



## Using Legal Empowerment for Labour Rights in India

Rina Agarwala

To cite this article: Rina Agarwala (2019) Using Legal Empowerment for Labour Rights in India, The Journal of Development Studies, 55:3, 401-419, DOI: [10.1080/00220388.2018.1451631](https://doi.org/10.1080/00220388.2018.1451631)

To link to this article: <https://doi.org/10.1080/00220388.2018.1451631>



© 2018 UNU-WIDER. Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 01 Apr 2018.



Submit your article to this journal [↗](#)



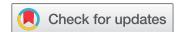
Article views: 773



View Crossmark data [↗](#)



Citing articles: 1 View citing articles [↗](#)



# Using Legal Empowerment for Labour Rights in India

RINA AGARWALA

Department of Sociology, Johns Hopkins University, Baltimore, MD, USA

**ABSTRACT** *This paper brings labour back into the literature on legal empowerment against poverty. Employing a historical lens, I outline three waves of legal movements. Each wave is distinguished by its timing, the state-level target, and the actors involved. In all three waves, legal empowerment was won, not bestowed. Labour played a significant role, fighting in each subsequent wave for an expanded identity to address exclusions. Drawing from the Indian case, this paper's findings highlight the evolving strategies of legal empowerment movements vis à vis uneven welfare states. They underline the significance of symbolic power of legal recognition, even in the absence of perfect implementation. Finally, they highlight contemporary workers as an overlooked, identity-based group that addresses the intersectionalities between class and ascriptive characteristics.*

## 1. Introduction

This paper uses the case of India to bring labour back into the recent literature on the use of legal empowerment to address poverty and exclusion. In doing so, it urges scholars to move past the mutually exclusive dyad commonly used to distinguish class interests from citizen or identity-based interests. This depiction of class *versus* identity has had two drawbacks. First, it has created an unnecessary horse race between the two sides, where scholars have featured either class or identity movements in certain periods, when in reality both have always been extant. Second, it has overlooked the raw fact that interests and movements based on class and ascriptive identities usually intersect with one another. Overlooking the resilient presence of class and ascriptive identities, as well as their intersectionalities, has eclipsed our analysis of poor workers' evolving role and shifting strategies in legal empowerment movements over time.

The Commission on Legal Empowerment of the Poor (CLEP) defines legal empowerment as 'a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens' (UNDP and CLEP, 2008). Since the early twentieth century, legal empowerment for the poor has emerged in liberal democracies (in the North and the South) through constitutionally guaranteed legislation designed to protect individual rights. In India, legal empowerment for the poor has been creatively expanded since the 1980s to also protect *group-based rights* among vulnerable communities.

I argue here that legal empowerment for the poor (in India and elsewhere) has evolved through three waves. Each wave is distinguished by its timing, the state-level target of the demands, and the principal actors involved. In each wave, legal empowerment was won, not bestowed from above. Not surprisingly, each victory was also met with direct and indirect resistance that undermined one wave's sustainability and opened the door for a subsequent wave, which in turn was marked by new formations and strategies, as well as strings still attached to history. In short, the

---

*Correspondence Address:* Rina Agarwala, Department of Sociology, Johns Hopkins University, 533 Mergenthaler Hall, 3400 N. Charles Street, Baltimore, MD 21218, USA. Email: [agarwala@jhu.edu](mailto:agarwala@jhu.edu)

© 2018 UNU-WIDER. Published by Informa UK Limited, trading as Taylor & Francis Group

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License (<http://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way.

three waves are simultaneously distinct and connected through the dynamic forces of ever-shifting state–society relations.

Significantly, I show that labour has been intimately involved in all three waves, and that its characteristics, demands, and strategies have shifted in each wave. My aim in highlighting labour's often overlooked role is not to argue that labour's impact on legal empowerment movements has been more or less than that of other identity groups; indeed it is beyond the scope of this paper to make such claims. Rather, I aim to highlight labour's evolving role in legal empowerment movements, because it deepens our understanding of the actors and processes undergirding these movements' material and economic components and thus complements the existing literature, which tends to focus on the movements' social and political components and/or non-class actors.

Scholars have long discussed the first wave of legal empowerment, which ran from the early 1900s to the 1970s and was marked in parliamentary democracies by national-level legislation. The first wave featured organised labour, narrowly defined as industrial workers formally recognised as operating under registered employers (Marshall, 1964). Recently, many scholars have debated the effects of what I call the second wave, which ran from the 1980s to the present and was marked by public interest litigations (PILs) in high courts (Liu, 2006; Mehta, 2007; Ruparelia, *in press*; Zweig, 2010). In contrast to the first-wave literature, organised labour has been surprisingly absent in studies on the second wave. Instead, identity-based groups (organised by ethnicity, caste, race, and gender), civic rights groups, and issue-specific groups have been featured. In this paper, I offer a corrective to this literature to highlight labour's involvement in second-wave legal empowerment as an addition to the other identity-based groups commonly highlighted.

Less articulated has been what I call a third wave, which began in the mid-1990s and utilised a hybrid approach to legal empowerment by bridging the legislative, executive, and judiciary branches of the state. Third-wave movements underline the importance of attaining symbolic power from legal recognition, a power that is often muted in the recent scholarly focus on implementation. Symbolic power is attained through the official visibility that legal recognition gives to subjects, topics and needs, and it offers groups the *threat* of enforcement. In addition, third-wave movements have been significant for enabling a re-defined group of workers (that is informal workers or those unprotected by laws regulating standard employment relationships) to insert itself alongside other identity-based groups (gender, ethnicity, caste, and so forth). Like first-wave labour groups, third-wave informal worker groups are fighting for legal empowerment along class identities. Unlike first-wave labour groups, third-wave informal worker groups include sub-altern workers (such as women, low castes, and ethnic and racial minorities), who were long excluded from earlier labour organisations. Third-wave class-based organisations, therefore, not only act as an additional identity group that is too often overlooked, but they also address the intersectionalities of class and ascriptive identities that are forming innovative movements today.

Drawing on primary research with informal workers' movements in construction and domestic work, as well as an historical analysis using court documents and secondary sources, I examine the changing junctures between labour and each of the three waves of legal empowerment efforts in India. What are the key similarities and differences? What implications do these waves have in our understanding of transformations from below? I conclude with implications that might help us understand the contemporary third wave of legal empowerment for the poor among Indian construction and domestic workers.

## 2. First-wave legal empowerment

In the first wave of legal empowerment for the poor, rights were divided into two categories. The first guaranteed what Isaiah Berlin famously termed 'negative freedoms' or what T.H. Marshall delineated as 'civil and political citizenship' (Berlin, 2002; Marshall, 1964). These rights, which included voting, holding property, free speech, movement, and association, protected individuals *from* interference by others. Over time, liberal democracies guaranteed such rights to all citizens, regardless of class or ascriptive characteristics such as race, gender, and ethnicity. In response to various social movements, these rights were protected under constitutional law and enacted through national parliaments. In India,

the national independence movement fought to make these rights universally enshrined and judicially enforceable (across class, caste, religious identity, and gender) as ‘fundamental rights’ in Part III of the newly independent nation’s first constitution in 1950.

The second category of first-wave legal empowerment rights included socio-economic rights or ‘positive freedoms’, such as the right to food, housing, health care, education, and income. These rights guarantee individuals’ ability *to* act. Unlike civil and political rights, socio-economic rights have been less consistently guaranteed through national legislation in liberal democracies. That socio-economic rights are not universally guaranteed to all citizens is not surprising given liberal democracies’ commitment to capitalist market economies, which sanction income-based inequalities. Scholars have instead noted the diverse varieties of capitalisms that have arisen across the world’s liberal democracies to guarantee degrees of socio-economic rights. The social democracies of Scandinavia offer an expansive set of socio-economic rights guaranteed through robust redistributed welfare legislation, while the United States offers the least generous guarantees of socio-economic rights. In India, socio-economic rights are promised in the so-called Directive Principles of Social Policy under Part IV of the 1950 constitution. Significantly, these rights are *not* enforceable or justiciable by any court, rather, they are enumerated as guidelines or aspirations that the government (at the national and state levels) should use when framing laws and policies.

By the mid-1900s, organised labour throughout the world had become a key actor pushing legislatures to enact justiciable laws that would guarantee at least some socio-economic rights to the poor (Rueschemeyer, Stephens, & Stephens, 1992). By drawing on cross-class coalitions and structural-historical moments (such as financial crises and liberation movements), labour movements pushed parliaments to enact laws to regulate working conditions, mitigate exploitation, and protect workers’ dignity; apex judiciaries were empowered to protect these rights (Przeworski & Wallerstein, 1982). While levels of implementation of such laws varied, countries across the globe shared a justiciable commitment to formally recognising workers under law and ensuring that capital decommodifies workers’ productive and reproductive labour through minimum wages, job security, work contracts, health care, and old-age benefits. Through these efforts, ‘labour’ was defined in idealised terms to represent those operating in the so-called modern, non-agrarian public sphere. While this definition omitted the millions of workers still operating in the invisible spaces of homes, unregulated workshops, and agrarian economies, its applicability was envisioned to expand with development, particularly industrialisation.

### *2.1. First-wave legal empowerment and labour in India*

Even under British colonialism, Indian workers organised into robust trade unions and successfully struggled to attain legislation that recognised their contributions and protected them against exploitation by employers and the colonial state. During the mid-1900s, the newly independent Indian government added additional legislations at the national and state levels (through statutes, laws, and rules) to further decommodify labour and restrain capital, thereby shifting the labour legislation framework from ensuring continued accumulation to ensuring social justice and a welfare state (Thakur, 2007). The 1950 Indian constitution stipulated that the state would be responsible for securing public assistance for its citizens in the case of ‘unemployment, old age, sickness, disablement and other cases of undeserved want’ (Papola & Pais, 2007). To this end, Indian labour laws held capital responsible for labour’s needs. In return, organised labour promised industrial peace, thereby enshrining a new social contract where the state provided for labour’s social regeneration and economic betterment in return for citizens’ labour.

### *2.2. Limitations of first-wave legal empowerment*

By the late 1970s, the first wave of legal empowerment for the poor was beginning to wane. Much has been written about the demise of first-wave labour struggles since the 1980s and the rise of unprotected work under neoliberal globalisation. In India, the long list of national labour laws have

remained in place since the government launched its liberalisation reforms in 1991, but the budget cuts of labour ministries at the national and state levels have neutered enforcement. The Indian state also now overtly promotes unregulated, informal work for all Indians and has thus increased decentralised production.

At the same time, blaming neoliberal ideologies and policies for the mass of unprotected, informally employed labour is too simplistic. Twentieth century labour protections failed to protect the majority of Indian workers long before the start of neoliberalism. In India, the majority of workers *always* operated outside the jurisdiction of labour laws, because small-scale enterprises, understood to be a temporary function of poverty, were exempt from most labour legislation. A few exceptions, such as the 1948 Minimum Wages Act and the Payment of Wages Act, aim to ensure all workers subsist above the poverty line and thus apply to small enterprises; but they are rarely enforced. Under the Minimum Wages Act, the autonomous wage boards designed to set and update minimum wages for all occupations by industry are largely inactive and revised wages are rarely indexed for inflation, so they decline in real terms (Zagha, 1998). Workers in large firms are unaffected because their wages are determined by collective bargaining agreements and exceed the minimum wages (NCEUS, 2006).

The official and unofficial exemption that labour laws provided to small enterprises created an obvious disincentive to grow enterprises. As a result, Indian business became notorious for managing multiple small-scale operations in unregulated conditions. From 1984 to 1994, employment in firms with more than 100 employees was stagnant, whereas it increased by 3.6 per cent per year in firms with less than 100 employees (Zagha, 1998). This exemption enabled a mass labour force of unregulated, unprotected, informally employed workers to remain extant in India, despite its progressive labour laws. The incorrect assumption made was that labour movements would successfully struggle to bring all workers within the ambit of existing labour laws.

Therefore, more than affecting the relative *size* of informal versus formal labour, I argue that liberalisation reforms have affected the relative *power* of India's informal versus formal labour (for more, see Agarwala, *in press*). Specifically, the post-1980s era of liberalisation undermined formal labour as an organised, legitimate, and worthy group actor fighting for citizenship rights, and thus shattered the promises of first-wave legal empowerment for the poor.

### 3. Second-wave legal empowerment

Given the strong push for diminished state power in the 1980s, it is surprising that in the 1980s a second wave of legal empowerment and socio-economic rights *through the state* emerged to address poverty in the global South. Unlike the first wave, which was marked by labour movements pressuring the state's executive and legislative branches to enact legislation to de-commodify labour, the second wave was marked by civil society and ascriptive identity groups partnering with the judicial branch of the state to hold the legislative and executive branches accountable for socio-economic deprivations and exclusions through constitutionally guaranteed rights-based claims. In the wake of organised labour's declining power, alternative groups throughout the South emerged to fight for legal empowerment in the 1980s. In Brazil, citizen groups used the amendment process to incorporate the right to health, education, land, and participation in municipal budgeting into the 1988 constitution (Holston, 2008). In China, the 1982 constitution provided new 'citizen rights to legal justice' in response to growing social unrest and demands for entitlements to work and land (Lee & Hsing, 2010). In India, even Maoists parties who reject participation in India's parliamentary system, used judicial activism to fight the state's counter-insurgency efforts (Sundar, 2016).

#### 3.1. Second-wave legal empowerment in India

In India, the 1980s witnessed an unprecedented era of progressive 'judicial activism', where high courts at the national and state levels partnered with civil rights groups to uphold *enforceable* socio-economic rights for the poor (Baxi, 1985). Using a creative version of PIL, also known in India as

‘social action litigation’, activists from within and outside the judiciary tried to ‘rebalance the distribution of legal resources, increase access to justice for the disadvantaged, and imbue formal legal guarantees with substantive and positive content’ (Cassels, 1989, p. 497). In most cases, PILs were filed against the Indian state’s legislative and executive branches. Indian PILs used judicial powers to enforce civil, political, and socio-economic rights among the poor through a three-pronged strategy.

First, in contrast to most legal avenues of activism that aim to protect individual rights, a PIL is pursued by filing a writ petition in a state-level high court or the nation’s Supreme Court in the name of a vulnerable *group*, such as ‘the poor’ (Bhagwati, 1982).

Second, the early PILs involved high court justices reaching out to representative groups (such as non-governmental organisations [NGOs] or a union) who sought legal remedies for violations to constitutional rights, thereby reversing the earlier trend where an aggrieved party had to approach the courts for justice. India has been noted for being unique in the world, because its early PILs were often initiated by judges, such as Justice P.N. Bhagwati and Justice Krishna Iyer (Cassels, 1989). In 1986, the Supreme Court expanded the definition of legal aid, something Bhagwati and Iyer had been fighting for since 1945. The case of *Suk Das v. Union Territory of Arunachal Pradesh (SC 991)* determined that legal aid would not only provide legal services to the poor, but also educational outreach on legal rights, policies, entitlements, and how to fill forms.<sup>1</sup> In 1998, the government established the National Legal Services Authority (NALSA) under the judiciary to perform this function. NALSA’s outreach fundamentally increased vulnerable groups’ access to the judiciary. Once a violation was determined, courts (often alongside a social movement organisation) would file a case on behalf of the people who had been violated, usually against the state or ‘the Union of India’.

Third, second-wave PILs aimed to *change* existing power dynamics. According to Chief Justice Bhagwati, ‘The Rule of Law ... should [not] be allowed to be prostituted by the vested interests for ... upholding the status quo’ (Bhagwati, 1982). Early PILs aimed to protect vulnerable populations’ civil liberties as illustrated by the pioneering case protecting the right to bail and legal aid in *Madhav Hayawadanrao Hoskot v. Maharashtra* (1978). Subsequent cases, however, aimed to expand the sets of rights that the judiciary could protect. In addition to enforcing the executive and legislative branches’ responsibility to uphold poor citizens’ civil and political rights, which are considered fundamental rights and are guaranteed by the Indian constitution, PILs enforced the executive and legislative branches’ responsibility to uphold poor Indians’ socio-economic rights, which are promised, *but not guaranteed* under the ‘directive principles’ of the constitution (Jayal, 2013).

To make socio-economic rights judicially enforceable, judges expanded the interpretation of Article 21 in Part III of the constitution that guarantees the ‘right to life’ and Article 14 on the ‘right to equality’ (Baxi, 1985). Although the provision of the civil and political rights guaranteed in the constitution are acknowledged as the domain of the legislative and executive branches of the state, high courts asserted the role of the judiciaries in holding the government accountable for implementing these rights. By doing so, high courts could assert the failure to implement a government project designed to improve the poor’s material circumstances (through the provision of food or living wages, for example) undermined the poor’s ‘right to life’. The state, therefore, could be held judicially accountable for a constitutional violation of its role. It is important to note that second-wave PILs judicially enforced the implementation of existing laws and programmes, rather than attaining new parliamentary legislations (as in the first and third waves).

As Chief Justice Bhagwati (1982) wrote in a landmark ruling in 1982,

The only solution of making civil and political rights meaningful to these large sections of society [that is the poor] would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. Of course, the task ... is one which legitimately belongs to the legislature and the executive but ... the time has now come when the courts must become the courts for the poor and struggling masses of this country.

The use of judicial activism to protect vulnerable populations' civil, political, and socio-economic rights in India, and thus the end of first-wave empowerment through constitutional rights and parliamentary action, began after the state of emergency initiated by then Prime Minister Indira Gandhi from 1975 to 1977. The sudden suspension of elections, civil liberties, free press, association, and opposition, alongside an absence of socio-economic provisions for the poor, exposed the important role that civil and political liberties play in wellbeing (Ruparelia, 2016). These experiences also undermined citizens' faith and trust in the executive and legislative branches' will to protect citizenship rights. To fill this void, the Indian Supreme Court and new social movement organisations galvanised into joint action to protect these rights through the state's third branch – the judiciary. Under the second-wave, India's Supreme Court has been widely recognised as the most powerful in the world. As Justice Bhagwati noted, it 'revolutionised the whole concept of access to justice in a way not known before to the Western System of jurisprudence' (Bhagwati, 1982).

### 3.2. *Labour in India's second wave*

The second wave of judicial empowerment for the poor in India has been insightfully debated among scholars and activists (Baxi, 1985; Cassels, 1989; Ruparelia, *in press*; Sathe, 2004). But the literature to date is marked by a contradictory lens into labour's role in these movements. On one hand, and in line with the post-1980s trend in academia that privileged analyses of ascriptive identities, rather than class, labour is rarely mentioned as an organised group. The declining power of unions among formally employed urban workers is said to explain labour's absence in second-wave movements on legal empowerment. On the other hand, poor rural labourers who were denied minimum wages while working for government projects (such as publicly financed sports facilities in the capital city of Delhi in the early 1980s or drought-relief schemes and public works in the state of Rajasthan in the late 1980s), are repeatedly noted in the literature as being catalysts for early PILs (Dasgupta, 2008; Pande, 2014). Importantly, these rural workers' claims were not met through class-based organisations, but through civic rights groups comprised of cross-class networks including middle-class activists, lawyers, and judges.

Underlying the second-wave literature, therefore, is an acknowledgement that the central relationship of labour exploitation, or class-*in-itself*, remains extant in modern neoliberal economies but that class as an organisational category, or class-*for-itself*, is dead. In place of class-based organisations, it is argued, have come new social movements, comprised of civic rights groups and NGOs mobilised around identities (such as caste, gender, indigeneity) or issues (such as land, environment, education). Indeed, India did witness an impressive upsurge in identity and issue-based movements on the ground after the 1980s (Omvedt, 1993). However, the lack of attention paid to labour movements since the 1980s must also be understood as part of a political critique (conscious or not) of organised labour that emerged from the left and the right (Herring & Agarwala, 2006). From the left, sub-altern groups exposed the hegemonic reproductions of patriarchy, casteism, and ethno-centricism of many twentieth century labour unions. From the right, proponents of neoliberalism capitalised on these criticisms to undermine the legitimacy of labour's demands and to absolve capital and states of responsibility for protecting labour.

These academic and political trends have incorrectly eclipsed labour's involvement in second-wave legal empowerment efforts and undermined our ability to analyse the changing realities of labour identities and group formation over time. At an analytical level, it has reproduced a flawed understanding of labour and identity-based groups as mutually exclusive. We know in reality that the rise of identity-based groups does not, by definition, extinguish the possibility of labour identities or class-based groups; both groups can co-exist and interact. Second-wave legal empowerment through judicial activism and PILs in India did attempt to protect vulnerable labour. Following first-wave attempts, and distinct from third-wave attempts, second-wave efforts to protect labour were restricted to ensuring the implementation of existing labour legislation. Labour was assumed to already be protected (as a group) under law; PILs, therefore, focused on enforcing the implementation of those laws. Neither labour organisations nor courts sought to enact new legislation to protect labour through PILs.

The problem with this approach is that most Indian labour legislation only applied to the minority of workers with a legal contract in large businesses. Small businesses, as well as those working without a legal contract in large businesses, were exempt from labour legislation. To address the needs of vulnerable workers within these laws, second-wave PILs focussed on the most vulnerable workers – bonded labour, child labour, and rural labour – whose rights were being violated under labour legislation that banned slavery and child labour, and ensured minimum wages for all.

Unlike first-wave movements, where unions represented labour rights and the Ministry of Labour under the executive branch implemented existing laws, second-wave PILs on labour were brought by unions *and* NGOs, and the Supreme Court pushed innovative mechanisms to implement existing legislation against labour exploitation. For example, in response to a letter from a District *Bidi* Workers' Union about the illegal employment of children in *bidi* factories, the Supreme Court ordered an NGO to investigate and write a report for the court, and then mediated a plan of action between state officials, the employers, and the petitioners. The court appointed the Tamil Nadu State Legal Aid and Advice Board to ensure the plan was implemented for three years (Dasgupta, 2008). In another case, *M.C. Mehta vs. Union of India*, the Supreme Court sent the police commissioner and the labour commissioner to investigate child labour at a hazardous electroplating unit in Delhi. The court held the labour commissioner in contempt for delaying the investigation. Upon finding that child labour was extant, the court fined the employers and used the money to fund education and health care for the child workers (Dasgupta, 2008).

With regard to bonded labour, the Supreme Court went even further than identifying and liberating exploited labour; the court forced the state to aid in their rehabilitation. In 1986, Justice Bhagwati ruled that freed bonded labourers should be given financial aid upon release by their state governments as well as subsidies from the national government. In 1984, the court simplified the procedures for workers to fit under the legal category of 'bonded labour' to facilitate their ability to apply the Bonded Labour System (Abolition) Act, 1976 (Dasgupta, 2008).

In 1982 the Supreme Court heard the famous case, *PUDR vs. Union of India*. PUDR, the People's Union for Democratic Rights, brought forth a PIL on behalf of rural migrant construction workers who were hired to build facilities for the ASIAD Games in New Delhi. The court ruled that the national government, the Delhi Administration, and the Delhi Development Authority must ensure that all workers received the minimum wage (under the 1948 Minimum Wages Act), equal pay for equal work (under the 1976 Equal Remuneration Act), were at least 14 years old (under the 1938 Employment of Children Act), and had been given all of the proper required facilities and conveniences under the 1970 Contract Labour (Regulation and Abolition) Act and 1979 Inter-state Migration Workmen (Regulation of Employment and Conditions of Service) Act. The Court also appointed as ombudsmen and two independent institutions – the Indian Social Institute and the People's Institute for Development and Training – to protect labour interests (Dasgupta, 2008).

These rulings highlighted human rights atrocities through a labour lens. That these rulings arrived as organised labour and labour protections were being questioned by liberalisation policies is significant. As Justice Bhagwati wrote:

Labour laws are enacted for improving the conditions of workers, and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of the fine ... [labour laws] would remain merely paper tigers without any teeth or claws. (Bhagwati, 1982)

### 3.3. Limitations in the second wave

By the 1990s, the limits of second-wave political jurisprudence began to show. First, the Supreme Court faced an insurmountable backlog, accepting less than 2 per cent of all writ petitions filed in the 1990s (Ruparelia, 2016). Second, several PIL cases ended with decisions that favoured middle-class elites, rather than the poor, highlighting PILs' dependence on the proclivities of individual judges. In

the early 2000s, judges used PILs to launch ruthless slum demolition drives in New Delhi, curtailing the rights of labour, tenants, and students (Sathe, 2004); weaken the 73rd and 74th Amendments, which empowered local elected representatives over state bureaucrats (Mehta, 2007, p. 80); and overturn progressive jurisprudence on environmental issues by ruling against the *Narmada Bachao Andolan*, a grassroots anti-dam movement that sought to protect tribal groups (Ruparelia, 2016).

With regard to labour, PILs were limited by existing legislation, most of which never covered the vast majority of workers. These trends raised important questions as to the constantly shifting nature of legal empowerment for the poor, as well as whether, how, and through whom legal empowerment movements could *expand* the coverage of existing labour legislation.

#### 4. Third-wave legal empowerment

The limits to second-wave progressive judicial activism in India forced civil society groups to once again shift their strategies by the mid-1990s. Third wave movements for legal empowerment have been marked by a hybrid approach of toggling between the legislative, executive, and judicial branches of the government. As in the first wave, third-wave movements have launched campaigns against the legislative and executive branches to enact new national-level legislation, thereby reminding us of the significant symbolic power vulnerable groups secure through legislation, even in the absence of perfect implementation. At the same time, third-wave campaigns have used second-wave court rulings and PILs as precedents for their demands for new legislations and were thus a direct output of second-wave judicial activism. According to Article 142 of the Indian constitution, a Supreme Court or high court order is enforceable by law. Therefore, a court order can force the legislature to make a guideline or an act. This use of PILs to assert the judiciary's role in the socio-economic empowerment of the poor through court-ordered legislation is unique to India. Finally, third-wave movements have launched new PILs through the judiciary to ensure enforcement of new legislations, if and when they are enacted. Among informal workers, this hybrid approach has relied on the networks and intersectional interests of informal workers with other identity-based interests.

Perhaps the most controversial aspect of the third-wave's hybrid approach has been the use of PILs to enact new legislation through a court order (which differs from second-wave movements that focussed on ensuring the implementation of existing legislation). By the early 2000s, PIL-initiated court orders had provided a springboard from which grassroots campaigns won several new rights-based national legislation guaranteeing welfare. These included the 2002 Right of Children to Free and Compulsory Education Act (RTE), the 2005 Right to Information Act, the 2005 National Rural Employment Guarantee Act, and the 2006 Scheduled Tribes and Other Traditional Forest Dwellers (recognition of Forest Rights) Act (FRA). Since the early 2000s, popular media has repeatedly noted the Indian state for having the largest welfare programmes in the world (in absolute terms).<sup>2</sup>

Lawyers fighting for PILs support the strategy of court-ordered legislation as an important tool in the arsenal of activists' options (along-side campaigns for new legislation). As one such lawyer exclaimed:

We are not enamoured by legislation. The government will always come up with laws that are rubbish. We [that is lawyers filing PILs] operate at the group empowerment level to use enforcement to force the government to implement the legislation. We take a combative approach. We hold the government accountable! In India the Administration is colonial, throwing all representation in the waste basket. The Administration is unmoved ... we have an alternative weapon.<sup>3</sup>

Other activists are weary of judicial overreach and place more faith in grassroots campaigns for parliamentary legislation. As one union leader who works with formal and informal workers said:

I don't have a positive view of PILs. They are a product of a broken relationship between the legislature and executive ... When there is so much violation of law, the judiciary and lawyers

filing PILs are just grand standing. This just advances people's lack of rights. We need agency for a new society. We need a rights-based language.<sup>4</sup>

Although this union leader lauded two PILs (the 1992 case for workers during the ASIAD games and the right to food bill), he was critical of the use of PILs in enacting new legislation,

Using PILs for implementation of existing laws is OK. But the problematic part is using them to create law. That shows how broken our democracy is. The judiciary should not be filling this role! It is a complete collapse of the social contract.<sup>5</sup>

Finally, PILs have unsurprisingly created frictions within the state. According to a PIL lawyer, 'The courts and judges have a soft spot for us. That's how we survive. But the government sees and calls us "enemies of the state"'.<sup>6</sup> Alok Agarwal, Member Secretary (Head) of NALSA, the government's legal aid authority, reiterated this friction:

The beauty of PILs is that it's not adversarial ... The Court is only helping the government do its job ... No government officials oppose the ideas behind the PILs. The question is always how to do it? We can pass all sorts of orders to the government to give people more money and land and food and so forth. But where will the money come from?<sup>7</sup>

#### *4.1. Labour in India's third-wave of legal empowerment*

Although it has been less featured in the literature, organised labour has played an important role in third-wave movements. New organisations have emerged to mobilise a re-defined and an expanded labour identity that includes informal workers. Informal workers have long been embedded in capitalist relationships because they produce and provide legal goods and services; yet they were always excluded from first-wave labour, health, and financial regulations that protected standard employment relationships. The informal workforce includes contract workers, who produce through chains of sub-contractors and whose relationship to the principal employer is thus veiled, and self-employed workers, who own small, unregulated businesses that provide cheap inputs for capital production and services to employers and employees. By working in the privacy of their homes or unregistered work-sheds, informal workers mitigate employers' overhead costs and help constrain the expansion of a costly, protected formal working class.

That labour has re-emerged as an organised group should not surprise us. Labour's instrumental role in the first wave of legal empowerment for the poor brought institutions (such as unions and political parties) that (although dwindling in number and power in some contexts) continue to hold sway in many countries. More importantly, history has shown that labour and capital always reinvent themselves to sustain their resistance (Marx, 1976; Polanyi, 2001). What is striking is that *informal* labour throughout the world is finding new ways to advance their rights through alternative workers' struggles (Agarwala, 2014). In other words, informal workers are demanding that non-traditional employment relationships are not equated to lack of power, state protection, or state regulation; indeed, informal workers are regulated by state law, albeit under different terms than formal workers. In addition, informal workers are organizing along class lines by exposing the relationship of labor exploitation that persists in non-standard employment relationships.

Underlying these third-wave movements is a politics of recognition where informal workers are asserting themselves as a vulnerable group with a distinct identity that needs attention. Like other identity groups, informal workers are fighting for protections within their informal work identity, rather than fighting to get rid of this identity (by becoming formalised, for example). In addition, informal workers are embarking on what Nancy Fraser (2013) calls 'movements for emancipation'. These movements, which extend Polanyi's 'double movement' to a 'triple movement' aim to include and empower those left out of twentieth century movements for protection. In addition to race, class,

and gender, twentieth century protection movements left out informal workers. In short, *informal workers' class-based groups practise identity group politics*.

Recent informal workers' movements hold important implications for our understandings of labour as an organised, class-based actor in legal empowerment. They also raise important insights into linkages between class and other identity movements. Informal workers' movements emerged in India in the late 1970s and early 1980s in concurrence with second-wave legal empowerment efforts. However, informal workers' movements did not join second-wave movements for a simple reason: there were no existing legislations or programmes that protected their unique needs. Unlike the subset of poor, rural workers on government construction projects, most informal workers could not claim minimum wages since they had no proof of employment.

Instead, informal workers' organisations launched national campaigns toward the executive and legislative branches to create *new* legislation. Like first-wave struggles, these efforts sought minimum wages and improved working conditions for workers. Like second-wave struggles, informal workers used PILs to then ensure the enforcement of the new legislation on the most vulnerable groups. But informal workers' third-wave movements were distinct from first and second-wave movements in that they aimed to expand protective legislations to include previously excluded groups of citizens, namely informal workers. Because of the make-up of informal workers, their demands often reflected the needs of previously ignored identity groups, such as women and low-caste members, thereby exposing the intersectional nature of class, caste, and gender identities. As well, informal workers' third-wave movements were distinct in that they utilised the progressive PILs for labour that emerged in the early 1980s as a springboard to legitimise their fight for new national-level legislation. In particular, the chief justices that led the PIL movements of the early 1980s also led the third wave of informal workers' movements in the second half of the 1980s.

Informal workers used their power as voters to demand new legislation that ensured state responsibility for informal workers' social reproduction through the provision of welfare benefits (Agarwala, 2013). In addition, they struggled to create a new group-based identity and demanded informal workers' identity cards. An innovative institutional structure, called a 'welfare board', was proposed to disperse the identity cards and welfare provisions to informal workers. Welfare boards are tripartite institutions implemented by the state or national government. In return for being a member of a board, workers are entitled to welfare benefits, such as housing, education scholarships for children, health-care, funeral expenses for work-related accidents, and pensions. Currently, welfare boards in India are occupationally based and benefits differ according to trade. As I analyse elsewhere, their success (which has been mixed) depends on the political and economic context in which they are implemented. Those operating under competitive populist parties (even neoliberal) have been more successful than those operating under a single, hegemonic party rule (even when that party is left-wing). Throughout the 1980s and 1990s, informal workers' organisations focused on pressuring elected state politicians in the executive and legislative branches to enact legislation to protect the working conditions and welfare needs of informal workers in various industries (Agarwala, 2013).

Despite their vulnerabilities and in contrast to popular belief that informal structures of production prevent labour organisation, informal workers are organising to defend their humanity through class-based movements. But their struggles have differed from first-wave labour movements in several ways. First, to attain state attention for new legislation, informal workers have appealed to *citizenship* – rather than labour – rights. Second, to mobilise the dispersed workforce whose lines between work and home are blurred (with some working in their homes and others living on their worksites), informal workers have organised at the *neighbourhood* – rather than shop floor – level. Third, to attract vulnerable workers in a labour-unfriendly polity, informal workers have drawn on their struggles for new legislation for *welfare from the state*, rather than on their struggles for employer-provided benefits and minimum wages.

While the struggles for employer-provided benefits continue, it is the welfare struggles that have yielded greater state response and attracted more new members. Importantly, the language of citizenship, space-based mobilisation, and welfare demands on the state have enabled informal workers' organisations to include several sub-altern groups (including women and lower-caste members)

involved in hidden forms of contract and self-employed work in homes and unregistered work-sheds. At the same time, their demands are not for universal benefits. Rather, they assert a class-based identity (certified by government-sponsored worker identity cards) that demands welfare and work benefits only for fellow-informal workers.

This calls on us to question and re-examine the ‘either-or’ depiction of labour movements (often associated with first-wave legal empowerment) versus identity and civic rights movements (often associated with second-wave legal empowerment). Informal workers’ movements provide insights into an emerging bridge between the two movements, because they organise around a class-based identity, but include the interests and members of sub-altern groups that have long felt marginalised from labour movements. Informal workers’ movements, therefore, remind us that labour movements and identity movements can be interrelated and overlapping.

By the 1990s and early 2000s, informal workers began to see the fruits of their efforts in new legislation designed to protect their welfare. These included the 1996 Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act; the 1996 Building and Other Construction Workers Welfare Cess Act; and the 2008 Unorganised Workers Social Security Act. Once these acts came to fruition, informal workers turned to PILs to capitalise on the judiciary’s ability to enforce the executive and legislative branches to implement these acts. Specifically, informal workers’ organisations used PILs to force state governments to enact their welfare boards. This hybrid approach of toggling between campaigns against the legislative and executive branch for new legislation and employing the arm of the judiciary through PILs to enforce this legislation marks the third-wave of legal empowerment for the poor.

Examining informal workers’ use of legal empowerment, therefore, provides an important corrective to the legal empowerment literature to date and illuminates our understanding of the continuities and contradictions between the three waves.

#### *4.2. Third-wave legal empowerment and labour in India*

During the late 1970s and early 1980s, informal workers began organising into their own unions that were distinct from formal workers’ unions. As in the first wave, informal workers returned to pressuring parliamentary bodies to enact national-level legislation to protect workers. In contrast to the first wave, however, they pushed forth new legislation that addressed their unique needs as informal workers operating outside standard employment relationships. Furthermore, their demands often reflected the needs of previously ignored identity groups, such as women and low-caste members. In some ways, informal workers in the third wave utilised the progressive PILs for labour that emerged in the early 1980s as a springboard to legitimise their fight for new national-level legislation. In particular, the chief justices that led the PIL movements of the early 1980s were actively involved in leading the third wave of informal workers’ movements in the second half of the 1980s. Lastly, informal workers in the third wave continued to use PILs to ensure the proper implementation of the new national-level legislation, if and when it was attained. The third wave of labour empowerment indicates a hybrid model where informal workers’ organisations toggle between first- and second-wave tactics. It also highlights the intersectional nature of class and identity based interests and movements, which in turn facilitated this hybrid approach.

Drawing from a comparative study of two industries (construction and domestic work), I illustrate below the importance of the judiciaries in the successes and failures of contemporary third-wave national campaigns toward the legislatures. As I have elaborated elsewhere, construction workers’ movements in India were among the earliest and most successful sectors to organise informal workers (see Agarwala, 2013 for a more detailed history). Domestic workers’ movements represent one of the newest sectors to organise informal workers. By examining these two sectors, we can provide a cross-sectional look at informal workers’ third wave movements over time and stage of development.

### 4.3. Construction workers' movement for legal empowerment in India

Although construction workers' movements in India are mired with challenges of scale and effectiveness, they have become a role model for informal workers' organising in other sectors.

As in many countries, India's construction industry has witnessed a rapid expansion since the 1980s. Today, it constitutes 11.3 per cent of India's total economic output (National Council of Applied Economic Research [NCAER], 2014, p. viii). In 2014, the construction market totalled US\$157 billion. Infrastructure accounted for 49 per cent of the market, housing and real estate 42 per cent, and industrial projects 9 per cent. The industry is expected to grow in all three areas, but especially in real estate, by 7 to 8 per cent per year. According to Deloitte (2014, p. 22), India is poised to be the world's third-largest construction market by 2030. Indian construction is also a major source of employment. From 2004 to 2011, construction employment rose by nearly 10 per cent (Ghose, 2016). Today, 40 million workers are employed in construction (or 10 per cent of the nation's workforce), making it the second-largest employer in India after agriculture (Reserve Bank of India [RBI], 2015). Forty-four per cent of India's urban informal workforce is estimated to be in construction (Jayakrishnan, Thomas, Rao, & George, 2013, p. 225). Eighty per cent of total employment in construction is informal; in the residential sector of the construction industry, 99.4 per cent of the jobs are estimated to be informal (NCAER, 2014, p. 20).

Informal construction workers in India work through chains of sub-contractors and rarely interact with principal employers. Indian construction workers can be divided into two labour streams. The first reside in slums or other informal housing settlements and sell their labour at a local market place to a sub-contractor who hires them on a daily basis. These workers are hired for nearby projects that include house repairs, smaller roads, and new multi-story buildings. The second category is comprised of rural migrants who are brought into the city by a sub-contractor to work on a specific project. These workers live on sites or in a nearby labour camp. These projects include new multi-story buildings, office parks, shopping malls, and large public infrastructure projects, such as metros and highways.

In the late 1970s and early 1980s, informal construction workers began organising into unions (most of which were unaffiliated to a political party) in some Indian states. These unions fought for new legislation to protect informal workers' unique needs. In 1985, a group of unions launched the National Campaign Committee for Central Legislation on Construction Labour (NCCCL) to expand informal workers' movements across India and to create a single national-level legislation that could regulate informal construction workers. On 5 December 1986, NCCCL submitted a draft bill for national-level legislation to the Petitions Committee in the *Lok Sabha*, the lower house of the Indian parliament. For the next 10 years, organised construction workers fought against builders' associations to lobby chief ministers, ministers of parliament, and successive prime ministers of India to pass the bill. In 1989, NCCCL submitted a petition with 400,000 signatures of construction workers demanding legislation to regulate their working conditions and welfare needs. On 19 August 1996, then Prime Minister H.D. Deve Gowda enacted two acts: the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, which aimed to regulate work conditions, and the Welfare Cess Act, which called on each state to create and implement its own Construction Workers' Welfare Fund and Board.

The first act aiming to regulate working conditions, catered to the demands of the builders' association to apply minimal protections, and the NCCCL was understandably unhappy with the result, especially because a suitable enforcing body was absent. But the second act on welfare boards has been lauded by other informal workers' campaigns for specifying a funding mechanism to support the board. Under the legislation, a fund is financed through state contributions, fees from workers, and the construction workers' welfare tax. The tax is 1 per cent of the building cost applied to all building projects that employ 10 or more workers and cost more than Rs.1 million (US\$2,000). In addition, the identity cards promised by the welfare board are often cited as the greatest benefits attained, because they have given workers a legitimate *claim* to basic socio-economic rights.

Particularly noteworthy is that the NCCCL was formed under the Chairmanship of Dr Krishna Iyer, a member of the Communist Party of India (Marxist) *and* the very Supreme Court justice who stood at the helm of second-wave PILs. Dr Iyer helped draft the legislation bill and suggested submitting it through the Petitions Committee of Parliament, an unprecedented pathway for new legislation. Moreover, Dr Iyer's personal relationship with Deve Gowda eventually urged Gowda to enact the legislation when he became prime minister. In my interviews with leaders and activists of the NCCCL, Dr Iyer was repeatedly evoked for his instrumental role in getting the legislation passed. The involvement of second-wave leaders in the national campaign for construction workers' legal empowerment might explain their reliance on a rhetoric of citizenship rather than labour rights.

Since 2006, the NCCCL has used PILs to ensure the enactment and implementation of the welfare boards across states. To date, the Supreme Court has issued 10 orders. As a result of these PILs, construction workers' welfare boards have been enacted in all states. A key feature of second-wave PILs was transparency and right to governance that enabled vulnerable populations to monitor government schemes. In this vein, NCCCL has initiated PILs to monitor the implementation of welfare boards. According to N.P. Samy, president of a construction union in Karnataka (KSCWCU) and founding member of NCCCL, 'Once they started monitoring and showing that the act was not being implemented in different states ... all of the states started constituting their welfare boards'.<sup>8</sup> Construction union leaders repeatedly credited the PIL lawyers for these victories, indicating NCCCL's continued reliance on their network of lawyers and high court justices to ensure the implementation of the Welfare Board.<sup>9</sup>

The campaign still has a long way to go. Now that all welfare boards are in place, they have amassed millions of dollars in funds. But disbursement of funds is still scant, registration of workers has been low, and the boards have become prone to politicians' abuse of the funds for their own political purposes. On 4 December 2015, the NCCCL gathered to commemorate the first anniversary of Dr Iyer's death with a meeting of unions, welfare board officials, and members of parliament to discuss the recent failures of the Supreme Court to address eight PILs already filed by the NCCCL on behalf of construction workers and violations of the Construction Workers' Welfare Board. By evoking the memory of Dr Krishna Iyer, NCCCL fortifies legitimacy in their claims for implementation and continues to uphold the potential power of judicial activism (NCCCL, 2015). At the same time, Bhatnagar also expressed fear that progressive judicial activism in India has died with the early leaders of the movement,

We can't achieve the unity that we achieved under Krishna Iyer when we got the National Act passed. He had a very strong reputation, and his Chairmanship was key. We had no political party affiliation, so all the political parties came out in support of us. Now the government is completely anti-labour.<sup>10</sup>

One important difference between third-wave construction workers' movements and the second-wave civic rights movements of the 1980s is that the latter were known for forging a cross-class alliance with middle-class activists, journalists, scholars, judges, and lawyers. These groups' understanding of the language, perspectives, and manners of the state and employers enabled them to legitimise sub-altern claims (enshrined in the PILs) and advocate effectively for legislation (Pande, 2014). In contrast, NCCCL is not as embedded among middle-class activists, scholars, and journalists apart from their relationships to some judges and lawyers. Further research should examine the relative impact on their campaigns for legal empowerment.

#### *4.4. Domestic workers' movements for legal empowerment in India*

Domestic workers' recent movements yield important insights into the potential and limits of third-wave movements for legal empowerment among informal labour. Unlike construction, paid domestic work in India has never been officially recognised as work. Therefore, data on its productivity and

employment is spotty. Domestic workers in India are classified in two categories: ‘live-ins’ and ‘live-outs’. Live-ins are often young, unmarried, rural migrants who live in the employer’s home or an attached quarter. A large portion of their pay includes housing and food. Live-outs live in their own homes in the city and tend to be married, middle-aged women. Live-outs are further categorised into ‘part-time’ and ‘full-time’ workers. A part-time worker may work a full day, but for multiple employers for a specified number of hours and on specific tasks in each home. A full-time worker works for a single employer every day for an unspecified number of hours and multiple tasks. Due to the rising costs of real estate in India’s major cities, live-outs have been the fastest growing group of domestic workers. Unlike construction workers, domestic workers have direct, daily interactions with their employers. Although some live-ins are employed through placement agencies who profit from domestic workers’ labour through a placement fee, most domestic workers are self-employed, finding employers through their personal networks. That self-employed workers organize against class-based exploitation is not unusual in India (Agarwala, 2015).

The majority of domestic workers are illiterate (Neetha, 2010), and are usually first-generation female rural migrants (Rao, 2011). Although *Dalits* (the lowest rung of India’s caste hierarchy) traditionally comprised the largest proportion of domestic workers, the sector is becoming more mixed, including members of ‘other backward castes’ and even ‘upper castes’, as well as non-Hindus, such as Christians and Muslims (Neetha, 2013). These trends are said to reflect the desperate need for any employment among poor women, as well as more openness to any worker by employers.

#### 4.5. Domestic workers’ comprehensive legislation

Unlike construction workers, domestic workers are still fighting to attain comprehensive legislation to regulate their working and living conditions. Although domestic workers have had some legislative victories, they are scant, and they remain at the state levels.

At present, domestic workers’ organisations are struggling to: (1) attain a sector-based, comprehensive law to regulate and protect their working conditions (by fixing wages, holidays, medical leave, work safety, and so forth); and (2) incorporate domestic work as a category covered by India’s 14 labour laws (including the Minimum Wages Act 1948, the Maternity Benefit Act 1961, Workmen’s Compensation Act 1923, Inter State Migrant Workers Act 1979, Payment of Wages Act 1936, Equal Remuneration Act 1976, Employees’ State Insurance Act 1948, Employees’ Provident Fund Act 1952, and the Payment of Gratuity Act 1972).

At first glance, these demands are surprising. In an era when most labour organisations, scholars, and the public are mourning the *demise* of protective legislation for workers and the neutered impact of existing labour laws in India, these demands for more labour laws appear misguided. The dwindling capacity of Indian labour departments to employ inspectors guarantees that a minimum wage law for domestic workers would remain unimplemented. Even the Supreme Court appears to be pulling back on its earlier enthusiasm to implement labour legislation. So why fight to join a sinking ship through new labour legislation?

My interviews with domestic workers’ organisations reveal their fight for protective labour legislation is a *demand for recognition* of their work. Domestic workers repeatedly highlighted to me the beneficial symbolic impact of simply *having* such legislation in the first place, *even* when it is not implemented and/or does not cover the informal workforce. First, such legislations provide official recognition of who is a worker (being exploited in a wage relationship) and what is work. At present, domestic workers are not recognised as workers in India, their employers are not recognised as employers, their relationship is not recognised as exploitative, and the home is excluded as a place of work. Therefore, domestic workers’ fight for protection (in terms of employment conditions or welfare) is doomed. Many organisations spoke of the need to change the terminology to domestic work and shed earlier, derogatory terms for the occupation. Having a law in place would also secure this change in the terminology.

Second, the fight for protective legislation is a demand for the *threat of power*. Although informal workers are regularly excluded from the laws in practice, having the laws enables unions and workers

to exert some power over employers by using the threat of judicial action. Construction leaders regularly spoke about filing court cases and calling the police when employers refused to provide proper compensation to workers' families after work-related accidents. Although numerically small, these cases illustrated an important tool through which unions could empower their existing members and mobilise new members. Domestic workers often spoke about the need to file such cases, so employers would have some 'fear'.

Domestic workers' attempts to attain comprehensive legislation to regulate conditions of work and welfare in India began in the 1950s. But to this day, each attempt has failed. After a one-day domestic workers' solidarity strike in 1959, two private members' bills were introduced in parliament. The first was the Domestic Workers (Conditions of Service) Bill introduced in the upper house (*Rajya Sabha*) by P.N. Rajabhoja, and the second was the All India Domestic Servants Bill. Both bills included clauses for minimum wages, maximum hours of work, a weekly day of rest, 15 days' paid annual leave, casual leave, and the maintenance of a register of domestic workers by the local police (Palriwala & Neetha, 2011).

Both bills were stalled during the parliamentary sessions, so they could lapse. In 1972 and in 1977, another private members' bill was submitted to the lower house (*Lok Sabha*), called the Domestic Workers (Conditions of Service) Bill. This bill aimed to bring domestic workers under the purview of the Industrial Disputes Act. Both times, they were allowed to lapse. In 1974, the Committee on the Status of Women in India noted the need to regulate the conditions of domestic workers, but this too was ignored by the Government of India. During the 1980s, further attempts were made to legislate the working conditions of domestic workers, but all attempts failed to materialise into new laws. The 1988 National Commission on Self Employed Women and Women in the Informal Sector recommended (to no avail) 'a system of registration of domestic workers, a minimum wage, a legislation to regulate conditions of employment, social security and security of employment' (Neetha, 2013). Similarly, the 1989 House Workers (Conditions of Service) Bill, which proposed that every employer contribute to a House Workers' Welfare Fund, was ignored (Palriwala & Neetha, 2011, pp. 98–99). More recently, the National Commission for Women drafted the Regulation of Employment Agencies Act in 2007; the National Campaign Committee for Unorganised Workers and Nirmala Niketan drafted the Domestic Workers (Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill in 2008; Shri Arjun Ram Meghwal introduced a private members' bill, the Domestic Workers (Conditions of Service) Bill, in parliament in 2009; and the Domestic Workers' Rights Campaign was launched in 2010.

Interestingly, the cumulative failures in attaining national legislation have galvanised a range of domestic workers' organisations into joint action at the national level. In 2013, after the International Labour Organisation Convention on Domestic Work, several organisations came together under a new banner, called the National Domestic Workers Platform. They held a mass rally in 2014 in New Delhi to urge the government to adopt a central law guaranteeing the rights of domestic workers. In December 2016, the National Platform members met once again to discuss yet another draft bill. As well, the national government has included domestic workers as an occupational category in some labour legislations (a contradiction that is not uncommon in Indian law), such as The Unorganised Workers' Social Security Act (2008); The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013); and The Child Labour Act (2006). Some state governments have also specified domestic work in their minimum wage notifications and targeted health insurance programme, and called for the regulation of placement agencies.

At present, the Indian government has agreed to form a policy for domestic workers, which will present a vision and advise state governments on potential regulatory options. It will not hold any judicial weight. Although domestic workers' organisations refuse to accept this as a replacement for the act, many have said they are willing to accept it as a first step. The Draft Policy on Domestic Workers (which is currently pending approval in parliament) sets out a labour rights framework for domestic workers, and obliges the national and state governments to include domestic work in existing labour laws and programmes and to set up legislative mechanisms to address issues that existing legislation does not address. It also obliges state governments to set up an institutional mechanism which provides for social security, grievance redressal, and dispute resolution. It further urges

governments to register workers, employers, and placement agencies and to promote skills development. Under these recommendations, governments will be urged to forbid sexual harassment and bonded labour, regulate working conditions by stipulating minimum wages, compulsory paid leave of 15 days per year, maternity leave, one day off every week, and a safe working environment (Ministry of Labour and Employment, 2011).

#### 4.6. Domestic workers' welfare boards

In recent years, welfare boards have multiplied in several states. However, they are limited because many are not tripartite and lack defined funding sources. Nevertheless, informal workers' organisations across sectors remain committed to demanding and implementing welfare boards to consolidate informal workers' identity, provide a forum for their concerns, and provide an institutional mechanism for the delivery of worker identity cards and benefits.

Welfare boards for domestic workers now exist in three states. The earliest was established in the state of Kerala in 1977. Maharashtra's was established in 2008 and Jarkhand's in 2013. Further research needs to be conducted in Kerala to examine the impact of its welfare board. In the newer states (Maharashtra and Jarkhand), the boards are woefully weak. In Maharashtra, they are not connected to a secure funding source. In Jarkhand, the government merely folds in existing programmes, which do not leave domestic workers better off than before. Implementation is a constant and unsurprising problem.

Lawyers who were active in issuing PILs for construction workers, urge domestic workers to take the PIL route to address these challenges. As one lawyer said:

We should compare domestic workers with slavery ... Article 21 'right to life', bonded labour ... with a PIL, the Supreme Court may make an order governing domestic workers, and then the government will have to come up with a law or an act. Then you can get medical benefits, minimum wages and so forth. Then the rights are binding ... with a dispute resolution mechanism. Welfare Boards cannot replace courts!<sup>11</sup>

## 5. Conclusion

The recent literature on the use of legal empowerment to address poverty and exclusion has focussed on groups organised around ascriptive identities (such as ethnicity, race, caste, and gender) or topics (such as environment, water, and so forth). Using the case of India, I have tried to bring labour back into the discussions on legal empowerment.

First, I draw a historical lens onto the use of legal empowerment to fight poverty and reveal three waves of movements at the global level. Each wave is distinguished by its timing, the state-level target of its demands, and the principal actors involved. The first wave ran from the early 1900s to the 1970s and was marked by national-level legislation in parliaments. The second wave ran from the 1980s to the early 2000s and was marked by PILs in high courts. Less articulated has been what I call a third wave, which began in the mid-1990s that utilised a hybrid approach to legal empowerment by bridging the legislative, executive, and judiciary branches of the state. Third-wave movements underline the importance of attaining symbolic power from legal recognition, a power that is often muted in the recent scholarly focus on implementation. Legal recognition makes subjects, topics and needs officially visible, and it offers groups the threat of enforcement. Alongside their differences, the three waves share commonalities. In each wave, legal empowerment was won, not bestowed from above; social movement actors from below have always been critical of legal changes from above. In addition, each wave's victories were met with resistance that undermined its sustainability and opened the door for a subsequent wave marked by new formations and strategies, as well as strings attached to the preceding wave.

Second, I illuminate labour's changing roles in legal empowerment movements across each wave. Although labour has been widely acknowledged as a significant actor in the first wave, it has become

surprisingly understudied in the second and third waves. As I detail above, labour has played a significant role in the first, second, *and* third waves of legal empowerment. More interestingly, its role and demands have shifted over time, underscoring the dynamic nature of group-based politics. With each subsequent wave, labour has fought for a more encompassing identity whose boundaries stretch beyond earlier exclusions. In India, first-wave movements and the resulting legislation protected labour narrowly defined as only those operating within a standard employment relationship under formally registered employers.

Second-wave movements expanded this definition by enforcing the *implementation* of existing legislation designed to protect especially vulnerable groups (such as children, bonded labour, and rural labour). These legislations were often enacted by first-wave movements. From above, second-wave movements expanded their state-level options and made use of the Supreme Court (and not just parliaments) to employ innovative methods to implement existing legislation against labour exploitation. From below, second-wave movements expanded the forms of organisations that could represent workers to include NGOs (as well as unions).

Finally, third-wave movements expanded the definition of labour even further to include sub-altern workers operating outside standard employment relationships and who were long marginalised from earlier organised class-based groups (such as women, low castes, and ethnic minorities). From below, third-wave organisations address the ‘intersectionalities’ of class and ascriptive identities and thus provide an important corrective to the more simplified labour-centric versus ascriptive identity-centric analyses on legal empowerment. Unlike earlier waves, third-wave movements have also witnessed the rise of new organisations that have mobilised alternative class identities among the long-excluded informal workforce. From above, third-wave movements’ have returned to fighting for national-level legislation through legislatures (as in the first wave), thereby reminding us of the significant symbolic power vulnerable groups secure through legislation, even in the absence of perfect implementation. Informal workers in India have employed a language of citizenship to pressure parliamentary bodies to enact national-level legislation that directly addresses their unique needs as informal workers, women, and low-caste members. In addition, they have used second-wave court rulings as precedents for their demands for new legislation and are launching PILs to ensure the implementation of legislation that they have won for informal workers. I have employed a comparative analysis of third-wave movements in India’s construction and domestic work sectors to showcase the victories and challenges of present efforts.

The findings outlined in this paper urge us to move past distinctions of labour versus ascriptive identities as mutually exclusive. Vulnerable groups are simultaneously organising along identities, as well as along the intersectionalities of class, gender, ethnicity/race, and caste. My research to date indicates some tensions between informal and formal workers’ organisations, but relatively few tensions between informal workers’ organisations and other ascriptive identity-based organisations. Results have been mixed and varied across space and industry. But they remain under-analysed. It is time now for our scholarship to follow the lead of social movements from below to critically analyse the complex outcomes of their constantly evolving movements.

## **Acknowledgements**

I am grateful to Becky Bowers, Sonal Sharma, and Shiny Saha for their excellent research assistance and to Rachel Gisselquist, the participants of the UNU-WIDER project workshop, and two anonymous reviewers for their insightful comments and suggestions.

## **Funding**

This work was supported by Ford Foundation [0145-1760].

## **Disclosure statement**

No potential conflict of interest was reported by the authors.

## Notes

1. From Annual Report of NALSA (see Government of India, 1987).
2. See for example: <http://www.independent.co.uk/news/world/asia/the-biggest-welfare-programme-in-history-indian-government-gives-800-million-citizens-a-legal-right-8796961.html>.
3. Interview, 7 January 2017.
4. Interview, 13 January 2017.
5. Interview, 13 January 2017.
6. Interview, 7 January 2017.
7. Interview, 14 January 2017.
8. Interview, 19 October 2015.
9. Interview, 16 November 2015.
10. Interview, 16 November 2015.
11. Interview, 7 January 2017.

## References

- Agarwala, R. (2013). *Informal labor, formal politics and dignified discontent in India*. New York: Cambridge University Press.
- Agarwala, R. (2014). Informal workers' struggles in eight countries. *Brown Journal of World Affairs*, XX(11), Spring/Summer, 251–263.
- Agarwala, R. (2015). Re-defining exploitation: Self-employed workers' movements in India. *International Labour and Working Class History*, 89, 107–130. doi:10.1017/S0147547915000344
- Agarwala, R. (in press). The politics of India's reformed labor model. In A. Kohli, C. Jaffrelot, & K. Murli (Eds.), *Business and politics in India*. New York: Oxford University Press.
- Baxi, U. (1985). Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India. *Third World Legal Studies*, 4, 107–132.
- Berlin, I. (2002). Two concepts of liberty. In H. Hardy (Ed.), *Isaiah Berlin: Liberty*. Oxford: Oxford University Press.
- Bhagwati, P. N. (1982). *People's union for democratic rights vs. union of India*. New Delhi: Supreme Court of India.
- Cassels, J. (1989). Judicial activism and public interest litigation in India: Attempting the impossible? *The American Journal of Comparative Law*, 37, 495–519. doi:10.2307/840090
- Dasgupta, M. (2008). Public interest litigation for labour: How the Indian Supreme Court protects the rights of India's most disadvantaged workers. *Contemporary South Asia*, 16, 159–170. doi:10.1080/09584930701733498
- Deloitte. (2014) *Competitiveness: Catching the next wave, India*. Retrieved January 16, 2016, from <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/about-deloitte/in-about-india-competitiveness-report-2014-noexp.PDF>
- Fraser, N. (2013). A triple movement? Parsing the politics of crisis after Polanyi. *New Left Review*, 81, 119–132.
- Ghose, A. K. (2016). *India employment report 2016: Challenges and imperative of manufacturing-led growth*. New Delhi: Institute of Human Development (IHD) and Oxford University Press.
- Government of India. (1987). *Annual report*. New Delhi: National Legal Services Authority.
- Herring, R. J., & Agarwala, R. (2006). Introduction: Restoring Agency to Class: Puzzles from the Subcontinent. *Critical Asian Studies*, 38, 323–356. doi:10.1080/14672710601072954
- Holston, J. (2008). *Insurgent citizenship: Disjunctions of democracy and modernity in Brazil*. Princeton: Princeton University Press.
- Jayakrishnan, T., Thomas, B., Rao, B., & George, B. (2013, October–December). Occupational health problems of construction workers in India. *International Journal of Medicine and Public Health*, 3(4), 225. doi:10.4103/2230-8598.123415
- Jayal, N. (2013). *Citizenship and its discontent: An Indian history*. London: Permanent Black.
- Lee, C. K., & Hsing, Y.-T. (2010). Social activism in China: Agency and possibility. In C. K. Lee & Y.-T. Hsing (Eds.), *Reclaiming Chinese society: The new social activism*. New York, NY: Routledge.
- Liu, X. (2006). Reform in China: The role of civil society. *Social Research*, 73, 121–138.
- Marshall, T. H. (1964). *Class, citizenship, and social development: Essays*. Garden City, NY: Doubleday.
- Marx, K. (1976). *Capital* (Vol. 1). London: Pelican Books.
- Mehta, P. B. (2007). The rise of judicial sovereignty. *Journal of Democracy*, 18, 70–83. doi:10.1353/jod.2007.0030
- Ministry of Labour and Employment. (2011). *Final report of the task force on domestic workers*. Retrieved March 27, 2017, from [http://www.nirman.org/pdf/national\\_policy\\_on\\_domestic\\_work\\_2011.pdf](http://www.nirman.org/pdf/national_policy_on_domestic_work_2011.pdf)
- NCAER (National Council of Applied Economic Research). (2014). *Impact of investments in the housing sector on GDP and employment in the Indian economy*. Retrieved June 27, 2014, from [http://mhupa.gov.in/W\\_new/Impact\\_of\\_Housing\\_on\\_GDP\\_Employment\\_FULL\\_REPORT.pdf](http://mhupa.gov.in/W_new/Impact_of_Housing_on_GDP_Employment_FULL_REPORT.pdf)
- NCCCL (National Campaign Committee for Central Legislation on Construction Labour). (2015). *Circular*. New Delhi: Author.
- NCEUS (National Commission for Enterprises in the Unorganised Sector). (2006). *Report on conditions of work and promotion of livelihoods in the unorganised sector*. New Delhi: Government of India.
- Neetha, N. (2010). Self employment of women: Preference or compulsion? *Social Change*, 40(2), 139–156.

- Neetha, N. (2013). *Domestic workers: Profile and emerging concerns*. Retrieved November 11, 2013, from <http://www.labourfile.org/CurrentArticleDetails.aspx?id=521>
- Omvedt, G. (1993). *Reinventing revolution: New social movements and the socialist tradition in India*. Armonk: ME Sharpe Inc.
- Palriwala, R., & Neetha, N. (2011). The absence of state law: Domestic workers in India. *Canadian Journal of Women and Law*, 23, 97–119. doi:10.3138/cjwl.23.1.097
- Pande, S. (2014). *The right to know, the right to live: A long view of social rights activism in India* (Doctoral Thesis). Institute of Development Studies, University of Essex, Brighton.
- Papola, T. S., & Pais, J. (2007). Debate on labour market reforms in India: A case of misplaced focus. *The Indian Journal of Labour Economics*, 50, 183–200.
- Polanyi, K. (2001). *The great transformation*. Boston, MA: Beacon Press.
- Przeworski, A., & Wallerstein, M. (1982). The structure of class conflict in democratic capitalist societies. *American Political Science Review*, 76, 215–238. doi:10.1017/S0003055400186952
- Rao, N. (2011). Respect, status and domestic work: Female migrants at home and work. *The European Journal of Development Research*, 23, 758–773. doi:10.1057/ejdr.2011.41
- RBI (Reserve Bank of India). (2015, April 30). Sectoral deployment of bank credit—March 2015. *Press Release*. Retrieved September 14, 2015, from [https://rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=33834](https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=33834)
- Rueschemeyer, D., Stephens, E. H., & Stephens, J. D. (1992). *Capitalist development and democracy*. Chicago, IL: University of Chicago Press.
- Ruparelia, S. (2016). *A semi-progressive juristocracy: The unexpected social activism of the Indian Supreme Court* (Unpublished Manuscript).
- Ruparelia, S. (in press). Contesting the right to law: Courts and constitutionalism in India and China. In P. Duara & E. Perry (Eds.), *Beyond regime type: China and India compared*.
- Sathe, S. P. (2004). *Judicial activism in India: Transgressing borders and enforcing limits* (2nd ed.). New Delhi: Oxford University Press.
- Sundar, N. (2016). *The burning forest: India's war in bastar*. New Delhi: Juggernaut Books.
- Thakur, C. P. (2007). *Labour policy and legal framework in India: A review*. New Delhi: Institute for Studies in Industrial Development.
- UNDP and CLEP. (2008). *Making the law work for everyone. Volume I: Report of the commission on legal empowerment of the poor*. New York, NY: United Nations.
- Zagha, R. (1998). Labor and India's economic reforms. *The Journal of Policy Reform*, 2, 403–426. doi:10.1080/13841289808523391
- Zweig, D. (Ed.). (2010). *To the courts or to the barricades?: Can new political institutions manage rural conflict?* New York, NY: Routledge.