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“LABOUR LAWS IN INDIA: A CONSTITUTIONAL AND INTERNATIONAL ANALYSIS”

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INTRODUCTION

Labour laws is also known as employment laws, the main purpose behind the creation and implementation of labor related laws is to protect the employees from exploitation and ensure a good living condition. It is a body of laws that govern the relationship between employees and employers and to entrust the legal rights of the workers and their working organizations. In labour laws, there is also mentioning about the settlement mechanisms to settle any industrial disputes. Labor laws are mainly formed under the socialist principle for providing all the legal benefits for the workers community. Labour law is in the concurrent list, in Indian Constitution, the need for framing labor laws is well defined in several provisions. In all countries, labor laws are there to safeguard the rights of employees and protect them from exploitation. International Labour Organization is an international organization which is formed with the sole purpose of preserving the labour rights and to regulate the labor laws and to settle any industrial disputes between the employees and the employees. In this paper, discussing about the several labor laws in international perspective. State is an integral part of labour laws and also labour rights are inevitable to the social and economic development since the industrial revolution. Departments of Labor are responsible for the effective administration of labour legislations and for promoting its future development.

NEED OF LABOUR LAW

The origins of Labor law can be traced back to the past and the most varied parts of the world. The labor laws arose due to the continuous demands of workers for their better conditions. If we look into the past, we can witness the unfair treatment of employers to their workers and can witness the remarkable transformations too. Present labour laws in the country are a product of industrial revolution. It was the process of transition from the agrarian economy to industrialized or machine era. During this period, new machines were formed and the emergence of steam engine and spinning jenny. These technological advancements reduce the need of manual workforce and increase the productivity and helps to enlarge the trade

relationship between the nations. It leads to several working opportunities and the rapid growth of urban areas. The industrial revolution was first coined by the English economic historian Arnold Toynbee. It gradually affects the labor's right, they didn't get proper wages, facing exploitation, long working hours, inequality in the payment and abuse from the workplace. The Indian economy was also under the control of East India company and also exploited the working class of India too. With the growth of industrialization, employees faced several harsh conditions and they organized unions and agitated for their needs. As a result of this, the government enact the labor laws to protect their interest. For instance, Britain enacted the first labour law, The Factory Act 1833, which limited the working hours for children, women and provide minimum wages, list safety measures, US passed Fair Labor Standards Act, 1938 ensured minimum wages and overtime pay. For regulating all the system globally, the international labor organization was founded in 1919. It was one of the first organization to deal with the labour issues, rights and to promote the social justice. It was established through the Treaty of Versailles after the First World War. International Labour Organization adopted several labour conventions and recommendations in order to protect and resolve the labour rights and interest. After the Second World War, UN emerged as the successor of League of Nation and International Labour Organization merged with the United Nations. After that many countries introduced several social welfare programs and enacted laws for the worker's upliftment.

EVOLUTION OF LABOUR LAWS

The history of labour legislation is closely connected with the history of British colonialism era. They enacted laws for to support the needs and interest of their employees. Prior to India's independence, British government introduced Factories Act, 1833. This act created the guidelines for managing working hours, prohibit the child labour, wages for the overtime labour, prohibition of women from night work. Then later introduced Trade Union Act 1926 and Trade Disputes Act of 1929 with the aim of creating a good relationship between workers and employers and promoting collective bargaining. Ultimately, Industrial Disputes Act 1947 repealed the Trade Union Act 1929. Later on, the continuous demands of union, workers, the Government of India enacted several labour welfare laws for governing the workers and employer's relationship.

PROVISIONS OF LABOUR LAWS IN THE INDIAN CONSTITUTION

Under the Indian Constitution, the importance for the dignity of human labour and the need for safeguarding the labor's interest can be seen in Chapter 3 from Article 16,19,23,24 and in Chapter 4 from Article 39,41,42,43,43 A of the Constitution. Article 23- Prohibition of traffic in human beings and forced labour. Article 24- Prohibition of employment of children in factories, means restriction for the children below the age of 14 years. Article 41- Right to work. Article 42- State shall make provisions for securing just and humane conditions and maternity benefit. Article 43A- State shall make suitable legislation to secure the participation of workers in the undertakings or other organizations engaged in any industry.

Labour law is in the concurrent list, so both can make laws under this with the aim of welfare of the workers. Some laws are only prevailed in their respective states because states can also make provisions under this subject matter. Under this law, there include right to work, prohibition of child labour, protecting minimum wage, social security measures, redress of grievance, to form and organize trade unions, collective bargaining. International Labour Organization and UN principles have influenced the legislators while implementing labour law.

LABOUR LAWS IN INDIA

In India, we have plethora of labour laws. They are enacted by the Central Government, some of them are enacted by the Central Government and enforced by the State Government and some other laws are enacted by the Central Government but enforced by both governments. Some of the important social security labour laws are as follows;

- 1) Employee's State Insurance Act 1948.
- 2) Industrial Disputes Act 1947.
- 3) The Equal Remuneration act 1976.
- 4) The Maternity Benefit Act 1961.
- 5) The Minimum Wages Act 1948.
- 6) The Payment of Wages Act 1936.
- 7) The Factories Act 1948.
- 8) The Trade Unions Act 1926.
- 9) The Workman's Compensation Act 1923.
- 10) Prevention of Sexual Harassment of Women at Workplace, 2013.

EMPLOYEE'S STATE INSURANCE ACT, 1948

This act is a social welfare legislation. Social security means it's the protection that a society given to individuals to ensure income security in case of unemployment, sick, injury and to provide financial stability to the persons. The main object of giving benefits to employees in case of sick, injury, maternity related matters. This act was passed to meet the needs of Articles 41, 42, 43 like right to work and give assistance in case of unemployment, old age, sick. Under this act, the employees can avail several benefits like medical benefits, cash benefits, pension, compensation for diseases.

Section 2(12)¹, defines the factory. It means any premise, where 10 or more persons were employed and in any part of the premises which a manufacturing process is being carried on with the aid of power but doesn't include a mine, railway running shed.

This act defines the manufacturing process² and it has the same meaning assigned to the Factories Act, 1948. Section 2(k) of Factories Act defines the manufacturing process and it's the making, altering, finishing, packing, cleaning, demolishing any article or substance with a view to its use, sale, transport, delivery or disposal.

- 2) pumping oil, water,
- 3) generating, transforming power or
- 4) composing types for printing, or book binding,
- 5) constructing, reconstructing, repairing, finishing of vessels,
- 6) preserving or storing of any article in cold storage.

Section 2(22), defines wages, means all remuneration paid or payable in cash to an employee, but doesn't include any pension fund or provident fund, any travelling allowances, any gratuity, payable on discharge.

This act covers the shops and establishments employing more than 20 employees too. An employee who is a member under ESI scheme cannot claim any compensation under Workmen's Compensation Act and from under the Maternity Benefit Act. There is an Employee's State Insurance Corporation. It consists of members representing employees, employers, the central and state governments, representatives of parliament and medical

¹ Employee's State Insurance Act, 1948.

² Sec.2 (14) AA of Employee's State Insurance Act, 1948.

profession. Standing committee is the executive body. The Medical Benefit Council is a statutory body which gives advises regarding medical benefit. The employer should register the factory with ESI Corporation. Both employee and employer should contribute the wages as prescribed by the act, there is an Employee's Insurance Court for adjudicating the case, if any issue arise. It is constituted by state government. Appeal can file before the High Court within 60 days against such order.

FACTORIES ACT, 1948

The purpose of this act is to ensure adequate safety, health, welfare measures of the workers who are employed in factories. This act which underlines the employment conditions, working hours, maintenance of factories, in both limit for using several hazardous substances, to protect the safety and health of the workers.

Section 6 defines the registration of factories. Chapter 3 covers the health-related sections of workers and the employers and they should obey the rules. Section 11 says that factory should be kept clean. Section 12 says that there should be arrangement of dispose of waste and affluence, ventilation should be adequate, adequate drinking water, lighting, latrines, urinals should be provided. In welfare areas, it includes the adequate first aid boxes should be provided and maintained, areas for taking rest, adequate facilities for washing, sitting and storing clothes, provide canteens and shelter rooms. Give facilities, in case of large factories, for more than 500 workers- provide ambulance room, 250 or more provide candy.

In safety areas, should test the working conditions of the machines periodically and should be properly fenced it, provide safety appliances for eyes, dangerous dust and gas, should appoint safety officer, if number of workers are thousand or more.

This act also specified the working hours and provide 48 hours in a week under Section 51. Weekly holiday compulsory, provide at least an hour rest after 5 hours of work, there is a restriction on double employment and cannot work in two factories at the same time. There are certain welfare measures for women like they can't be employed beyond 6am to 7pm hours.

All workers name should be maintained on a register. Child below the age of 14 should not be employed, in case of adolescent, he can be employed only if he is fit and certified by a certified surgeon for a full day's work and should display the abstract of factories act and rules in English

and local language on notice board.

INDUSTRIAL DISPUTE ACT, 1947

Before this act, all industrial disputes were governed under the provisions of Trade Disputes Act, 1929. But unfortunately, there are some defects in 1929 act and to remove that defect, the Industrial Dispute Act, 1947 came into force. It was enacted to make provisions for investigation and settlement of industrial disputes. It contains 40 sections divided into 7 chapters. Chapter 2 contains various authorities under the act, these include conciliation officers, labor courts and tribunals. Chapter 3 contains the main provisions like filing disputes to labour courts and industrial tribunals. Chapter 5 contains provisions to prohibit strikes and lockouts, chapter 6 contains various penalties. Industrial dispute means an disagreement between an employer and workers representatives ie, a trade union. If anything happened like that, they tried to resolve it and the management may resort to lockouts while the workers may resort to strikes etc. Section 2 (K) defines industrial dispute, it means dispute between employee and employers. The aim is to provide industrial peace and harmony between them by resolving the conflict through negotiations. Section 25T-U says that no workman or a trade union shall commit any unfair labor practices and shall be punishable with imprisonment for a term not exceed six months or with fine which may be extend two ₹1000 or both. Section 26 says about the penalty for illegal strikes and lockouts for one month imprisonment or fine up to rupees 50. The authorities under this act are conciliation officer, court of inquiry, board of conciliation, labor courts, tribunals, national tribunals.

WORKMEN'S COMPENSATION ACT, 1923

This act defines that to provide workmen or their dependents some reliefs or financial aid in case of any accidents occurred while in the employment period. It protects the workers from financial distress and provide aid and service in the form of compensation for injury by accident. This act doesn't apply to workmen, who covered under the ESI Act. Section 2(n) of the act defines workmen, who is a master, seaman or other member of the crew of a ship, or a captain, a person recruited as driver, helper, mechanic, cleaner. This act covers the cooks employed in hotels, restaurant using power. If anyone suffers any injury in any accident arising out of in the course of employment is entitled to compensation. In some cases, the employer shall not be liable if the employee worked willfully against the order of the employer and also if the employee is injured under the influence of drugs, in that case also employer is not liable and

here the burden to prove willful disobedience shall lie upon the employer, when the employee filed any suit for damages against the owner in a civil court. In this act, there are two types of disablements. It refers to the loss of earning capacity by an employee due to an accident. There are partial and total disablement, total disablement means that the employee fully loss its earning capacity. The most important aspect is that, the accident must be arise out of and in the course of employment, then only the compensation can be claimed. The general principle of this act is that is there must be a causal connection between the injury and accident and it must be done in the course of employment. The onus is upon the applicant to prove it. If there was no fault on the employer, the compensation will get, ruled in New India Assurance Company Limited V Ponnama Kurien³. Compensation is payable even if the fault is upon the employee or didn't take any proper precautions, this was held in Mar Themotheous V Santhosh Raj⁴. under this act comma the government appointed a commissioner for workmen's compensation full stop all the funds must be paid only through the commissioner in case of death or total disablement.

TRADE UNIONS ACT, 1926

This act given the procedure for the registration of trade unions and provide the trade unions some protection and rights in order to protect the labors and as a representative of labour force through several mechanism and collective bargaining is one of them. Chapter 2, Section 3 of the act defines the appointment of registrar and it should be appointed by the state government of each state. Section 4 says about the mode of registration, there should be a maximum of seven or more members of a trade union in order to register. Applications will be made to the register through Section 5 and it should be signed by 7 numbers at least and it should contain the names, addresses, occupation of the members, name of that trade union, addresses of its head office and the name and occupation of its office bearer's etc. If the union is already working for more than one year, it should supply the statement of assets and liabilities After the clear perusal of documents the registrar shall register the trade union and issue a certificate of registration. Trade union is a perpetual succession and have a common seal and it can hold property, sell, acquire, transfer properties of both movable and immovable. It can be sue and be sued. A person who attained majority can be appointed as an office bearer of a registered trade union. In case of any change of registered office, a notice should be given to the register within 14 days of such change. In case of dissolution, also the notice of dissolution should be

³ New India Assurance Company Ltd V Ponnama Kurien, (1995) 84. Com.Cas.251(Ker HC DB)

⁴ Mar Themotheous V Santhosh Raj, 2001 LLR 165(Ker HC DB).

given within 14 days of the dissolution. If they don't do above mentioned matters properly then there is a fine and any one gives any incorrect copy of the rules of the union, then the fine amount would be up to 200.

MINIMUM WAGES ACT, 1948

This act was first evolved by international labour organization in 1928 with several issues facing by the workers at that time and especially in the matters like the payment of wages and it led to exploit them. Later the Minimum Wages Act introduced for providing a fixation of minimum wages in certain employments. The main elements of the act were, the Appropriate Government means both the central and the state governments and the rates of wages once fixed are revised at an interval not exceeding of five years. The employer must pay wages as prescribed by the government. It must be paid in cash and the amount of wage should be given as prescribed by the act and every employer should maintain a register of wages. The employer should place a notice in front of the establishment in regional and English language showing the minimum rates of wages, name and address of the labor inspector or assistant commissioner of Labor etc. It covers to all workers in the agricultural, industrial, small-scale sectors etc. The Government of India have been fixed some amount as minimum wages and the fixation of rate of wages is done by assessing the cost-of-living, variable dearness allowance measures.

NEW LABOUR CODES

To combine 29 central level related legislations, the central government proposed four Labour Code bills in 2019. The Parliament approved 3 labour code bills in September 2020, with the aim of consolidating the different labor laws in the country. Labour is a concurrent list subject so Central and the State legislature can make laws. The second National Commission on labor in 2002 recommended the codifying labour laws in order to make them transparent and uniform. The reason behind that decision was the existing labor laws were outdated, complex and inconsistent with the present situation. Finally, the central government subsumed or codified the existing 29 central labour related laws and industrial laws into four, they are as follows: -

- 1) Code on Wages
- 2) Industrial Relations Code
- 3) Social Security Code
- 4) Occupational Safety, Health and Working Conditions Code.

But these laws are not implemented yet. This labour reforms will enhance the ease of doing

business in the country. The benefits of these for labor codes will be available to workers of both organized and unorganized sector. For labor laws codified or amalgamated into the code on wages 2019, through this code all the workers have got the right to minimum wages and it will review in every five years. Equal pay to male and female workers, it increases the wage ceiling limit from 18,000 to 24,000.

Central Government codified 9 labour laws into the social security in order to provide insurance, pension, maternity benefit and free treatment will be available to organized and unorganized sector under the ESI hospitals. It made compulsory to register with employee's State Insurance Corporation, if it's working in hazardous area. The code proposes the establishment of a National Social Security Board for recommending the central government about various schemes.

13 existing labour laws were codified into Occupational, Safety, health and working conditions code in this code it mainly focuses on the security of interest of workers engaged in factories, plantations, contract and migrant workers in order to provide better and safe working conditions and environment. Free annual health checkup, providing appointment letters to the workers, right to women workers to work in all type of establishments, maternity leave for woman increased from 12 to 26 weeks.

Central government codified 3 labor laws into Industrial Relations Code, in order to safeguard the interest of trade unions. To resolve the dispute between unions and employers through amicable manner. It includes prior permission of the government is mandatory before closure, retrenchment, lay off employees in establishments having more than 300 workers, it prohibits the employees from going on strike without giving 60-day notice and also prohibited from going on strike during the pendency of proceedings before the tribunal.

INTERNATIONAL LABOUR ORGANISATION

The International Labor Organization Was created in in the Paris peace conference of 1919, as a part of Treaty of Versailles that entered the First World War. In 1946, the International Labour Organization became a specialized agency of the United Nations, protects the interests and the voice of workers, employers and governments providing a unique platform for promoting decent work for all women and men. It is devoted to promoting social justice and recognized the international labor and human rights and also helps to create an environment of decent

working conditions. The preamble of International Labour Organization constitution prescribes about the regulation of working time, prevention of unemployment, provision of adequate living wage, social protection of workers, children and women and also equal pay for equal work, freedom of association, elimination of forced labor law, right to collective bargaining.

The International Labor Organization has 187 member states. It is headquartered in Geneva, Switzerland. It's the oldest specialized agencies of the United Nations. The International Labor Organization has a tripartite governing system, that unites governments, employees and workers to establish labor standard and also for creating laws. There are three main bodies, they are, The International Labour Conference, which meets annually to formulate International Labor Standards. The Governing Body is the second one, which act as the executive council and the decides the policy and budget, it meets three times a year. The third one is International Labour Office, the permanent secretariat that administers the organization. It had played a crucial role in protecting the workers' rights throughout the 1930s Great Depression.

The International Labor Organization has four strategic goals there,

- 1) To create and implement workplace norms, core values and fundamental rights.
- 2) To improve the chances for decent work and they guarantee that men and women have equal opportunities for the same.
- 3) Promote the tripartism.

The International Labour Organization is crucial for resolving labour related concerns, they adopted conventions and promotes and strives to safeguard the human rights. The majority of these conventions are non-binding. However, it becomes legally binding as soon as a member state accepts the conventions.

The International Labor Organization adopted a declaration named Declaration on Fundamental Principles and Right to Work in 1998. It says about 8 fundamental principles and rights including,

- 1) Elimination of forced labor convention.
- 2) Abolition of child labor.
- 3) Freedom of association and the right to collective bargaining.
- 4) Elimination of discrimination in respect of employment and occupation.

The core conventions of international labor organization are as follows,

- 1) Force the labour convention.
- 2) Minimum age convention.
- 3) Equal remuneration convention.

India is also a founding member of International Labour Organization; it became a permanent member of governing body in 1922. India also ratified 6 fundamental conventions and not ratified the freedom of association and the right to organize convention and the right to organize and the collective bargaining conventions.

CONCLUSION

The protection of workers' rights the establishment of norms for labor practices and the encouragement of amicable workplace interactions made labor laws crucial. They are also very important for making a healthy environment between the government and the workers. The main aim of this loss was to protect the workers interest, rights and to provide Social Security measures in order to make a good standard of living for the workers. This loss promotes peaceful industrial reforms.

Looking back into history, we can witness the exploitation and humiliation faced by the labour sector and to protect and save the community from these evils, the government enacted several labor laws for safeguarding their interest. They agitated against the evil forces and as a result of that international organization like International Labor Organization were formed and introduced the conventions and rules to uphold the interest of the workers and provided Social Security schemes for the workers upliftment. The International Labor Organization is a crucial body for making rules and regulate the labor laws and conventions. It marked the several basic conventions to safeguard the industrial life of the workers. The labor law enactments are a very much needed thing in our society. Fair competition, equal pay for equal work, health and safety of workers in the industries, provide protection from discrimination, and safe working conditions are the evolving labor concerns of the present generation. The global standards foster the fair-trade practices. These are essential for ensuring fair, safety and healthy working environment.

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