**A Comparative Study of Labour Standard in India & China**

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**Abstract**

The Labour of India and China has more impact on world labour market as compared to other countries because these two counties have more population and labour workforce too so, it has been seen that a country having more labour workforce should have good labour laws. And to stop the exploitation of labour in these countries as many Multi-National Companies invest where there is plenty of resources i.e. Labour is easily available so that it helps them in producing products cheaply.

This Research examines labour standards in China and India. We have examined labour laws at the national levels in both countries, however somewhere in China some sub-national laws have been taken and compare them to global standards. Many of India’s standards are recent and demonstrate different approach to all employment contracts and schemes in the country. China’s approach is older i.e. there are not much amendment made after 2010, but it almost cover different industries and sectors through same law. The main aim has been of both the countries for welfare of Labour and decreasing the exploitation of workers.

**Research Methodology**

The method adopted for the research is basically content analysis of the available secondary data. Content analysis is a methodology in social sciences by which text are studied as to authorship, authencity or meaning. Content analysis is the summarizing, quantitative analysis of text that relies on the scientific methods and does not limit it as to the type of variables that may be measured or the context in which new text are presented or created. In this research the methodology of content analysis is used for analyzing internet data comprising of various secondary and primary sources such as articles, previous researches, reports of various institutions and books, etc. For the study secondary data collection is followed by researcher as it is a doctrinal study.

**OBJECTIVES**

To Compare the Laws of both nation with International Legal Standard.

To Compare both Nation laws on some Labour Standard and Critical Analysis.

**Literature review**

According to Shyam Sundar (2007), prior to their respective reform periods, China and India pursued similar developmental strategies (Srinivasan, 2003). In comparison to India, China's economic reform was a massive undertaking because India already had a significant presence of the private sector in place. Both reaped the benefits of economic reforms in the form of faster economic growth; however, there were some significant differences. The economic reform process in India began during Rajiv Gandhi's tenure, but stalled due to political setbacks and opposition.

According to BIBHAS SAHA(2006), in his study took various scale and tool to compare India and China when he found out that when we talk about China's radical labour reforms were necessary to some part for the formation of a free labour market, which eventually permitted unrestricted industrial growth and quick employment, but they also had some negative impacts on income distribution and industrial relations. However, India's incapacity and unwillingness to alter its strict labour regulations may have severely reduced the positive effects of industrial deregulation in the organised sector.

**Introduction**

The growth performance of India begin in 1990-91 when there was economic crisis in the country and the Government of India open all the gates for Global market to invest , take resources and setup companies in India, so it changed the reform process accordingly.

And if we talk about China it was majorly started in 1970s in which China opened its economy for global but China achieved its economic growth faster and develop its in house companies to capture the global market and it was based on labour intensive technique only because China was rich in Labour Workforce. And it can be said that China pursued some extent which were necessary for the creation of a free labour market and it also allowed industrial growth significantly.

In both the countries there was big plan was made, which caused inefficiency in allocation of resources and also created potential platform for investment and future entrepreneurship for development and growth of people of both countries.

**Legislation examined**

India have developed different systems to deal with labour policy. In Constitution of India, labour is found under the Concurrent List, which enables both the Central and State governments to enact Laws in this area. In India there is industry specific laws which helps in proper administration and jurisdiction such as Factories Act, Minimum Wage Act, Mines Act etc. also govern the working condition of different group of workers. However in this paper the laws have be taken which have more coverage as compared to other and on which actually comparison can be done properly in both countries.

In China, there are majorly the National law which govern the different group of worker such as Labour Code of China, regulation in paid annual leave and at sub-National level there are also laws basically it has been observed that there is general guiding principles.

**Comparison of labour standards**

**Mandatory day of rest**

In India and China, The National labour laws give govern employees in all categories to get a day of rest during the week. Indian laws confirm the mandatory day of rest in a week should be provided by employer[[1]](#footnote-1). Chinese provinces show no variation as there also employer has to provide a mandatory day of rest[[2]](#footnote-2). In India, if an employee is requested to work on scheduled days of rest, compensation should be provided according to the overtime wage rate[[3]](#footnote-3). In China, The employer has to give wage premium of 200% of his/her wages[[4]](#footnote-4).

**Working hours**

In India, national laws define the working hour as per week or as per day so that exploitation can be stopped like if an employer doesn’t give work on Monday and then say worker to work on Tuesday for 18 hour in a day then it is not possible to work for worker so government of India introduce this system of a day and a week. The regular workweek for working in India is 48 hours and if in case of day its 9 hour.

Table 1.1 : Hour restriction in Different Legislation:

|  |  |  |
| --- | --- | --- |
| Legislation | Working Hours | Weekly Hour |
| The Factory Act, 1948[[5]](#footnote-5) | 9 hr a day | 48 hr in a week |
| The Mines Act, 1952[[6]](#footnote-6) | 9hr day | 48 hr a week |
| The Minimum Wages Act, 1948[[7]](#footnote-7) | 9hr a day | 48 hr in a week |
| The Code on Wages, 2019 | 8hr to 12hr | 48 hr in a week |

According to The Factories Act the worker should not be forced to work for overtime for more than ten hours a day and in inclusion of intervals of rest it should not exceed more than 12 hour in a day[[8]](#footnote-8).

Chinese labour law gives that standard working periods shall not exceed 8 hours in one day and forty hours in a week on average[[9]](#footnote-9). After this law came into effect, the laws were changed hours of work for a week. The working hour of a week was decreased by 4hrs i.e. it became 40 hours a week. This change brought China in line with international norms of ILO.

**Overtime**

In India, according to The Wages Code Act it is defined that employer should pay for every extra hour or every part of hour the worker has worked in excess of his/her working hours which constitute the normal working hour then the worker should be provided with twice normal rate of wages[[10]](#footnote-10). According to Federal Laws like Factories Act and The Mines Act the employer should pay 100 % wages for every hour as per the average wages paid for every day.

In China, According to Labour Law of the People's Republic of China it is given that, if worker is working for every extra hour then he/she should be paid 150% of wages as per last wage rate[[11]](#footnote-11). And the Labour Code also tells that the working hour should not be increased more than 1 hour per day and if because of any season it is needed to be increased more than 1hour then maximum it should be increased to 3 hours per day and the health of worker should be guaranteed and in a month total extension should not be more than 36 hours[[12]](#footnote-12).

**Annual leave**

India and China both require that employers provide employees with vacation. In India the employer has to provide annual leave to worker who has worked for more than 240 days then if he/she is adults then worker should be given leave as one day off for every twenty day they work in the previous year and in case of a child he/she should be provided for one day off for every 15 day he/she worked[[13]](#footnote-13).

In China if we compare the duration of leave is according to how much work a worker has done till the date like if worker is working with a firm or industry or company for more than a year and less than 10 year, they are entitled to get 5 days paid leave in a year. If a worker has worked more than 10 year and less than 20 year then, 10 days annually paid leave. If a worker has worked more than 20 year then the leave increase by 5 days as compared to 10 year work experience. The Statutory National Holiday and rest should not be included in the annual leave[[14]](#footnote-14).

**Parental leave**

**A) Paternity Leave**

In India there is no law for paternity leave of private sector although there is law named as The All India Services (leave) Rules which give provision for giving paternity leave to officer who are employed in All India Services which include paternity leave should be given 15 days before the delivery of child and after delivery the leave can be given for up to 6 week. He should be paid for leave according to the payment made immediately going to leave[[15]](#footnote-15).

In China. There is no National Law on Paternity Leave but it is provided under some act like Beijing Municipal Regulations on Population and Family Planning here it is said that for the couples who have been according to the regulation, the paternity leave will be provided for 15 days and before the child reaches 3 years of age then father should be given 5 days leave every year[[16]](#footnote-16).

In Shanghai there is an Act Shanghai population and family planning which make provision for paternity leave as to be given by employer that is 10 days and the salary of the paternity leave should be paid as per normal attendance[[17]](#footnote-17).

**B) Maternity Leave**

In India there is Maternity Benefit Act governing women leave for maternity time period. This Act ensures that women should get paid for twenty six week which is not more than eight week i.e. which means a women can get paid for 8 week before the delivery date and after delivery she should be paid for rest of the week. Wages should be given as per the average daily wage rate during the last three months preceding the day of absence. Those women would not be entitled to get paid maternity who have not been worked in an establishment for the period not less than 160 days preceding the 12 month from the date of delivery[[18]](#footnote-18). In case of miscarriage the women should be entitled to get paid wages for 6 week after the miscarriage has happened[[19]](#footnote-19).

In China the employer has to give paid maternity leave to women for 98 days which include 15 days of antenatal leave. And there should be extra 15 days leave in case of dystocia. Those female employee who has more than single birth shall be granted an extra maternity leave for every additional child born. If the women had a miscarriage before the four month pregnancy then 15 days maternity leave should be provided after that happened. And if a female having miscarriage in 4th month or after that, they should be provided with 42 days of maternity leave[[20]](#footnote-20).

**Critical Analysis**

India fails to meet the 1962 Reduction of Hours Recommendation of the ILO, which suggests that countries work to bring down their weekly hours from 48 hours to 40. In contrast, China has achieved this goal in a very short time.

Workers in India and Chinese workers whose working life is less than 20 years also fail to benefit from the ILO's revised 1970 Holidays with Pay Convention of three-week’ annual leave.

India's inability to extend protection to large portions of its workforce also hampers its ability to meet the requirements of the Convention. Both India and China fall just short of the 14-week maternity leave proposed by the same convention.

China’s standards are a relatively recent development and demonstrate a single overarching approach to all employment contracts in the country. India’s laws, however, date from much earlier, reflecting the standards deemed suitable in the immediate post-independence period.

The Indian approach to labour law is much more piecemeal, covering different industries and sectors through different laws. This patchwork method of legislation contributes in part to the vast sectors of Indian labourers who fall through these regulatory gaps, depending on such factors as the size of the establishment of their employment, or their jurisdiction of employment as well.

The unitary system in China provides a uniform blanket of regulation across the country, which provinces may alter only slightly. In India, although the basic principles remain standard throughout the country, the joint constitutional jurisdiction over labour makes the details of norms quite diverse. This system has an impact on transparency in Indian law, as it makes it more difficult to know which laws apply in which instances compared to China.

**Conclusion**

Because of the inclusive nature of Indian democracy, trade unions have been able to resist any changes to labour laws. The state's inability to change labour laws fits the overall pattern of state withdrawal in some ways. Despite the fact that we enter in new era of competition we still labour laws appear archaic, the state most likely hopes that the free market will reshape labour institutions by unleashing benevolent forces.

We know the fact that India's labour laws are designed to safeguard employees' rights, they give the impression that employers' interests—who are often investors—have been neglected. For instance, no employer would want to fire productive workers from a company that is operating profitably. Employers in this situation would like to adopt competitive practises in order to retain talent. In light of this, when we look towards our analyses we easily see labor-related laws in India are frequently deemed to go far beyond the intent behind their enactment.

1. The Wages Code Bill, 2019, Sec 13(b) [↑](#footnote-ref-1)
2. Labour Law of the People's Republic of China, 1994, Article 38 [↑](#footnote-ref-2)
3. The Minimum Wage Act, 1948, sec 13(c) [↑](#footnote-ref-3)
4. Labour Law of the People's Republic of China, 1994, Article 44(2) [↑](#footnote-ref-4)
5. The Factories Act, 1948, sec 54, 51 [↑](#footnote-ref-5)
6. The Mines Act, 1952, sec 28, 30 [↑](#footnote-ref-6)
7. The Minimum Wages Act 1948, Sec13 [↑](#footnote-ref-7)
8. The Factories Act, 1948 Sec 64(4) [↑](#footnote-ref-8)
9. Labour Law of the People's Republic of China, 1994, Article 36 [↑](#footnote-ref-9)
10. The Wages Code Act, 2019 Sec 14 [↑](#footnote-ref-10)
11. Labour Law of the People's Republic of China Art 44(1) [↑](#footnote-ref-11)
12. Labour Law of the People's Republic of China Art 41 [↑](#footnote-ref-12)
13. The Factories Act, 1948 Sec 79 [↑](#footnote-ref-13)
14. Regulations on Paid Annual Leave of Employees, 2007, Article 3 [↑](#footnote-ref-14)
15. All India Services (leave) Rules, 1955 Sec 18(b) [↑](#footnote-ref-15)
16. Beijing Municipal Regulations on Population and Family Planning, 2003 [↑](#footnote-ref-16)
17. Shanghai population and family planning, 2016 [↑](#footnote-ref-17)
18. Maternity Benefits (Amendment)Act, 2017 Sec 5(3) [↑](#footnote-ref-18)
19. Id. Sec 9 [↑](#footnote-ref-19)
20. The special provisions on labour protection for female employees (state council decree no. 619),1988, Art 3 [↑](#footnote-ref-20)