

LABOUR LEGISLATION: A CONSTITUTIONAL AND LEGAL PERSPECTIVE

Written by Snigdha Sharma & Shivani Sharma***

** LLM Student*

*** LLM Student*

ABSTRACT

This paper aims to highlight the Constitutional and legal rights guaranteed for the protection of the labour in India. Indian Constitution through its various provisions mentioned under Part –III and Part –IV provides for the welfare of labour which includes the right to education, child and women labour, conditions of work, workmen’s compensation, securing the health of the employees, providing just and humane conditions of work and maternity benefits. To attain the objective, the state is duty bound to make laws in regard to the above mentioned conditions of the labour in India. Labour is a subject of a concurrent list which means the centre and the state both have the power to make laws on it. Labour class is not a slave class rather they deserve the same respect as others get in their respective work environment. Labour law regulates the relationship between the employees, its workers, trade unions and governments. It has a socio-economic impact on the society at large if the relationship between any of the variables is not in harmony which can lead to devastating effects on the economy of a nation. The main purpose of labour laws is to provide a framework within which the employers, workers and their representatives can interact and build a harmonious industrial relation which is the desire of every democratic nation. The concept of labour laws is as old as human civilization and the problem of labours are in existence since time immemorial. The Constitution of India has guaranteed equal rights which are accessible to each and every person. An attempt will be made to examine the existing provisions of labour under the Indian Constitution and other legislative enactments. The research methodology for the present work will be empirical and researcher will rely on primary as well and secondary data.

Keywords: Labour, Working Class, Legislation, Employees, Workmen etc.

INTRODUCTION

The term labour in common parlance means any energetic work carried out by the human beings though in general it implies the hard work which includes both physical and mental. With the advent of modernization the term 'labour' has been confined to industrial work done by the 'working-classes'.

Any work whether physical or mental, which has been undertaken for some pecuniary benefit is called labour. Such term implies in a broader sense as a total working force or labour force which includes all persons working for a livelihood as distinguished from such persons who do not or are not expected to work for a living such as housewives, children, old persons etc.¹

In other words, Labour is an ability to work. Labour is a broad concept because it involves both physical and mental elements. Labour is a primary or human factor of production which indicates a human resource. A Labourer is a person who owns labour. Hence, a labourer means a worker who does not possess any means of production. They sell their physical labour skilled or unskilled to earn their livelihood. Even during the ancient period 'Shudra' constituted the labour force who were considered to be the lowest in the classes provided in our shastras i.e the four Varnas or classes of people such as Brahmins (priests) at the top, kshatriyas (the warriors) at the second level, vaishnavas (business class) at the third level and the shudras (untouchables) at the last level and they were not even allowed to worship in any temple and were given the task of performing menial work.

The purpose of labour legislation of any country is to provide economic stability and advancement to the wage earning class. However, the above mentioned purpose is not able to provide an impetus to such a class as far as the Indian legislations are concerned. Rather the condition of this class deteriorated due to the existence of certain inadequate laws.

The concept of labour laws or legislations emerged due to widespread demands made by the worker's organizations because of the low labour costs and inhuman conditions. The

¹ Dr. T. N. Bhagoliwal's, *Economics of Labour and Social Welfare*, 5 (2nd ed.,1976).

workers needed such a mechanism which can reduce the vigours of harsh and insufficient legislations and can improve their standard of living and can provide better conditions for work. The demand of higher wages by workers led to the clashes between the employers and the general public because of the price rise of various commodities as it was not acceptable by the common masses which led to the chaotic situation in the country which in turn forced the government to intervene in restoring the harmony. An attempt was made by the concerned government to enact various policies on labour laws which can be traced back in the history of British colonialism. The dominance of British political economy was quite implicit in the early laws made by the Britishers. In order to run British establishments, Britishers needed the Indians as workers which was not an easy task and hence laws for hiring workers became a necessity which led to the enactment of labour legislation in order to protect the interests of British employers. The first such legislation was the Factories Act 1833. This Act was a result of the Indian textile goods which offered tough competition to British textiles in the export market and such Act was enacted in order to make India labour costlier.

The Factories Act was the first such enactment of the Indian government which laid down various provisions such as eight hours of work, the abolition of child labour, and the restriction of women during the employment at night, and the introduction of the scheme of overtime wages for work beyond eight hours. The enactment proved to be the workable piece of legislation, promoting welfare in the regime of labour laws. In the year 1886, a demonstration in Chicago by workers of the entire world was held with the motive of joining hands in the struggle against capitalism. In a memorandum submitted to the Government of India in 1888, Surendranath Bannerji, one of the leading nationalist said, "The coolies (this was the contemptuous term widely used to denote the plantation labourers) were in a state of quasi-slavery."²

In the year 1890s, the entrepreneur Jamsetji Tata launched plans to move into heavy industry using Indian funds to remove the hurdles of capitalism. However, launching of heavy industries which needed the funds were not being given any financial help by the

² Bipan Chandra, *The Rise and Growth of Economic Nationalism in India*, 323 (revised edition 1977).

government because of the situation prevalent at that time howsoever, they agreed to buy the steels from such industry in case of surplus.

The Tata Iron and Steel Company (TISCO), headed by his son Dorabji Tata (1859–1932), opened its first ever plant at Jamshedpur in Bihar in 1908, by using American technology and became the leading iron and steel producer in India, with 120,000 employees till the year 1945. TISCO became India's proud symbol of technical skill, managerial competence, entrepreneurial flair, and high pay for industrial workers.

With the advent of time, a need was felt for a mechanism that can regulate the employer and workmen relations in case of any dispute and the first and foremost such Indian statute to regulate the relationship between employer and his workmen was introduced by the government in the year 1929, known as the Trade Dispute Act, 1929 (Act 7 of 1929) which introduced various provisions including the restraining rights of strike and lock out, however, such Act failed to provide a dispute redressal mechanism.

Later on, the Bombay Industrial Disputes Act, 1938 was enacted to provide for permanent machinery for the settlement of disputes by establishing an industrial court. This Act was later replaced by still more comprehensive legislation known as the Bombay Industrial Relations Act, 1946. In the year 1943, a Labour Investigation Committee was appointed known as Rege Committee to examine the existing labour legislations to make necessary recommendations and suggestions. The Committee submitted its report in 1946, wherein it pointed some ambiguities in reference to the enforcement of labour legislations.³

As a result, the Industrial Disputes Act came into force on 01.04.1947 repealing the Trade Disputes Act 1929 and hitherto is a governing law relating to disputes in the industrial relations.

Labour rights have been an integral part of our social and economic development since the industrial revolution. The demand of Labour laws arose due to the demands of workers for

³ The Report of Royal Commission Report, 1929, available at <http://www.worldcar.org/tittle/report-of-the-royal-commission-on-labour-in-india-and-evidence/oclc/4972579>, (last seen on 14/10/2017).

better working conditions, the right to organize, and the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour costs low. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labour law is therefore both the product of, and a component of, struggles between different interests in society.

The concept of labour is omnipresent in the society since time immemorial and its history can be traced back in ancient era where the Labourers enjoyed far more privileges than today. They were paid well, treated kindly and accommodated comfortably and were not allowed to work forcefully. Labourers, who were associated for a long time with the employer, were entitled to several concessions such as remunerations in case of illness, sick leaves and some retirement benefits accruing to them if any.⁴

Labour legislation now-a-days has attained significant objectives, such as:

- facilitating productive individual and collective employment relationships, so that productivity of an economy can be enhanced;
- providing an atmosphere where workers and employers can interact and work mutually and peacefully;
- providing such a mechanism through which the grievances of workers can get redressed without any delay and efficiently.¹

As far as the study is concerned, the labour legislation can fulfil these functions effectively only if it is able to understand the conditions and need of the working class. The most efficient way of ensuring the abovementioned objectives is by way of enacting the statutes on labour laws and by laying down effective redressal machinery in order to solve their grievances.

⁴ Available at <http://yabaluri.org/TRIVENI/CDWEB/LabourLegislationinAncientIndiamay39.html>, (Last seen on 13/10/2017.)

The term Labour in Marxist political economy refers to "all those things with the aid of which man acts upon the subject of his labor, and transforms it."⁵

Means of labour includes tools and machinery (the "instruments of production"), as well as buildings and land used for production purposes and infrastructure like roads and communications networks and so forth.⁶

The move towards granting protection to the Indian workforce continued in the post-independence era on a pre-requisite that the worker is considered to be a weaker partner in employer-employee relation. This led to the emergence of various enactments related to labour laws in India. Some of them requires a mention such as the Minimum Wages Act, 1948, The Interstate Migration Act, 1979, The Contract Labour (Regulation and Abolition) Act 1970, Child Labour (Prohibition and Regulation) Act, 1986, The Equal Remuneration Act, 1976 etc.

CONSTITUTIONAL SAFEGUARDS IN REFERENCE TO LABOUR

The Constitution of India, which came into force on January 26, 1950, retains the federal character which was an important feature of the Government of India Act, 1935. Although the fixing and revising of wages through collective bargaining has not been recognized in many organised sectors but the fixation through this method is still in existence. The course of collective bargaining was influenced in the year 1948 on the recommendations of the Fair Wage Committee, which stated in its report that there are three levels of wages which exist as a general rule— minimum, fair, and living. As per the recommendations of the Committee, the industries were under a duty to pay the minimum wages and not below the capacity which is related to the productivity of such industry.

The duty of protection and maintenance of the dignity of human labour has been enshrined in the supreme law of the land i.e the Constitution of India under Chapter-III (Articles 16,

⁵ Institute of Economics of the Academy of Sciences of the U.S.S.R., 1957, available at <http://www.jstor.org/stable/1812355> (last seen on 13/10/2017).

⁶ *Ibid.*

19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) which deals with Fundamental Rights and Directive Principles of State Policy respectively. Labour is a subject of Concurrent list which has been provided in the seventh schedule of the Constitution of India wherein both the Union and the state governments can make laws on the matters related to labour.

The preamble of the Indian Constitution has declared that it aims at securing justice (social, economic and political) to all the citizens irrespective of any class, creed, race or religion and furthermore provides in the form of Fundamental rights and directive principles and fundamental duties such rights and duties which is considered to be necessary for the welfare of the society as a whole. The Constitution further provides for the three organs of the government namely the legislature, executive and judiciary which are independent in their spheres and has been enjoined to adhere to the policy of self-restraint so that one organ should not encroach upon the other organ and maintain the harmony and balance between themselves.

In *Crown Aluminium Works v. Workmen*, Mr. Justice Gajendragadkar observed that the Constitution of India is the Grundnorm of all the laws and is essential in the attainment of the ideals of social and economic justice and is the guiding spirit in providing welfare to the society and for doing the common good. Moreover, the present labour legislation in India has a tremendous impact on the society and on the basic law of the country.⁷

As stated above, the implementation as well as the execution of labour laws is the responsibility of both the union and state governments, as it being the subject of Concurrent List of the Constitution. The Constitution of India has adopted several clauses concerning labour that has been enunciated in the Philadelphia Declaration.

Our Constitution of India has provided number of rights for the protection of labour system by incorporating various provisions in the form of Articles, guidelines and duties for the proper implementation of abovementioned laws. The remedy that has been provided by our Constitution is in the nature of writs which can be enforced either in the Supreme Court or

⁷ *Crown Aluminium Works v. Workmen*, AIR 1958 SC 34.

High Courts in case of violation of fundamental rights or any of the legal rights by virtue of Articles 32 and 226 respectively.

Article 19 of the Constitution guarantees six fundamental rights to the citizens of India which are exercisable by them throughout and in all parts in the territory of India. These are:

- (a) to freedom of speech and expression
- (b) to assemble peaceably without arms;
- (c) to form association and unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (g) to practise any profession or to carry on any occupation, trade and business.

Although our Constitution guarantees such rights but these are not the absolute rights and are governed by certain reasonable restrictions.⁸

Article 23 embodies two declarations. Firstly, that traffic in human beings, beggar and other similar forms of forced labour are prohibited. Secondly, any contravention of the prohibition shall be an offence punishable in accordance with law. This article protects the individual not only against the invasion by the State but also against private citizens. It imposes a positive obligation on the State to take measures to abolish such evils. Thus, Article 23 of the Constitution provides prohibition of traffic in human being and beggar and other similar forms of forced labour. The term 'Traffic in human beings' means selling and buying of men and women like goods and includes trafficking amongst women and children for immoral or other purposes.

In People's Union for Democratic Rights v. Union of India⁹, Supreme Court concluded that any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be forced labour.

⁸ V.N Shukla, *Constitution of India*, 251(M.P. Singh, 12th ed., 2013).

⁹ People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

In Bandhua Mukti Morcha v. Union of India¹⁰, Supreme Court declared that bonded labour is a crude form of forced labour which is prohibited by Article 23.

Article 24 of the constitution provides for the prohibition of employment of children below 14 years of age in factories and hazardous employment. This provision is certainly in the interest of public health and safety of life of children and is in consonance with the provisions of the directives contained in Article 39(e) & (f).

The directive principles of state policy are concerned with the main objective, namely, the building of an egalitarian social order and a welfare society.

Article 39 specifically lays down the provisions for the working class such as equal pay for equal work, adequate means of livelihood, equal distribution of wealth and protection of children and labour.

Article 41 lays down the directions for the state to ensure to the people within the limits of its economic capacity and development: employment, education and public assistance in cases of unemployment, old age, sickness and disablement.¹¹

Article 42 contains a directive to provide just and humane conditions of work and maternity relief. Recently, the law regarding maternity has been considerably changed by providing various benefits under the maternity Act, 2017.

In Bijay Cotton Mills Ltd. v. State of Ajmer¹², Article 42 was relied upon by the Supreme Court in deciding the matter related to minimum wages under the Minimum Wages Act, 1948. Laws related to unfair labour practices were also taken into consideration by the Supreme Court in this case. Under Article 42-A provision with regard to participation of workers in the management of industrial undertakings has been laid down wherein the active participation of workers is expected to increase industrial production and industrial peace.

¹⁰ Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

¹¹ Art.41, the Constitution of India.

¹² Bijay Cotton Mills Ltd. v. State of Ajmer, AIR 1955 SC 33.

Article 43 requires the state governments to secure work to the worker by providing a living wage and conditions of work ensuring a decent standard of life in addition to social and cultural opportunities. The concept of 'living wage' has been elaborately dealt in **Standard Vacuum Refining Co. of India v. Workmen**¹³, the Supreme Court held that every workman shall have such a wage which will maintain him in the highest state of industrial efficiency and will enable him to provide his family with all the material things that are needed for their health and physical well being.

Article 43A requires the participation of employees in the management of any industry and for this, the Government shall take steps with the help of suitable legislation to secure such participation. This article has been inserted by 42nd Amendment Act.

Article 47 of the Constitution of India, requires the state to raise the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties.

Some other provisions contained in Part-IV are as follows:

- securing the health and strength of employees, men and women;
- the tender age children are not abused;
- forcing of citizens to enter into such avocations which are unsuited to their age or strength due to economic necessity.

Article 14 of the Constitution of India provides the concept of Equality. this Article contains two phrases, one is ' Equality before law' and other is 'Equal protection of laws' .Dr. Jennings in his words explained the phrase, "Equality before the law which means that alike should be treated alike and law should be administered equally. As far as, the phrase 'Equal protection of laws' is concerned, it means that the laws should be equally applicable to each and every person irrespective of his/her nationality.

¹³ Standard Vacuum Refining Co. of India v. Workmen, AIR1961 SC 895.

In the case of Randhir Singh V. Union of India¹⁴, the Supreme Court held that though the principle of 'equal pay for equal work' is not expressly declared by our Constitution as a fundamental right, but it is implicit in our Constitution under Art.14, 16 and 39(c). So abovementioned right can be enforced in cases of unequal scales of pay based on irrational classification.

In Mewa Ram v. A.I.I. Medical Science¹⁵, the Supreme Court held that the doctrine of 'equal pay for equal work' is not an abstract doctrine. The principle of equality must be among the equals, and unequal people cannot claim equality on any basis.

Thus, Indian Constitution provides protection to the working class by incorporating number of provisions and most importantly by making these provisions enforceable in court of justice so that the courts can effectively and efficiently provide remedies to them.

Indian labour policy has remained consistent since independence. The labour legislations which are in force on India are as follows:

1. Laws relating to children and women

- i) The Child Labour Prohibition and regulation Act, 2016
- ii) The Maternity Benefit Act, 2017
- iii) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

2. Laws relating to specific industries

- i) Factories and Workshops Act, 1878
- ii) Mines and Minerals Act, 2015

¹⁴ Randhir Singh V. Union of India, AIR 1982 SC, 879.

¹⁵ Mewa Ram v. A.I.I. Medical Science, AIR 1989 SC, 1256.

iii) Transport Act,2016, i.e (a) Railways (b) Ports and Docks(c) Inland

Water (d) Air (e) Road

3. Laws relating to specific matters

i) Wages

ii) Indebtedness

iii) Welfare

iv) Housing

v) Forced Labour

4. Laws relating to Social Security

(a) Employee's Compensation

(b) Maternity Benefits

(c) Insurance

(d) Retirement Benefits

(e) Bonus Schemes

(f) Payment of Gratuity

5. Laws relating to trade unions and industrial relations (such as Trade Unions Act,1926 and Industrial Disputes Act,1947)

6. Laws relating to statistics.

COMMISSIONS ON LABOUR

On December 24, 1966, the First National Labour Commission, hereinafter referred to as, NLC was constituted under the Chairmanship of Dr. Gajendragadkar to study and review the working conditions of labour since 1947 and also wanted the suggestions on the labour

legislation and the living conditions of workers as the conditions of the workers were deteriorating. The Commission was given the two main tasks: i) to provide a workable solution to the existing laws in the organised sector and ii) to recommend a mechanism or a machinery which can ensure at least minimum standards of protection to the workers in the unorganised sector. Moreover, the commission was free to provide suggestions in case of any ambiguities which they may find in the existing labour legislations. The commission elaborately studied the legislations and in August 28, 1969 Commission submitted its report with a memorandum providing various recommendations for the welfare of the working class as well as of the employers.¹⁶

On October 15, 1999, the Second National Commission on Labour was constituted under the Chairmanship of former Union Labour Minister Dr. Ravindra Varma, to suggest rationalization of the existing labour laws and policies in the organized sector. The commission submitted its report on June 29, 2002 with certain recommendations including the change in the techniques used by the workers in the industry and also recommended the change in the timings of the labours and their working conditions for the purpose of globalising the economy and further for the purpose of making industries more economic friendly and to increase the market competitiveness.

India is mandated to create a work environment conducive to achieve a sustainable economic growth while keeping in view the interests of the working class in general and those of the vulnerable sections of the society in particular. This process will provide sustainability in attaining higher levels of productivity, competitiveness and increasing employment opportunities and will also create such conditions which will help the labourers to work in an environment conducive not only for survival but for further growth of industry.

So in nutshell, it can be rightly observed that the main objective of labour laws is to provide benefits of globalization and economic growth to the poor and downtrodden and to bridge the wide gap between existing social infrastructure and aspirations of the masses. The labour laws need to be reformed without affecting the interests of the labour. Thus, it can be rightly observed that globalization means interaction of global economic sources, in all sectors of economy for the welfare, upliftment and development of working community. Hence

development of labour laws is a continuous process. The social workers, Indian Labour Organization, Trade Unions at National and International level, Non-Government Organization and political parties have played a commendable role in the development of labour laws in India.¹⁷ But unfortunately, the laws related to labour have not been effectively implemented and lacks efficient enforcement mechanism. To achieve the above mentioned objective of labour legislations, an active cooperation and participation from the general public is required which can bring harmony between the administration and the labour class. This research paper is an attempt to provide an overview of labour legislations especially in reference to the Constitutional safeguards and if such laws implemented properly can bridge the gap amongst the employers and the working class on one hand and the government on the other hand.

¹⁶ Available at www.lawyersclubindia.com, (last seen on 13/10/2017).

¹⁷ *Ibid.*