

Labour Laws

By: Avantika Singh

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Published by:



NEERAJ PUBLICATIONS

(Publishers of Educational Books)

Sales Office : 1507, 1st Floor,

Nai Sarak, Delhi-110 006

E-mail: info@neerajbooks.com

Website: www.neerajbooks.com

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Typesetting by: Competent Computers

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LABOUR LAWS

INDUSTRIAL JURISPRUDENCE

Industrial Jurisprudence—An Overview



INTRODUCTION

The evolution of Industrial Jurisprudence in India can be traced back to the period of post Independence. Before the Independence, the industrial jurisprudence existed in a rudimentary form. The paramount concern of the Pre-independence industrial jurisprudence was the amelioration of the working condition of the workers at the factories. There was hardly any deal with the social justice to the working class. It was only after the commencement of our Constitution, that the adequate provisions for the social justice to the workers were inserted.

Before the Independence, India was not only a great agricultural country, but also a manufacturing country. But the British Government, as a matter of their policies always tended to discourage the Indian industries. This led to a widespread nationalism in India, which laid emphasis on the boycott of the foreign goods. Further a non-cooperation movement saw its birth that is also called swadeshi movement, which emphasized on the use of indigenous goods and boycott of the foreign goods.

CHAPTER AT A GLANCE

SOURCES

Industrial Jurisprudence was not in a much developed form before the commencement of the Constitution of India. Before the Independence, the paramount concern of the Government was to ameliorate the condition of the factory workers. It was after the commencement of the Constitution that the paramount concern of the Government shifted towards the social justice for the

labourers, who constituted the bulk of the population. Industrial Jurisprudence in India is based on three sources—the constitution, legislative enactments, and judge-made law or judicial decisions.

The Constitution

Every legislative act of the state must be in harmony with the constitutional values, and it must be intended to achieve the constitutional goals. The Preamble of the Constitution declares “we, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens: Justice, Social, Economic and Political; Liberty of thought, Expression, Belief, Faith and Worship; Equality of Status and of Opportunity; and to promote among them all Fraternity assuring the Dignity of the individual and the Unity and Integrity of the Nation”.

In our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution.

Chapter IV of the Constitution of India states about the Directive Principles of State Policy. Application of the principles contained in this part.—the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 38 of the Constitution states about the State to secure a social order for the promotion of welfare of the people: The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

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Article 39 (A) talks about the Equal justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 42 lays down the provision for just and humane conditions of work and maternity relief: The State shall make provision for securing just and humane conditions of work and for maternity relief.

The Constitution also states the fundamental rights. **Article 19** states protection of certain rights regarding freedom of speech, etc. All citizens shall have the right:

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

Prohibition of traffic in human beings and forced labour Article 23: Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Legislative Enactments

The role of the Ministry of Labour in the new millennium needs to be perceived and internalised in this perspective. This is one of the oldest and largest Ministries of Government of India. During its existence of over 50 years, the Ministry has passed through numerous vicissitudes. There have been new initiatives and significant achievements as well. New Divisions on emigration and child labour have been opened; laws on health, safety, welfare and social security of workers in both organised and informal sectors have been enacted, new welfare schemes have been introduced with simultaneous increase in budgetary outlays. The five enactments in the area of Social Security for the industrial workers are:

- Employees' Provident Fund and Miscellaneous Provisions Act, 1952.
- Employees' State Insurance Act, 1948.
- Workmen's Compensation Act, 1923.
- Maternity Benefit Act, 1961, and
- Payment of Gratuity Act, 1972.

The rule making power is conferred on the appropriate government, which may be a Central Government or State Government. The state laws are applicable only within the respective states, while the Central laws are applicable throughout the India.

ESI scheme is jointly administered by the Central Government and the State Governments. While the Central Government formulates the Scheme, recovers the contribution from employers of covered establishments with the help of its Recovery Officers.

Factories Act, 1948 regulates health, safety, welfare and other working conditions of workers in factories. It is enforced by the State Governments through their factory inspectorates.

Judge-made Law or Judicial Decisions

Industrial tribunals, the Labour Appellate Tribunal, the High Courts and Supreme Court have all contributed in varying measure to the principle of industrial jurisprudence. According to Article 141, the law declared by the Supreme Court shall be binding on all courts within the territory of India.

LABOUR LEGISLATION

Genesis

Law is necessary for maintaining peaceful environment for the growth of the industry. Labour legislation in India has developed with the growth of the industry. In the eighteenth century India was not only a great agricultural country but a great manufacturing country too. Asian and European markets were mainly fed by the looms supplied by India, but the British Government in India as a matter of policy discouraged the Indian manufacturers in order to encourage the rising manufacturers of England. Their policy was to make India subservient to the industries of Great Britain and to make Indian people grow only raw materials. The British oppression in India continued for a considerable time which led to the growth of Indian nationalism and to a vigorous renaissance. Nationalism has an obvious economic aspect with in our country which was reflected in the urge for economic reforms and for industrialization.

As per the economic policy of the British Government, they never wanted to make India an industrial base, rather they wanted to make India a supplier of raw materials for their industries. Instead of promoting industries in India, they continued to de-industrialise and ruralise the Indian economy. Further with the advent of industrial revolution in England, the British Government revved up its efforts to further exploit the Indian economy. As a result, in 1947, when the British left, India represented a ruined economy, a sick society and the present danger of the evil effects of neo-colonialism.

India is a founder member of the International Labour Organisation, which came into existence in 1919. At present the ILO has 175 Members. A unique feature of the ILO is its tripartite character. The membership of the ILO ensures the growth of tripartite system in the Member countries. ILO's interest in child labour, young persons and their problems is well known. It has adopted a number of Conventions and Recommendations in this regard. In India, within a framework of the Child Labour (Prohibition and Regulations) Act, 1986 and through the National Policy on Child Labour, ILO has funded the preparation of certain local and industry specific projects. In two known projects, viz. Child Labour Action and Support Programmes (CLASP) and International Programme on Elimination of Child Labour (IPEC), the ILO is playing a

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vital role. Both central and state governments have enacted laws on labour issues. Central laws grant powers to officers under central government in some cases and to the officers of the state governments in some cases.

In India, the plantation industry in Assam was the first to attract legislative control. The method of recruitment of workers in this industry was full of hardships. Workers were employed through professional recruiters. Workers were not allowed by the planters to leave the tea gardens. A number of Acts were passed from 1863 onwards to regulate the recruitments. These legislations protected the interests of the employers more than safeguarding the interests of the workers. The Factories Act was passed in 1934 and the Mines Act in 1923. The Workmen's Compensation Act, 1923 was passed to protect the interest of the workers. The following Acts have been enacted to promote the conditions of labour and regulate the relation between employer and employee keeping in view the development of industry and national economy: The Equal Remuneration Act, 1976, The Factories Act, 1948, The Industrial Disputes Act, The Industrial Employment (Standing Orders) Act, 1946, The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988, The Maternity Benefit Act, 1961, The Minimum Wages Act, 1948 etc.

Objectives

Some of the objectives of the labour laws are as follows:

1. Make statutory provisions for regular training of a certain number of apprentices in different trades.
2. Protect and safeguard the interest and well-being of the working class against arbitrary and unilateral actions of the employers.
3. Provide for statutory fixation, payment and periodic revision of need based minimum wages to employees.
4. Ensure that the employees are paid their wages on fixed dates, at least once a month.
5. Grant freedom of association to the working class to form trade unions and to have right to organise by providing for the registration of trade unions.
6. To promote welfare of trade union through collective bargaining and collective action.
7. Promote industrial peace by providing elaborate machinery for the settlement of industrial disputes.

Classification

There are over 45 legislations on labour from the Central Government and the number of legislations enacted by the State Governments is close to four times that of the Central Acts. Some of the important are as follows:

- (a) **Laws related to Working Conditions**
(i) The Factories Act, 1948

- (ii) The Plantation Labour Act, 1951
(iii) The Mines Act, 1952
(iv) The Motor Transport Workers Act, 1961
(v) The Contract Labour (Regulation & Abolition) Act, 1970
(vi) The Shops and Establishments Act. The Child Labour (Prohibition & Regulation) Act, 1986

(b) Laws related to Wages

- (i) The Payment of Wages Act, 1936
(ii) The Minimum Wages Act, 1948
(iii) The Payment of Bonus Act, 1965
(iv) The Equal Remuneration Act, 1976

(c) Laws related to Social Security

- (i) The Workmen's Compensation Act, 1923
(ii) The Employees' State Insurance Act, 1948
(iii) The Employees' Provident Fund & Miscellaneous Provisions Act, 1952
(iv) The Maternity Benefit Act, 1961
(v) The Payment of Gratuity Act, 1972

(d) Laws on Employment and Training

- (i) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
(ii) The Apprentices Act, 1961

(e) Laws on Labour Welfare Funds

- (i) The Mica Mines Labour Welfare Fund Act, 1946
(ii) The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976
(iii) The Limestone & Dolomite Mines Labour Welfare Fund Act, 1972
(iv) The Beedi Workers Welfare Fund Act, 1976

(f) Legislation on Industrial Relations

- (i) The Trade Unions Act, 1926
(ii) The Industrial Employment (Standing Orders) Act, 1946
(iii) The Industrial Employment (Standing Orders) Rules, 1946
(iv) The Industrial Disputes Act, 1947

SPECIAL FEATURES OF LABOUR LAWS

The term 'labour legislation' is used to cover all the laws which have been enacted to deal with "employment and non-employment" wages, working conditions, industrial relations, social security and welfare of persons employed in industries.

Need for labour legislation in India. All sectors are treated equally in the matter of operation of labour laws. Labour laws do not take in to consideration the size of industries, they apply to all industries. In India, labour legislation is treated as an arm of the State for the regulation of working and living conditions of workers.

STATUTORY RETURNS

Returns relating to industrial relations are statutory except trade unions are received on a voluntary basis. The primary object of returns under the factories act is to assess the extent to which the provisions of the act are

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implemented. These statutory returns provide factory statistics on Average Daily Employment, Mandays worked, Hours of work, Leave with wages, Accidents, Occupational diseases, Safety Measures, Welfare amenities like canteens, rest rooms, crèches, etc., inspections and convictions.

Returns under the Payment of Wages Act, 1936 furnish information on number of Factories covered under the Act and submitting returns by State and by Industry Code, Average daily employment during the year, Total number of man-days worked during the year, Total gross wage bill before deductions, by components like basic wages, cash allowances, bonus, arrears and money value of concessions etc.

Returns under the Minimum Wages Act, 1948 furnish information related to Addition of New Employments during the year, Fixation of Minimum Wages for the first time, Scheduled employments and prevailing Minimum Wage Rates for unskilled workers, Scheduled employments and range of Minimum Wage Rates, Comparative Minimum Wage Rates in Scheduled Employments in Central Sphere/ States/ Union Territories, Number of Inspections made, irregularities detected, prosecutions launched, claims preferred in Central Sphere/ States and UT's during the year.

Returns under the Plantations Labour Act, 1961 furnish information related to Number of days worked, Number of man-days worked, Average daily employment by sex and age, Number of hours worked per week, Maternity and sickness benefits, Welfare amenities and accidents. Act applies to any land used or intended to be used for growing Tea, Coffee, Rubber, Cinchona and Cardamom.

In the Motor Transport Workers' Act, 1961 information related to number of registered undertaking and average daily employment, distribution of undertakings by normal daily hours of work and rest intervals, number of workers entitled to annual leave with wages and workers granted leave, welfare facilities (i) number of canteens, (ii) rest rooms, (iii) dispensaries, (iv) doctors, (v) nurses and the number of undertakings providing these facilities and (vi) number of inspections, prosecutions and convictions. Motor Transport undertakings employing five or more transport workers.

Under the Shops and Commercial Establishments Acts, information on (a) number of (i) shops, (ii) commercial establishments, (iii) cinemas, theatres, hotels, restaurants etc., and (b) persons employed in each of these categories of establishments, number of inspections made, prosecutions launched, cases disposed of and amount realised as fines, ownership of shops and employment therein, breakup of the shops into (i) number of shops independently run by owners, and (ii) other shops.

The Act applies to shops, commercial establishments such as, restaurants, hotels and places of amusement in selected urban areas.

Returns under the industrial Employment (Standing Orders) Act, 1946 provides information on (a) establishments

covered by the Act, (b) employees in the covered establishments, (c) establishments with certified standing orders in respect of all or a group of employees at the beginning of the year with the breakup under (i) number of establishments and (ii) number of employees covered, (d) number of applications for certification in respect of establishments which had no certified standing orders either for all or any group of employees with the breakup: (i) pending at the commencement of the year, (ii) received during the year, (iii) disposed of during the year and (iv) pending at the end of the year, (e) similar details in respect of establishments which had certified standing orders in respect of any group of employees and which apply for certification of standing orders in respect of other group of employees, (f) number of establishments having certified standing orders in respect of all employees at the end of year along with the number of employees therein, (g) number of establishments having certified standing orders in respect of only a group of employees at the end of the year along with the employees covered therein. (Form - A).

Returns under the Workmen's Compensation Act, 1923 provides information related to average daily number of workers-adults and minors separately, number of cases of compensated injuries separately for: (i) death, (ii) permanent disablement, (iii) temporary disablement and (d) similar details of occupational diseases.

Under the Maternity Benefits Act, 1961 information of (a) Number of establishments covered by the Act, (b) number of establishments submitting returns, (c) average daily employment of women in the establishments submitting returns, (d) number of women who claimed maternity benefits, (e) number of claims of maternity benefits accepted and fully/partially paid, (f) total amount of maternity benefits, (g) amount of bonus paid and (h) number of cases in which women enjoyed full maternity leave prior to confinement. All these details together with those relating to enforcement (number of complaints received, number of cases in which violations were found and number of prosecutions/ convictions) are furnished separately for (i) factories, (ii) mines and (iii) plantations.

Under the Collection of Statistics Act, 1953, important items of information collected under the survey by the NSSO for both the Sectors relate to labour cost, scheduled working days, mandays/man-hours worked, mandays paid for, gross earnings before deductions, absenteeism and Labour turnover. These Statistics are processed and published by the Labour Bureau.

Under the Act, the Annual Survey of Industries (ASI) is conducted covering (a) all factories registered under Section 2m (i) and 2m (ii) of the Factories Act., 1948, (b) Bidi manufacturing units registered under the Bidi & Cigar Workers (Conditions of Employment) Act, 1966. For the purpose of the Survey, the units in the frame are divided into two sectors viz., (i) Census and (ii) Sample.