. Without robust sector-sensitive rules and enforcement mechanisms, occupational safety in construction risks becoming a formal obligation rather than an enforceable right.

3.4 Code on Social Security, 2020

The Code on Social Security, 2020 aspires to extend social security coverage to all workers, including those in the unorganized, gig, and platform sectors. For construction workers, this promise holds particular significance given the historical exclusion of informal and migrant labor from contributory welfare schemes. However, the Code's reliance on digital registration, employer-linked identification, and discretionary, scheme-based entitlements poses significant barriers to effective inclusion.

Migrant construction workers, who frequently move across states and worksites, face practical difficulties in maintaining continuous registration and accessing benefits tied to place-based or employer-specific records. The absence of robust portability mechanisms undermines the Code's stated objective of universal coverage. As Guy Standing's analysis of the "precarariat" highlights, social security systems that fail to accommodate labor mobility and employment fragmentation often reinforce insecurity rather than mitigate it. In the construction sector, the gap between legislative promise and institutional capacity threatens to reproduce longstanding patterns of exclusion under the guise of reform.

4. Judicial Precedents and Constitutional Continuity

4.1 Informality and Constitutional Labor Rights

In *People's Union for Democratic Rights v. Union of India* (1982), the Supreme Court held that non-payment of minimum wages to construction workers violates Article 23. The Court rejected the fiction of voluntary consent, recognizing economic compulsion as coercion. This constitutional reading transforms labor rights into fundamental rights, a continuity that must guide Labour Code interpretation.

4.2 Principal Employer Liability and Economic Control

In *Hussainbhai v. Alath Factory Thezhilali Union* (1978), the Court articulated the “economic control” test, holding that the real employer is the entity that exercises ultimate control over production. This doctrine is crucial in construction projects where developers exert de facto control while disclaiming legal responsibility.

The Labour Codes' failure to codify this principle risks enabling what legal realist scholars describe as “liability fragmentation”, a structural evasion of accountability through contractual layering.

4.3 Welfare Funds and Judicial Frustration

In *National Campaign Committee for Central Legislation on Construction Labour v. Union of India* (2018), the Supreme Court expressed grave concern over unutilized welfare cess funds despite rampant worker deprivation. This case illustrates Baxi's critique of “bureaucratic welfare constitutionalism,” where rights exist but administration fails.

4.4 Migrant Labour and Judicial Anecdotal Testimony

During the COVID-19 crisis, *In Re: Problems and Miseries of Migrant Laborers* (2020) documented the lived experiences of migrant construction workers, unpaid wages, forced displacement, and absence of social security. These judicial narratives function as constitutional testimony, reinforcing the need for worker-centric interpretation of the Social Security Code.

5. Regulatory Fragmentation and Emerging Legal Risks

Notwithstanding legislative consolidation under the labour codes, regulatory fragmentation continues to undermine effective implementation. This fragmentation manifests through persistent state-specific rules and notification regimes, ongoing ambiguity surrounding

employer and principal employer liability, and the limited efficacy of inspection-cum-facilitation models that often prioritize procedural compliance over substantive worker protection. Further, the increasing reliance on digital governance frameworks has exacerbated the exclusion of informal and migrant workers who lack consistent access to digital infrastructure or literacy.

Against this backdrop, future labor litigation is likely to concentrate on several critical fault lines. These include the scope of joint and several liability of developers, contractors, and principal employers; the transparency, collection, and utilization of welfare cess under the Occupational Safety, Health and Working Conditions (OSH) framework; and the portability and enforceability of social security entitlements for inter-State migrant workers. In addition, constitutional challenges invoking Articles 14 and 21 of the Constitution are expected to test whether differentiated regulatory treatment and diluted safeguards withstand standards of equality, non-arbitrariness, and the right to life with dignity.

In response, courts are likely to revive and strengthen purposive and welfare-oriented interpretative approaches. Such judicial engagement would seek to prevent the erosion of substantive labor protections through delegated legislation, administrative discretion, or technological gatekeeping, thereby reaffirming the social justice orientation of labour law reforms.

6. Comparative and Theoretical Perspectives

Comparatively, several jurisdictions continue to retain sector-specific regulatory architectures for construction labor. Singapore and the United Arab Emirates, for instance, operate tightly regulated construction regimes characterized by mandatory licensing of employers, dedicated welfare boards, rigorous safety standards, and continuous compliance monitoring. These sectoral frameworks recognize the construction industry's heightened vulnerability to workplace accidents, informality, and migrant labor dependence. India's shift away from such sector-specific regulation under the Labour Codes represents a conscious move toward regulatory consolidation. While this approach may enhance administrative efficiency and uniformity, comparative labor scholars describe it as a form of "regulatory flattening" — a model that streamlines governance but risks erasing sectoral vulnerabilities and weakening targeted worker protections.

From a theoretical standpoint, the legitimacy of labor regulation cannot be assessed solely through the lens of contractual freedom or market efficiency. Labour law theorist Hugo Sinzheimer famously argued that labor law derives its normative authority not from private contract, but from its role in advancing social justice and correcting structural inequalities inherent in labor markets. Viewed through this lens, India's Labour Codes must be interpreted not merely as instruments of economic regulation or ease-of-doing-business reforms, but as constitutional tools designed to operationalize social justice.

Accordingly, the interpretation and application of the Labour Codes must remain anchored in constitutional morality, particularly the principles of dignity, equality, and substantive fairness embedded in the Constitution. Any reading that privileges formal uniformity over material protection risks undermining the very rationale of labor law and diluting its welfare orientation. Courts, therefore, have a critical role in ensuring that regulatory consolidation does not translate into normative dilution, and that labor reforms continue to reflect the Constitution's commitment to social justice.

7. Recommendations and Way Forward

7.1 Reintroduction of Sector-Specific Rules under the OSH Code

States should utilize their rule-making powers under the Occupational Safety, Health and Working Conditions Code to reintroduce sector-specific safeguards for construction work, drawing on the protective architecture of the erstwhile Building and Other Construction Workers (BOCW) framework. Such subordinate legislation can restore targeted welfare measures, safety standards, and compliance mechanisms tailored to the unique risks of the construction sector, without undermining the broader objectives of regulatory consolidation.

7.2 Codification of Joint Employer Liability

The Labour Codes should be supplemented through statutory clarification or amendment to expressly recognize joint employer liability where economic control, supervision, or functional integration is exercised by developers or principal employers. Adopting "economic control" as the determinative test would align Indian labor law with contemporary realities of fragmented production chains and prevent the dilution of accountability through multi-tiered contracting arrangements.

7.3 Mandatory On-Site Worker Registration Mechanisms

A system of mandatory, on-site worker registration should be instituted, with primary responsibility placed on developers or principal employers rather than contractors. Developer-led registration would reduce evasion through sub-contracting, enable accurate worker identification, and facilitate access to welfare benefits, safety oversight, and social security entitlements at the point of employment.

7.4 National Framework for Social Security Portability

There is an urgent need for a unified national framework ensuring the portability of social security benefits for inter-State migrant and mobile workers. This should be operationalized through interoperable digital databases that allow seamless transfer of entitlements across jurisdictions, while incorporating robust privacy, data protection, and grievance redressal safeguards to prevent exclusion and misuse.

7.5 Judicial Capacity Building and Specialized Adjudication

Effective enforcement of the Labour Codes requires corresponding judicial capacity building. The establishment of specialized labor benches or designated labor code tribunals would enhance doctrinal consistency, reduce delays, and enable adjudicators to develop sectoral expertise, particularly in complex questions of liability, welfare entitlements, and constitutional compliance.

8. Conclusion

The Labour Codes mark a significant structural reimaging of India's labor law framework, reflecting an ambition to rationalize, modernize, and unify a historically fragmented regulatory landscape. Yet, in the context of the real estate and construction sector - defined by deep informality, layered contracting, and heightened vulnerability regulatory consolidation without contextual sensitivity risks entrenching, rather than dismantling, existing forms of precarity. Uniform legal architecture, when detached from sector-specific realities, may inadvertently weaken protective mechanisms that once addressed the distinctive risks of construction labour. In this setting, judicial continuity assumes critical importance. Courts remain the most vital institutional safeguard against the dilution of labor protections, particularly where legislative consolidation has shifted substantive safeguards into the realm of delegated legislation or administrative discretion. By grounding interpretation in constitutional labor rights, embracing purposive and welfare-oriented reasoning, and remaining attentive to the lived realities of

vulnerable workers, the judiciary can ensure that the Labour Codes function as instruments of social justice rather than mere vehicles of regulatory efficiency.

Ultimately, the success of labor reform cannot be measured solely by statutory coherence or ease-of-compliance metrics. As Upendra Baxi compellingly reminds us, the true test of any labor law regime lies in its capacity to protect the “worst-off worker at the construction site.” The enduring legitimacy of the Labour Codes will therefore depend not on their formal elegance, but on their ability through interpretation, implementation, and enforcement to translate constitutional promises of dignity, equality, and security into tangible protections for those at the margins of India’s labor economy.

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