



## "A COMPREHENSIVE ANALYSIS OF THE EVOLUTION OF LABOUR LAWS IN INDIA"

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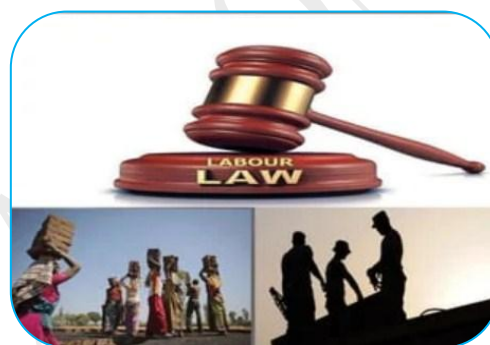
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### ABSTRACT:

*Labour management relations are a dynamic socio-economic process. Both parties, namely, employers and employees constantly strive to maximize their preferred values by applying resources to institutions, in their efforts, they are influenced by and are influencing others. In order to meet these situation labour laws seeks to evolve a rational synthesis between conflicting claims of the employers and employees.*

**KEYWORDS:** *Labour management relations , socio-economic process, rational synthesis.*



### INTRODUCTION

It examines the merits of the rival contentions and seeks to resolve the conflict by evolving solutions, which without causing any injustice to the employers meet the employees' legitimate claims. A number of legislations can be traced directly or indirectly to the Conventions and Recommendations adopted by the International Labour Conference. Labour laws seek to regulate the relations between employer and employees. The access of this law is wider than any other law as it touches the lives of billions of workers besides employer and consumers. In this paper attempt is made to trace the evolution of labour laws in India.

### Labour and Management Relations:

Land, capital and labour emerged as factors of production and economic power belonged only to those who could control use of these key factors. Capital and labour were wedded to land and economic power belonged to those who control its use. With the industrial Revolution in certain part of the world, capital became the vital factor of production. Industrialization brought about far reaching changes in the working methods, manpower management relations on the shop-floor. This led to emergence of two distinct classes on the industrial scene, namely, the capitalist and the working class. Initially, the capitalist were more powerful as they provided capital. Because the labour were unorganized and untrained and

lack mobility hence did not receive fair deal from the employers. Industrial and labour jurisprudence in our country developed gradually. Its birth may be traced back to the industrial revolution. Until independence, it was existed in the rudimentary form in our country. Legislations regarding industrial relations though were in the primal state, it did have benign intentions to ameliorate the conditions of labours.

After independence, the Indian government followed a socialist policy with stress on mixed economic policy, i.e. both private & state owned enterprises were encouraged but were regulated with licenses and controls. In order to bring greater equity and harmony in industrial relations, the government played an active role by enacting various labour

Protective labour laws in the interest of the weaker labour class, which was open for exploitation by the employers. It also instituted tripartite labour conferences and ratifying Convention of the International Labour Organization. This encouraged the dependency of the labour on the government, which was very willing to take on role of an arbiter in labour - management disputes and gain political advantage.<sup>1</sup> The purpose of these interventions of the government in the labour matter was to extend benefits of industrial prosperity to workers being he is important partner in the production to seek his active co-operation. This was an attempt to ensure social justice, social security and create cordial atmosphere, which have not adequately protected by earlier legislations. In addition, to fortify the Constitutional goals enshrined in the preamble, fundamental rights and Directive principles of State policy with regards to Labours. In this process Government/State evolves, influences, mould and shapes labour relations with instruments of laws, rules, agreement, awards of the courts, and emphasis on usages, customs, traditions, other considerations, implementations of its policies and interference through executive and judicial machinery. Thus, industrial relations affect the economic social and political life of the whole community and industrial life in particular. Here all methods are available, welfare model dealing with labour management relations ranging from conciliation, arbitration, worker participation in management, collective bargaining to the ethical codes and the bipartite and tripartite forums for consultation. The government has shifted its emphasis from time to time, and pragmatism has alternated with ideology of mixed economy and Gandhian Philosophy of trusteeship. The growth of labour laws and industrial jurisprudence in India subsequent to 1950 bears close resemblance to the growth of Constitutional law. The Constitution through Directive Principles of State Policy and Fundamental Rights provided safeguards to protect the interest of weaker and disadvantaged class of labour. Quite apart from this, the Supreme Court and the High Courts in the process of judicial interpretation has played a creative role in protecting the interest of the bonded labour, child labour, contract labour, women workers, labour getting less than minimum wage and labour becoming jobless on closure of the establishments by invoking the new concept of public interest litigation.<sup>2</sup>

That the theory of 'hire and fire' as well as the theory of 'supply and demand', which allowed free scope under the doctrine of 'laissez faire' no longer hold the field. While constructing a wage structure the industrial adjudication has to take into account to some extent the considerations of right and wrong, propriety and impropriety, fairness and unfairness. As the social conscience of general community becomes more alive and active, as the 'welfare policy' of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement collective bargaining enters the field, wage structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilized and progressive society also comes to be recognized.<sup>3</sup>

Labour legislation has intimate relations with human factor in industry. In fact, labour legislation had originally introduced to curb the excesses of the early factory system and offer relief to the factory workers groaning under inhuman conditions of service. Labour laws that were protective in character to start with, gradually became ameliorative with the inclusion of welfare measures. In various countries, the basic or protective legislation had enacted through the efforts of more enlightened and liberal sections of society who could not stand the appalling hardships of the workers. Gradually, the concept of welfare has become an integral part of the philosophy of industrial jurisprudence.<sup>4</sup>

The emphasis of law on achieving the social welfare of the people along with the fact of great economic and technological advancements have placed great burdens on law and the courts of law.

<sup>1</sup> Memoria C B Dynamic of Industrial Relations, Himalaya Publishing House, Nagpur, 5<sup>th</sup> Edn 2009 p 177

<sup>2</sup> Supra 1, at p 3

<sup>3</sup> Standard Vacuum Refining Co of India Ltd v Its Workmen (1961) 1-LLJ 227, 282 (SC)

<sup>4</sup> IGNOU, study material on Labour Laws Ms-28, Industrial jurisprudence- at p. 29

Because, of the necessity to enact laws for workers being weaker partner in industrial relations, on complex and diverse subjects it has become inevitable for the legislature to leave gaps in the statutes and deliberately give discretion to the courts to evolve doctrines, principles, standards, and norms themselves in the process of application of the law from case to case. Over the year the relationships between employers and employees has changed from masters and servants to one of co-partners. Earlier it was a one-sided relationship with employer wielding absolute power to 'hire and fire' employees. Gradually government and unions intervened to prevent one-sided exploitation by the employer and to wield countervailing power over them. Today the relationship between employer and employee is contractual, reciprocal, and mutual. The employee has certain rights and obligations and so does the employer. The obligations of the employer are relatively precise and specific whereas those of the employees are imprecise and elastic. The substantive terms of the contract of employment have prescribed wages, working hours, holidays, etc. in definite terms, but the obligations of the employee to provide an honest, efficient, and faithful service and to obey orders are not easily measurable and, therefore, application of sanctions against workers for non-fulfillment of obligations often becomes difficult. In the employment relationship, employee's expectations become employer's obligations and employers expectations become the employees' responsibilities. Therefore, there is bound to be certain area of conflict where either party is not able to live up to the other's expectations. Therefore, to meet the aspiration of both the parties the State plays a very vital role in harmonizing the industrial relation, the role of the State in industrial relations is determined by its political, ideological, and socio-economic orientation. This has a direct impact on the model it adopts for economic development. The role of the state varies depending on the status of development/industrialization and the level (international, national, industry) of interactions.<sup>5</sup>

## 2. Industry and Labour-Constitutional Perspective

The preamble of the Constitution, inter alia, seeks to provide Justice, social economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity, Fraternity, assuring the dignity of the individual and unity, integrity of nation. These principles enshrined in preamble of our Constitution provide the bedrock for framing all labour and social legislations and their progressive and creative interpretation in favour of working classes. These principles run through our labour legislations like golden threads and provide them strength and stamina to meet the aspirations of working classes; whether it is protective legislations, social security legislations, welfare legislations or even industrial relations legislations, they all heavily lean towards working classes due to the philosophy provided in the preamble. The Constitution is the Source of all legislations. Therefore, it is necessary to have a close look at the Indian Constitution.

### Constitutional Perspective:

The policy matters related to labour legislations have covered in list III (Concurrent list) of the Seventh Schedule to the Constitution of India. The important entries relevant to labour laws in this list are: Entry No. 22- Trade unions; industrial and Labour disputes, Entry No. 23- social security and social insurance, Entry No. 24 – Welfare of labour including conditions of work, provident funds, employers liability, workmen compensation, invalidity and old age pensions and maternity benefits, Entry No. 36- Factories, the only exception is that industrial disputes concerning union employees are contained in List I, (i.e. Union List) and thus is a union subject. The Central Government as well as the State Government can pass laws in respect of labour matters. However, most of the labour laws have been passed by the Parliament and are uniform all over India. Some of the Acts have been modified by States to suit their requirements.<sup>6</sup> It is worth noting the observation of the National Commission on Labour it stated that "the current dichotomy between laying down policy and its administration has not been without difficulties. Equally serious has been the States' desires to have new legislation. On occasions,

<sup>5</sup> Venkata Ratnam C S, Industrial Relations, Oxford University Press, New Delhi, 2009 at p. 263-64

<sup>6</sup> Padhi P K Labour & Industrial Laws, PHI Learning Pvt. Ltd, New Delhi, 2007, at p. 1, 2

there have been debates over the responsibilities of administering specific pieces of legislation as between Centre and States. For, a long time since independence, question of this type were sorted out in the Labour Ministers' Conference or in the tripartite. There have been instances when, on the advice of Central Government, a State had stayed its proposed action in the field of labour Legislations".<sup>7</sup> Article 245(1) empowers the Parliament to make laws for the whole or any part of the territory of India, and the legislature of a state to make laws for the whole or any part of the territory of the State. The parliament has an exclusive power to make laws with respect to any matters contain in list 1 in the seventh schedule of the Constitution, while the parliament and the legislature of the any State have the power to make laws with respect to the matters enumerated in list three of the Seventh Schedule of the Constitution. The fundamental rights, which run from Article 12 to 35, are contained in Part III of the Constitution, limit and control legislative competency. Any law including labour laws contravening any fundamental right is void. Any citizen affected by such a law has a right of access to the Courts under Article 32 and 226; where under it is the duty of the Supreme Courts or a high court, respectively, to enforce fundamental rights by issuing writs or suitable orders or directions. The rights mainly freedom of speech and expression, freedom of assembly, freedom of association, , the prohibition of forced labour, employment of children in factories and protection of life and personal liberty, protect some of the crucial interest of the workers, strengthening their hands in forming trade unions, staging demonstration and carrying on collective bargaining. On the other hand the freedom of trade and occupation may presumably be help principally to the employers in carrying and organize his business. The right to equality, however, protects both capital and labour, though in different manner.<sup>8</sup> The Part IV of the Constitution of India enshrined the goals and values to be secured by the State, as a welfare State and enumerated directive principles run from article 36 to 51. According to Article 37, though these principles are not justifiable, they are nevertheless fundamental in the governance of the country. These principles give certain direction to the legislature and the executives, to show in what manner they are to exercise the legislative and executive power vested in them. Hence, with a view to ensure that both the legislature and the executive do 'not merely pay lip-service to these principles, by that they should made the basis of all legislative and executive action...in the matter of governance of the country, the state has been enjoined to apply these principles while making laws. The National Commission on Labour said that Directive principles can be said to give a broad picture of the progressive philosophy, on which the Indian Republic expects to function in social, economic, political and international matters. The directive principles read as a whole, have in them, the running thread that also binds various elements that has often cited as the objectives of a social society.<sup>9</sup>

The preamble to Constitution emphasizes that India should be a socialist secular democratic republic based on social, economic and political justice. The directive principles therefore spell out in details the goal of economic democracy the socio-economic content of political freedom, the concept of welfare state. These principles have been characterized as 'basic to our social order' as they seek to build a social justice society. These principles have played a crucial role in legislative and administrative policy making in the country. They have inspired the idea of socialist pattern of society; the process of planning has been oriented towards achieving the goals contained in them, an especially public industrial and economic sector has extended and a pervasive system of government regulation of private economic enterprise has been created. Constant efforts are being made to improve the position of backward and economically weaker section of society in general and industrial workers in particular.<sup>10</sup>

Some of the important directive principles having direct impact on labour legislation include- i. social order based on justice, ii. To secure social, economic and political justice for all, to minimize the inequalities in income, to eliminate inequalities in status, facilities and opportunities to all section of

<sup>7</sup> supra 6

<sup>8</sup> Supra 1 at p.34

<sup>9</sup> Ibid at p. 35.

<sup>10</sup> Jain M. P. Indian Constitutional Law 4<sup>th</sup> edn. (1998), Wadhwa and Company Nagpur at p. 737,38



society, iii. An adequate means to livelihood, iv. Prevention of concentration of wealth and means of production, v. equal pay for equal work for both women and men, vi. Protecting and preservation of the workers health; vii To make provision for securing right to work to education and the right to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved wants, viii. Just and human conditions of work and for maternity benefits; ix living wage to the workers; x Participation of workers in management and decent standard of life to the workers. Thus, Article 38, 39, 41, 42, 43 and 43-A provides the basis of a large body of labour laws that obtain in India. Mostly an industrial law has been directed towards the implementation of these directives. Referring to Article 42 and 43, the Apex Court has emphasized that the constitution express a deep concern for the welfare of the workers. The court may not enforce directive principles as such, but they must interpret laws as to further and not hinder the goal set out in the directive principles.<sup>11</sup> Some of the basic principles evolved by the Supreme Court and various High Courts in India over a period of time while interpreting the fundamental rights and directive principles, namely- Equity and Fairness, Social Justice in Interpretation of welfare Statutes, Welfare. It is fruitful to discuss some of the landmark cases to understand the application of these principles by the Courts in India. **Equity and Fairness:** Equity refers to equal treatment to one and all under comparable circumstances. Equity and fairness are used synonymously in industrial relations. The concept of fairness in an objective when one applies a technical yardstick like market forces or job evaluation. For instance, the management may consider it fair to freeze wages in times of recession, while worker may feel that it is unfair to do so in view of the rise in the cost of living. The concept of fairness is utilitarian when one goes by what the majority accepts. The notion of fairness becomes relative when one considers whether or not one is getting a fair share of pay in relation to what others with similar qualification and experience are receiving.<sup>12</sup>

### **Social Justice in Interpretation of welfare Statutes:**

Social justice is an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. It operates at the levels of both distributive justice and corrective justice. The clearest manifestation of distributive justice is found in our concept of wages, dearness allowances, bonus other benefits to the workers. Social justice is concerned with the distribution of benefits and burdens throughout a society. In fact, the very object of industrial jurisprudence is to meet the growing need for social justice to the working class.<sup>13</sup> The pattern of social justice differs with the pattern of society. The concept of social justice may change with changes in society and social norms. Social Justice postulates the hopes and aspirations of a particular society and depends upon cultural, political and social development at a given time. It is justice according to the conscience of society. This changing pattern is indicative of the fact that the concept of social justice is a living and vibrant thing, and is a means to the establishment of a new social order. The concept of social justice derived its source from I.L.O. Conventions, Universal Declaration of Human Rights and above all, from the Constitution of India. It is find pride of place in Directive Principles of State Policy, in Part IV of the Constitution of India. The Constitution Provisions contemplated not only economic justice or equitable distribution of wealth, but also social justice with a view to providing adequate means of livelihood, work, equal opportunity, and opportunities for proper growth and development of health and welfare, especially of children and youth. These welfare and protective provisions enshrined in the Constitution have gone a long way in emancipating labour from bondage and repression, and have emboldened them to form trade unions. In short, the fundamental law of our country enshrines the concept of social justice as one of the objective of State Policy. Social justice as the mother of industrial jurisprudence is a philosophy superimposed on the legal systems and has emerged in its present shape when the old principles of absolute freedom of contract and the doctrine of Laissez faire or hire and fire yielded place

<sup>11</sup> U. P. S. C. Board v Harishankar, AIR 1979 SC 65

<sup>12</sup> Supra 6, at p. 33.

<sup>13</sup> Sharma A M Industrial Jurisprudence and Labour Legislation, Himalaya Pub. House, 6<sup>th</sup> Edn 2009 at p 48.

to the new principles of social welfare and common good.<sup>14</sup> In addition, in the process of dispensing social justice, the Supreme Court has laid down principles and guidelines based on which wages, bonus and allowances do have to be fairly divided among persons contributing to production of wealth. The compass of social justice has been extended far beyond its original frontiers by several decisions of the Supreme Court. The Apex Court said: "All legislation in a welfare State is enacted with the object of promoting general welfare; but certain types of enactment are more responsive to some social demands and also have a more immediate and visible impact on social vices, by operating more directly to achieve social reforms".<sup>15</sup> The concept of social justice is not narrow, or one-sided, or pedantic, and is 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 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, endeavors to resolve the competing claims of employers and employees by finding a solution, which is just and fair to both parties to establishing harmony between capital and labour, and good relationship. Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes.<sup>16</sup> In *Air India Statutory Corporation v United Labour Union and Ors*<sup>17</sup>, while underlining the significance of doctrine of 'social justice', the Apex Court observed that "Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc from handicaps, penury to ward off distress and to make their life livable, for greater good of the society. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and human conditions of work and leisure to workman are part of his meaningful right to life and to achieve self expression of his personality and to enjoy the life with dignity.

**Welfare:** The labour legislations being a welfare statutes have aimed at ameliorating the economic status and improving the working conditions of the working people, to attain these ends in such statutes, therefore, there are not only beneficial provisions to benefit the workers, but there are also generally enacted penal provisions, to assure the compliance of the beneficial effects of these statutes, such statutes, generally, have to be liberally construed, so as to make the power conferred by them real and not illusory, with a view to achieve the purpose for which the power was conferred.<sup>18</sup> A construction which would defeat the rights of the have-nots and the underdogs and which would lead to injustice should always be avoided. Thus, it is clear that while interpreting the welfare statute the court would follow the liberal construction rule, which would ameliorate the conditions of the workers being a weaker section in industrial sectors.

Thus, Labour legislation has intimate relations with human factor in industry. In fact, labour legislation has been originally introduced to curb the excesses of the early factory system and offer relief to the factory workers groaning under inhuman conditions of service. Labour laws that were protective in character to start with, gradually became ameliorative with the inclusion of welfare measures. In various countries, the basic or protective legislation was enacted through the efforts of more enlightened and liberal sections of society who could not stand the appalling hardships of the workers. In other words, social conscience revolted against the degradation of the workers into sub-human existence. The Governments were pressurized to meet to enact progressive welfare legislation

<sup>14</sup> Supra 5 at p. 23

<sup>15</sup> *Works Manager Central Rly Workshop v Vishwanath* (1970) 1 LLJ 351, 356-358(SC).

<sup>16</sup> *JK Cotton & Spinning Mills Co Ltd v Labour Appellate Tribunal* (1963) II LLJ 436, 444 (SC)

<sup>17</sup> *Air India Statutory Corporation v United Labour Union and Ors* (1997) 1 LLJ 1113, 1135(SC)

<sup>18</sup> *Malhotra O P*, *The law of Industrial Disputes* 6<sup>th</sup> edn 2009, Butterworth Wadhwa, Nagpur at p 47

to protect and to promote the interest of working class. Gradually, the concept of welfare has become an integral part of the philosophy of industrial jurisprudence.<sup>19</sup> The emphasis of law on achieving the social welfare of the people along with the fact of great economic and technological advancements have placed great burdens on law and the courts of law. Industrial and labour laws is developed in respect to the vastly increased awaking of the workers of their rights, particularly after the advent of independence. Government and other stakeholders, concerned with the determination of the terms of employment and conditions of labour of the workers. Escalating expectations of the workers, the hopes extended by Welfare State, uncertainties caused by tremendous structural developments in industry, the decline of authority, the declining attraction of the work ethics and political activism in the industrial field, all seem to have played some role.<sup>20</sup> The Government shaped a mixed economic policy to extend benefits of industrial prosperity to workers he being an important partner in the production process. The policy of the Government with respect to industrial workers had informed by the ideal of workers' welfare as enshrined in the preamble and directive principles of the Constitution. To give shape to this policy the governments in India, both the Federal as well as State, indulged into the profuse legislative activity. India showed remarkable sensitivity to the welfare of industrial workers by framing policies and enacting laws to ameliorate the woes of the industrial workers by consolidation of different labour laws into four important codes. In light of recent labour law reforms, it is evident that the landscape of labour management relations is continuously evolving to adapt to changing socio-economic dynamics. These reforms have aimed to enhance the balance between the interests of employers and employees while ensuring fairness and justice in the workplace. The emphasis has been on promoting transparency, accountability, and inclusivity in labour practices.

To sum up, the recent reforms have also recognized the importance of addressing emerging challenges such as technological advancements, globalization, and the gig economy. Measures have been taken to provide adequate protection and rights to workers in non-traditional employment arrangements, ensuring that labour laws remain relevant and effective in the modern context. Furthermore, the reforms have placed a greater emphasis on promoting dialogue and cooperation between employers and employees to foster harmonious labour relations. Mechanisms for dispute resolution have been strengthened, encouraging negotiation and mediation to resolve conflicts in a timely and amicable manner. Overall, recent labour law reforms have sought to create a conducive environment for sustainable economic growth, social development, and inclusive prosperity. By aligning with international standards and best practices, these reforms have positioned India as a progressive and responsible member of the global labour community. However, continual monitoring and evaluation will be essential to ensure that these reforms effectively address the evolving needs and challenges of the labour market to achieve this parliament consolidated labour laws into four codes to ensure effective compliance of the laws.

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<sup>19</sup> Supra 5 at p. 29

<sup>20</sup> Supra 21 at p. 19