

Overall Review of the Challenges and Solutions to Human Rights in Labour

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Abstract: In the emerging social world, globalisation has become a dominant factor to international development. New forms of labour employment pose present day challenges to legal systems around the world. This article researches the past and present challenges on human rights in labour while seeking for solutions that contemporary organisations and authorities had utilised and being critical of its operations. In this article, through researching the functions and limitations of international organisations and its provisions, it provides a general overview of possible development pathways for future provisions. This article also explores the utilisation of such provisions and domestic challenges of human rights by formulating a judgement from contemporary case studies of the new emerging markets. By extracting regulatory clauses from multiple international and domestic provisions of human rights regulations, it may assist in investigating possible ways that the human rights provisions may be exploited by certain parties and taken advantage of.

Keywords: TNCs (Transnational Corporations), Extraterritorial Jurisdiction, Externalities

1. Introduction

The topic of labour rights is often widely explored by institutions, firms and not limited to. However the regulations and complications upon such a topic is vastly controversial, particularly between different countries. Due to the increasing spotlights on profit and economic welfare, it resolutely undermines the importance of social and health security of labour and its market. Research in this topic is ultimately essential as it serves as a substantial portion of human rights and is relatively untouched and less developed on an international scale allowing it to be exploited more than any other fields of law.

Due to the wide classifications of differences in labour and human rights provisions in countries, this article will divide the classification into developed and developing countries being similar levels of general societal development in its legal systems. Generally, in developed countries there is a comparatively more profound system of justice and legal framework of jurisdiction amongst labour rights and labour protection. This is thanks to the relatively earlier development of such a legal framework from increased social awareness and long-term case studies provided in the industry amid its legal and social progression. In contrast, developing countries often bear inadequacy in its written provisions and accepted customs of labour justice.

In the age of globalisation and complications in the systems of the labour market, the insubstantial labour provisions are often exploited upon by outreaching firms seeking for domestic benefits

elsewhere, creating further social expense and fabricating profit utilising the legal loopholes in contemporary systems of enforcement and its regional differences.

The International Provisions of labour rights in various forms acts as one of the most efficient ways of establishing international standards, eliminating regional restrictions which allows firms to exploit. However, there is a major limitation of lack of enforcement strategies that causes impairment in its missions. Examples of such conventions include UNGP on Business and Human rights, and ILO Labour Rights provisions, aiming at different perspectives at scales as large as firms, countries and down to individuals or work unions. Diving into the specific articles will be able to administer a systematic overview of the advantages and disadvantages of such provisions in supporting the different parties in relevance to human rights in labour.

To further encompass general understandings of the so mentioned issues, this article will incorporate case studies from both the developed and developing worlds and scope into the specific struggles of human rights in industries, evaluating potential risks and preventions for violations by corporations. This article will also be inclusive to different types of individual contracts and legal identities which protect or fail to provide security to labour and organisations associated with such acts.

This article will identify and examine the different aspects of the challenges, and contemporary efforts made to improve the aforesaid threats to the welfare and security of labour under human rights laws provisions. This article will actively consider the social phenomenons and being inclusive of economic and political perspectives when evaluating the effectiveness, flaws and improvements for legal frameworks both internationally and domestically, analysing their features in relevance to the aims and achieved objectives.

2. Exploitation by TNCs and Local Firms

2.1. Exploitation by Firms

As the world enters the critical age of development in technology, transportation and communications, the economic, social and political sectors therefore become increasingly interconnected and interdependent. Firms become more incentivized to maximise profit and therefore seek loopholes in the field of labour. As this economic activity begins to expand, the process of globalisation also gains further effect within the field of politics, interlinking the economy and the social environment domestically.

Before the age of globalisation and outreach, domestic jurisdictions were relatively effortless when managing firms and labour, if sufficient regulations were in place. The idea of enforcement was uncomplicated with the national government and subsidiary courts being the single authority of jurisdiction. However, this changes as the world shrinks, connecting cities to cities, connecting countries to countries and connecting the Global North to the Global South. As the relative scale for enforcement enlarges, it becomes ultimately challenging.

Due to the sovereign legal challenges between countries, the concept of extraterritorial jurisdiction becomes a hurdle to the administration of corporate laws and transnational corporation (TNC) operations regulations. Each sovereign nation entitles unique articles and approaches in managing transnational corporations, where differences may be found and advantages may be exploited.

International firms all attempt to maximise their individual surplus at the cost of social welfare. All transnational corporations facilitate a complex chain of global supply, contributing to further regulatory challenges. The act of prosecution for TNCs operating through intricate international foundations becomes excessively challenging. Domestic parties' attempts to hold TNCs accountable through regulatory intricacies still arise under the difference in frameworks. The European Union's General Data Protection Regulation is an attempt to unify jurisdictions within its perimeter of clusters

of countries, effective through all activities within the borders of EEA (European Economic Area) countries, combating the limitations of multinational prosecution [1].

This regulation provided by the European Union positively acts against privatising information and causing disruption and leading to information market failure or other economic and social negative externalities due to this matter. The territorial applicability of this regulation successfully eliminates the national limitations of domestic provisions, and the EU as a whole is able to unify its regulations for information privacy, as conveyed in Article 3 of the EU GDPR. The enforcement of EU GDPR also partly overcomes the limitations of international global conventions, as stated by Articles 83 and 84, it imposes significant penalties if a party fails to comply, as a substantial regulatory enforcement measure.

Alternatively, TNCs gain more advantages also through the exploitation of labour. Child labour, extra hours unpaid and poor working conditions may all be part of legal flaws which TNCs take advantage of and marginally profit from. The dominant enforcement mechanism that the international supervision now relies on is still universal jurisdiction, such enforced by the ICJ (International Court of Justice) [2].

2.2. Gig and Informal Economy Exploitation

As the labour market expands and new forms of employment emerge, the gig economy and informal labour takes up a considerable portion. This area is under-provided by regulations and operating structure to protect the basic rights and security of its employers. In further discussion of the informal economy and informal labour employments, there are little to no ways in regulating them causing a grey area in the social protection mechanisms by law.

The major flaws of provisions in the gig and informal fields of the economy are lack of clear employment relationships, inadequate social protection, limited collective bargaining rights, limited human rights and business responsibilities and non-standard employment arrangements, non-exhaustive.

Awareness over these fields upon its emergence had been raised by authorities globally and domestically. To overcome these challenges in the emerging field of studies, the ILO and UN subsidiary organisations in recent decades have closely adapted their provision articles to the new labour environment. In consideration of the contemporary online markets and short term contract payments within the gig economy, the provision of social protection to labour becomes disregarded, as little to none legal systems have adapted into the new contradictory employment. In the short run, the ILO tackles this new legal complication by urging its member states and its public to pursue full employment and productive work under conditions that safeguard basic human rights. This provided by the ILO convention No.122 on Employment Policy intends to enclose the information gaps of the general public in entering legal and social loopholes of the emerging short term and informal labour market [3].

The construction of a liable legal framework on the new forms of labour and employment remains time consuming and requires long term research in order to improve social welfare within these fields. By utilising the case study within the United Kingdom as a developed nation and one of the first to identify the problems in exploitation of labour within the gig economy, it may provide an improved perspective of contemporary limitations.

In the United Kingdom, as in similar states to other developed countries, the employment status of gig and informal workers remains largely ambiguous, therefore limiting the ability of government intervention in providing its social protection and welfare by law. Despite the uncertainty of its determination, the UK government attempts to clarify and distinguish the status of such workers [4]. It addresses basic features of the workers as being not under direct supervision, and not obtaining holiday or sick pay when they are out of work. However, this still fails to explore and provide the

legal protection of the workers such as contracts of payment dependent on hours or workload, which are usually only specified by the employers and often exploited upon.

Furthermore, whilst the UK provides the National Minimum Wage Act in 1998 which establishes minimum wage rates, though challenges still persist in enforcing such regulations for gig workers, though it is clear that informal economies do not contribute to the national economy or government revenue therefore are excluded from such protection [5].

Overall, domestic provisions are more effective due to its nature though it still requires further construction of provisions in order to repair its loopholes and ambiguity in clarifying statuses of the labour market and employment rights.

3. Impacts of Human Rights Exploitation

3.1. In Developed Countries

As mentioned from previous sections, the legal systems, frameworks and development level all differ regionally and nationally. It is commonly perceived that developed countries withhold a more facilitated environment for enforcement of human rights in labour due to its longer history and larger capacity of economic activity and legal experiences on this matter. Especially in developed countries due to economic liberalisation and globalisation, non-state actors become more dominant in participating in international and domestic labour markets whilst becoming more involved in exploring the legal systems to inquire economic advantages.

Often in developed countries it is visible that there are much more provisions of international relevant standards on the human rights of firms, this is due to the high rate of globalisation and global communication causing the urgency of need for global employment conventions. However, the push for further development of human rights provisions is occasionally barred by political standpoints.

It is often the case that the source of transnational corporations are from developed countries such as the United States. This status leads to favouring policies economically to their domestic firms and development whilst policies being pressured politically by economically dominant firms. It was seen that the Clinton Administration was agitated for a long period of time over China's Most-favoured Nation (MFN) trade status and the President demanding human and labour rights reforms at the same time as a circumstance of maintaining such status for trade [6]. Though the administration was pressured by the US transnational corporations which generates great revenue from the business in China and had to eventually recall its terms.

In Developed countries, the basics of human rights are generally provided and well-maintained and facilitated by its well-rounded legal framework, however major articles within its provisions may be economically oriented to its own international corporations for benefit, which may be a flaw and a way of exploitation of the firms. Though domestically, it is generally viewed as proficient in protecting the social security of labour.

3.2. In Developing Countries

High social imparities within the developing countries is a major concern in enforcing human rights within its labour markets. More individuals are incentivised to receive more private benefits and capital at the cost of social rights and benefits. All social conditions due to the lack of development within these countries results in a lack of agency in enforcement of labour human rights. This may also be resulted by the large numbers of informal employment without government jurisdiction.

Cultural imperialism is a decisive factor to the domestic legal system of labour rights for developing countries. It is often found that large-scale TNCs out-sourcing into developing countries are favoured by the international policies provided by its source nation whilst cultural imperialism

leading to altering of domestic regulations within the host countries, particularly favouring source nation firms in the use of labour locally.

In developing countries, it is common to see the trend of over-using and exploitation of youthful labour. This is majorly caused by the high proportion of the population being a youthful population and lack of general provisions in labour age, further pushed by social pressure in supporting family incomes within deprived regions and the nation overall [7]. In Table 1, Bangladesh as an iconic developing country suffering from lack of labour provisions shows the exploitation of child labour and lack of children's rights due to lack of financial sustainability.

Table 1: Child Occupations in Bangladesh.

Children	Age	Percent (%)
Working (% and Population)	5 to 14	9.2
Attending School (%)	5 to 14	88.4
Combining Work and School (%)	7 to 14	8.2

Table 1 shows a relatively high level of child labour is used within Bangladesh's working sectors, both formal and informal. Up to a portion of children are involved in illicit activities and forced begging as well as commercial sexual exploitation.

On January 20, 2022, the Bangladesh government successfully ratified the ILO Provision Protocol of 2014 to the Forced Labour Convention, 1930. It also ratified the ILO C.138 on Minimum Age. This provides a basic development framework for Bangladesh to incorporate when constructing its all-legal system for labour and human rights.

Despite some improvements, there are still limitations to the ratification of provisions from Bangladesh, there are still certain standards not met in relation to the international standards. Minimum age for work in Bangladesh is still set to 14, in contrast to the international consensus. At the present day, this still affects the overall social welfare of Bangladesh due to the high number of international businesses seeking labour domestically, however the standards are being met and more ILO standards are being ratified by Bangladesh as a contributing member state, more changes should be brought about in the coming decades.

4. Contemporary Provisions

4.1. The International Labour Organization Convention on Labour Standards

The International Labour Organization Convention on Labour Standards is playing an exceptionally pivotal role in upholding and providing standards in the field of human rights internationally. It establishes general principles protecting worker's rights and social welfare. As a subsidiary agency of the United Nations, the ILO was founded in 1919 with the utmost essential mission of promoting and advancing the system of social justice and fair labour practices across the globe [8]. Over the recent decades of development and renovating practices of the organisation, itself and provided conventions had evolved to clearly address contemporary challenges in human rights in alignment with global workforce development and trend.

In relevance to the previous sections, a significant change that the convention had adopted and adapted to modern labour practices is the addressing articles on the gig economy. The gig economy commonly characterised by short-term, contradictory and potentially informal employment had

incentivised the ILO to renovate its articles. As an example, Article 2 within the Convention No.122 on Employment Policy was facilitated by an update to address the challenges posed by temporary contracts and the need for protection in these industries and non-traditional newly emerged labour employment schemes. As said “shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies [9].”

Overall, the ILO Convention on Labour Standards is a substantial piece of provision which sets a global standard, ratified by most of its member states within the ILO.

4.2. The UN Guiding Principles on Business and Human Rights

The United Nations Guiding Principles (UNGP) on Business and Human Rights, provided by the United Nations Human Rights Council (UNHRC) in 2011, marked a paradigm shift and advancement in addressing the impact of businesses on human rights. It upholds the duty of navigating the intersection of commerce and the rights of humanity. The UNGP on Business and Human Rights provides the foundation for business to mitigate and address the problems of human rights abuse in its operations.

In response to the constantly increasing complexity of the global supply chains, the UNGP in similarity to the ILO Conventions incorporated modifications to suit the modern challenges. Its articles urged companies and businesses to conduct comprehensive assessments of their supply chains and to eliminate the possibility of any violations of human rights and labour rights standards [10].

4.3. Limitations and Attempts to Improve

Despite the success of drafting human rights provisions in the labour markets such as the ILO Convention and UNGP, they still face limitations in its feasibility of enforcement domestically and internationally. Referring to the previous sections, the ILO Conventions lack authority in enforcement and purely relies on member states to enact upon the conventions. Eventually leading to uneven compliance of the regulations provided. Moreover, the ILO framework comparatively is less adaptive to rising issues such as the emerging gig economy due to slow pace of conventions amendments. On the other hand, UNGP faces similar struggles in its enforcement and application [11]. The UNGP is a non-binding, voluntary provision, based on corporation’s interests to embrace such principles, and there is a lack of universal obligation for firms to meet such clauses. It is seen as extremely off putting due to its lack of legal mechanisms of holding individuals accountable in comparison to the ICJ which is much more functional internationally in its jurisdictions.

In summary, both the ILO Convention on Labour Standards and the UNGP on Business and Human Rights contributed largely to the development of labour and human rights in protecting social justice, the modern adaptations provided by countries in conjunction also highlights the commitment into social issues and solving them. However, in fully addressing the limitations these provisions still require a foundation for enforcement, formalising a universal enforcement strategy is essential in its future operations.

5. Conclusions

As the society develops and takes its own adaptations, our legal systems, domestically and internationally follows the pace as it expands and extends itself to accommodate in addressing all contemporary social and legal challenges being faced in regional and global labour markets and overall human rights.

The contributions of countries, clusters of countries such as the European Union, and international organisations are all critical contributors to formulating a more advanced and sustainable legal

framework in enforcing and standardising international labour and human rights in business. However, they all face the limitation of extraterritorial jurisdiction when it comes to transnational corporations and additionally face challenges of insufficient provision of internationally standardised measures, and it is challenging to maintain a general standard globally in all countries.

In conclusion, despite the multitude of challenges in enforcement, the legal framework is still constantly developing and adjusting to account for the developing labour market and its new structures of employment. This ensures that the overall global standards will not lack provision and countries may use this as a standard to provide its own amended articles in regulating national markets. Whilst more international regulatory bodies may be incorporated to maintain and regulate the standards.

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