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Recalibrating Labour Law: A Critical Institutional Analysis of the Labour Relations Act in South Africa

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ABSTRACT

This paper critically analyses the Labour Relations Act (LRA) by examining its efficiency and institutional dynamics, focusing on its influence on workplace relations, collective bargaining, and dispute resolution. The LRA seeks to strike a balance between fostering economic productivity and protecting workers' rights, yet its implementation is frequently influenced by broader institutional factors such as legal precedents, evolving policies, and socio-economic realities. The study assesses whether the LRA successfully promotes labour market efficiency or if institutional limitations hinder its effectiveness in achieving its goals. By integrating comparative perspectives and case law applications, the paper identifies key challenges in the operation of the Act and explores the tensions between legal frameworks and practical outcomes. Additionally, it proposes policy recommendations aimed at creating a more adaptable and equitable labour system, addressing the complexities that impact the law's capacity to respond to changing market conditions. This analysis ultimately calls for a rethinking of the LRA's approach to better align with contemporary labour market needs while ensuring fairness for all stakeholders.

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1. INTRODUCTION

The Labour Relations Act 66 of 1995 (LRA) was enacted as a legislative response to South Africa's turbulent industrial history, aiming to institutionalise democratic values in the workplace, promote orderly collective bargaining, and resolve labour disputes fairly and expeditiously.[1] As a pivotal component of the post-apartheid legal framework, the LRA embodies constitutional imperatives such as the right to fair labour practices, freedom of association, and access to dispute resolution mechanisms.[2] However, as the South African labour market continues to evolve under the pressures of economic stagnation, technological disruption, and increasing precarity in employment, there is growing concern that the LRA may no longer be adequately calibrated to meet contemporary

[1]Labour Relations Act 66 of 1995 (hereinafter the LRA).

[2] Constitution of the Republic of South Africa, 1996, ss 23(1)–(6).

labour market demands.[3] This paper explores whether the Act remains fit for purpose in light of shifting institutional dynamics and socio-economic conditions.

The LRA was crafted during a time of political optimism and strong trade union influence, with the primary objective of transforming an adversarial industrial relations system into one grounded in cooperation, fairness, and inclusivity.[4] It sought to achieve this through mechanisms such as sectoral collective bargaining, statutory dispute resolution through the Commission for Conciliation, Mediation and Arbitration (CCMA),[5] and the promotion of workplace forums as a means of participatory democracy.[6]

While these instruments have delivered measurable gains in stabilising workplace relations and reducing wildcat strikes, their overall efficacy is increasingly undermined by structural and institutional challenges.[7] Chief among these is the growing disconnect between the formal objectives of the LRA and the realities of a fragmented, dualised labour market in which large sections of the workforce, particularly informal, casualised, or non-standard workers, remain marginalised or excluded from its protective scope.[8]

This paper critically analyses the institutional performance of the LRA by examining its operational logic and real-world effects, particularly in the domains of workplace relations, collective bargaining, and dispute resolution. Drawing on relevant case law, policy analysis, and comparative perspectives, the study interrogates whether the LRA enhances or inhibits labour market efficiency and equity. It considers the influence of judicial interpretation, regulatory design, and administrative capacity on the LRA's implementation, as well as the implications of policy drift and enforcement gaps.[9]

In this regard, the paper builds on the scholarship of Fredman, Cheadle, and others, who have questioned the normative coherence of South African labour law and its capacity to adapt to the fluidity of global labour trends.[10]

Furthermore, the analysis identifies critical tensions between legal frameworks and practical outcomes. These include, inter alia, the erosion of collective bargaining power in certain sectors, the bureaucratisation of dispute resolution processes, and the limited impact of workplace forums in facilitating genuine worker voice.[11] In light of these findings, the paper proposes targeted legal and policy reforms to enhance the LRA's responsiveness to contemporary challenges. Such reforms include strengthening inclusive bargaining mechanisms, reforming dispute resolution procedures to reduce systemic delays, and expanding institutional protection for vulnerable categories of workers.[12]

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[3] Bhorat H et al "The Evolution and Impact of Labour Regulation in South Africa" in Bhorat H & Kanbur R (eds) *Poverty and Policy in Post-Apartheid South Africa* (HSRC 2006) 215–240.

[4] Du Toit D et al *Labour Relations Law: A Comprehensive Guide* 6 ed (LexisNexis 2015) 12–13.

[5] Conciliation, Mediation and Arbitration(hereunder the CCMA).

[6] LRA, ss 27–34; s 213 (definition of "workplace forum"); s 115 (functions of the CCMA).

[7] Benjamin P "Institutional Responses to the Changing Labour Market: The South African Case" (2016) 37 ILJ 779 at 783–785.

[8] Theron J "Non-standard Employment and Labour Market Segmentation in South Africa" (2011) 32 ILJ 845 at 849–850.

[9] Budeli M "Industrial Democracy and the Role of Trade Unions in South Africa: A Labour Law Perspective" (2010) 14 Law, Democracy & Development 1 at 8–10.

[10] Fredman S *Human Rights Transformed: Positive Rights and Positive Duties* (OUP 2008) at 199–204; Cheadle H "Regulated Flexibility: Revisiting the LRA and the BCEA" (2006) 27 ILJ 663 at 665.

[11] Godfrey S et al *Collective Bargaining in South Africa: Past, Present and Future?* (Juta 2010) at 108–112.

[12] Commission for Conciliation, Mediation and Arbitration (CCMA) *Annual Report 2022–2023* (Pretoria: CCMA 2023) at 27–32.

In sum, this inquiry contends that the LRA, while normatively ambitious and historically significant, requires urgent recalibration. A labour regime that remains overly rigid or exclusionary risks entrenching inequalities and undermining social justice, core values enshrined in South Africa's Constitution.[13] Reimagining the LRA within a framework that balances flexibility with fairness is thus not merely a legal necessity, but a socio-political imperative. By interrogating the institutional dynamics and structural limitations of the Act, this paper contributes to the broader debate on how South African labour law can evolve in alignment with economic realities, technological innovation, and the transformative aspirations of constitutional democracy.

2. THE LRA IN CONTEXT: LEGISLATIVE AIMS AND THEORETICAL FRAMEWORKS

2.1 The Transformative Ambitions of the LRA

The Labour Relations Act 66 of 1995 (LRA) emerged from the crucible of South Africa's democratic transition, serving as a central pillar in the broader project of transforming apartheid-era labour relations. Its enactment reflected the imperative to dismantle racially exclusionary labour laws and institutionalise a framework based on fairness, equality, and participatory governance in the workplace. Rooted in the constitutional right to fair labour practices, as entrenched in section 23 of the Constitution of the Republic of South Africa, 1996 (the Constitution), the LRA was designed to balance the often-competing interests of economic development, labour stability, and social justice.

The LRA's overarching purpose is set out in its preamble and section 1, which emphasises the advancement of economic development, social justice, labour peace, and workplace democracy. These aims are reinforced by mechanisms promoting collective bargaining, sectoral determination, and accessible dispute resolution through the Commission for Conciliation, Mediation and Arbitration (CCMA). Notably, the LRA replaced the Industrial Conciliation Act of 1956, which had institutionalised exclusion and repression, with a model informed ILO standard. It thus symbolised a fundamental normative shift from authoritarian industrial relations to a rights-based, participatory model.

The Act also embodies South Africa's transformative constitutionalism, as articulated by Klare, which demands the restructuring of legal, social, and institutional power relations to achieve substantive equality and social justice. Within this paradigm, the LRA is not merely a regulatory instrument, but a vehicle for realising the Constitution's foundational values of dignity, equality, and freedom in the labour sphere. However, the practical implementation of the Act has not always matched its transformative intent. As this paper argues, institutional constraints, policy inertia, and market realities have blunted the LRA's impact, calling for a critical reassessment of its theoretical underpinnings and design assumptions.

2.2 Institutional Theory and Labour Market Efficiency

Understanding the challenges facing the LRA today requires engaging with institutional theory, which offers a framework for analysing how legal norms interact with the broader socio-economic and political environment. Institutions, in this context, refer not merely to formal structures such as bargaining councils or dispute resolution bodies, but also to the normative,

[13] Klare K "Legal Culture and Transformative Constitutionalism" (1998) 14 SAJHR 146 at 150–155.

procedural, and cultural systems that shape behaviour in the labour market.

The LRA was premised on the belief that strong institutions, especially those enabling collective bargaining and dispute resolution, could internalise workplace conflict, reduce transaction costs, and enhance labour market efficiency. This view aligns with the "regulated flexibility" model, which recognises the need for adaptable labour standards but insists on legal protections to prevent exploitation and maintain social cohesion. Cheadle, a key architect of the LRA, argued that regulation must accommodate flexibility without undermining fundamental rights, an idea that informed the LRA's design of decentralised, sector-specific bargaining frameworks.

However, institutional theory also highlights the problem of institutional drift and path dependency.

Over time, as economic conditions change, institutions may become misaligned with new realities, producing inefficiencies or exclusionary effects. This is evident in South Africa, where the original assumptions underpinning the LRA, such as strong, centralised unions and a stable manufacturing base, no longer hold. The rise of informal, temporary, and platform-based work challenges the capacity of existing legal structures to mediate employment relationships. Moreover, the decline of bargaining councils and the rise of enterprise-level negotiations reflect a weakening of institutional density, undermining the LRA's normative framework of sectoral governance.

The LRA's efficiency must also be assessed in terms of its dispute resolution system. While the CCMA has provided a cost-effective alternative to traditional litigation, growing caseloads, resource constraints, and delays in enforcement have raised questions about institutional resilience. Institutional theory compels us to examine not only the formal legal texts but also how these institutions perform in practice, how they adapt (or fail to adapt) to environmental change, and how actors (unions, employers, state agencies) navigate these structures.

In sum, institutional theory helps illuminate the disjuncture between legal frameworks and real-world outcomes. As this article will demonstrate in the following sections, the LRA's institutional architecture, while normatively sound, has struggled to keep pace with the evolving labour market. Addressing this gap requires more than doctrinal reform; it demands a strategic recalibration of institutional design, accountability, and inclusivity.

3. KEY MECHANISMS AND INSTITUTIONAL DYNAMICS OF THE LRA

This section builds on the prior analysis by critically examining how the Labour Relations Act functions through its core mechanisms, with scholarly depth.

3.1 Collective Bargaining and the Erosion of Bargaining Councils

At the heart of LRA lies the principle of collective bargaining, understood both as a constitutionally protected right and as a regulatory strategy for managing industrial conflict. The Act establishes a statutory framework for bargaining councils, voluntary agreements, and the extension of collective agreements to non-parties. This pluralist approach reflects the LRA's normative commitment to industrial democracy and sectoral stability, predicated on the idea that employers and workers, through representative bodies, should self-regulate their conditions of employment.

Bargaining councils, established in terms of section 27 of the LRA, were intended to institutionalise sectoral governance by allowing trade unions and employer organisations to negotiate agreements on wages, benefits, and dispute procedures. These agreements could, in turn, be extended to non-parties

in the sector under section 32 of the Act, thus preventing a regulatory "race to the bottom" and encouraging compliance across the industry.

However, recent decades have witnessed the gradual erosion of this model. First, the number and influence of bargaining councils have declined due to labour market restructuring, declining union density, and employer withdrawal. The formal private sector, once a stronghold of collective bargaining, has become increasingly segmented, with growing numbers of workers employed under atypical, non-standard, or informal conditions. These workers often fall outside the scope of sectoral agreements, either because they are not formally employed or because employer associations lack the incentive to include them in extended agreements.

Second, the mechanism of extending agreements to non-parties has come under constitutional and judicial scrutiny. In Free Market Foundation v Minister of Labour, the High Court considered whether section 32 infringed the principle of legality by delegating law-making powers to private actors. Although the case was ultimately dismissed, the litigation highlighted the growing tension between voluntary bargaining arrangements and constitutional standards of transparency, accountability, and representativeness.

Moreover, in sectors such as textiles, mining, and agriculture, state-led exemptions, wage differentials, and informalisation have undermined the bargaining architecture. As a result, collective bargaining has become uneven and fragmented, with significant disparities between high-density sectors (such as public service and metalwork) and low-density, precarious sectors. This has widened inequality and contributed to industrial instability, as seen in the Marikana tragedy, where informal and parallel bargaining processes failed to avert violent conflict.

The weakening of collective bargaining thus raises foundational questions about the LRA's capacity to regulate labour relations in a changing economy. Without institutional innovation to include non-traditional workers and incentivise employer participation, the risk is that the collective bargaining system will become increasingly obsolete, undermining the LRA's normative coherence and practical utility.

3.2 Workplace Forums and the Failure of Participatory Democracy

Another cornerstone of the LRA's vision for workplace democracy was the creation of workplace forums -statutory bodies established to promote joint decision-making and worker participation at the enterprise level. Envisaged as a supplement to union representation, workplace forums were meant to empower workers on issues not traditionally covered by collective bargaining, such as restructuring, training, and work organisation.

Despite the potential of this model, workplace forums have all but failed in practice. Less than a handful have ever been established since the LRA's enactment, with both employers and unions exhibiting reluctance to adopt the mechanism. Unions viewed forums with suspicion, fearing they would dilute their representative authority and undermine adversarial bargaining. Employers, on the other hand, were wary of ceding decision-making power and potentially disrupting managerial prerogative.

This mutual distrust, combined with inadequate legal incentives and procedural complexity, rendered workplace forums practically defunct. The institutional failure of forums reflects broader limitations in the LRA's approach to participatory democracy: while laudable in theory, the absence of structural commitment from stakeholders, along with weak

enforcement mechanisms, has led to stagnation.

Moreover, the lack of alternative institutional pathways for non-unionised workers has reinforced asymmetries in representation. In an era marked by decentralised workplaces and individualised employment relationships, reliance on traditional union forms of representation is increasingly exclusionary. Without functional mechanisms to enable workplace-level participation, the LRA's ideal of democratic engagement risks becoming hollow.

3.3 The CCMA and Dispute Resolution: Successes and Systemic Constraints

The establishment of the CCMA under section 112 of the LRA represented a paradigm shift in South African labour dispute resolution. By offering free, accessible, and expeditious dispute resolution services, the CCMA was intended to democratise justice in the workplace and alleviate the burden on courts. In many respects, it has succeeded: the Commission handles over 200,000 cases annually, with a high settlement rate and wide geographic reach.

However, the CCMA's institutional success has also created systemic constraints. First, the growing volume of disputes, many of them repetitive or procedurally complex, has strained its capacity, leading to delays and procedural bottlenecks. Second, the enforcement of arbitration awards remains problematic. Although section 143 allows awards to be certified as court orders, actual compliance often requires further litigation, undermining the speed and cost-effectiveness of the process.

Third, there is an emerging critique that the CCMA's dispute resolution model has become overly bureaucratised, prioritising procedural correctness over substantive justice. This is especially true in dismissal disputes, where technicalities often determine outcomes, and vulnerable workers may lack legal representation. In Sidumo and Another v Rustenburg Platinum Mines Ltd and Others, the Constitutional Court attempted to clarify the standard of review for arbitrators, but subsequent jurisprudence has revealed persistent tensions between judicial deference and administrative accountability.

Finally, the institutional independence and funding model of the CCMA have come under threat in recent years, with budget cuts and political interference jeopardising its autonomy. This erosion of institutional integrity compromises the LRA's foundational promise of impartial, accessible, and effective dispute resolution.

4. STRUCTURAL AND SOCIO ECONOMIC CHALLENGES UNDERMINING THE LRA

This section builds upon THE doctrinal and institutional critiques by identifying deeper structural and socio-economic forces that impair the effectiveness of the Labour Relations Act. Footnotes follow the Stellenbosch Law Review style throughout.

4.1 Dual Labour Markets and Non-Standard Work

The South African labour market has become increasingly segmented, giving rise to a dual structure where a relatively small cohort of formally employed, unionised workers enjoy the protections of the LRA, while a growing number of workers in informal, casual, or non-standard forms of employment remain outside its reach. This dualism undermines the LRA's central objective of extending fair labour practices and meaningful representation to all workers.

Non-standard work, including part-time, temporary, outsourced, and platform-based employment, has grown significantly over the past two decades, largely driven by cost-cutting strategies and technological change. These work arrangements often fall through the cracks of traditional regulatory models,

which assume a binary relationship between a single employer and a full-time employee. Although amendments to the LRA in 2014 introduced certain protections for temporary and labour brokered workers, enforcement remains weak, and compliance is often evaded through legal structuring or informalisation.

This exclusion has particularly dire consequences in low-income sectors such as domestic work, security, and agriculture, where vulnerable workers lack bargaining power and access to dispute resolution mechanisms. The inability of the LRA to encompass this growing sector of the labour market challenges its legitimacy as a framework for universal labour protection. Moreover, the social and economic inequality that results from this bifurcation deepens the historical injustices the Act was intended to address.

In short, the rise of precarious employment exposes a structural misfit between the LRA's institutional design and the realities of contemporary labour markets. Without significant adaptation to include and regulate non-standard forms of work, the LRA risks entrenching a legal underclass of unprotected workers, fundamentally at odds with the constitutional principle of fair labour practices.

4.2 The Political Economy of Labour Regulation

Labour law does not operate in a vacuum; it is embedded within a broader political economy that shapes, and is shaped by, contestations between labour, capital, and the state. The LRA was born out of a corporatist compromise negotiated through NEDLAC (the National Economic Development and Labour Council), where organised labour, business, and government reached consensus on the principles of tripartism, industrial peace, and regulatory fairness.

However, this consensus has frayed over time. South Africa's labour regulatory framework has increasingly come under pressure from competing policy agendas, namely, the need to foster economic growth, attract investment, and address mass unemployment. In this climate, labour regulation is often framed as a constraint on business flexibility, leading to calls for deregulation, especially from employer associations. Conversely, organised labour has resisted reforms perceived as weakening hard-won protections, resulting in policy deadlock and reform paralysis.

Moreover, the state's role as both regulator and employer has complicated its commitment to labour rights. While the public sector remains one of the most unionised spaces, it has also witnessed austerity-driven hiring freezes, outsourcing, and wage restraint, all of which undermine the principles embodied in the LRA. The consequence is a disjuncture between formal commitments to labour justice and the actual policies implemented at the national level.

This political economy dynamic has also contributed to regulatory drift. While the courts and CCMA continue to interpret and apply the LRA, legislative reform has been sporadic and reactive. The failure to modernise the LRA in response to structural shifts in the economy reflects not just technical inertia, but a deeper institutional misalignment between labour regulation and macroeconomic governance.

4.3 Judicial and Legislative Drift

Another challenge to the effectiveness of the LRA arises from the inconsistent and sometimes contradictory ways in which its provisions have been interpreted and applied by the courts. While the Constitutional Court has consistently affirmed the right to fair labour practices and access to dispute resolution, its judgments have also created ambiguities that complicate institutional implementation.

In National Union of Metalworkers of South Africa v Assign Services (Pty) Ltd, the Court held that temporary employees placed by a labour broker become the permanent employees of the client after three months. While hailed as a victory for precarious workers, the decision also raised complex questions about dual employment and the scope of employer obligations, leading to confusion among employers and dispute resolution bodies.

Similarly, in SAPS v Solidarity obo Barnard, the Court grappled with the intersection of labour rights and affirmative action. Although the Court upheld employment equity as a legitimate aim, its reasoning failed to provide a coherent framework for balancing competing constitutional values, leaving lower courts and administrative tribunals uncertain about how to adjudicate fairness in hiring and promotion practices.

Legislatively, the lack of sustained, proactive reform of the LRA has allowed it to drift away from its original aims. Key structural changes in the labour market, especially the gig economy and artificial intelligence, have not been substantively addressed in law, leaving regulatory gaps that are exploited by employers and suffered by workers. Moreover, the increasing judicialisation of employment disputes has paradoxically undermined the LRA's goal of accessible and informal dispute resolution.

In sum, the combined effect of jurisprudential uncertainty and legislative inertia has weakened the coherence and responsiveness of the LRA. These dynamics, in turn, have eroded public confidence in labour law institutions and contributed to rising disillusionment among both workers and employers.

5. COMPARATIVE INSIGHTS: LESSONS FROM OTHER JURISDICTIONS

A robust assessment of the LRA must extend beyond domestic limitations and doctrinal analysis to include comparative insights from jurisdictions grappling with similar tensions between labour protection, institutional resilience, and economic change. While labour law is deeply context-sensitive, comparative analysis can serve as a diagnostic and normative tool for evaluating institutional design, gauging regulatory adaptability, and identifying best practices. This section explores selected case studies, Brazil, Germany, and India to uncover how institutional innovation and recalibration have been used to respond to fragmented labour markets and evolving forms of work.

5.1 Brazil's Labour Reform and Institutional Recalibration

Brazil's labour law regime, historically grounded in the Consolidação das Leis do Trabalho (CLT) of 1943, has long reflected a corporatist model akin to South Africa's sectoral bargaining architecture. The CLT originally entrenched strong state-sponsored unions and collective bargaining institutions. However, the rigidity of this system eventually came under pressure from economic liberalisation, high unemployment, and the expansion of informal employment.

In response, Brazil undertook significant labour law reforms in 2017 through Law No. 13.467/2017, aimed at introducing greater flexibility while preserving core worker protections. [4] These reforms included the formal recognition of telework, increased scope for individual agreements in limited contexts, and new mechanisms to resolve disputes extrajudicially. Most notably, the reforms placed a renewed emphasis on negotiation at the enterprise level while attempting to rationalise union funding mechanisms, which had historically fostered dependence on mandatory union dues.

While controversial, Brazil's reform process demonstrates the importance of legislative responsiveness to structural shifts in the labour market. The reforms signal an effort to balance regulated flexibility with formalisation, rather than indiscriminately deregulating protections. For South Africa, Brazil's experience provides a cautionary yet instructive model of how labour law can evolve to include emerging work arrangements while preserving the legitimacy of collective labour institutions. However, it also highlights the political risks of overcorrecting in favour of employer flexibility at the expense of collective solidarity and worker voice.

5.2 Germany's Co-Determination and Strong Works Councils

Germany presents a strikingly different model, one based not on sectoral voluntarism but on deeply institutionalised worker participation through Mitbestimmung (co-determination). German labour law mandates the creation of Betriebsräte (works councils) in enterprises with more than five employees, with wide-ranging powers to consult, negotiate, and co-manage employment conditions. These forums are distinct from trade unions and operate at the workplace level, while unions conduct sectoral bargaining at the macro level.

Co-determination is embedded in both statutory and constitutional frameworks, notably through the Works Constitution Act of 1972 and its post-war social-market economic foundations. These institutional arrangements have not only ensured high levels of worker representation but have also contributed to economic stability, low strike rates, and adaptive labour-market policy. Importantly, works councils have proven particularly effective in facilitating workforce transitions during crises, such as automation and COVID-19-related shutdowns.

For South Africa, the German model underscores the potential of legally mandated workplace participation to complement rather than replace union representation. It illustrates how institutional density at multiple levels, national, sectoral, and enterprise, can foster both voice and adaptability. The failure of workplace forums under the LRA (as discussed above) may be partially attributed to the absence of similar legal imperatives and institutional support mechanisms. Adopting co-determination in full may be politically and structurally unfeasible in South Africa, but the principle of mandatory participatory governance merits reconsideration within the South African labour framework.

5.3 India's Labour Code Consolidation and the Informal Sector Challenge

India, like South Africa, has struggled with a fragmented and highly informal labour market. Over 90% of its workforce operates in the informal economy, often beyond the reach of traditional labour law protections. Historically, India's labour laws were governed by over 40 central statutes, many of which were complex, contradictory, and poorly enforced. [17] In an attempt to rationalise this regime, India undertook a landmark consolidation through the enactment of four labour codes between 2019 and 2020: the Code on Wages, the Industrial Relations Code, the Code on Social Security, and the Occupational Safety, Health and Working Conditions Code.

These codes sought to harmonise and simplify labour regulation, introduce uniform definitions of "worker" and "employee", and expand formal protections to unorganised sector workers through social security mechanisms. While hailed for improving legal clarity, the reforms have also been criticised for diluting collective bargaining rights, easing retrenchment procedures, and failing to institutionalise

robust mechanisms for informal worker representation.

India's experience reveals the tension between codification and substantive protection. The consolidation of laws may enhance administrative efficiency, but without institutional support, such as inclusive dispute resolution platforms or informal worker unions, these gains remain symbolic. The South African LRA, although already consolidated, faces a parallel dilemma: how to broaden protection and representation without exacerbating legal complexity or undermining existing rights. India's reforms remind us that formal legal coverage does not automatically translate into material empowerment or institutional efficacy.

In sum, comparative experience affirms the importance of regulatory responsiveness, inclusive participation, and institutional pluralism. Brazil's reforms reveal the challenges of aligning law with informal realities; Germany illustrates the long-term dividends of entrenched participatory mechanisms; and India warns of the limits of consolidation in the absence of implementation and worker mobilisation. For South Africa, these insights point toward the need for a recalibrated LRA, one that embraces structural inclusivity, reinforces worker voice beyond traditional unions, and integrates new forms of labour into its institutional architecture.

This section builds on the preceding analysis and comparative insights to propose viable reforms for recalibrating South Africa's labour law regime. It provides normative direction, policy recommendations, and institutional strategies to restore the Labour Relations Act's transformative potential in an evolving socio-economic landscape. Footnotes follow the Stellenbosch Law Review house style.

6. TOWARDS REFORM: RETHINKING THE LRA FOR CONTEMPORARY REALITIES

The LRA was conceived as a cornerstone of South Africa's democratic and constitutional transition, a bold legislative instrument designed to redress historical injustices, institutionalise industrial democracy, and promote equitable labour market outcomes. Yet, as the preceding sections have demonstrated, the LRA's normative aspirations have been compromised by institutional fragmentation, regulatory drift, economic informalisation, and a rapidly changing world of work. [1] While its foundational principles remain sound, the Act's institutional architecture and regulatory assumptions now require decisive reform.

This section outlines three broad reform trajectories, each responding to specific institutional and socio-economic limitations, through which the LRA can be reimagined for contemporary labour realities: (1) expanding inclusive bargaining frameworks, (2) redesigning dispute resolution mechanisms, and (3) enhancing worker voice beyond trade unionism.

6.1 Expanding Inclusive Bargaining Frameworks

The decline of traditional sectoral bargaining structures and the rise of precarious work demand an urgent reconfiguration of collective bargaining under the LRA. Bargaining councils, once seen as the institutional backbone of South African industrial relations, have been hollowed out by declining unionisation, employer disaffiliation, and sectoral shifts. A revitalised collective bargaining system must recognise and adapt to these changes by enabling new forms of organisation and representation.

First, legislative reform should support multi-employer and multi-party bargaining platforms that accommodate hybrid and informal employment arrangements. Such frameworks could draw inspiration from 'open bargaining models', where different forms of worker

collectives, including community-based organisations, cooperatives, and informal worker associations, are granted legal recognition and bargaining standing. This would mitigate the exclusion of non-standard workers who do not fit the LRA's conventional definitions of "employee" or "trade union."

Second, state facilitation and financial incentives should be introduced to sustain bargaining forums in vulnerable sectors such as domestic work, hospitality, and agriculture. The state, through NEDLAC or the Department of Employment and Labour, should proactively map sectors with low bargaining density and provide institutional support, including subsidised dispute resolution, data collection, and negotiation training, to enable functional decentralised bargaining.

Third, the extension mechanism in section 32 of the LRA requires revision to ensure that extensions of bargaining agreements to non-parties meet constitutional standards of accountability and representativity, as raised in Free Market Foundation v Minister of Labour. A more transparent and evidence-based extension process, possibly through oversight by a quasi-judicial panel, would preserve inclusivity while preventing undue regulatory capture by incumbent unions and employer organisations.

6.2 Institutional Redesign of Dispute Resolution

South Africa's dispute resolution system, particularly the CCMA, remains a vital component of accessible labour justice. Yet, as discussed earlier, its institutional capacity is under increasing strain from caseload backlogs, resource limitations, and procedural complexity. Reform is needed not only to streamline processes but also to enhance the substantive fairness and enforcement of outcomes.

First, the LRA should be amended to empower the CCMA to make binding determinations with enforceable outcomes for vulnerable workers in certain categories (e.g. dismissal for domestic workers, wage underpayment for informal employees), without requiring additional certification or enforcement proceedings. Specialised labour justice clinics should also be created in partnership with universities, legal aid bodies, and NGOs to support self-represented workers navigating the system.

Second, digitalisation of dispute processes, including remote hearings, e-filing, and automated scheduling, must be accelerated to improve access, especially in rural areas. The COVID-19 pandemic demonstrated the feasibility and utility of virtual proceedings, and these practices should now be institutionalised through amendments to CCMA Rules and section 138 of the LRA.

Third, the jurisdictional boundary between the CCMA and the Labour Court requires clarification. Forum shopping, duplicative proceedings, and inconsistent jurisprudence undermine legal certainty. A simplified appeals mechanism, modelled on administrative tribunals in jurisdictions such as Canada, could enhance procedural efficiency and protect the right to a fair hearing without unnecessary litigation.

6.3 Enhancing Worker Voice Beyond Trade Unions

The failure of workplace forums and the limits of traditional trade unionism in the current era necessitate the development of alternative and complementary mechanisms of worker representation. The original ambition of the LRA, to institutionalise workplace democracy, cannot be realised if representation is confined to a declining unionised minority.

One approach is to revitalise workplace forums by removing unnecessary thresholds (such as the 100-employee requirement) and making their establishment mandatory in certain sectors or enterprise sizes. As the German

Betriebsräte model demonstrates, mandatory co-determination mechanisms can foster accountability, reduce adversaries, and create durable industrial relations.

Additionally, the LRA should accommodate minority union representation and multi-union bargaining units, particularly in fragmented or informalised sectors. The jurisprudence in SA Municipal Workers Union v SA Local Government Association confirmed the possibility of inclusive bargaining units, but legislative clarification is needed to facilitate such arrangements and prevent exclusionary conduct by majority unions.

Moreover, innovative forms of sectoral forums or worker councils, not tied to enterprise-level thresholds, should be explored. These could provide non-unionised workers with participatory platforms to engage employers, regulators, and policymakers. Such forums have been piloted in Latin American and Asian jurisdictions, particularly in platform work and domestic employment.

Finally, the LRA must respond to the rise of digital labour platforms by developing a regulatory typology for platform workers. These workers often exist in a regulatory grey zone between employee and independent contractor. The Act should introduce a rebuttable presumption of employment for workers earning below a specified income threshold and working under dependent conditions.

7. CONCLUSION

The LRA stands as one of the most significant legislative instruments of South Africa's post-apartheid constitutional order. It was designed to democratise the workplace, institutionalise collective bargaining, and harmonise industrial relations in a profoundly unequal society. However, three decades later, the socio-economic and institutional terrain in which the LRA operates has shifted in ways its drafters could not fully anticipate. Informalisation, digitalisation, deunionisation, and socio-economic exclusion now define large swathes of the South African labour market.

As demonstrated throughout this article, the LRA's ability to achieve its constitutional and legislative objectives has been constrained by both internal and external factors. Internally, the Act's institutional mechanisms, bargaining councils, workplace forums, and the CCMA have struggled to remain responsive to the evolving structure of work. Externally, macroeconomic pressures, policy inconsistency, and judicial drift have undermined the coherence and reach of labour regulation. These developments have not only eroded confidence in labour law institutions but have also intensified inequality and precarity, particularly for workers in non-standard or informal forms of employment.

The comparative analyses of Brazil, Germany, and India highlight both the universality of these challenges and the diversity of institutional responses. Brazil's reforms underscore the delicate balance between flexibility and protection; Germany's co-determination model offers a compelling case for robust workplace democracy; and India's consolidation efforts caution against purely formalistic solutions without practical enforcement or inclusion. For South Africa, these examples provide critical inspiration for thinking beyond conventional regulatory assumptions.

The reform trajectories proposed in Section 6 of this article, expanding inclusive bargaining frameworks, redesigning dispute resolution, and enhancing worker voice beyond trade unionism, are not exhaustive but point to a strategic recalibration of the LRA's institutional architecture. These recommendations align with the constitutional imperative of transformative constitutionalism, which requires ongoing structural reform to dismantle apartheid's legacy and ensure substantive equality. As Klare notes, labour law must be a site of social experimentation aimed at expanding

freedom, dignity, and participatory democracy.

Ultimately, the LRA must evolve to accommodate a pluralistic and fragmented labour market without abandoning its foundational values. It must embrace institutional pluralism, legal adaptability, and participatory governance to meet the demands of a new world of work. Reform must be underpinned by a developmental state ethos that treats labour not as a cost to be minimised, but as a partner in building an inclusive economy.

While the challenges are considerable, so too is the opportunity to reimagine labour law for a new generation. The LRA's promise of fair labour practices, meaningful representation, and social justice remains as urgent and compelling as ever. To honour that promise, the time for bold and principled reform is now.

REFERENCES

Constitution

Constitution of the Republic of South Africa 1996.

Legislation and Caselaw

Free Market Foundation v Minister of Labour 2016 (1) SA 496 (GP)

National Union of Metalworkers of South Africa v Assign Services (Pty) Ltd 2018 (5) SA 323 (CC)

SA Municipal Workers Union v SA Local Government Association 2007 (4) SA 476 (CC); 2007 (5) BCLR 545 (CC)

South African Police Service v Solidarity obo Barnard 2014 (6) SA 123 (CC)

Articles

Albin E & Mantouvalou V "The ILO Convention on Domestic Workers: From the Shadows to the Light" (2012) 41 ILJ 81

Albin E "Labour Rights in the Informal Economy: New Forms of Voice and Representation" (2016) 37 ILJ 1803

Benjamin P "Beyond the Unemployment Debate: The Regulation of Work" in Buhlungu S et al (eds) State of the Nation: South Africa 2007 (HSRC 2007) 251

Benjamin P "The Regulatory Challenges of Agency Work in South Africa" (2010) 31 ILJ 2451

Benjamin P "The Uses and Limits of Conciliation and Arbitration in a Rights-Based Labour Market" (2009) 30 ILJ 1

Bezuidenhout A & Fakier K "Maria's Burden: Contract Cleaning and the Crisis of Social Reproduction in Post-apartheid South Africa" (2006) 33 Antipode 1

Bhorat H & Kanbur R (eds) Poverty and Policy in Post-Apartheid South Africa (HSRC 2006)

Bhorat H et al "Small Matters: Informality and Labour Regulatory Reform in South Africa" (2014) DPRU Policy Brief PB/2014/08

Cardoso A & Gindin J "Labour Law Reform in Brazil: Neoliberalism and the Crisis of Labour Rights" (2020) 21 Global Labour Journal 1

Cheadle H "Arbitration and the Erosion of the LRA's Dispute Resolution Objectives" (2014) 35 ILJ 1

Cheadle H "Private Agreements and Public Law" (2015) 36 ILJ 1

Chen M "The Informal Economy: Recent Trends, Future Directions" (2012) WIEGO Working Paper No. 1

Cooper K "Employment Equity and Fairness in the Workplace" (2016) 37 ILJ 1625

Dammann J "The Future of Codetermination in Germany" (2006) 14(1) International Journal of Comparative Labour Law 25

De Stefano V "Non-Standard Work and Limits of the Employer–Employee Relationship" (2016) ILO Conditions of Work Report No. 71

De Stefano V "The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowdwork and Labour Protection in the 'Gig Economy'" (2016) ILO Conditions of Work Report No. 71

Deakin S, Lele P & Siems M "The Evolution of Labour Law: Calibrating Flexibility and Security in the European Union" (2007) 146(4) International Labour Review 133

Department of Employment and Labour Collective Bargaining Strategy (2020)

Dey S & Choudhury A "India's Labour Law Reforms and the Challenge of Implementation" (2022) ILO Working Paper 38

Du Toit D et al Labour Relations Law: A Comprehensive Guide 6 ed (LexisNexis 2015)

Eichhorst W et al "Works Councils and the Response to COVID-19 in Germany" (2021) IZA Policy Paper No. 173

Ferner A & Hyman R (eds) Changing Industrial Relations in Europe (Blackwell 1998)

Funk L & Lesch H "Social Partnership in Crisis? German Industrial Relations and the Economic Crisis" (2011) 17(4) Transfer 391

Godfrey S et al Collective Bargaining in South Africa: Past, Present and Future? (Juta 2010)

Grogan J Workplace Law 13 ed (Juta 2022)

Hepple B Labour Laws and Global Trade (Hart 2005)

ILO "Regulating Platform Work: New Strategies for Fairer Work" (2021) Policy Brief

Klein K "Legal Culture and Transformative Constitutionalism" (1998) 14 SAJHR 146

Krein JD & Macedo e Silva AC "The 2017 Labour Reform in Brazil: Consolidation of an Incomplete Transition" (2019) 158(4) International Labour Review 541
Law No. 13.467/2017 (Brazil)
Liebenberg S "Socio-Economic Rights: Adjudication under a Transformative Constitution" (Juta 2010)
Maciel F "Union Funding and Autonomy in Brazil after the Labour Reform" (2021) 10 Revista Direito e Práxis 3
Mehrotra S et al "Joblessness and Informal Work in India: Trends and Policies" (2014) 56(2) Economic and Political Weekly 44
Ministry of Labour and Employment (India) "Labour Codes Overview" (2021)
Prassl J, Humans as a Service: The Promise and Perils of Work in the Gig Economy (Oxford University Press, 2018)
Rogers J & Streeck W "The German Model of Industrial Relations: Between Institutional Stability and Social Change" in Ferner A & Hyman R (eds) Changing Industrial Relations in Europe (Blackwell 1998)
Seekings J & Nattrass N Class, Race, and Inequality in South Africa (Yale University Press, 2005)
Srivastava R "The Code on Social Security, 2020: A Critique" (2021) 56(4) Economic and Political Weekly 14
Theron J & Godfrey S "Informality, Employment and the Law" (2014) 35 ILJ 845
Theron J "Non-standard Employment and Labour Market Segmentation in South Africa" (2011) 32 ILJ 845
Theron J "Regulated Flexibility and Labour Market Reform in South Africa" (2003) 24 ILJ 614
Tucker E "The Role of Adjudicative Tribunals in Labour Law Enforcement" (2011) 32 Comp Lab L & Pol'y J 315
Webster E & Joynt K "Austerity, Public Sector Unions and the Politics of Collective Bargaining" (2021) 42 ILJ 4

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