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# INDUSTRIAL RELATIONS AND LABOUR LAWS

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CHAPTER

# 1

# Introduction to Labour Law

Over the years, labour laws have undergone change with regard to their object and scope. Early labour legislations were enacted to safeguard the interest of employers. They were governed by the doctrine of *laissez faire*. Modern labour legislation, on the other hand, aims to protect workers against exploitation by employers. The advent of doctrine of welfare state is based on the notion of progressive social philosophy which has rendered the old doctrine of *laissez faire* obsolete. The theory of 'hire and fire' as well as the theory of 'supply and demand' which found free scope under the old doctrine of *laissez faire* no longer hold good.

## I. APPROACH TO LABOUR LAW

Labour law seeks to regulate the relations between an employer or a class of employers and their employees. The reach of this law is so wide that it touches the lives of far more people. Indeed, it covers millions of working men and women as compared to any other branch of law. It is this aspect which makes it most fascinating of all branches of law and, therefore, the study of this subject is of enormous dimension and of ever changing facets.

There has been a remarkable change in the approach to labour law and industrial relations since World War II. Philadelphia Charter adopted in 1944 provided that 'labour is not a commodity' and that 'poverty anywhere is a danger to prosperity everywhere'. W Friedmann and others who have tried to analyse the essential characteristics of legal development in this branch of law consider it to be a 'social duty' on the part of employer as the main bedrock on which this law is built. This is exemplified by the very approach of law makers to the construction of a wage packet of the working men and women, wage fixation and condition of service. The Indian Constitution lays down broad guidelines to be followed by the state.

The Supreme Court in *D N Banerji* v. *P R Mukherjee*[1], stated that the law as developed after the Second World War, particularly in a welfare state, has reversed the theories of Sir Henry Maine and now society progresses form contract to status and has witnessed considerable legislation laying down conditions of service and also ensuring payment of minimum wages by laws.

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[1] AIR 1953 SC 58.

## II. BASIS OF LABOUR LAW

Otto Kahn-Freund in his book *Labour and the Law* makes the following propositions:

(*i*) The system of collective bargaining rests on a balance of the collective forces of management and organized labour. The contribution which the courts have made to the orderly development of collective labour relations has been infinistesimal.

(*ii*) Collective bargaining is a process by which the terms of employment and conditions of service are determined by agreement between management and the union. In effect, 'It is a business deal (which) determines the price of labour services and terms and conditions of labour's employment.'

(*iii*) The law governing labour relations is one of the central branches of law according to which a very large majority of people earn their living. Nonetheless, law is a secondary force in human relations, especially in labour relations.

(*iv*) Law is a technique for regulation of social power. This is as true of labour law as it is for other aspects of any legal system. Labour law also seeks to lay down minimum standard of employment. It lays down norms by which basic conditions of labour are fulfilled such as maximum working hours, minimum safety conditions, minimum provisions for holidays and leave, protection for women and children from arduous labour, prohibition of children below certain age from employment, provisions for minimum standards of separation benefits and certain provision for old age.

## III. SOCIAL JUSTICE AND LABOUR LAW

The development of industrial law during the last decade and several decisions of the Supreme Court while dealing with industrial relations have emphasized the relevance, validity and significance of the doctrine of social justice. The concept of social justice is not narrow or one-sided or pedantic. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities. Nevertheless, in dealing with industrial relations, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It therefore, endeavours to resolve the competing claims of employees by finding a solution which is just, fair and reasonable to both parties with the object of establishing harmonious relations between labour and management.[2]

### A. Concept of Social Justice

It is difficult to precisely define the meaning of social justice. It is a vague term. Indeed, in *Muir Mills Case*[3], Justice Bhagwati felt that social justice is a very vague and indeterminate expression and that no clear cut definition can be laid down which may cover all situations. He, however, observed that 'without embarking upon a discussion as to the exact connotation of the expression 'Social Justice', we may only observe that the concept of social justice does not emanate from the fanciful notions of any adjudicator, but must be founded on a more solid foundation.'

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[2] See *J K Cotton Spining & Weaving Mills* v. *Labour Appellate Tribunal,* AIR 1964 SC 737.
[3] AIR 1995 SC 170.

## B. Social Justice and the Constitution of India

The Constitution of India in the Preamble resolved to secure to all its citizens : Justice—social, economic and political. Therefore, the concept of social justice is not foreign to legal order. Social justice is the primary objective of the state as envisaged in our Constitution. Social justice is one of the aspirations of the Indian Constitution. In order to secure to all citizens social justice, the Indian Constitution guarantees several fundamental rights.

## C. Application of Concept of Social Justice in Industrial Adjudication

The application of the concept of social justice in the adjudication of industrial disputes is now well settled. However, there is a word of caution. Its application may vary according to the individual presiding officer's view, which may be fanciful. Thus in *Punjab National Bank* v. *Ram Kanwar*[4], the Supreme Court observed that social justice does not mean that reason and fairness must always yield to convenience of a party. The Court held that such one-sided or partial view is next of kin to caprice or humour. Social justice need not always be in favour of workers—there may be cases, whereby their own conduct or on account of clear or unambigous provisions in a statute, they may not be entitled to relief. In such cases, grant of relief would not be just or fair.

The Supreme Court has applied the principles of social justice while upholding the workman's right to equal pay for equal work, reinstatement in service in case of wrongful discharge or dismissal, payment of wages to temporary or daily rated employees at the rate payable to permanent employees and regularization and confirmation of casual and daily wages employees. The Court has also elevated the right to work, right to equal pay for equal work and right to get minimum wages as fundamental rights. These pronouncements of the Court are directed to secure the goal of social justice which has now attained the status of basic feature of industrial adjudication.

A survey of decided cases reveals that courts have generally applied the doctrine of social justice in interpreting labour laws. However, there has been a conflict of opinion in the high courts and even in the Supreme Court on the question of application of the concept of social justice. In *Central India Spinning and Weaving and Manufacturing Co* case[5], Justice Modholkar speaking for the Bombay High Court held that the concept of social justice ought not to be imported in interpreting the Industrial Disputes Act or other similar Acts. The same learned judge speaking for Supreme Court in *Rai Sahab Ram Kanwar's Case*[6] held that tribunal has no jurisdiction to decide on the basis of its own concept of social justice. However, Justice Gajendragadkjar in *J K Cotton & Spinning and Weawing Mills Case*[7] rejected the argument that the concept of social justice is irrelevant. He added that 'the concept of social justice has now become such an integral part of industrial law that no one can suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes.' He observed:

> The concept of social justice is not narrow, or one-sided, or pedantic, and not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing

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4 (1957) ILLJ 542.
5 *Central India Spg. Wvg & Mfg Co. Ltd* v. *Industrial Court*, (1959) ILLJ 468.
6 (1963) 2 LLJ 65.
7 AIR 1964 SC 737.

> with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claim of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour, and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy, and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair play and justice.

In *Harijinder Singh* v. *Punjab State Warehousing Corpn*[8], the Supreme Court has elaborately discussed the concept of social justice and its application. The Court observed:

> The preamble and various articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of the personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of society. In a developing society like ours which is full of unbridgeable and ever-widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare state and social justice is amply reflected in large number of judgments of this Court, various high courts, national and state industrial tribunals involving interpretation of the provisions of the Industrial Disputes Act, Indian Factories Act, Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act, Workmen's Compensation Act, the Employees Insurance Act, the Employees Provident Fund and Miscellaneous Provisions Act and the Shops and Commercial Establishments Act enacted by different states.

In *Ramon Services (P) Ltd* v. *Subhash Kapoor*,[9] Justice R P Sethi, observed: 'after independence, the concept of social justice has become a part of our legal system. This concepts gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare State would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by the persons concerned with the justice dispensation system.'

In *LIC of India* v. *Consumer Education and Research Centre*,[10] Justice K Ramaswamy observed that social justice is a device to ensure life to be meaningful and liveable with human dignity. The State is obliged to provide to workmen facilities to reach minimum standard of health, economic security and civilized living. The principle laid down by this law requires courts to ensure that a workman who has not been found guilty cannot be deprived of what he is entitled to get. Obviously, when a workman has been illegally deprived of his

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[8] (2010) 3 SCC 192. para 19.
[9] (2000) 1 SCC 118.
[10] (1995) 5 SCC 482.

device then that is misconduct on the part of the employer and employer cannot possibly be permitted to deprive a person of what is due to him.

## IV. PUBLIC INTEREST LITIGATION FOR ENFORCEMENT OF LABOUR LAWS

The Supreme Court in *S P Gupta* v. *Union of India,* popularly known as the Transfer of Judges case[11] formulated the doctrine of public interest litigation in the following words:

> Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction or writ or order.

The Court found the view that public interest litigations unnecessarily clog the dockets of the court and add to the already staggering arrears of cases pending for years and should be discouraged, to be a totally perverse one smacking of an elitist and *status quo* approach. On the contrary, the Court found that the doors of courts were open for vindicating the right of the rich and well-to-do, for the landlord and the gentry, for the wealthy and the affluent and held that those who have decried public interest litigation did not seem to realize that courts were not meant only for the business magnet and the industrial tycoon, but they existed also for the poor and the downtrodden. The Court accordingly treated the letter written to a judge to be a writ petition.

## V. INTERNATIONAL LABOUR ORGANIZATION AND ITS INFLUENCE ON INDIAN LABOUR LAWS

The International Labour Organization (ILO) has played a key role in promoting international labour standards. It was set up in 1919 under the Treaty of Versailles. India is a founder member of ILO.

There are certain fundamental principles of the ILO that were laid down at the time of its inception. These principles are known as the Charter of Freedom of Labour. The main principles of ILO are as follows:

- Labour is not a commodity.
- Freedom of expression and of association are essential to sustained progress.
- Poverty anywhere constitutes danger to prosperity everywhere.
- The war against want requires to be carried on with unrelenting vigour within each nation and by continuance and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of the governments, join with them in free discussion and democratic decision with a view to promotion of common welfare.

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[11] AIR 1982 SC 149.

The aforesaid principles were modified at the 26th session of ILO held in Philadelphia in 1944. It also adopted a Declaration that concerns with the aims and purposes of the organization. This Declaration is known as the Philadelphia Charter.

By 2008, ILO had adopted 190 conventions and 198 recommendations. India had ratified 42 of the 190 conventions and one protocol. The Constitution of India and labour legislation uphold all the fundamental principles envisaged in the 8 core international labour standards. It ratified 4 of the 8 core conventions of ILO. With regard to the others, India seeks to proceed with progressive implementation of the concerned standards and leave the formal ratification for consideration at a later stage when it becomes practicable.

The ILO has influenced labour legislation in India. Most labour legislation has been enacted in conformity with ILO conventions.

Today, the ILO stands as one of the specialized agencies of the United Nations with longer history than any of its sister organizations.

## A Structure and Activities

The ILO is a tripartite organization consisting of representatives of governments, employers and workers of the member-countries. There is parity of representation as between government and non-government groups and also between employers' and workers' groups. The structure of the organization has helped in welding together employers and workers in various countries (including India) into independent organizations. In our country, for a long time now the representatives of employers and workers have secured, through their respective constituencies, elective posts on the Governing Body of the ILO.

The ILO operates through its (*i*) Governing Body; (*ii*) International Labour Office; and (*iii*) the International Labour Conference, which meets once a year to review the international labour scene.

## B. Making of International Labour Standard

The annual conference sets normative standards on important matters such as regulation of hours of work and weekly rest in industry, equal remuneration for equal work, abolition of forced labour, discrimination in employment, protection of workmen against sickness, disease and work-injury, regulation of minimum wages, prohibition of night work for women and young persons, recognition of the principle of freedom of association, organization of vocational and technical education, and many areas concerning labour management relations. The standards are evolved after a full debate in the Conference. Usually the standards are accepted after discussions in the Conference over two successive years. Agreed standards on a specified subject are then converted into an international instrument, a 'Convention' or a 'Recommendation', each having a different degree of compulsion. A 'Convention' is binding on the member-state which ratifies it; a 'Recommendation' is intended as a guideline for national action.[12]

## C. ILO Declaration on Fundamental Principles and Rights at Work

The ILO declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in June 1998, declares *inter alia* that all member states,

[12] See Govt. of India, *Report of the First National Commission on Labour* (1968), 473.

whether they have ratified the relevant conventions or not, have an obligation to respect, promote and realize the principles concerning the fundamental rights which are the subject of those conventions, namely:

(*a*) freedom of association and the effective recognition of the right to collective bargaining;

(*b*) elimination of all forms of forced or compulsory labour;

(*c*) effective abolition of child labour; and

(*d*) elimination of discrimination in respect of employment and occupation.[13]

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The goal is not just the creation of jobs but the creation of jobs of acceptable quality.[14]

The Government of India has ratified Convention 122 on Employment and Social Policy in 1998. Article 1 of the Convention lays down:

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements, and overcoming unemployment and under employment, each member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.
2. The said policy shall aim at ensuring that:
   (*a*) There is work for all who are available for and seeking work;
   (*b*) Such work is as productive as possible;
   (*c*) There is freedom of choice of employment and fullest possible opportunity for each worker to qualify for, and to use skill and the endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.
3. The said policy shall take due account of the state and the level of economic development and mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.[15]

The aforesaid convention was ratified by India at a time when unemployment levels were high. One, therefore, has to presume that the government is now committed to pursue an active policy designed to promote full, productive and freely chosen employment.[16]

From the commitments of the Government of India, it can be deduced that the following rights of workers have been recognized as inalienable and must, therefore, accrue to every worker under any system of labour laws and labour policy. These are:

(*a*) Right to work of one's choice

(*b*) Right against discrimination

(*c*) Prohibition of child labour

(*d*) Just and humane conditions of work

(*e*) Right to social security

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[13] Govt. of India, *Report of the Second National Commission on Labour* (2002), 35.
[14] *Ibid.*
[15] Govt. of India, *Report of the Second National Commission on Labour* (2002), 35.
[16] *Ibid.*

(*f*) Protection of wages including right to guaranteed wages

(*g*) Right to redressal of grievances

(*h*) Right to organize and form trade unions and right to collective bargaining

(*i*) Right to participation in management

## VI. REVIEW OF LABOUR LAW BY THE FIRST NATIONAL COMMISSION ON LABOUR

An important development in the arena of labour law and policy was setting up of the (first) National Commission on Labour in December, 1966 by the Government of India. The Commission was asked to undertake a comprehensive review of labour law. The Commission investigated the problems relating to labour and formulated a policy for the future. In the sphere of industrial relations, the Commission made the following recommendations:[17]

(*i*) Any sudden change replacing adjudication by a system of collective bargaining is neither called for nor practicable. The process has to be gradual. A beginning has to be made in the move towards collective bargaining by declaring that it will acquire primacy in the procedure for settling industrial disputes. Conditions have to be created for promotion of collective bargaining. The most important among them is statutory recognition of a representative union as the sole bargaining agent. The place which strikes/lock-outs should have in the overall scheme of industrial relations needs to be defined; collective bargaining cannot exist without the right to strike/lockout.

(*ii*) With the growth of collective bargaining and the general acceptance of recognition of representative unions and improved management attitudes, the ground will be cleared, at least to some extent, for wider acceptance of voluntary arbitration.

(*iii*) It would be desirable to make recognition compulsory under a central law in all undertakings employing 100 or more workers or where the capital invested is above a stipulated size. A trade union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30 per cent of workers in the establishment. The minimum membership should be 25 per cent if recognition is sought for an industry in a local area. The proposed National/State Industrial Relations Commission will have the power to decide the representative character of a union, either by examination of membership records, or if it considers necessary, by holding an election by secret ballot open to all employees.

(*iv*) The present arrangement for appointing *ad hoc* industrial tribunals should be discontinued. An Industrial Relations Commission (IRC) on a permanent basis should be set up at the centre and one in each state for settling 'interest' disputes. The IRC will be an authority independent of the executive. The main functions of the National/States IRCs will be (*a*) adjudication in industrial disputes; (*b*) conciliation; and (*c*) certification of unions as representative unions.

(*v*) In essential industries/services, when collective bargaining fails and when the parties to the dispute do not agree to arbitration, the IRC shall adjudicate upon the dispute and its award shall be final and binding.

It is unfortunate that most of the above recommendations have not been implemented.

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[17] Govt. of India, *Report of the Second National Commission on Labour* (2002), 35.

## VII. REVIEW OF LABOUR LAW BY THE SECOND NATIONAL COMMISSION ON LABOUR

The poor conditions of unorganized labour and the defective labour laws continued to engage public attention. On 11 January 1999, the Government of India announced its decision to set up the second National Commission on Labour to make suggestions to rationalize laws for workers in the organized sector and recommend an 'umbrella' law to protect labour in unorganized employments. The Commission was asked to take into account the emerging economic environment involving rapid technological changes, requiring response in terms of change in methods, timing and conditions of work, in industry, trade and services, globalization of economy, besides desirability to bring the existing laws in tune with further labour market needs and demands.[18] While making a study, the Commission was also required to examine the minimum level of labour protection and welfare measures and the basic institutional framework for ensuring the same in the manner which is most conducive to a flexible labour market and adjustments necessary for furthering technological changes and economic growth.

The (second) National Commission on Labour, which submitted its report to the Government of India on 29 June 2002, has made wide ranging recommendations on various facets of labour, viz., review of laws, social security, women and child labour, skill development, labour administration, unorganized sector, etc. Some of the significant recommendations are as under:

(*i*) Existing set of labour laws should be broadly grouped into four or five sets of laws pertaining to: (*i*) industrial relations; (*ii*) wages; (*iii*) social security; (*iv*) safety; and (*v*) welfare and working conditions. The Commission is of the view that the coverage as well as the definition of the term 'worker' should be the same in all groups of laws, subject to the stipulation that social security benefits must be available to all employees including administrative, managerial, supervisory and others excluded from the category of workmen and those not treated as workmen.

(*ii*) There is no need for different definitions of the term 'appropriate government'. There must be a single definition of the term, applicable to all labour laws. The Central Government should be the 'appropriate government' in respect of Central Government establishments, railways, posts, telecommunications, major ports, light-houses, Food Corporation of India, Central Warehousing Corporation, banks (other than cooperative banks), insurance and financial institutions, mines, stock exchanges, shipping, security, printing presses, air transport industry, petroleum industry, atomic energy, space, broadcasting and television, defence establishments, cantonment boards, central social security institutions and institutions such as those belonging to CSIR, ICAR, ICMR, NCERT and in respect of industrial disputes between the contractor and the contract labour engaged in these enterprises/ establishments. In respect of all others, the concerned state government/union territory administrations should be the appropriate government. In case of dispute, the matter will be determined by the proposed National Labour Relations Commission.

(*iii*) Central laws relating to the subject of labour relations are currently the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 and the Industrial Employment (Standing

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[18] See *Hindustan Times*, January 12, 1999, New Delhi.

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