Article

ELRR

The Economic and
Labour Relations Review
2019, Vol. 30(3) 422–440

DOI: 10.1177/1035304619863550
journals.sagepub.com/home/elra
SAGE

How independent is India's labour law framework from the state's changing economic policies?

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Abstract

Judicial interpretation of statute law in common-law countries means that the judiciary may mediate the social impact of legislation. In the case of the protection of labour rights in India, this article examines the extent to which the judiciary acts independently from the government of the day, and the extent to which court judgements are swayed by prevailing administrative policies. Specifically, to what extent have economic liberalisation and labour market flexibility policies influenced court decisions in cases challenging worker dismissals? Drawing on a review of 270 judgements delivered by the Supreme Court of India and the state High Courts between 1950 and 2010, a relationship is traced between a shifting pattern of Courts' judgements and policy changes initiated by the Indian government in response to economic conditions. The objective of the study is to understand the effect of a structural shift in the economy on the cases of consented and contested decrees related to dismissal of workers under the relevant laws in India. It is found that the specific statute has not greatly changed through legal reforms, but the judiciary's interpretations of it have changed over six decades based on dominant socio-political currents, in tune with government economic policies. This raises profound questions about judicial independence in defence of labour rights.

JEL Code: K31

Keywords

Economic liberalisation, impugned dismissal, India, judicial independence, labour dispute resolution, unfair dismissal

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Introduction

Courts in India, as adherents to common-law doctrine, have played a dominant role in interpreting statutes. As a result, the judiciary, rather than legislators, has shaped/mediated the actual effects of law on Indian society. However, specific statutory provisions have been subject to widely differing judicial opinions, and such variance in judicial interpretation has increased with time. Judges have been swayed by extraneous factors and prevailing ideological currents, resulting in inconsistent interpretations of statutes. Judicial interpretations and subsequent Courts' judgements and decisions have reflected judges' background, ideology, and worldviews, to the point where arguably judicial independence is 'under threat' or highly compromised. In labour law, there are instances where higher Courts have swung sides from pro-labour interpretations of statutes to aligning with employers by interpreting the same statute in a different way. One view is that this phenomenon has become more common with the advent of economic liberalisation. Others argue that the legal framework has not been tainted, regardless of relentless attempts by Indian parliamentarians to influence a judiciary, seen by legislators as standing in the way of economic reforms.

This article leans towards the social and labour policy paradigm (Arup et al., 2006) – the thesis that over time the regulatory focus of labour law has shifted from the employment relationship to the labour market. India has undergone a 'tectonic shift' in its economic policies and the impact has been felt on the country's social and labour policies. On account of the economic reforms introduced by the Indian Government in the early 1990s, the country has gradually transformed from a 'coordinated market' to a 'liberal market' economy. Nevertheless, during the period prior to economic liberalisation, there were a number of significant 'political events', like internal political change, change in Government, and Constitutional amendments, which also had long-lasting impact on social and labour policy.

Therefore, the objective of this study is to understand the impact of these changes on Courts' interpretation of a particular statute that has remained the biggest defender of labour rights until the present date. It explores whether a statute that was enacted back in the late 1940s to protect labour rights may not have been overhauled throughout the following 60 years, but because of changes in the country's macroeconomic policies, the judicial interpretation of the statute has changed with time to facilitate smooth implementation of economic reforms post 1991 in India.

From a political economy perspective, Governments in emerging economies care more about financial markets than about other institutions. Under global structural adjustment policies, politics (the state) and economics (the market) do not exist in separate spheres and politics is not free from market interference. It is seen as the role of governments to set rules and create opportunities for revitalisation of the economy in order to support a surging demand for capital creation. A structural shift occurs whereby the state (politics) remains subordinate to the pursuit of economic (market) interests.

Although changes in the Government's economic policies are part of reforms proposed by the legislator, it is argued here that the judiciary backs them as well. As analysed by Iaryczower et al. (2006), dominant rhetoric in public opinion influences Government's economic policy initiatives and modifies the way Courts function so that the latter do not inhibit implementation of the former's policies (Bergara et al., 2003).

https://doi.org/10.1177/1035304619863550 Published online by Cambridge University Press

Depending on how powerful the Government is (viz., coalition or minority Government vs single party in majority), the legislature can exert a moderate to high level of control on the judiciary (see Nasrudin et al., 2013, for the role of strong Government in economic development). An unswerving impetus by the legislative and executive organs of the state in bringing policy reforms has made an enduring impression on judges' interpretation of any statute.

Studies on ways in which judicial rulings are swayed by changing economic policies seldom exist in a non-western, emerging economy context. So, an attempt is made in this article to study this phenomenon, which is well established in the developed economy context (McCubbins et al., 1995). The approach chosen has been to review a large selection of judgements delivered on impugned dismissal of workers, delivered over a long period by the Supreme Court of India (SCI) and different state High Courts (HCs). The term 'impugned dismissal' is commonly used in India to refer to cases of dismissal of worker that are allegedly unfair or illegal (dismissal of a worker without following principle of fair play and natural justice, for example, without the conduct of an internal inquiry) and are likely to be disputed by the worker in a Court or Tribunal.

The objective is to find whether the judiciary has changed its interpretation, especially of the provisions of the Industrial Disputes Act of 1947 on impugned dismissal based on case facts or Labour Courts' (LC) decisions. Besides, we intend to find whether there is any specific pattern identifiable in changes in judicial interpretation that can be linked to the change in the country's economic policies. We examined the judicial interpretation of the remedial provisions available for illegal dismissal, namely, Section-11A under the Act of 1947. Section-11A allows Courts, Boards and Tribunals to interfere with an employer's decision to dismiss a worker, set aside the decision and give relief to the worker, if needed.

Considering higher Court judgements that were repeatedly cited in subsequent cases on impugned dismissal in the same or different Courts, 270 selected judgements delivered by the SCI and the state HCs on the legal safeguards for dismissed workers between 1950 and 2010 were studied. The purpose was to find whether the Courts' liberal interpretation of the provisions under the Act of 1947 that benefitted labour during 1970–1990 (the pre-liberalisation period) changed during 1990–2010 (in the post-liberalisation period) when the Courts interpreted the same provisions in a new and different way.

Six decades is long enough to witness dramatic changes in society and the labour market, which could influence the way the judiciary views its role within the larger context of political democracy and economic rationalisation. Here, we will focus narrowly on those events that could affect judges' worldview and judicial interpretation while deciding cases. The six decades were divided into three phases, differentiated according to the state of political economy and Government's policies on industry and labour. There was a gradual shift in India's economy with changes in social policy initiatives after 1970 and labour market liberalisation policies after 1990.

The first two decades, post-independence, also known as a period of 'national capitalism', are exemplified by pluralistic industrial relations and a paternalistic labour-relations system, practised mostly in large state-owned enterprises (SOEs) where strong politically affiliated unions bargained with employers through state controlled institutions. Coutts and Gudgin (2016) have reported a similar phenomenon in the United

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Kingdom during the 1970s when the British economy was strongly managed by government and consequently the trade unions remained powerful. As a result, the labour market induced social harmony with minimum industrial unrest though economic efficiency could not be generated (Bhattacherjee, 2001) in India. Cases of impugned dismissal, especially the ones in which 'victim pleas' were tenable, seldom existed, because taking part in union activities did not amount to an act of omission that would warrant harsh disciplinary action such as dismissal. Workers in large Indian SOEs have mostly organised under the aegis of state sponsored unions.

However, the next phase, viz., 1970–1990 witnessed reducing control of SOEs on politically affiliated unions. Because of declining 'monopoly' effects, labour unrest was on the rise. In private enterprises, the workers struggled to receive benefits, which until then were easily available in SOEs. By the early 1980s, the Indian economy started suffering. This led to political instability and forced the ruling party to initiate economic liberalisation on a small scale. The economy shifted from a traditional import-substituting system to a system in which export and domestic consumption were emphasised. This first attempt to liberalise the Indian economy was marked by structural adjustment policies that left a long-lasting impact on the domestic labour market. Rising industry-wide strikes gave birth to 'independent' unions. Affiliated unions sought freedom from state control. The government sensed non-cooperation from major unions. Because of the inflexibilities embedded in laws like the Act of 1947, employers resorted to unfair labour practices, like dismissing those workers who opposed companies' labour force reduction plan.

The Indian economy became considerably more open, based on growing private enterprises and foreign investment (Chaudhuri, 1995). Manufacturing grew as small and medium firms increased in numbers (Goldar, 2000). Their growth, however, led to a drop in employment elasticities in organised manufacturing and gave rise to casual and contractual employment. Economic restructuring led to an increase in managerial flexibility through restrictions on recruitment, and a transfer of employment categories outside the scope of the bargaining framework, in the context of mergers, suspension of industrial action and concession bargaining (Venkataratnam, 1996). These called for rationalisation of labour laws. Since trade unions felt that amending existing laws would add to managerial power, they created obstacles for the reformers. Labour law reform could be prevented but the non-union sector grew and resulted in a fall in the relative size of the unionised workforce, lesser intervention of Government institutions in collective bargaining and a rise in cases of impugned dismissal.

However, the jury is still out on whether the legal framework was tainted in the post-liberalisation era. Our goal is to find whether the economic reforms influenced the judiciary to the extent that the legal framework no longer remains insulated.

The first section of the article explains the state of the judiciary in India, the features of Indian labour laws and the process of adjudication of labour disputes in the country. Relevant literature on factors affecting judges' decisions is then reviewed. Findings from a review of a large selection of Courts' judgements and decisions are presented, followed by an explanation of how a reversal in the nature of judicial pronouncements can be attributed to changes in judicial interpretation, resulting from changes in economic policies.

The state of the Indian judiciary

Courts in India administer a common-law system of jurisdiction where precedents and legislation play an equal role in interpreting statutes. The judiciary is the final interpreter and guardian of the Indian Constitution. It plays this role by calling for scrutiny of any deed or action by the legislature and executive.

The Indian Constitution confers power upon judges, benches and magistrates to act as guardian, protecting the rights of every citizen from being infringed by any organ of the state. Courts are expected to remain unaffected by any influence exerted by legislature or executive. In the words of the architect of the Indian Constitution, Dr B.R. Ambedkar, 'the people of a nation may lose confidence in the executive, or the legislature but it will be an evil day if they lose their confidence in its judiciary'.[1] Judicial independence is thus an important feature of the Indian Constitution.

Germane literature

A large literature exists on what make judges decide as they do (Baum, 1997; Hausegger et al., 2013; Markesinis, 1997; Maveety, 2003; Zorn and Bowrie, 2010). The proposed motivations include economic and socio-political factors as well as an individual judge's background, beliefs, ideologies, and allegiances; these have been found to be equally important in determining the ways in which a case is handled by judges (Ashenfelter et al., 1995; Grossman, 1967; Nagel, 1962; Rachlinsku and Wistrich, 2017).

Several studies indicate that an effective justice system can help in improving business climate and fostering growth in emerging economies.[2] A justice system that is in harmony with political development can reduce the risks that firms face in emerging markets. In its attempt to rescue the economy through liberal policies, a Government may strike a balance between its policies and justice system so that the judiciary does not impede its efforts in achieving economic growth. La Porta et al. (1998) note that in countries where a memorandum of procedure for judicial appointments is approved by a parliamentary committee, the administrative arm does not hesitate to have its say in the kind of people to be appointed, their caste, creed, religion, background and political allegiance. It even dictates the principles guiding judges' conduct inside the Courtroom. It is not only the scale of activities[3] undertaken by the Government that has bearing on the number of lawsuits filed in Courts (Grossman and Sarat, 1971), but the judges' conduct too is predisposed to the economic policy framework adopted by the Government.

There are instances reported by Iaryczower et al. (2006) where the ruling party has intimidated the judiciary and the Court has attuned its demeanour with the priorities set by political powers. The judiciary's relative position on Government's economic policies has influenced Courts' judgements. However, McCubbins et al. (1995) comment that 'every spasmodic change in politics and Government's economic policies is not correspondingly followed by a transformation in judicial doctrine' (p. 1632). In the Indian context, Chandrachud (2014) observes that a minority or coalition Government has normally failed to influence the judiciary. Judges' appointing authorities among many other comparable factors such as judges' experience on the bench turn out to be significant predictors of their decisions (Ashenfelter et al., 1995).

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While frameworks are available as a normative basis against which the data could be analysed in this study, systematic work in the Indian context is sparse. Hence, it was decided to take a grounded approach and examine the extent to which judicial interpretations and subsequent judgements have changed with time and whether these changes can be attributed to economic policy changes.

Labour laws and the Industrial Disputes Act, 1947

The basic features of labour laws in India flow from the *Industrial Disputes Act of 1947*. Laws regulating labour in India were enacted in line with the Government's guarantee of a high degree of protection for labour. Both State and Federal Government offer varying degrees of legal protection to labour in line with their economic and complementary labour policies. Articles 14 to 16, 19(1) (c), 23, 24, 38, 41, 42, 43 and 43A of the Indian Constitution concern labour rights.

Indian labour laws, applicable to only 8% of the total workforce (workers in the organised sector – see Roychowdhury, 2019) can be broadly classified into three categories. The first set regulates working conditions, and a second set further regulates employment conditions and covers the right to collectivise and raise disputes. The third set guarantees a minimum wage, timely payment of wages, workplace insurance and social security. Within the second set of labour laws, the *Industrial Disputes Act of 1947* was specifically enacted to protect workers during layoffs, retrenchment (termination of surplus labour), discharge, dismissal and closure, other than offering relief during lockouts and strikes. This law offers the right to raise a dispute against illegal dismissal, discharge and retrenchment.

Industrial jurisprudence in India

The judiciary in India deals with a complex distribution of power among its various levels, defined by different types of Courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. These Courts form a hierarchy of precedence, with the SCI at the top, followed by the HCs of the respective states, below which are the District Courts.

With regard to jurisprudence on labour matters, a judge of a LC can set aside a statute on her or his own authority unless it has been previously contested in a HC or the SCI. The LC enjoys a special place in industrial jurisprudence, different from the SCI/HCs, as it deals with extraordinary matters. Since a labour dispute should be referred by the concerned party to the Appropriate Government viz., the State Government under the Act of 1947, the dispute, if not resolved through conciliation or arbitration under the jurisdiction of the State Government, is referred to a LC or Industrial Tribunal (IT) depending on the matter of the dispute. So, under each appropriate government's jurisdiction, one or more LC/IT exists (see Figure 1). Through its specialised understanding of the circumstances that arise, the LC helps expedite the resolution of cases (McCarthy, 1990). Concerning the lower courts from where labour laws start to get differing interpretations, the LC attends to a worker raising a dispute (relating to issues listed in Schedule II of the Act of 1947) with the appropriate government (viz., office of a labour

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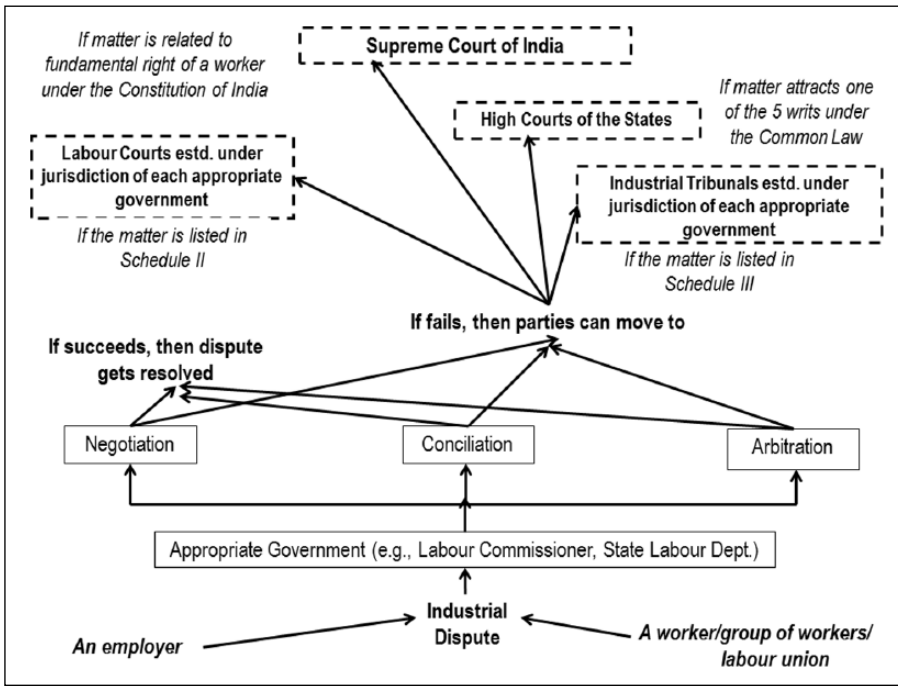

Figure 1. Dispute resolution system under the Industrial Disputes Act, 1947.

commissioner or state labour department). The issues include illegal dismissal, discharge and retrenchment. Likewise, the IT attends to a petition of a worker who raises a dispute relating to the issues from Schedule III of the Act of 1947 that is not resolved through arbitration or conciliation (see Figure 1).

The Act of 1947 gives a LC the powers to make decisions on labour disputes. The LC can grant interdicts remedying wrongs through its perceived power to interpret laws more impeccably than the SCI/HCs. In the past, LCs have offered directions to appellants in a succession of cases, unless the SCI/HCs have reversed their orders.

Nevertheless, the SCI and LC are not always on the same page. Normally, a LC decides each case on its merits without regard to setting precedents. The SCI has delivered rulings in cases, which it felt could guide subsequent decisions of a LC. The SCI has tried to influence lower Courts like the LC to carry out judicial interpretations that are in harmony with its own interpretation, in order to reduce competition between the Courts, and has on occasion quashed lower Courts' orders in response to provocative developments (McCubbins et al., 1995: 1634–1635)

Legal protection provided to dismissed workers

The procedure and the circumstances under which a worker in India can challenge his or her dismissal have not always been the same. Until 1971, there was no specific legal provision empowering any court or tribunal to entertain an appeal from a dismissed

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worker. However, in 1971, such a provision was inserted in the Act of 1947. Since 1971, workers have challenged unfair dismissal on the ground of lack of a proper enquiry, inappropriate severity considering the nature of the misconduct, reliance on flimsy grounds without sufficient evidence, cases of victimisation and so on. The LC has been empowered by Section-11A to ask for evidence, enquiry proceedings, reports and other materials that employer may have in his or her possession relating to the grounds on which the dismissal decision was made.

Up to now, critics have not been able to 'sink their discussional teeth' into India's industrial jurisprudence where they could pinpoint legislative shortcomings in amending laws, although scholars understand that the legislature dawdled over the process of passing amendments. The Act of 1947 is no exception. Section-11A, inserted in 1971, reads,

> Where an industrial dispute relating to the discharge or dismissal of a worker has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the worker on such terms and conditions, if any, as it thinks fit, or give such other relief to the worker including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Procedure for making an appeal

Normally, an aggrieved worker lodges a wrongful dismissal claim within 3 years from the date of dismissal, under Section-2A of the Act of 1947. But, to appeal against the decree of a LC, the appellant will file a writ appeal under Article 226 of the Constitution with the HCs. Appeals against an order by a LC upholding an employer's decision to dismiss a worker can be made to the SCI too under Article 32 of the Constitution only if there is a breach of a worker's fundamental rights. The SCI has original, appellate and advisory jurisdiction.

Labour law reforms and the Industrial Disputes Act of 1947

Over roughly 70 years, there have not been more than 10 major amendments to the Act of 1947. These amendments have mostly clarified the meaning of a phrase in the law or defined a term for which the parties until then relied on other laws or Courts' judgements. It is likely that the lawmakers chose not to overtly modify the entire law to suit the shifting political agenda, since a major rewriting would be more noticeable. Although Indian Courts have supposedly tried to remain insulated from political pressures, it is highly disputed whether the Government overtly promoted legislative reforms through amending statutes or whether the judiciary have experienced covert influence, so that judges have come to understand the same statute differently by applying different methods of statutory interpretation.

Data

Drawing on judgements delivered by the SCI and different state HCs over six decades since 1950 on impugned dismissal under the Industrial Disputes Act of 1947, this study

https://doi.org/10.1177/1035304619863550 Published online by Cambridge University Press

assesses their empirical implications. The Judiciary's conflicting views were studied on employers' right to dismiss worker under law. The purpose was to determine whether judicial interpretation of the 1947 Act and subsequent pronouncements have changed over the six decades that represent India's catching up in economic transition.

Instead of considering every impugned dismissal case heard by every Indian Court over 60 years, we picked a sample of cases from each period and calculated the percentage in which judicial intervention supported managerial prerogative. From the vast population of judgements delivered by all courts, our sample judgements from each time period was selected from the *Labour Law Journal* (Labour Law Journal Editorial Committee, 2005)[4] keeping in view the reliance made upon those judgements by different Courts in subsequent years. One basis of our selection of judgements was that the SCI's rulings were more likely than LCs' judgements to have been swayed by changes in Government economic policies. As an LC decree often gets overruled by HCs and the SCI, the judgements delivered by the SCI and HCs, where the Courts interpreted the Act of 1947 differently over time and established new doctrines or defended the established ones, were taken as the basis of the study. The case facts, reasons contained in judges' decisions, and Court's interpretation of specific provisions from the Act of 1947 in 78, 76 and 81 cases from 1950–1970, 1970–1990 and 1990–2010, respectively, were studied.

Judicial pronouncements on the dismissal of workers

Given a long time-span of 60 years, we focused only on landmark judgements vis-à-vis the major economic and political changes in Indian history post-independence. It was assumed that where law reforms are not easy for the Government to introduce in support of economic and social policy changes, the influence on the judiciary will be more indirect, but detectable through a shift in the balance of judicial interpretations favouring the employer over labour.

1950–1970. In the first two decades immediately after independence, Courts in India did not have any special power while hearing petition of an aggrieved worker who has been illegally dismissed, especially when the employer had confirmed that a domestic enquiry had already been undertaken,[5] and had proceeded in a 'fair and proper manner' before dismissing the worker.

Immediately after independence, the conception of a socialist state by the first Prime Minister of independent India, Jawaharlal Nehru, was affirmed by legal safeguards for labour and other weaker sections of the society. This was also in consonance with the outlook of legislators towards maintaining industrial peace through use of protective labour laws. Both Federal and State Judicial structures comprising lower Courts like the LC and IT as well as the higher Courts such as HCs and the SCI were expected to buoy up the Government's stand by leaning towards the underprivileged. Nevertheless, per Nehru's policies of providing added judicial protection to the marginalised was in deep contrast to the SCI's enduring predilection for the better-off (Chodosh et al., 1997–1998; Gadbois, 1985; Galanter, 1989; Sudarshan, 1985).

However, the Labour Appellate Tribunal (LAT) set up under the Industrial Disputes (Appellate Tribunal) Act of 1950 started taking an interest in cases of alleged illegal/

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Table 1. Cases with Courts' decree in favour of worker or employer from three periods.

Decades	Number of cases[a] in favour of worker	Number of cases[a] in favour of employer
1950–1970	29 (37%)	49 (63%)
1970–1990	61 (80%)	15 (20%)
1990–2010	18 (22%)	63 (78%)

SCI: Supreme Court of India; HC: High Courts.
[a]Include judgements delivered by both the SCI and the state HCs.

wrongful dismissal of workers. In 1953, the LAT recommended five conditions,[6] based on a Model Code of Conduct (also known as Standing Orders), under which a Court could exercise its jurisdiction to investigate a case of alleged wrongful dismissal under Section-11 of the Act of 1947. These conditions were 'want of bona fide' (where the aggrieved party was seeking good faith); victimisation because of alleged involvement in union activities; and violation of the principles of natural justice (viz., dismissing a worker without conducting a free and fair inquiry), erroneous findings and perverse findings on the material/physical/real evidence.

These tests relating to procedural objectivity and fairness underpinning the decision to dismiss a worker were upheld by the SCI in 1959.[7] One year later, the SCI made only a symbolic addition[8] to the set doctrine by emphasising the 'necessity of proper enquiry as per establishment's code of conduct'. Along these lines, the SCI in 1961 held[9] that the 'Tribunal has to first accept the finding arrived at in the enquiry'. Therefore, the SCI was clear on not offering any power to the LAT to cast doubt on the employer's decision in dismissing a worker. Especially when the employer can prove that he or she has functioned within the boundary set by the code of conduct of his or her establishment, thus adhering to the principle of fair play and natural justice.

Out of 78 cases reviewed (see Table 1) from the first 20 years, in 25 cases the SCI/HCs came down heavily on the lower Courts when the latter tried to 'interfere' with the employer's decision to dismiss a worker. Barring repetitive efforts by the SCI to remind employers of their duty to follow the 'principle of fair play and natural justice' before dismissing workers (in 13 cases), the SCI set aside majority decisions of lower Courts in favour of dismissed workers. The SCI showed an aversion to what were seen as lower Courts' nitpicking approach and set limits for the Courts' jurisdiction in 14 cases. In 16 cases, the upper Courts assumed the role of mentor for the lower Courts. Guidelines created by the SCI were resolutely pushed to influence the behaviour of members of judiciary from lower ranks.

However, during these two decades, while delivering judgements on other labour-related matters such as accident compensation, immunity to trade unions, right to strike and so on, the upper Courts were not forthrightly unidirectional. They reconciled matters based on disparate principles laid down by judges in a range of other matters. It was only in cases of judicial review of impugned dismissal that the upper Courts firmly established principles that were largely in favour of the employer. The LAT was later replaced by a three-tier system of tribunals with one of them being the LC, to hear cases of impugned dismissal.

1970–1990. These two decades were characterised by political turbulence, slow economic growth, nationalisation of financial institutions and banks, centralization, regulation and other steps taken by the government for the furtherance of a coordinated economy. The Congress party remained in power for the most part of this period led by Late Ms Gandhi, the daughter of Nehru whose economic policies were not significantly different from her predecessors'.

However, by the end of Nehru's tenure, the Government had set clear priorities of offering more legal safeguards to labour given the discordant between SCI's rulings and legislators' consideration of labour's rights. Consequently, the Courts with original jurisdiction over disputes raised by dismissed worker increased their 'scope of jurisdiction' in the 1970s and 1980s. There was an extraordinary escalation in number of law suits filed on impugned dismissal matters as well as a rise in the scope of judicial intervention, primarily because the insertion of Section-11A by the Industrial Disputes (Amendment) Act of 1971 allowed the LC to set aside the employer's decision of dismissing his employee and offer remedies, if needed.

When Section-11A armed the LC with appellate Court powers to go into the merits of cases and gauge the 'appropriateness' of employers' decision to dismiss workers, the SCI subsequently began implementing the legal principles laid down in a path-breaking judgement in favour of a dismissed worker. In 1976, the SCI delivered ruling[10] according to which, before dismissing an employee, every employer must hold a 'proper' domestic enquiry where all material evidences were required to be adduced or else the LC could direct reinstatement as a remedy. Full power was given to the LC to reappraise whether the evidence justified the finding of misconduct, and to weigh the quantum of punishment. The raison d'etre of the SCI in *Firestone* case was adopted by the HCs in subsequent hearings. In 61 out of 76 cases from these two decades (see Table 1), the upper Courts abstained from meddling with the decisions made by the LCs, whether setting aside employers' dismissal decisions or reinstating workers with(out) back wages (in 27 cases); in 13 cases, they upheld the orders passed by the LCs of reduced punishment. The precedent set by the SCI's ruling in *Firestone* was sufficient for the LC to exercise its power. The SCI's indifference in some way compelled the HCs not to get into conflict with the doctrines set out by the LCs.

The LC also had a number of victimisation pleas to hear in these two decades. These were made mostly by union officials whose employment was terminated for their involvement in workplace organising. The SCI developed tests for determining victimisation,[11] which suggests the judiciary's intention, not only to encourage such pleas but also to indirectly promote the judiciary's objective of reconstructing the legal order in favour of collectivisation.

1990–2010. When India in 1985 sensed the balance of payment crisis resulting from the fixed exchange rate system, no one anticipated that the worst economic crisis in the history of independent India would follow. This was attributed to import substitution and licencing, 'policy paralyses', central planning, public-sector monopoly with restriction on foreign equity holdings in domestic firms, exchange rate depreciation, and the accumulation of large fiscal deficits. In early 1990s, the Government introduced radical changes in its fiscal, investment and trade policies, and this heralded the dawn of a new era of economic liberalisation in India.

https://doi.org/10.1177/1035304619863550 Published online by Cambridge University Press

The systematic shift in the 1990s to a reliance on market forces brought out drastic changes in India, including reforms that weakened union power. In less than two decades, India migrated towards a liberal market economy (LME). As domestic capital-intensive producers aligned with new LME norms of individualism, 'hire and fire' and market-mediated coordination, legal institutions changed in a complementary was through 'reinterpretation' (Hall and Thelen, 2009). Labour market institutions were weakened in terms of collective bargaining coverage, unions became fragmented and their roles were marginalised. Meanwhile, the judiciary quietly sided with the legislators' intent to liberalise the economy.

Although the LC continued functioning in line with the legislative intent behind Section-11A, it gradually became clear that the SCI was returning to its old pre-1970s stance. The SCI increasingly and apparently indiscriminately began annulling LCs' decisions, even admonishing the LCs on their conduct. In 43 of the 81 cases of dismissal during this period, the SCI came down heavily on the LCs and set aside their decisions. The HCs too quashed decisions of the LCs in 21 cases and asked LC to refrain from interfering with managerial prerogative, especially when employers reported that they had conducted an enquiry before dismissing the worker. Several landmark judgements of the SCI and HCs that exemplify this sudden reversal in judicial interpretations are discussed.

In 2000, the SCI ruled that 'the LC can exercise the power of setting aside a dismissal order only if it is sanguine of the unfoundedness of dismissal as penalty'.[12] In 1997, the SCI had already defined the role of HCs in hearing dismissal cases referred by a LC. In a case concerning a LC's power to interfere with the quantum of punishment, the SCI said, 'while it is important for the LC to use discretion in a judicious manner, it is equally important for the HCs that they do not remain a mute spectator after noticing capricious use of the said discretion by LC'.[13]

The SCI's activism is reflected in its attempts to oversee not only the LC, but the state HCs as well. In 2004, the SCI listed the types of cases in which a LC can exercise its power to vary the punishment imposed by an employer.[14] This was a turning point from the perspective of the judiciary, where judges of upper Courts commented on the scope of jurisdiction of lower Courts, rather than being guided by respect for the lower Court's Constitutional rights. In 2005, the SCI quashed a LC order that dismissal was too harsh a punishment for a properly-heard offence,[15] saying that 'discretion vested with LC under Section-11A is defined (by then) by various judgments of the SCI. It is certainly not "unlimited" where LC can by way of sympathy alone exercise the power under Section-11A and reduce punishment'. In 2006, the SCI again quashed a LC order[16] reducing the punishment of dismissal for a proven offence, holding that the 'Courts' discretionary jurisdiction to interfere with quantum of punishment could be exercised only when, inter alia, punishment is found to be grossly disproportionate'.

By the mid-1990s, the HCs also started taking a different standpoint in cases on impugned dismissal. The Bombay HC in 1995 quashed a LC order,[17] in a case where the appellant worker had been proven guilty and dismissed, but the LC felt that deprivation of back wages while reinstating him would be sufficient. HC held that 'once appellants was found guilty, which the LC upheld, then the punishment of dismissal cannot be said to be disproportionate'. In this case, the HC interfered with the quantum of punishment and its appropriateness.[18]

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The SCI in 2000 held that 'after finding the dismissal to be justified, the LC cannot exercise power under Section-11A. The same was gross error on face of record, perverse, baseless and without jurisdiction'.[19] In 2002, the SCI observed that 'LC had no justification to interfere with the punishment awarded by the management, as creating an atmosphere of threat and security would be sufficiently good reason for dismissal'.[20] In 2004, where worker was held guilty of the charge of embezzlement, the award passed by the LC of reinstating with partial back wages was quashed by the SCI as the apex court did not find the same judicially tenable.[21] In 2005, the SCI held that a 'LC had misplaced its sympathy in interfering with the decision reached in enquiry where the employee had been found guilty'.[22]

Discussion and conclusion

The objective of this study has been to extend the body of scholarship on changes in judicial interpretation of statutes and subsequent pronouncements that are delivered by Courts because of changes in Government economic policies in an emerging economy. There is a literature on the relationship between changes in judicial doctrine and major 'political events' such as constitutional amendments, internal political change initiated by elections, passage of segregationist laws and other events that have triggered political changes (for an overview, see McCubbins et al., 1995). However, these studies are mostly from western, developed countries where changes in judicial interpretation of statutes have not always been attributed to economic policy changes. By contrast, less has been written on the changes that have been taking place in the judicial interpretation of statutes in the developing world that are primarily attributable to changes in economic policy.

Therefore, an attempt has been made to trace an emerging relationship between changing industrial and labour policies at the onset of economic transition in an emerging economy like India and changes in judicial interpretation by the Courts of one of the important statutes in the country. The Industrial Disputes Act of 1947 was chosen as the case study, because of the strong legal safeguards it provides to workers in the organised sector in India. These safeguards are likely to create the biggest hindrance for investors interested in setting up business in the country. The Act restricts employers' flexibility to manage the size of their workforces in the context of organisational and technological change, or to exercise managerial prerogative in disciplining workers' performance. To implement liberal economic policies, the Indian Government apparently needed to introduce new measures to increase labour market flexibility. The Government could have done this overtly, by introducing reforms in labour laws and curbing the protection offered to workers, or by relying on or subtly influencing the way the judiciary has interpreted a pro-labour statute like the Act of 1947 in line with new Government priorities.

The right to dismiss is the most significant right wielded by the employer and constitutes the highest deterrent to worker resistance. To prevent the misuse of the power, the lawmaker in India has enacted legislation that makes it mandatory for an employer to follow a code of conduct (Standing Orders) and the principle of fair play and natural justice when dismissing a worker.

Majority judgements delivered by the Courts were coherent with statutes affirming judicial independence in the first two decades after independence. During this period, in the absence of legal provisions that would offer power to judiciary in matters related to impugned dismissals of worker, the SCI guided and set boundaries for the lower Courts like the LCs. For instance, a lower Court could examine prima facie matters of worker's dismissal (Sarkar, 2017), but could not decide on sufficiency or insufficiency of evidence when an employer dismissed a worker after conducting an enquiry. However, the SCI's pronouncements in this period were not in harmony with of the policy orientation of Indian parliamentarians. The country's judiciary, and the SCI with its origin in English Common Law where the judiciary doggedly backed the bourgeois, was in contradiction with Nehru's priority of legal support for the cause of the disadvantaged. Until the end of the 1970s, though the lower Courts tried to build on the political philosophy of independent India's leadership, the SCI was freighted with the legacies of colonialism. However, it is debatable whether the disjuncture between the legislature and judiciary can be attributed to India's new Constitution that ensure judicial independence and at the same time expected the legislators to protect the interest of labour. Judicial independence as envisaged by Dr Ambedkar was not intended to contradict the overarching 'welfare state' principle envisioned by Nehru.

The 1971 insertion of Section-11A into the 1947 Act addressed this disjuncture by conferring special powers upon the LCs to give relief to dismissed workers. Subsequently, the stance of LCs appeared to swing the balance towards the marginalised, driven by the then socialist Government's intent to protect the downtrodden, including labour. However, during the 1970s, India witnessed one of its most controversial periods when people saw a dramatic turn in the country's political affairs with democracy brought to a grinding halt. The fundamental rights and legal remedies protected by the Constitution were suspended when the Government declared a state of emergency that lasted from June 1975 until March 1977.

After the lifting of the emergency, the country slowly began seeing a shift in the judiciary's stand vis-à-vis labour rights. After 2 years of emergency during which the independence of the SCI was tampered with,[23] the apex court reversed its stance. The SCI in several cases decided in favour of workers. There were gross violations of labour rights during the emergency. After the lifting of the emergency, the SCI in particular started leaning towards labour in majority judgements. This stance continued for the majority of the 1980s. In a number of landmark judgements, the SCI displayed an adroitness to construe meanings liberally in making interpretations that favoured workers. This form of 'quasi-judicial activism' was a reassertion of the SCI's independence. The same apex court that until then had been considered a conservative protector of the economically better-off (Rudolph and Rudolph, 1987) became a saviour of those who had suffered the state's oppression (Sarkar, 2017) during nation-wide emergency.

Courts applied the doctrines of liberal construction of a statute, broad interpretation of legal provisions and notional extension, which constitute the intuitive ideas behind legal protection in a socialistic state. The LCs of the country went on to reinstate workers and the SCI seldom opposed such activism. The period 1970–1990 epitomises the metaphor of 'public morality', and with policy or even quasi-political pressures being espoused by the judiciary. The Government's intervention, by inserting Section-11A, triggered a movement that was sustained mainly because of the judiciary's populist or

democratic role in claiming back the independence that it had lost during the 2-year long emergency.

What the SCI did by extending the underpinnings of judicial interpretation of statute into affirmative, rights-based, constructive, and liberal interpretation need not necessarily be seen as an act of judicial activism[24] but be viewed as purposive interpretation to safeguard labour rights and combat impunity in a socialist state. Policy decisions can be opened for judicial scrutiny only if they are discriminatory and arbitrary in nature. Since the insertion of Section-11A was not seen as unreasonable, the SCI's embrace of this new legislative initiative cannot be construed as interventionist, or outside the permissible limits of judicial morality.

However, with the launch of economic reforms in 1991, the major state institutions started to change. In the face of the continued leaning of LCs towards workers, the SCI applied different principles in judicial reasoning. This produced a different doctrinal landscape in the hearing of cases on impugned dismissal. The SCI repealed a large number of affirmative rulings that had been delivered in favour of dismissed workers. As a consequence, the SCI's rulings relegated the scope of the LCs' rule and reduced their power.

The SCI, which in the late 1970s had furnished an all-encompassing definition of the term 'Industry' in the *Bangalore Water Supply* case primarily to offer maximum safeguards to workers under the 1947 Act, started conducting cases differently. The legal principles and precedents that were set by the SCI did not necessarily go into the details of case decisions as the prevailing ideological current began to play an increasingly dominant role, almost as if the judges of the apex court were walking with a mandate to support the Government new policy direction.

It was not only on workers' dismissals that the SCI appeared to make a volte-face. On other labour matters too, including the right to strike,[25] the right to receive strike pay,[26] employment insurance,[27] and contract workers' wages,[28] the higher Courts (the HCs and SCI) appear to have changed their stance. It appears that the SCI understood that it should not stand in judgement over parliament's sovereign will. The SCI now appeared to see labour as having been overprotected by the 'judicial activism' of higher courts in the previous two decades.

However, the jury is out on whether the Government's economic reforms had any bearing on the changed position of the SCI. Economic reforms that began in earnest in July 1991 aimed at reorientating the Indian economy from a controlled, statist, and centrally focused model to an open and market-friendly economic line by lessening trade barriers and bringing macro-economic stabilisation. Reforms in trade policies navigated export-import policy reform, reduced duties, and allowed foreign investment.

Certainly, there was no major reform in labour laws, primarily because of steep opposition from the labour unions and the left political parties. Capital was made free, but no explicit initiative could be taken to reform labour relations. So, arguably, the Government relied on harnessing softer or less direct means.

New economic policies required reforms in labour laws so to increase the ease of doing business. The compliance of the judiciary was seen as a key to promoting pro-market measures. Therefore, the old laws protecting privilege were revived and enforced (Baxi, 1994). Between 1990 and 2010, the judiciary was incrementally 'bereaved' of its own way of deciding cases, losing more of its freedom to decide cases for or against the

https://doi.org/10.1177/1035304619863550 Published online by Cambridge University Press

Government without fear or favour. Since the underlying pro-labour statutes such as the Act of 1947 could not be amended, the prevailing ideological current indirectly shaped judges' behaviour to the extent that judges' interpretation of a statute came gradually to favour the employer that interpretations were in harmony with economic reforms. If we reason that judicial independence is more likely at times of weak minority or coalition governments, we can see that during the past two decades, there was no such check on a climate of increased Government influence on the judiciary.

However, a second line of argument could be that the apparently rising 'judicial activism' of the LC in the 1970s and 1980s could be curbed 'only' by the SCI, where the apex court would of necessity be required to set tight limits on such activism. This tightening of control just happened to coincide with the period when the Government had a strong interest in the support of the judiciary in defending its economic reforms. Even a third line of argument is tenable, where one may say that with liberalisation, private sector and foreign employers turned more attention to judicial doctrines, compared with the position of their counterparts from the public sector and a small section of private sector enterprises in the mid-1980s. Consequently, appeals to the SCI increased post liberalisation as employers demanded protection from the 'activism' of the LC.

Judicial independence, which is an integral part of Indian Constitution, remained insulated from the influence of powerful Governments until the early 1990s. Judges decided cases independently despite devices imposed by Nehru's Government during 1950–1970 and by his daughter's and other successor Governments during 1970–1990 (Chandrachud, 2014). Against Nehru's populist policy that guaranteed additional judicial protection to labour, the SCI mostly decided cases in favour of the employer or at best remained impartial. Subsequently, workers experienced increasingly oppressive rulings from the judiciary during the crisis period. The SCI reasserted its position by espousing the cause of labour in the legal breakdown accompanying emergency rule post 1977, demonstrating that the apex court had not yet misplaced its independence. However, the SCI made a volte-face and countered its own doctrines after 1991. The apex court lithely swayed out of its previous path during the testing time of post-liberalisation by advocating the free market economy promoted by the Government.

Therefore, the statute did not necessarily change but its interpretation by the Courts did change with time in line with Government economic policy. We believe that the labour rights advocates should not only remain cautious of explicit reforms but also be equally vigilant concerning the Government's influence on the judiciary in order to achieve its purpose of serving the cause of neoliberalism in an emerging economy.

Funding

The author(s) received no financial support for the research, authorship and/or publication of this article.

Notes

1. See Din Dayal Sharma (1968).
2. Firms doing business in regions in emerging Latin American economies with better performing Courts enjoy greater access to credit. Besides, larger and more efficient firms are found in states with better judicial systems (World Bank Report, 2004).

3. Here, the scope of Government activities in a particular state is determined by the use of surrogate variables like the number of public employees per 10,000 populations, the length, and frequency of state legislative processes and so on (Grossman and Sarat, 1971).
4. A monthly Journal published by LexisNexis India that reports important judgements (related to labour law) of the Supreme Court as well as all the High Courts of the country.
5. Domestic enquiry is a process undertaken by the employer following the principle of natural justice and fair play under the *Industrial Employment (Standing Orders) Act* of 1946. In this process, the employer appoints an enquiry officer to conduct the enquiry in a free and fair manner and this officer submit the enquiry report to the disciplinary authority. Based on the report, the disciplinary authority decides on the course of punitive action to be taken against the convict as the case may be.
6. *Buckingham and Carnatic Co. Ltd.* vs. *Workers of the Buckingham* (1953) I LLJ 181 (SCI).
7. *Indian Iron and Steel Company Ltd (IISCO) and other* vs. *Workmen* (1958), I LLJ 260 (SCI).
8. *The Punjab National Bank Ltd.* vs. *Workmen* (1960) SCR (1) 806.
9. *M/s. Bharat Sugar Mills Ltd.* vs. *Shri Jai Singh and other* (1961), II LLJ 664 (SCI).
10. *Workmen of Firestone* vs *Management and Others* (1976) I LLJ 493 (SCI).
11. *Bharat Iron Works* vs. *Bhagubhai Balubhai Patel and Others* (1976) 1 SCC 518 (SCI).
12. *Parikshatbhai Mahavbhai Patel* vs. *Divisional Controller, G.S.R.T.C* (2000) ILLJ 1054 (Gujarat HC).
13. *The Management of Tamil Nadu Civil Supplies Corporation* vs. *The Presiding Officer LC* (1997) 1 MLJ 204 (Madras HC).
14. *Brihanmumbai Municipal Corporation* vs. *Arun V. Golatkar* (1994) I LLJ 135.
15. *Mahindra and Mahindra Ltd* vs. *N.B. Narawade* (2005) 3 SCC 134 (SCI).
16. *Hombe Gowda Education Trust and another* vs. *State of Karnataka and Others* (2006) 91 SCC 430 (SCI).
17. *Mohan Sugan Naik and Others* vs. *National Textile Corporation* (1995) I LLJ 110 (Bombay HC).
18. *Gujarat State Road Transport Corporation* vs. *Hansraj M. Chudasama* (2004) 3 GLR 2620 (Gujarat HC).
19. *Victor F Parmar* vs. *Elecon Engineering Co. Ltd.* (2000) III LLJ 494 (Gujarat HC).
20. *LIC of India* vs *Tukaram Ganpat Marathe* (2001) III LLJ 38 (Bombay HC).
21. *State of Harayana* vs. *Sukhbir Singh* (2004) LLR 184 (Punjab & Haryana HC).
22. *Management of Salem Steel Plant* vs. *Presiding Officer Labour Cour* (2005) II LLJ 901 (Madras HC).
23. By superseding judges, that is by not promoting judges who had decided cases against the Government to the post of CJI or during 1980s and by intimidating the judiciary by transferring independent HC judges to other Courts.
24. According to Black's law dictionary (Garner, 2004), judicial activism refers to a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions.
25. *T.K. Rangarajan vs. Government of Tamil Nadu and others* (2003) 6 SCC 581 (SCI).
26. *Bank of India vs. T. S. Kelawala and others [1990]; Syndicate Bank vs. K Umesh Nayak* (1994) 5 SCC 572 (SCI).
27. *The Regional Director E.S.I.C. vs. Francis De Costa and another* (1996) II CLR 812 (SCI).
28. *Senior Manager, FCI vs. Tulsi Das Bauri and others* (1997) LLR 601 (SCI).

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