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COMPARING INDIA AND CHINA**

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## **Abstract**

This paper explores trends in the formalisation and informalisation of work, focusing on the world's two largest labour markets, India and China. A first task in is to define what is meant by informal work. The definitions used by international agencies are not uniform and different countries have distinct approaches. There are numerous dimensions to informality that are not fully captured in statistical data. There is a trend towards formal employment and away from own-account work and self-employment in many regions of the world, particularly in East Asia where the proportion of the labour force in waged employment has doubled over the past three decades. The paper will look more closely at the contrasting cases of India (where formal work has increased recently, but to a very small extent) and China (where a variant of the standard employment contract may be emerging), discuss reasons for the divergence between them, and consider the relationship between formality and developmental outcomes in the two countries.

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## 1. Introduction

With 1.37 billion and 1.25 billion people, respectively, China and India together account for 36 per cent of the world's population. Because their populations are younger than the global average, they comprise an even larger share of global employment, nearly 40 per cent.<sup>1</sup> No discussion of the nature of work across the world should take place without addressing the development trajectories of these two countries, including important differences in how their labour markets have evolved. One marked difference concerns their experience of informal labour. Informal work is widespread in India, and while formal employment has increased recently, this is only to a very small extent. In China, on other hand, a variant of the standard employment contract, in which a number of social protections are attached to the status of wage labour, appears to be emerging. We discuss reasons for the divergence between the Indian and Chinese cases, and consider the relationship between formality and developmental outcomes in the two countries.

To assess the prevalence of labour informality and its significance for the global economy it is firstly necessary to disentangle some of its possible meanings from the multiple usages of the term in labour statistics. As we see in section 2, the definitions used by international agencies are not uniform, and different countries have distinct approaches. Definitions have also evolved according to underlying theories of the law–development nexus. The idea that informal labour represents a residue of the subsistence economy which will be displaced by industrialisation has given way to a view of informality as a feature of contemporary trends towards casualised and precarious work. In the process the definition of informal labour has been expanded, but may also have lost some of its coherence.

It is also important to understand the formalisation and informalisation of work as historical processes. There is a trend towards employment and away from own-account work and self-employment in many regions of the world, particularly in East Asia where the proportion of the labour force in waged employment has doubled over the past three decades. However, the transition to wage labour does not necessarily bring with it access to labour law protection. Employment is on a spectrum of formality and security. This is the context within which a debate has developed over the multi-dimensional nature of informality. Thus the question of informality needs to be seen in the context of long-run capitalist dynamics. In section 3 we set out a 'systemic' conception of labour law that sees labour market regulation as co-evolving with the emergence and stabilisation of labour markets and, more generally, of capitalist work relations. Here we build

on previous work in which we have interrogated the relationship between socioeconomic development and the development of labour markets in other countries. In this work we found that the long-run trend towards more formal labour markets in the global North was the consequence not just of industrialisation, but of the emergence of state capacity underpinning labour market institutions, including those shaping social insurance and collective bargaining. Can the same be said today of the two largest workforces in the world? Section 4 looks more closely at the co-evolution of labour market regulation and labour markets in India and China, after which we go on to examine the extent and nature of formalisation and informalisation in each country in Section 5. In Section 6 we conclude by examining some of the implications of the steady growth of formal work in China, in contrast to the much slower formalisation of Indian labour markets.

## **2. Defining Informality**

There is no single, generally accepted definition of informal work. Various definitions inform the collection of data, which in turn informs what we know and do not know about the extent of informal work and its various dimensions. These definitions are informed by theories of economic development, if only implicitly.

The term ‘informal’ or ‘informality’ gained intellectual purchase thanks to Keith Hart’s work in Ghana in the early 1970s and to the International Labour Organisation’s subsequent interest in the issue. Hart argued that the masses who were surplus to requirements for wage labour in African cities were not ‘unemployed’, but rather were working in ways not captured by standard categories, even if often for erratic and low returns.<sup>2</sup> Later, Hart expressed discomfort at the term’s widespread uptake in the absence of greater precision in its use and clarity around its intellectual origins.<sup>3</sup> For Hart, the ‘informal economy does not exist in any empirical sense: it is a way of contrasting some phenomena with what we imagine constitutes the orthodox core of our economy’.<sup>4</sup> The dualism of the definition, for Hart, begs reflection on the orthodoxy of our assumptions about what makes up the core.

Perhaps due to the legacy of modernist conceptions of the ‘economy’ which privilege oppositions between developed and undeveloped, market and non-market, such reflection has not been at the heart of scholarly or policy work in the field of informality. This modernist legacy is one of the reasons it has been possible to think about informal work as an anomaly destined for extinction via the transformative and universalising effects of socioeconomic development.

There is a growing recognition that the economy, markets and, indeed, capitalism, can take multiple forms both between countries and within countries and that these differences are not anomalies but instead are grounded in cultural and institutional histories.<sup>5</sup> Yet because these insights are difficult to translate into policy strategies, they have not consistently found their way into development programmes and regulatory discourses. As we shall see, the different institutional histories of India and China have resulted in vastly contrasting patterns of employment and informality both between the countries and between sectors and geographical spaces within each country. The complexity of these patterns challenges conventional ideas about the nature of informality.

In 1993, participants of the 15<sup>th</sup> International Conference of Labour Statisticians (ICLS) marked an historic turning point by agreeing that informal workers should be counted in labour force surveys to improve analyses on the modern global economy.<sup>6</sup> An internationally consistent, operational definition of the informal economy was viewed as a first step toward collecting and analysing data on the subject. ICLS participants drafted a definition that was subsequently incorporated into the 1993 System of National Accounts. According to Ralf Hussmanns of the Bureau of Statistics at the International Labour Organization, in order to obtain an internationally agreed definition of the informal sector which was acceptable to labour statisticians as well as national accountants, the informal sector had to be defined in terms of characteristics of the production units (enterprises) in which the activities take place (the ‘enterprise approach’), rather than in terms of the characteristics of the persons involved or of their jobs (the ‘labour’ approach).<sup>7</sup>

As a result, the ICLS defined the informal economy in terms of the structure of firms rather than by reference to the characteristics of workers. The definition focused on enterprises that had a low level of organisation, little or no division between capital and labour as factors of production, and labour relations unwritten by informal social relationships rather than formal contracts. Under this definition, the informal economy comprised only unregistered or unincorporated enterprises owned by households that produce goods and services to generate employment. The first statistical definition, then, was enterprise-based.

By the end of the 1990s, the 1993 ICLS definition was being criticised for the failure to include the growing group of informal workers operating in formal enterprises, as well as workers who move back and forth between, or work simultaneously in, informal and formal employment. Furthermore, the ICLS definition excluded the vast numbers of (often women) workers who are especially dependent on informal social networks, because they worked alone at

home or in multiple locations (as in the case of street vendors); these workers were excluded from the definition because their workplaces were not counted as ‘enterprises’.<sup>8</sup>

Thanks to the work of Ralf Hussmanns<sup>9</sup> along with many others, in 2003 the 17<sup>th</sup> ICLS adopted guidelines for measuring informal employment that attempted to address these criticisms (see Table 1). The ICLS concluded that ‘employment in the informal sector’ (based on the enterprise as unit of observation) and ‘informal employment’ (based on jobs as units of observation) were distinct concepts referring to different aspects of the ‘informalisation’ of employment and to different targets for policy-making.<sup>10</sup> Both concepts needed to be defined and measured in a coherent and consistent manner, so that one could be clearly distinguished from the other.

**Table 1: 17<sup>th</sup> ICLS Guidelines for Measuring Informal Employment (2003)**

- |   |
|---|
| <p>(a) own-account workers and employers employed in their own informal enterprises;</p> <p>(b) members of informal producers' co-operatives (not established as legal entities), if any;</p> <p>(c) own-account workers producing goods exclusively for own final use by their household (if considered employed given that the production comprises an important contribution to the total household consumption and is included in the national definition of employment);</p> <p>(d) contributing family workers in formal or informal enterprises; and</p> <p>(e) employees holding informal jobs in formal enterprises, informal enterprises, or as paid domestic workers employed by households. In line with the international definition, countries for which data are shown, define employees holding informal jobs as employees not covered by social security as employed persons, or as employees not entitled to other employment benefits.</p> |
|---|

The 2003 ICLS definition of informal work focuses on the 'nature of employment' in addition to the characteristics of enterprises and includes informal employment both within and outside agriculture.<sup>11</sup> It has played a crucial role in increasing the visibility of informal work in the statistical and policy platforms of the ILO and other multilateral organisations, and has been implemented in statistical analysis in many countries around the world.

Although the 2003 ICLS definition deals with a number of earlier criticisms of the 1993 definition, it continues to suffer from a number of flaws. First, it has not fully overcome the previous, dichotomous approach to informal work. It still represents informal work as an irregular phenomenon, rather than one which is shaped by institutions and social relations and which is the norm in many countries. Second, the definition does not recognise the structural interdependencies that link informal and formal economies. Third, the definition's utility is largely limited to aggregate-level statistical analysis. Deeper study is required to discover more about the nature of the work being conducted and other important work-related characteristics of economic relationships. Finally, the ICLS definition of informality and the broader conceptual framework in which it is embedded tell us nothing about the capacity of workers to demand access to legal entitlements or to organise collectively. For this reason, Dae-Oup Chang has argued for a system of classification that recognises the importance of workers' capacity to enjoy their legal entitlements as a determinant of formality. His point is that the capacity to be engaged in and enjoy the rights that are attached to the standard form of employment is based on power.<sup>12</sup> Thus, enacting new

labour regulations or making work relations more ‘formal’ by expanding legal definitions will not improve the lot of workers if they have no powers of enforcement. Chang’s definition is set out in Table 2.

**Table 2: Chang’s Pathways to Informality**

|  |
|--|
| <p><b>A Labour in the Informal Sector</b></p> <p>Informal self-employed (street vendors, home workers, teleworkers, garbage pickers, shoe shiners, non-self-subsistence small scale farmers, artisans), informal employees (family business workers, domestic workers, landless agricultural workers), migrant workers<sup>13</sup></p>  |
| <p><b>B Increasing Informal Labour of the Formal Sector: Atypical Labour Not Protected by the Regulatory Framework.</b></p> <p>Contracted workers (including daily workers), agency or dispatched workers, task-based casual workers, formal self-employed, disguised formal self-employed, migrant workers</p>  |
| <p><b>C De Facto Informal Labour: Formal Workers in Informalising (or Informalised) Formal Economy, Workers Who Have No Power to Enjoy the Legal and Institutional Regulation and Standards to which They Are Entitled</b></p> <p>Contracted workers, agency workers, part-timers, migrant workers, workers in export processing zones (EPZ), workers in developing countries with no or few democratic trade unions</p> |

Source: D-O Chang, ‘Informalising Labour in China’s Global Factory’ (2009) 39 *Journal of Contemporary Asia* 161.

This definition has the merit of recognising that some types of informal work are less visible or less easy to identify than others. Labour in the informal sector (Category A) is most visible. This is why workers in this sector were the focus of early literature on informality and of statistical definitions. However, informal labour in the informalising formal sector (Category C) is less readily visible as it exists *within* the existing regulatory framework. The informal sector is larger and more obvious in less developed countries, but non-standard or precarious work within the formal sector is relatively more common in developed countries, and would be classified as informal under Chang’s definition (Category B). De facto informal labour, as described by Chang (Category C), is prevalent both in developing and developed countries.

Contract workers, agency workers and part-timers come under what Chang

classifies as de facto informal workers (Category C). Many of these workers are, in principle, covered by the relevant regulatory framework in their country, but the exploitative nature of their employment and, in some sectors, high levels of mobility, effectively exclude them from protection. Even where they are protected by laws on labour standards, those workers face numerous de facto barriers to organising. The largest population in this informalising formal economy is found in developing countries where even workers with formal employee status often lack solidarity-based forms of protection for job security. Migrant workers in the formal sector are frequently in a similar situation when they fail to attract the protection of unions and therefore cannot in practice assert the labour rights that are, in principle, recognised by law. This points to the crucial impact of the interaction of employment law and immigration law.

Many workers with non-standard or atypical employment relations and workers who have little power to demand the protections to which they are entitled (Chang's Category B and C) continue to be overlooked by existing studies of the extent of informal labour. This has implications for their policy visibility. Such workers instead tend to be called 'precarious'. Whether it is useful for precarious work to be classified as 'informal' is a particularly pressing issue in the Chinese and Indian cases and one we return to below (see Section V).

Definitions of informality are essential if the extent of informal work is to be properly mapped and policy debates effectively informed, but there is a risk of definitions presenting an overly static picture of the nature of informal work. Ideas about the nature of work have developed in a dynamic fashion, as a response to industrialisation, while also shaping it, as we shall now explore.

### **3. Formalisation and Informalisation in Historical Perspective**

Rather than simply defining the nature of work in abstract terms, it may be productive to study how forms of work have been shaped by laws, institutions and social relations. Work may be characterised as informal in the sense that the worker performing it does not enjoy the rights and protections of labour laws, while still being shaped indirectly by those laws and by other formal and informal institutions. Informal work does not sit outside of laws, institutions and social relations, but is embedded within social relations as well as being a response to the way in which formal work is defined and constituted. Both formal and informal work have developed over time, responding to a range of economic and non-economic factors.

The way in which work relations are constituted is, in the final analysis, a

consequence of long run capitalist dynamics. The process of industrialisation which began in the global North in the early modern period and is having a transformative impact on parts of the global South today, in particular China, takes many varied forms, but also has common features which include the commodification of labour power and the related institutionalisation of wage labour as the ‘normal’ form of employment.<sup>14</sup> A ‘systemic’ conception of the relationship between labour market regulation and labour markets and capitalist work relations can be helpful for understanding the relationship between informal work and labour market regulation.

A ‘systemic’ conception of labour law sees labour market regulation as co-evolving with the emergence and stabilisation of labour markets and, more generally, of capitalist work relations. According to the systemic approach, labour law rules are seen as evolved or emergent solutions to co-ordination problems in particular market contexts (see Hyde 2006).<sup>15</sup> These solutions are based on distributional compromises which are often contingent in nature; the arrangements they embody are not necessarily optimal and may not be particularly stable.<sup>16</sup> However, they are capable of contributing to economic growth and to development more generally in a number of ways.

In the European context, legal and economic systems have co-evolved, developing in parallel with each other in particular national or regional contexts. Thus, the core institutions of labour law — the individual employment relationship, collective bargaining and social insurance — have evolved in parallel with the emergence of labour markets in market economies.<sup>17</sup> Labour law institutions serve certain ends which are specific to societies in which labour markets are established — that is to say, societies in which a significant proportion of the adult population is engaged in waged or salaried labour of some kind.

Historical research has shown that the process of constituting the labour market in Western Europe required the active deployment of the legal and fiscal arms of the state.<sup>18</sup> The state’s involvement in shaping market relations during this period was, in many contexts, coercive and even punitive, but legislation played a role in mitigating risks associated with the transition to the market from an early stage, and thereby contributed to industrialisation rather than simply responding to it.

For example, late sixteenth-century England already had in place a nationwide system of poor relief, administered locally but governed by a unified legislative framework, through which taxes were levied on households according to the value of their property in land and related assets. In the eighteenth century the term ‘poor’ was already being applied to the wage dependent (‘those who labour

to live, and such as are old and decrepit, unable to work, poor widows, and fatherless children, and tenants driven to poverty’).<sup>19</sup> Anticipating the logic of the twentieth-century welfare state, the lawyers and jurists who administered the pre-industrial poor law regarded poverty as a condition engendered ‘not by riot, expense and carelessness, but by mischance’.<sup>20</sup> Expenditure on poor relief in England during the period of industrial transition was seven times the amount spent in other Western European countries such as France, and doubled as a percentage of GDP in the course of the century to 1800.<sup>21</sup> Although the overall amount of national income spent on poor relief was low compared to modern-day levels of expenditure on the welfare state, replacement rates for unemployment benefits in some regions were comparable to those operating in Britain in the 1980s.<sup>22</sup> Thus the historical evidence points to the conclusion that the creation and elaboration of the poor law system from the reign of Elizabeth onwards was an important reason for the development of a capitalist system in England, affording the kind of protection for those in need which gave individuals a degree of protection against the hazards of life that in typical peasant cultures was provided by kin.<sup>23</sup>

Contrary to the neoclassical economic argument that social protection will only serve as a disincentive to employment,<sup>24</sup> economic historians recognised that the poor law helped to support the move to a market economy by offsetting the effects on workers and households of loss of access to the land. It paved the way for capitalism and the industrialisation of work with the associated separation of labour and capital.

The development of a welfare or ‘social’ state was of course far from continuous in most of the early industrialising nations. The demise in England of the ‘old poor law’ under the pressures of industrialisation in the final decades of the eighteenth century eventually ushered in the disciplinary regime of the workhouse, which was designed to make the receipt of poor relief as demeaning as possible and to avoid the subsidisation of wages. The expectation of the *Poor Law Amendment Act 1834*<sup>25</sup> was that once this strict regime was in place, wages would ‘naturally’ rise to a subsistence level. When this failed to happen, and when real wages instead began to fall during the ‘great depression’ between 1873 and 1896, the initial response of policy-makers was to make the workhouse regime even more punitive. The expensive failure of ‘test workhouses’ convinced reformers at the turn of the century that an alternative was needed. Sidney and Beatrice Webb and William Beveridge (1909) were among those who made the argument for a combination of social insurance and collective bargaining to put in place a floor to terms and conditions of employment.<sup>26</sup> It was these reforms which reversed the trend towards casual (or ‘informal’) work

at extremely low rates of pay which had become the norm in major cities and industrial centres in Britain at the end of the nineteenth century, a pattern which was repeated across the industrialised countries of Europe and North America at this time.

The emergence of the ‘standard employment relationship’ (SER) as the focal point of labour law regulation in the early decades of the twentieth century was the result, in part, of employer strategies which at that point favoured the vertical integration of production; but it was also the consequence of the rise of collective bargaining and of the passage of social legislation in the areas of workmen’s compensation and insurance against unemployment.<sup>27</sup> The SER was a compromise in which ‘subordination’ within the workplace was the condition of access to protection against labour market risks.<sup>28</sup>

In the global North, as new forms of work proliferate, the association of the SER with full-time, ‘permanent’ or indeterminate work, and a predominantly male-orientated breadwinner wage, has put a question mark over its future. Factory production has declined and precarious employment has increased across the economies of the global North since the 1970s.<sup>29</sup> Still, the prevalence of labour law across market economies strongly may suggest that it has a functional relationship of some kind to emergence of capitalism and also to the embedding of democratic political institutions, although the fit is not exact. We argue, therefore, that the relationship between the emergence of industrialised capitalism and labour market regulation is one that demands investigation.

For instance, there is a long tradition of labour law regulation in Latin America, which saw the emergence of mature forms of collective bargaining and social insurance in the middle decades of the twentieth century. These arrangements were put into question in the period of neoliberal policy ascendancy which began in the 1970s, but from the 1990s there was a switch in policy back to support for collective bargaining and solidaristic forms of social security, which reversed the previous trend towards informality (Fraile 2009).<sup>30</sup>

Although there is wide variation across different countries and regions, reforms aimed at building institutions to mitigate labour market risks are a feature of many fast-growing economies across the global South. As a result of factors including institutional reform and labour-intensive economic growth, East Asia has seen the largest rise in waged employment and corresponding decline in own-account work and similar types of informal work relationships over the past 20 years.<sup>31</sup>

The prevalence of labour law as a type of regulation found in virtually all market

economies strongly suggests that it has a relationship of some kind to the emergence of capitalism and also to the embedding of democratic political institutions. In many cases, the fit is not exact and labour law has not co-evolved with industrial forms, but rather has been transplanted with colonisation. In the next Section, we look at the evolution of labour law in China and India to attempt to better understand the way it has developed in India after independence and in China since 1979 with the fostering of managed markets.

## **4. The Evolution of Labour Market Regulation in India and China**

### **4.1 The Evolution of Labour Market Regulation in India**

In India, the low percentage of workers covered by labour laws today has roots in colonial law making. The restricted coverage of labour laws flowed in part from the colonial deployment of labour laws to secure a limited supply of labour, and partly due to the post-colonial association of labour with *industry*. In the early years of colonisation the British authorities adopted versions of the English *Masters and Servants Acts* aimed toward securing labour supply and discipline and very much not toward the protection of workers' interests.<sup>32</sup> From about the 1880s onwards, the colonial government began to introduce legislation similar to the protective *Factories Acts* then operating in the United Kingdom. This legislation, which included the *Factories Acts* of 1881, 1891, and 1911, was designed to regulate working hours and conditions, holidays, safety, and so on, and had a particular focus on the welfare of women and children.<sup>33</sup>

In the 1920s, the emergence of a strong nationalist movement, the development of a powerful trade union movement with the formation of the All India Trade Union Congress in 1920, and the spread of Communist influence in the labour movement following the Bolshevik Revolution in Russia in 1917 placed pressure on the government to further elaborate the labour law regime. The formation of the ILO also had some influence. A volume of new protective legislation, including laws pertaining to hours of work, rest periods, female and child labour protections, and health and safety provisions was enacted. This period of international influence in the 1920s also gave rise to the first industrial relations legislation in India. The *Trade Unions Act* of 1926 provided for the registration of trade unions, although registration was not made compulsory. Registration provided unions with legal status and some protections against civil and criminal liability in the course of an industrial dispute. This Act was followed by the introduction of the *Trade Disputes Act* of 1929, which provided for the compulsory reference of industrial disputes to a Conciliation Board or Court of Inquiry, and tightly regulated the right to strike.

Later revisions to labour law purposefully restricted the scope of protection. The Royal Commission on Labour, appointed in 1928 (known as the Whitley Commission) for example, determined that protection should only be extended to a small proportion of workers, so as not to impose undue costs on employers at this early stage of India's industrial development. The policy of depriving workers of social and employment security was meant to encourage workers to migrate to urban centres for periods of employment but return to villages between bouts of work. The Whitley Commission was boycotted by the All India Trade Union Congress, but most of its recommendations made their way into a string of new labour laws enacted in the 1930s. Virtually all of this legislation was aimed at protecting individual workers in factories and mines, and, prior to the Second World War, there were few attempts to experiment further with laws concerning collective labour relations.

India secured independence from the United Kingdom in 1947. The *Constitution of India* (1949) contained several guarantees specific to labour's interests, including 'the right to work', the right to 'just and humane conditions of work', the right to a 'living wage' and the right to form trade unions, among others. One of the first Acts of the new government was to introduce the *Industrial Disputes Act*, which continues, along with the *Trade Unions Act* of 1926, to provide the basic national legal framework within which the Indian industrial relations and labour market systems are structured. The government was outwardly labour-focused, treating the worker as an enfranchised citizen. However, for the architects of post-colonial India, the 'worker' worked in the modern economy. Policy-making was captured by the idea that the rural-agrarian order would soon be replaced by an urban-industrial one. The National Planning Committee, established in 1940 and chaired by Jawaharlal Nehru, focused primarily on *industrial* relations. The regulations it proposed were modelled on those already implemented in the industrialised world.<sup>34</sup>

The barriers to thinking more broadly about the regulation of work were not just conceptual, but also political. The industrial sector had an established and influential trade union movement that was intricately intertwined with the Indian independence movement.<sup>35</sup> This labour movement grew exponentially following independence. In 1929, the number of registered trade unions in India was 29; in 1951 it was 3987.<sup>36</sup> Although the unions cared for the interests of only a small fraction of the labouring classes, that minority was vocal. The fear of the radicalisation of the factory proletariat was high, and labour laws were designed to stifle unrest.

At the start of India's independence era industrial labourers formed less than 6

per cent of the total workforce.<sup>37</sup> Despite its relatively small size, this group of workers was seen as key to India's future prosperity. The implicit assumption was that a social system would eventually emerge which would mirror that of the West, with industrialisation powering the way towards prosperity. Jan Breman has suggested that little thought was given to the way in which local and historical conditions in India had shaped the working class and the ways that India's historical conditions differed from advanced economies.<sup>38</sup> The labour law regime that emerged was more reflective of future ambition than it was attentive to the characteristics of the majority of workers in India.<sup>39</sup> The restricted scope of labour laws combined with the limited ambition of land reforms at this time created a mass of workers who circulated from the countryside to urban centres and back again in search of work. The work they found was largely precarious and insecure.

Today, it is estimated that well over 90 per cent of the workforce falls outside of the law's putative protection and organisation.<sup>40</sup> Only a very small proportion of India's workers are members of trade unions,<sup>41</sup> and a similarly small proportion are covered by collective agreements. In the late 1990s, it was estimated that 2 per cent of the total workforce or 30 per cent of formal sector workers were involved in collective bargaining.<sup>42</sup> Coverage since then has continued to be very low. As Cooney et al put it:

The application of much Indian labour law — including key provisions such as the *Industrial Disputes Act 1947* and a good deal of the protective legislation regulating hours of work, health and safety, and other conditions — is limited in varying ways by reference to size of an establishment, type of economic activity, type of employment relationship, type of employment position, and so on. The reach of formal labour law is limited accordingly. Moreover, even where labor laws do apply in principle, the law is often easy enough to evade in practice, and enforcement is generally very poor.<sup>43</sup>

For workers covered by labour laws, however, the law is formally highly protective when compared with labour laws in other countries.<sup>44</sup> The most controversial law is section 25N of the *Industrial Disputes Act*, which was introduced in 1976 (amending legislation going back to 1947) and extended in 1984. Under the 1976 law, the permission of the state, via the state labour bureau, was required for all 'retrenchments' in establishments of 300 employees or more. This threshold was reduced to 100 employees in 1984. The constitutionality of section 25N was not clearly established until 1992 but it was effectively in force prior to that point in several states. The 1976 changes also saw an extension of the legally-mandated minimum notice period for dismissals from one month to three, and a widening of the powers of the courts to grant reinstatement for an

unjust dismissal.

The 1976 changes were passed during the period of the Emergency, when democratic institutions were suspended, and their immediate aims were not worker-protective; instead they were part of a 'Bonapartist' strategy of placing the state in a position to mediate between labour and capital, with the interests of labour subordinate to the development of the economy.<sup>45</sup> A number of studies have argued that section 25N is discouraging the growth of formal sector employment. The most convincing are those which have shown a tendency for the establishment size to cluster just below the 100-employee threshold.<sup>46</sup>

The most recent period of labour law reform in India arose as a result of the economic crisis that confronted the country in the late 1980s. Under the influence of the World Bank and the International Monetary Fund, the Indian state adopted a neoliberal orientation to macroeconomic policy. Public enforcement of labour standards was scaled back, leaving unions, which had become dependent on the state, in an increasingly vulnerable position. Most change in labour laws occurred with respect to the employment of women at night, greater ease in shift working, and relaxed regulation on the use of contract labour. Perhaps of more impact was the deregulation of a number of sectors previously controlled by the state through licensing requirements of various kinds, coupled with the opening of the economy to overseas trade and capital flows. This helped trigger vertical disintegration of supply chains and, eventually, de-industrialisation in a number of industries including textiles.

Jan Breman has recently described how this process unfolded in the state of Gujarat. Ahmedabad's integrated textile mills were closed in the 1990s and around 125 000 workers 'thrown into the informal economy'.<sup>47</sup> The employers were 'basically merchants rather than industrialists [who] didn't invest in the mills, they just took the profits and started using them for land speculation, while the machinery had become obsolete; some of it went back to the nineteenth century'. The end of regular employment in the textiles sector was accompanied by changes to housing policy which saw the demolition of communal living areas near the former industrial sites and the displacement of their inhabitants to poorly constructed neighbourhoods in the suburbs. In this newly informalised economy, households 'barely' survive.<sup>48</sup>

In the same period Gujarat also became one of the most lightly regulated states from the viewpoint of labour laws, as its government took advantage of India's federal structure to opt out of the *Industrial Disputes Act* in favour of a regime of no-fault dismissal. Gujarat's model of minimal labour market regulation coupled with incentives for inward investment is currently providing a template for much anticipated national reforms under the Bharatiya Janata Party administration

which took office in 2015.<sup>49</sup>

Labour law enforcement is recognised to be a major problem in India, but it is only partially related to long-standing issues of the underfunding of courts and labour inspectors. In the course of the fieldwork we conducted between 2013 and 2016, collusion between employers and inspectors was repeatedly raised as a problem. Where officials did not simply authorise retrenchments under section 25N (something which occurred in ‘98 per cent of cases’ in the Delhi region according to one of our interviewees), firms would often find other ways to evade the law:

Employers get round section 25N ... by employing just fewer than 100 employees. Or they just relocate. There was a case of a pharma company in Gurgaon. It had been there for 30 years. There was a union. It was not affiliated to any political party. Every three to four years the collective agreement would be renegotiated. Then the employer said he had to cut salaries, the bank was putting him under pressure. The Gurgaon plant was shut down. The same company, making the same product, reopened at an export zone in Haryana. The new workers were now getting a quarter of the former salary. At the old site the company was closed the banks repossessed the site. Now the employer makes 10 times as much profit. The same thing goes on in Uttar Pradesh. (Labour lawyer, interviewed in Delhi, 2013).

From a neoclassical economic perspective, India’s large informal sector is a consequence of restrictive labour laws which do not reflect the diversity of forms of work that exist in practice. A systemic view suggests that other forces were at work, including government strategies of segmenting the labour force and employer strategies of pursuing informalisation as a way of cutting costs and offloading social responsibilities. The inability of successive governments to modernise the labour laws is also an issue: the concept of the ‘ossification’ of labour law, applied to the US context by Estlund,<sup>50</sup> could equally well be applied to India.

Today the labour market in India is highly fragmented, with workers in formal enterprises, often protected by labour laws but lacking effective means of enforcing their rights, having a vastly different experience of work from the large majority of workers who have never worked in formal enterprises or received a contract of employment. For those who are not covered by labour laws, other informal regulations apply: those of caste, class, gender, patronage relations, tribal and village affiliations and so on. Thus the Indian labour market is very far from being ungoverned or unregulated, but is, at the same time, largely beyond the reach of formal laws. Claims that labour legislation is holding back the

development of a formal labour market in India need to be understood in this context.

## 4.2 The Evolution of Labour Market Regulation in China

Because China has undergone such far-reaching changes in the state's management of the economy over the last century, it is not possible to trace a single trajectory in the co-evolution of labour markets and labour market regulation. Instead, we can track three periods: the Nationalist period from 1928, the Communist period from 1949, and the period of gradual re-regulation along market principles from 1979.

China's labour law has been effectively developed from scratch since 1979, with some of the most significant developments occurring from 2007 onwards. However, there are certain important features of today's labour markets that owe their structures to the Communist period, including the distinction between rural and urban workforces.

Unlike India, China was never fully colonised by European powers, although significant parts of the country, such as Hong Kong and a major section of Shanghai, were subjected to extraterritorial rule by Western nations during the nineteenth century, and certain regions of the country were occupied by the Japanese during the parts of the twentieth. Passage of national labour laws was not possible until 1928 when the Nationalists defeated the Beiyang government and succeeded in unifying the country. The underlying contractual principles for labour contracts were found in the *Civil Code* that was promulgated in 1929. The *Civil Code* was strongly influenced by continental European and Japanese labour law systems. The key law regulating labour standards was the *Factory Law* of 1929, directed at poor working conditions in many of the burgeoning industrial enterprises. The *Factory Law* applied only to industry and only to factories using mechanical power, restricting its coverage to a small proportion of the workforce. Trade unions were regulated by the *Trade Union Law* which was highly repressive of freedom of association rights, and by the *Labour Disputes Settlement Law*.

Following the Communist Revolution, the Chinese Communist Party (CCP) which assumed control of the country in 1949 abolished the Nationalist legal system and began constructing a new economic and legal order. During the Communist era in China, any contractual basis for employment — in larger urban firms at least — was displaced by the administrative assignment of work. The freedom to strike was formally recognised for much of the Communist period.<sup>51</sup>

Particularly important from the perspective of understanding the contemporary situation of rural migrants was the consolidation of a sharp distinction between urban and rural workers, constructed around the *hukou*, or household registration system, which severely limited migration within the country. Many urban workers enjoyed relatively privileged conditions, being engaged on a permanent basis in large state-owned enterprises. In contrast, rural workers in collectivised farms experienced widespread poverty.

After the death of Mao, liberalisation began. Reforms in the 1980s and 1990s saw state enterprises privatised or shut down, in the process shedding millions of jobs. A large pool of labour for new firms was created, but also significant informality of work and related social problems.

The elimination of labour law under Mao meant that at the start of the period of market-led reforms in the late 1970s, there was virtually no regulatory framework in place to govern labour relations. A new system had to be created. From 1979, national and local Chinese governments began to dismantle the administrative ordering of the labour market in favour of one based on labour contracting. By the late 1980s, labour contracts had been introduced systematically across the urban economy, becoming a central institution for governing work. At the same time as this marketisation of working relations was being promoted, the freedom to strike was removed in the 1982 *Constitution* in a move by the CCP to tighten its grip and quash the emerging democratic movement.<sup>52</sup>

After over a decade of debate, in 1994, a more comprehensive national Labour Law was developed which remains in force today. One of the issues driving the debate was concern over how to regulate labour contracts without commodifying labour. The solution arrived at required a radical separation between labour contracts and all other forms of contracting. The Labour Law dealt only briefly with labour contracting, with the result that there was an absence of detailed rules regulating various aspects of the individual labour relationship. There were some working time protections and a right to notice and redundancy pay, but minimal controls over the dismissal decision. Not all employers during this period were under a duty to provide social insurance which largely operated through regional or city-wide programmes. This allowed many abuses and unfair terms to develop within labour contracts.

Thus the transition from the ‘iron rice bowl’ model was one from a protected, if highly state-directed, version of the labour relationship, to one mediated by contract. In contrast to India at this time, the underlying legal regime was weak, not just in its enforcement but in terms of its content too.

In 2007, however, China enacted a nationwide *Labour Contract Law* which came into force the following year. Enactment of the 2007 law marked a highly

significant change of direction in China's approach to labour market regulation coming after an extended internal debate over the merits of a more worker-protective approach, and in the face of concerted opposition from groups representing overseas employers including the American Chamber of Commerce.<sup>53</sup> The law was a response to growing levels of worker militancy and unrest in the rapidly industrialising coastal regions dating back to the 1980s, including actions such as go-slows, strikes and petitions. The *Labour Contract Law* was at the same time part of a larger institutional redesign aimed at increasing what official sources referred to as 'social harmony'. It was also part of an industrial strategy of encouraging firms to reduce their reliance on low-cost labour in favour of a strategy of organisational and technological 'upgrading'.<sup>54</sup> The move echoes the English poor law, which we described earlier in the chapter, which helped to support the move to a market economy by offsetting the effects on workers and households of loss of access to the land. In England, the poor law paved the way for capitalism and the industrialisation of work with the associated separation of labour and capital. It may be the case that the Labour Contract Law is performing a similar role in China in its transition to capitalism.

The 2007 law established the right of a worker in a relationship based on wage dependence or employer control to receive a written labour contract. Evidence of wage dependence can be presented in the form of pay slips, engagement letters, or even evidence from a security camera of a worker coming and going from work. As in most labour law systems around the world, the effect of an employer failing to provide a written contract is not the exclusion of the worker from legal protections; the worker remains within the coverage of labour law either way. Employer non-compliance, conversely, is a breach of the law which may be compensated by damages representing a doubling of the worker's salary for the period when no contract was provided. The written terms must normally be supplied within a month of the employment beginning.

The *Labour Contract Law* also strengthened the statutory floor of rights within the employment contract, in particular by providing for a right to claim reinstatement for unjust dismissal and by tightening the rules on dismissal procedures, notification of dismissals, redundancy selection, and priority re-employment following redundancy. In a related reform in 2008, a low-cost labour arbitration system was introduced for the resolution of disputes. Since that time the number of disputes resolved through the arbitration system has risen rapidly year on year.<sup>55</sup>

The situation of rural workers also changed. The *hukou* system was partially dismantled, allowing many rural workers to enter cities, where they became available to work in new forms of industrial and service enterprises. Yet sharp distinctions between rural and urban existences continue to shape labour markets.

Between 1980 and 2010, some 150–160 million persons without official household permits for urban residence migrated to work in cities.<sup>56</sup> The *Labour Contract Law* appears to be making some headway in reducing disparities between urban dwellers and migrants from the countryside, and with it, informality. A survey of migrant workers conducted before and after the 2007 law was passed suggests that it substantially increased the likelihood that migrant workers would obtain a written contract, and that workers who were given a contract were more likely to have social insurance and a union presence at their workplace, as well as being less likely to experience wage arrears.<sup>57</sup>

There appears to be a trend towards increasing formalisation of work in the major industrial areas. During the 1990s and 2000s, the southern coastal province of Guangdong became ‘one of the key nodes of the global economy, thanks to the combined interests of retailers like Wal-Mart and brand-defined companies like Nike, Mattel and Eileen Fisher’, with parts of the province benefiting from a light-touch regulatory regime equivalent to ‘a virtual free trade zone, attracting a wide range of manufacturers in search of low corporate taxes and lax environmental and planning regulations, and a workforce thought to be both compliant and cheap’.<sup>58</sup> While the implementation of the 2007 law in Guangdong was not straightforward, the evidence that many employers were going to considerable lengths to avoid it, while others moving their operations to low-cost provinces elsewhere in China or outside the country altogether,<sup>59</sup> suggests that it was seen from an early stage as having an impact on employers’ costs.

On some estimates, the proportion of workers receiving written contracts in Guangdong province increased from 12 per cent before the passage of the Act to over 60 per cent afterwards.<sup>60</sup> There is survey evidence to suggest that the law of 2007 has had a similar tangible impact on the level of benefits provided to employees in other of the more industrialised regions including the Yangtze River delta area ().<sup>61</sup> At the same time, there are indications, however, that the implementation of the 2007 law varies widely across different regions of China.<sup>62</sup> Concerns over its effectiveness have been voiced,<sup>63</sup> particularly in relation to the use of agency or ‘despatch’ labour and fixed-term employment, both of which are widespread across various manufacturing sectors including textiles and automobile production.<sup>64</sup>

It is not clear, however, how far the use of fixed-term or agency work should be equated with informality. Agency workers and fixed-term employees are not formally outside the scope of Chinese labour law and, like other workers, are entitled to a written contract; they also benefit, in principle, from a number of legal protections. Thus their work may be characterised as ‘precarious’ to varying degrees, without being ‘informal’. Under the 2007 law, agency workers were, in principle, entitled to equal terms and conditions which those employed in a

regular employment relationship, and their position was further strengthened from 2013. Fixed-term employees are entitled to permanent employment but only after two successive employment contracts with a cumulative duration of ten years or more. Thus the weak protection of fixed-term employees is at least in part a function of the underlying law rather than its implementation or enforcement. Agency and fixed-term workers are not necessarily employed in ‘informal work’ according to the 17<sup>th</sup> *ICLS Guidelines for Measuring Informal Employment*, and whether they are classified as informal according to Chang’s schema depends on contextual information such as the extent of job security and access to benefits they enjoy in practice.

China’s adoption of the *Labour Contract Law* has the potential to change not only its own developmental path but to alter the global dynamics associated with its rapid industrialisation and entry into world markets. For China to adopt a labour-protective measure at such a critical stage in its development implies that globalisation is not inevitably associated with a race to the bottom in labour standards, nor with irreversible declines, either globally or in particular regions, in the quality of employment. There is evidence from econometric research to suggest that the passage of the *Labour Contract Law* has led to improvements in total factor productivity in listed firms in regions with stronger state capacity. Although the impact of the law is mediated by the level of economic development across regions and by differences in the quality of the institutional environment, the reported effect is compatible with the theory that labour law can help stimulate industrial upgrading.<sup>65</sup> Whether this trend will persist and whether it will serve as an example to other developing countries (or even to developed ones contemplating deregulation of labour standards) remains to be seen, but it implies that policies articulated at national level can continue to shape labour market outcomes even in a period of global economic integration.

## **5. A Closer Look at Informality in India and China: Statistical Data and Interview Evidence**

As we have seen in the previous sections, labour market regulation has evolved very differently in China and India. The limited coverage of labour law in India is traceable to its colonial roots and to post-colonial aspirations that have not yet been realised. Although the newly independent country of the early 1950s had only a small industrial workforce, forming less than 6 per cent of the total workforce,<sup>66</sup> it was this group for which labour laws were designed. The future of India’s prosperity and growth was seen to hinge on this group of workers and its growth and displacement of the non-industrialised workforce. This historical legacy continues to resonate today in the structure of the Indian economy, where

a vast majority of the population are informally employed.

China's path paralleled India's in certain respects during its Nationalist period starting in the late 1920s, but diverged dramatically with the onset of the Communist period in the mid-twentieth century. As in India, labour laws enacted during the Nationalist period focused on regulating the relatively small urban industrial sector. Under Mao, workers in different sectors of the economy came to be formally registered, even though there were large differences in standards of living and social benefits across the urban–rural divide. The advent of marketisation and shifting role of the Chinese state since late 1970s led initially to an increase in the share of people working informally, but today this group still comprises less than a third of the non-agricultural workforce, and there are signs of growing formalisation driven by legal and institutional reforms.

In this Section we take a closer look at patterns of informality in India and China. We start by looking at comparative data on informality in the context of long-run economic forces shaping the development of the two countries, before examining the contours of informal employment in each country in more detail.

### **5.1 Comparing the Evolution of Informality in China and India: Aggregate Data**

Cross-national data collected by the ILO using a person-based definition of informality provide one of the few bases for making a direct statistical comparison between the Indian and Chinese experiences. According to the ILO,<sup>67</sup> 32.6 per cent of China's non-agricultural working population was in informal employment in 2010, as opposed to 83.6 per cent of India's non-agricultural working population in 2009 (see Table 3). The difference in the overall rate of 'persons in informal employment' in the two countries stems primarily from the level of 'employment in the informal sector', which is 67.5 per cent in India and 21.9 per cent in China. The share of persons in 'informal employment outside the informal sector' — that is to say, within the formal sector — is more similar: 16.8 per cent in India, and 12.5 per cent in China.

**Table 3: Rates of Persons in Informal Employment, China and India**

|                     | <b>Persons in informal employment,</b><br>as a percentage of non-agricultural employment | <b>Persons employed in the informal sector,</b><br>as a percentage of non-agricultural employment | <b>Persons in informal employment outside the informal sector,</b><br>as a percentage of non-agricultural employment |
|---------------------|--|---|--|
| <b>China (2010)</b> | 32.6%  | 21.9%   | 12.5%  |
| <b>India (2009)</b> | 83.6%  | 67.5%   | 16.8%  |

Source: ILO, *Statistical Update on Employment in the Informal Economy* (Geneva, ILO, 2012).

In order to make sense of these contrasting data, it is important to see recent developments in the context of the longer-term economic trajectories of the two countries. In 1980, according to the best data we have, the China and India were nearly identical in their level of development as measured by GDP per capita (Acoca, Chattaraj, and Wachter, 2014).<sup>68</sup> In the ensuing three decades, however, China's GDP per capita grew at *three times* the rate of India's, placing the two countries at far different positions by 2010, when the comparative ILO data on informal employment was reported, showing China's significantly lower informality rate.<sup>69</sup>

Related to the varying growth rates of China and India over recent decades is the difference in their evolving sectoral profiles. Simply put, China moved away from being an agricultural economy — with people moving into industry and services — at a far higher rate than India.<sup>70</sup> Between 1990 and 2012, the share of the working population employed in agriculture went from 59.6 per cent to 32.6 per cent in China and from 62.4 per cent to 47.0 per cent in India. China also urbanised at a much faster clip, going from 20 per cent urban in 1980 to 50 per cent in 2010 as India inched upward from 25 per cent to 30 per cent.<sup>71</sup>

China's lower levels of informal employment relative to India's stem in large measure from its history under Communism, which, meant that, as of the late 1970s, a very high share of its workforce was formally registered in the state-run economy. After 1979, with the roll-out of market reforms, there was a substantial increase in the number of Chinese people working informally. But it still bears asking why the share of people working informally in China did not rise far more

dramatically, to levels approaching those seen in India. To help account for the fact that informal employment still comprises less than a third of the Chinese workforce, we need to unpack the relationship between informality and economic development.

In the cross-national literature on informality, perhaps the strongest relationship that has been identified is the significant negative correlation between rates of informal employment and levels of economic development as measured by GDP per capita.<sup>72</sup> In part, this stems from the sectoral transformation that tends to be part and parcel of processes of economic development. Economic development generally entails a shift away from agriculture and towards industry and services, and, since informal employment is generally more prevalent in agriculture, the process of economic development tends to press in the direction of greater formalisation. A related process that often attends economic development and contributes to increases in formal employment is urbanisation, as city dwellers are more likely to become incorporated into the formal economy than their rural counterparts.

Given what we know about this established set of relationships, China's extraordinarily high rates of economic growth in recent decades and its rapid industrialisation and urbanisation have helped to keep its rate of informal employment at lower levels than they otherwise would have been, even with the substantial informal workforce that can be found in construction and other segments of China's industrial sector.<sup>73</sup> But these broader transformations also warrant deeper explanation. Fully accounting for China's explosive growth and socioeconomic development goes beyond the scope of this paper. However, highlighting some key aspects of the *political* economy of China's developmental trajectory can take us closer to understanding why it has modernised so rapidly and steered clear of even more widespread informalisation.

In China, industrialisation and urbanisation have been propelled at least in part by the organisation of the Chinese state. On the one hand, even amid recent waves of labour protest, Chinese government officials have *not* had to respond to demands from the labour force in the same way they would in a more democratic society. In particular, labour laws in China cannot be understood as responding to the emergence of collective bargaining from below, that is, at plant or company level, as was the case in Western Europe and North America in the early decades of the twentieth century.<sup>74</sup> On the other, decentralisation of authority and control over resources, coupled with a mandate from the central government to promote economic growth, *have* created a situation whereby local officials seek to develop the infrastructure necessary to pave the way for industrial development and support and attract an industrial workforce. Owing in part to these dynamics, the development of public housing and other forms of infrastructure is far more

extensive in China than in India, where informal urban settlements are more pervasive. There is a relationship between living and working formally, and the Chinese government has promoted a set of conditions under which both are more likely than in India for its ever growing number of urban residents.<sup>75</sup>

## 5.2 A Closer Look at Informality in India

The *India Labour and Employment Report 2014*, prepared by the independent, Delhi-based Institute of Human Development, cites a figure of 92 per cent for the proportion of the labour force engaged in informal work, which on the face of it is little changed from previous years.<sup>76</sup> To understand what this figure means, however, it is necessary to distinguish between the size of the informal *sector* and those in informal *employment*. As we have seen, these two categories differ because there can be ‘informal’ employment within the formal sector.

According to the IHD, the formal sector has been growing in India, from 11.8 per cent of all employment in 2004–05 to 17 per cent in 2011–12, and the proportion of formal employment within the formal sector has also been increasing. The IHD analysis, based on survey data, suggests that 7.5 per cent of the working population was engaged in ‘regular, formal employment’, meaning ‘regular, full-time employment with social protection’, in 2011–12, up from 6.6 per cent in 2004–05. On this basis, the Institute concluded that ‘the process of informalisation of the workforce seems to have halted since 2004–5’. One of the factors responsible for the decline has been the Mahatma Gandhi National Rural Employment Guarantee Scheme (NREGA), a programme introduced from 2005 under which the state provides a minimum of 100 days of paid manual work per year to rural households. A number of studies suggest that NREGA has contributed to an increase in the level of wage and in the stability of employment in rural areas,<sup>77</sup> although funding cuts may now be threatening the success of the programme.<sup>78</sup>

A complementary picture is provided by data published by the Government of India Labour Bureau’s *Report on Employment in Informal Sector and Conditions of Informal Employment* in 2015. The Bureau’s survey excludes the part of the agricultural labour force which is engaged in subsistence farming. Of the segment of the working population that is left when subsistence farming is excluded, 72 per cent were ineligible for social security benefits, 68 per cent had no written work contract, and 80 per cent had no trade union affiliation in 2011–12. Looking at the same data differently, from the standpoint of enterprise types, 38.9 per cent of workers were employed in ‘proprietary’ enterprises (a category related to the concept of own-account work), 12.9 per cent in ‘partnerships’ (unincorporated enterprises with a focus on a household or group of households). 24 per cent of the non-subsistence workforce were employed in registered

companies or in the public sector.<sup>79</sup>

If these data suggest that the size of the informal sector in India is somewhat less than the nine-tenths figure which is often cited and that formal employment is slowly growing, other data reported by IHD suggest that informalisation in parts of the economy, and in particular in the manufacturing sector, has been intensifying. Contract workers (a category defined by legislation to refer to those employed on a subcontract or quasi-independent basis) accounted for 13 per cent of total manufacturing employment in 1995, but 34 per cent by 2011. The share of value added in manufacturing allocated to wages (as opposed to profits), which was 45 per cent in the 1980s, was only 25 per cent by 2009–10. The Institute's assessment in 2013 was that the increasing "informalisation" of employment has gradually eroded the strength of the trade unions' leading to an increase in plant closures, a fall in the coverage of collective bargaining, and 'a significant arise in industrial unrest' outside the normal channels of social dialogue'.<sup>80</sup>

Informality in the Indian context is associated with structural inequalities. Access to formal employment in India correlates strongly with caste and religious affiliation. The IHD reports that casual work is concentrated among disadvantaged social classes including the so-called scheduled castes and Muslim workers, while regular work is concentrated among high-caste Hindus, Christians and Jains.<sup>81</sup> Wage gaps between casual workers and those in organised employment are huge: in 2011–12, 'a rural casual worker earned less than 7 per cent of a public-sector employee'. The employment rate for women is falling and is estimated to be between one half and two thirds that for men. Women are more likely than men to be employed in 'low-productivity, low-income, insecure jobs in farms and in the unorganised and informal sectors'.<sup>82</sup>

Dualism within firms and establishments, and not just at a macro level, is a common phenomenon not confined to smaller enterprises. Two accounts given to us in the course of fieldwork conducted in India in 2013 provide a sense of how informal employment is structured within the formal sector. A labour economist interviewed in Delhi described the consequences of lack of enforcement of labour laws and the constant circulation of labour from the countryside to the city in Punjab:

In dirty and dangerous factories in the Punjab there is almost no enforcement of labour laws. The shift lasts 12 hours in practice even if it is meant to be eight hours. There are extreme health and safety risks from hot metals and if there is an accident the worker is just paid off. These are listed companies. It's all in the open, nothing is hidden. These are all formal enterprises although not all the workers have social insurance. Many of the workforce are long-term but on fixed-term contracts. They

might think they are permanent but they don't have permanent contracts. They go back to the village every year to take two months off. They get a new contract each time even if they don't realise it. (Labour economist interviewed in Delhi, 2013).

Permanent contracts are highly valued and only permanent employees are able to form unions, undermining the effectiveness of unions:

You might go to a registered factory. 10 per cent of the workers would be permanent, 20–30 per cent casual workers on the books, employed for three months at a time, then, 60 per cent employed through labour-only subcontractors, not on the books. Only the permanent workers are allowed to form unions. Of the 60 per cent, most are migrants. They don't return to the village each work, they may stay in Kolkata for four to five years, then move on to Kerala, for example. The moment they leave, to see their family, they lose their job. (Labour economist interviewed in Delhi, 2013).

### **5.3 A Closer Look at Informality in China**

We find a number of similarities with this picture in China, though the study of informality is made more difficult there by the lack of a similar, official effort to map the extent of the informal labour force. The Chinese authorities, unlike their Indian counterparts, do not recognise 'informal work' as a relevant statistical category. There is, however, a widely shared belief among researchers that China has been undergoing increased informalisation since the implementation of market-orientated reforms which, as in India's case, began in the 1980s and have intensified over time:

Within a generation, urban China has moved from a highly protected 'iron rice bowl' system that guaranteed workers in state-owned enterprises (SOEs) and collectively owned enterprises permanent employment, cradle-to-grave benefits, and a relatively high degree of equality to a market-dominated employment characterised by considerable variation in wages, welfare provisions, labour law enforcement, and job security. ... the growth of informal employment is but the latest step in a downward slide of workers' employment security since the introduction of the labour contract system in 1986..<sup>83</sup>

How strong is the evidence for this view of the trajectory of employment in China? In the absence of official data on informality, evidence for the size of the informal sector has to be pieced together from a combination of government statistics using other categories, and independent surveys. Park and Cai use data from the *China Labour Statistical Yearbooks* and annual censuses to arrive at an

estimate of an informal workforce of around 40 per cent of total urban employment in 2005.<sup>84</sup> They get to this figure by removing those recorded as employed in state or collective employment, which was just over 20 per cent in 2005, having been around 80 per cent in 1978; employment in a registered enterprise (co-operatives, partnerships and limited liability companies), which amounted for around 10 per cent of the total in 2005; private-sector self-employment, recorded as 20 per cent in that year; and foreign employment, which was then around 5 per cent. What is left is an 'other' category which was unrecorded in 1985, around 15 per cent of the total in 1990, and 36 per cent by 2005, although it had earlier peaked at 39 per cent in 2003.

Park and Cai suggest that this residual category, which they propose consists of 'unreported urban workers and unregistered informal employment, including undocumented work by migrants in urban areas', gives a good measure of China's informal sector.<sup>85</sup> Their working definition of informality is phrased in terms of the practice of employment rather than by reference to the intended coverage of legal rules. Their approach focuses on 'workers who lack formal labour contracts' and includes some 'who work full-time on a relatively long-term basis with high job security but have limited participation in social insurance programmes' as well as those working on a part-time and casual basis 'with no security or sense of control' as well as some of the self-employed.<sup>86</sup>

The suggested informality rate of 40 per cent for urban employment in 2005 is high by the standards of the global North but much lower than in India, and it appears to be falling, contrary to Gallagher, Lee and Kuruvilla's assessment. It is based on a broad understanding of informal work as it includes workers in full-time and secure positions who are treated as informal because they lack a formal contract or access to social insurance, whether or not they were entitled to receive them, as well as those in casual or insecure work.

Despite the overall reduction in the incidence of informal work suggested by the data that can be pieced together, important barriers to formality persist. Account must be taken of the role played by the regulation of migration in patterns of informalisation and formalisation in China. As part of the *hukou* system, social benefits in China have been linked to a person's place of origin (the English poor law was not dissimilar in this regard).<sup>87</sup> As a result, many Chinese migrant workers remained unprotected in practice even when they were working under formal labour contracts in urban areas. A national reform enacted in 2014 made it possible as a matter of law to register and receive benefits in one's place of residence regardless of origin. However, as Li puts it, this was but 'a small step in the right direction', with many city governments erecting new barriers to establishing permanent residency and benefit levels often remaining highly segmented.<sup>88</sup>

Yet at the same time, the major shift in labour regulation associated with the *Labour Contract Law* of 2007 has also positively affected formalisation. Fieldwork we conducted in the Yangtze and Pearl River Delta regions between 2013 and 2016 suggests that, at least in larger enterprises, both Chinese and foreign-owned, there was an acceptance of the 2008 law, and an adjustment to the more protective labour law regime which it introduced, around this time. Human resources managers in China, as elsewhere, are unlikely, even in a confidential interview, to admit to failing to comply with the law, but a notable feature of our interviews was the criticism of the law for being both too strict in its own terms and too rigidly enforced — a view which suggests that the system of labour inspection through regional and city-level offices is more than purely formal.

One interview with a CEO suggested that the law had led to widespread changes in workplace practices within the firm:

The *Labour Contract Law* marked a critical change, from 2008. There was a lot of public debate about it. China is still not a country governed by law, by real regulation. I had many classmates in bio companies.<sup>89</sup> The view was that the courts would support any irrational claim by an employee. And many companies were having a hard time. So we spent a huge amount on changing our practices, checking many things. (CEO, Chinese subsidiary of foreign-owned multinational corporation, interviewed in 2013).

Another interviewee complained that the rules were inflexible, but the local government provided detailed guidance:

We have to comply with the 2008 law. The rules on dispatch work are very stupid. You need time to adjust to them. The local government gives us detailed guidance. Law-making like this is rather inflexible. Foxconn said, ‘we will replace workers with equipment when this law comes in’. We didn’t do that. (Human resources director, Chinese subsidiary of foreign-owned multinational corporation, interviewed in 2013).

The human resources director of a Chinese-owned multinational corporation raised concerns that the laws placed a burden for a ‘harmonious society’ on private enterprises, rather than spreading risk through the development of a welfare system.

We want to strictly follow the laws, all of them, not just those affecting workers. These new laws will make Chinese companies lose their competitiveness. The aim of building a harmonious society has a cost. From this company’s point of view the new labour law is good and we

should protect our employees. But the country's welfare system must be further developed. Some of these costs should be met by the welfare system. (Human resources director, Chinese-owned multinational corporation, interviewed in 2013).

The argument for including those without formal labour contracts within the category of informal employment is that without a written agreement they are likely to find it more difficult in practice to access social insurance protections and other employment-related benefits.<sup>90</sup> However, under the *Labour Law* of 1994, which was in force prior to the changes made by the *Labour Contract Law* from 2008, the legal rights attached to the employment relationship were in any case restricted. There were some working time protections and a right to notice and redundancy pay, but minimal controls over the dismissal decision. Not all employers during this earlier period were under a duty to provide social insurance which largely operated through regional or city-wide programmes. The transition from the 'iron rice bowl' model was one from a protected, if highly state-directed, version of the labour relationship, to one that was increasingly mediated by contract, with a substantial share of the workforce working informally. However, the share of the informal labour force in China remains significantly smaller than that in India, and seems to be falling as a result of the enactment of the *Labour Contract Law* and its implementation in the fast-growing coastal regions.

## 6 Conclusion

Researching trajectories of formalisation and informalisation is not straightforward in light of the multiple meanings accorded to the term 'informality', the lack of consistency in the statistical categories used to describe informal employment, and the rapid pace of change in many emerging markets. Some preliminary conclusions may be suggested.

Firstly, clarity is needed on the statistical categories used to describe informal labour, which currently elide some important distinctions between traditional sectors to which the concept of labour market risks is largely irrelevant; own-account work and household-based enterprises in which the distinction between labour and capital is unclear; and segments of the waged labour force characterised by precariousness and insecurity, which have a relationship to informality but are by no means beyond the scope of labour law rules. In relation to the latter category, a further distinction is relevant, namely that between workers who should be protected by labour laws but are not because of enforcement problems, and those who are not covered because of incomplete de jure coverage. The expansion of the definition of informality to include all

workers who do not enjoy de facto labour law protection is in danger of depriving the concept of its usefulness.

Secondly, we need to arrive at a better understanding of the relationship of informality to long-run capitalist dynamics. The emergence of formal labour markets in the global North, while compatible with the long-run development of capitalism, also required active social states. Industrialisation was a necessary but not sufficient condition for formalisation. In the global South, the persistence of the informal labour market is not only or even principally related to the phenomenon of late or recent industrialisation; it is also the consequence of policies which have encouraged casualisation and undermined labour market institutions. India's example shows the risks of this route. Whether China's different developmental path will lead to a different outcome remains to be seen, but the experiment initiated by the *Labour Contract Law* of 2007 is one with global ramifications.

Not unlike England at the point of its rapid industrialisation in the decades after 1750, China has seen its state undertake a set of actions designed to regulate and stabilise labour supply. As was the case with industrialising England, it is important not to overstate the worker-protective and socially progressive dimensions of the contemporary Chinese government's approach. For one, big gaps remain in the living standards and life chances of established urban residents versus those from rural areas, including internal migrant workers — some 260 million strong — who make up an outsized share of China's informally employed population. However, a set of policies aimed at promoting stability in both housing and employment, coupled with very high rates of economic growth, are contributing to the steady growth of formal work in China, particularly in contrast to the much slower formalisation of Indian labour markets.

Unlike China, India's employment structure today is much as it was in the late 1970s: an island of formality surrounded by a sea of informality. India's economic growth, though significant, has fallen well short of China's — and, being the 'office of the world' to China's 'factory of the world', has been less apt to absorb large numbers of working people from rural areas. Political dynamics in the Indian context have also been less conducive than in China to the development of an urban infrastructure that supports formalisation. In particular, local government has not been charged with such a clear mandate to drive economic growth and has not exerted as much control over revenues and key institutional levers.

The recent small decline in the relative size of the informal sector in India has occurred at the same time as informalisation or 'casualisation' has been

accelerating within the formal sector, even in the heart of the industrial economy. As a result, India's industrial trade union movement, representing not just a small fraction of India's employed population but a declining segment of the industrial workforce that, in the post-colonial imagination, was meant to become an ever-expanding population of social rights-bearing citizens, is facing an ever-growing challenge. As this trend unfolds, it has become easier for critics of labour regulation to cast industrial unions as an 'aristocracy of labour' out of synch with the interests of most working people. On the other hand, some of India's poverty alleviation programmes, most notably the Mahatma Gandhi National Rural Employment Guarantee Scheme, have been successful in stabilising work and incomes.

With around 34 per cent of the world population and nearly 40 per cent of its employed population, India and China, despite their differences, confront a common challenge: how to extend the realisation of social citizenship rights more widely and in ways that soften rather than harden the distinctions between urban and rural, 'advanced' and 'backward', privileged and marginalised. How the issue of labour informality is perceived will be a critical part of the debates to come in both countries.

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