



Industrial Labour Laws with Reference to Directive Principles of State Policy

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Abstract:

The Constitution of India has conferred innumerable rights on the protection of labour. In this chapter let's see in brief what are all the rights conferred and what are the mechanism used, with the support of case laws. An important feature of the constitution is the Directive Principles of State Policy. Although the Directive Principles are asserted to be "fundamental in the governance of the country," they are not legally enforceable. Instead, they are guidelines for creating a social order characterized by social, economic, and political justice, liberty, equality, and fraternity as enunciated in the constitution's preamble.

Part IV of the Indian constitution outlines the directive principles that a state should remember while framing laws for the society. Directive principles call for the provision of social justice and economic welfare and ensure peace and harmony by trying to remove the prevalent social evils. These principles act as a check on the government and as a yardstick to measure government performance. However, these provisions are not enforceable in any court of law; a fact that makes us questions the relevance of directive principles.

The role of the state in providing employment, social services, education and environmental protection cannot be denied. For instance, in developing countries like India, the state is seen as an important source of employment and provider of welfare. The state has the obligation to devise policies that improve the standards of living of all, which can be done in coordination with NGOs and the private sector.

Keywords: *Constitution, Directive principles, Industrial labour, NGOs*

1. Introduction

During the 20th century a new branch of jurisprudence known as Industrial Jurisprudence has developed in our country. Industrial jurisprudence is a development of mainly post-independence period although its birth may be traced back to the industrial revolution. Before independence it existed in a rudimentary form in our country. The growth of industrial jurisprudence can significantly be noticed not only from increase in labour and industrial legislation but also from a large number of industrial law matters decided by Supreme Court and High Courts. It affects directly a considerable population of our country consisting of industrialists, workmen and their families. Those who are the affected indirectly constitute a still larger bulk of the country's population.

2. Principles of Labour Legislation

Labour legislation in any country should be based on the principles of social justice, social equality, international uniformity and national economy. In the beginning, the worker was paid only for the days he actually worked. Until the passing of Workmen's Compensation Act, 1923 no compensation was paid in case of an accident taking place in the course of employment. The

Minimum Wages Act, The Factories Act, and the Payment of Wages Act are a few other legislations based on the principles of the social justice. This legislation fix the hours of work, make provision for payment of over-time, and leave rules, safety, health and welfare of labour in industry. Labour welfare in our country has a special significance for our Constitution provides for the promotion of welfare of people, for humane conditions of work and securing to all workers full employment of leisure and social and cultural opportunities.

The proponents of the relevance of directive principles, however, argue that it is the moral responsibility of the government to take remedial actions to remove societal imbalances. The aim of the drafters of the Indian Constitution was that the directive principles of state policy should serve as a beacon to the government and ensure that goals are achieved through permissible means.

3. Historical Background of Labour Policy & Labour Laws

India's Labour Policy is mainly based on Labour Laws. The labour laws of independent India derive their origin, inspiration and strength partly from the views expressed by important nationalist leaders during the days of national freedom struggle, partly from the debates of the Constituent Assembly and partly from the provisions of the Constitution and the International Conventions and Recommendations. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The Labour Laws were also influenced by important human rights and the conventions and standards that have emerged from the United Nations. These include right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management. Labour legislations have also been shaped and influenced by the recommendations of the various National Committees and Commissions such as First National Commission on Labour (1969) under the Chairmanship of Justice Gajendragadkar, National Commission on Rural Labour (1991), Second National Commission on Labour (2002) under the Chairmanship of Shri Ravindra Varma etc. and judicial pronouncements on labour related matters specifically pertaining to minimum wages, bonded labour, child labour, contract labour etc.

4. Constitutional Provision Regarding Labour Law

Under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result, a large number of labour laws have been enacted catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc. This is how we have a large number of labour legislations, which can be categorized as follows:

4.1 Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement

1. The Employees' State Insurance Act, 1948
2. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
3. The Dock Workers (Safety, Health and Welfare) Act, 1986

4. The Mines Act, 1952
5. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
6. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act, 1976
7. The Mica Mines Labour Welfare Fund Act, 1946
8. The Beedi Workers Welfare Cess Act, 1976
9. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
10. The Cine Workers Welfare (Cess) Act, 1981
11. The Beedi Workers Welfare Fund Act, 1976
12. The Cine Workers Welfare Fund Act, 1981

4.2 Labour laws enacted by Central Government and enforced both by Central and State Governments

13. The Child Labour (Prohibition and Regulation) Act, 1986.
14. The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996.
15. The Contract Labour (Regulation and Abolition) Act, 1970.
16. The Equal Remuneration Act, 1976.
17. The Industrial Disputes Act, 1947.
18. The Industrial Employment (Standing Orders) Act, 1946.
19. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
20. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
21. The Maternity Benefit Act, 1961
22. The Minimum Wages Act, 1948
23. The Payment of Bonus Act, 1965
24. The Payment of Gratuity Act, 1972
25. The Payment of Wages Act, 1936
26. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
27. The Building and Other Construction Workers Cess Act, 1996
28. The Apprentices Act, 1961

4.3 Labour laws enacted by Central Government and enforced by the State Governments

29. The Employers' Liability Act, 1938
30. The Factories Act, 1948
31. The Motor Transport Workers Act, 1961
32. The Personal Injuries (Compensation Insurance) Act, 1963
33. The Personal Injuries (Emergency Provisions) Act, 1962
34. The Plantation Labour Act, 1951
35. The Sales Promotion Employees (Conditions of Service) Act, 1976
36. The Trade Unions Act, 1926
37. The Weekly Holidays Act, 1942
38. The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
39. The Workmen's Compensation Act, 1923
40. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
41. Act, 1959
42. The Children (Pledging of Labour) Act 1938
43. The Bonded Labour System (Abolition) Act, 1976

44. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

4.4 There are also Labour laws enacted and enforced by the various State Governments which apply to respective States

4.4.1 Labour Rights under the Indian constitution

The Constitution of India has conferred innumerable rights on the protection of labour. Let's see in brief what are all the rights conferred and what is the mechanism used, with the support of case laws.

The Articles 21, 23, 24, 38, 39, 39-A, 41, 42, 43, 43-A and 47 of the Constitution, are calculated to give an idea of the conditions under which labour can be had for work and also of the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country.

The idea of 'equal protection before the law' embodied in Article 14 of our Constitution serves as the philosophical foundation for equal treatment of similarly situated workers by the employer. This principle finds resonance in the idea of 'equal pay for equal work' enumerated in **Article 39(d)** which is further enforced through the **Equal Remuneration Act, 1976**. This statutory intervention also holds importance from the viewpoint of gender-justice since it was a clear command against discrimination between men and women who performed a similar quantum of work.

In the Pre-Constitutional era, the recommendation of the Royal Commission on Labour (1929) for granting recognition to unions was sought to be implemented by the Trade Unions (Amendment) Act, 1947 which was never brought into force. Subsequently, the Trade Unions Bill introduced in Parliament in 1950 proposed a mechanism for recognition, but the bill lapsed. Another failed attempt was made in the form of the Trade Unions and Industrial Disputes (Amendment) Bill, 1988 which proposed the creation of industry-level bargaining councils whose membership would be proportionate to the relative strength of various trade unions.

Article 24 of the Constitution of India is also enforceable against private citizens and lays down a prohibition against the employment of children below the age of fourteen years in any factory or mine or any other hazardous employment. This is also in consonance with Articles 39(e) and (f) in Part IV of the Constitution which emphasizes the need to protect the health and strength of workers, and also to protect children against exploitation. The Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits the employment of children in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.

The understanding of Article 23 was expanded by the decision in *People's Union for Democratic Rights and others v. Union of India* which was also followed in *Sanjit Roy v. State of Rajasthan*. In that case, it was held that when a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words 'forced labour' under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32) for the enforcement of fundamental rights which include the payment of minimum wages.

In *Randhir Singh v. Union of India*(AIR 1982 SC 879), the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution

to be a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39 (c) of the Constitution. In **Dhirendra Chamoli v. State of U.P (AIR 1986 SC 172)** it has been held that the principle of equal pay for equal work is also applicable to casual workers employed on daily wage basis. In **State of Maharashtra v. Manubhai Pragaji Vashi** the Court has considerably widened the scope of the right to free legal aid. The right to free legal aid and speedy trial are guaranteed fundamental rights under Art. 21. Art 39A provides "equal justice" and "free legal aid". It means justice according to law.

In addition are the provisions in Part IV of the Constitution of India. While Article 38 speaks of the promotion of welfare of all the people Article 39 (a) speaks specifically of right to an adequate means of livelihood for men and women equally. Article 39 (d) addresses the issue of equal pay for equal work for both men and women (the Government of India went on to enact the Equal Remuneration Act in 1975 to fulfill this direction) and Article 39 (e) particularly directs the state to ensure that its policy secures that the health and strength of workers, men and women and children are not abused and that the citizens are not forced by economic necessity to take to vocations unsuited to their age or strength. Article 41 adds strength to Article 39 (a) by stating that within the limits of its economic capacity and development the State should make effective provisions for securing the right to work amongst other things to its entire people. Article 42 is one of the hall marks of the Indian Constitution as it takes into consideration the very specific context of pregnancy related discrimination in the context of employment and therefore it directs the State to make provisions for securing not only just and humane conditions of work but also for Maternity Relief. It is in this context that the Government of India went on to enact the Maternity Benefit Act, 1961 which enables women in the labour force who have been employed for 160 days in a year to provide leave with pay and medical benefit.

4.4.2 Judicial Creativity and the expansion of 'Industrial Jurisprudence'

Even though the rights of labourers are governed by several statutes, it is important to understand the scope of constitutional remedies that have been recognized in this area. In this respect, the decision in **People's Union for Democratic Rights v. Union of India** was significant in so far as it gave new dimensions to several areas pertaining to labour law. The case arose out of the denial of minimum wages to workmen engaged in various construction projects for the Asian games, the employment of children in the same and the non-enforcement of provisions of the Equal Remuneration Act, 1976, Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The case was admitted in the nature of a Public Interest Litigation on the basis of a letter sent to Justice P.N. Bhagwati. The dilution of the requirement of 'locus standi' enabled access to justice for the aggrieved workers who otherwise would have faced immense difficulties in approaching the Supreme Court. In addition to recognising the violation of Article 23 and 24, it was held that the non-observance of the above-mentioned statutes amounted to a violation of 'personal liberty' under Article 21. The reasoning advanced was that the protections conferred on the workmen by these legislations were intended to ensure the basic human dignity of the workmen. Hence, if the workmen are deprived of their rights under these welfare-oriented legislations, the same amounts to a violation of Article 21 by the respondents, which included the governmental agencies who were obtaining the services of the workmen through contractors. Another example where this approach was used was the decision in **Bandhua Mukti Morcha v. Union of India** where Article 21 read with the Directive Principles enumerated in Articles 39, 41 and 42 were cited as the basis of the State's obligation to identify, release and suitably rehabilitate bonded laborers under the Bonded Labour System (Abolition) Act, 1976.

Coming to the Directive Principles of State Policy enumerated in Part IV of the Constitution, Article 38 reflects the intent of the State to work towards an egalitarian society where there is

equal opportunity for all citizens and social justice prevails. In this respect Article 39, 41, 42, 43 and 43-A are considered to be the 'magna carta' of industrial jurisprudence in the Indian context. Article 39 reinforces the idea of working towards social equality and also enumerates several principles that are sought to be enforced by way of statutes.²⁴ For instance, Article 39(a) recognises that all citizens have the right to an adequate means of livelihood, which corresponds to the idea of protecting the basic dignity of individuals that has been read under Article 21 as well. As mentioned earlier, there is a directive for ensuring 'equal pay for equal work' for both men and women, which corresponds to the idea of 'equal protection before the law' and is enforced by the Equal Remuneration Act, 1976. Article 39(e) also emphasizes the need to ensure that the health and strength of workers is not adversely affected and that they are not forced to enter unsuitable occupations. This is read in conjunction with Article 42 which lies down that the State shall make provision for securing just and humane conditions of work. Article 39(f) enumerates the importance of protecting children from exploitation and to give them proper opportunities and facilities to develop. These ideas are in consonance with the prohibitions against 'forced labour' and employment of children below the age of fourteen years, which have been laid down under Article 23 and 24 respectively. Article 39(f) places an obligation upon the State to provide for the sustenance and education of deprived children.

Article 41 highlights the State's responsibility to make effective provision for securing the right to work, the right to education and to public assistance in conditions of need. Article 42 also enumerates the State's obligation to make provision for Maternity Relief. The same is done by way of the Maternity Benefit Act, 1961 and the Employee's State Insurance Act, 1948 for factories coming under the latter legislation. Likewise, Article 43 imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work. Article 43-A which was introduced by the 42nd Amendment in 1976, has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments. The other principles enumerated in Part IV which have a bearing on Labour Laws are Article 45 that talks about the obligation to provide free and compulsory education for the promotion of educational and economic interests of weaker sections and Article 47 that emphasizes the need for improvement in the level of the standard of living and of public health.

5. Rights of woman employees

There are a number of cases in which the Supreme Court helped to advance the rights of women and strike down those laws or practices that were discriminatory. Though, this may not be true in the case of all women workers. In **Ram Bahadur Thakur (p) Ltd. v Chief Inspector of Plantations** a woman worker employed in the Pambanar Tea Estate was denied maternity benefit on the grounds that she had actually worked for only 157 days instead of the required 160 days. The Court, however, drew attention to a Supreme Court Decision (1982(2) LLJ 20) wherein the Court held that for purposes of computing maternity benefit all the days including Sundays and rest days which maybe wage less holidays have to be taken into consideration. It also stated that the Maternity Benefit Act would have to be interpreted in such a way as to advance the purpose of the Act therefore upheld the woman worker's claim. In the **All India Bank Employees Association v. I.T.**, the Supreme Court held, "the right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of article 19 but by totally different considerations."

The Directive Principles of State Policy are guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution, are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that

the State is expected to apply in framing and passing laws. The Minimum Wages Act of 1948 empowers government to fix minimum wages for people working across the economic spectrum. The Consumer Protection Act of 1986 provides for the better protection of consumers. The Equal Remuneration Act of 1976 provides for equal pay for equal work for both men and women. The Sampoorna Grameen Rozgar Yojana (Universal Rural Employment Programme) was launched in 2001 to attain the objective of providing gainful employment for the rural poor. The programme was implemented through the Panchayati Raj institutions.

6. Conclusion

India has gone a long way in implementing most of the Directives contained in Part IV of the Indian Constitution. Statutes on land reforms, nationalization of Banks and insurance Companies, promotion of cottage industries and Labour legislations are concrete examples of implementation of these Directive Principles. Although such criticism has some merit, nevertheless, it is also to be remembered that these directives do serve a purpose, - and a very important one. They lay down the ideal of welfare State, and if properly and judiciously implemented, will lead India towards its goal of an ideal welfare State. Moreover, they will also lend a continuity of policy to the country. Governments may come, and governments may go, but these directives will go on for ever. The relevance of the directive principles outlined in the Indian constitution cannot be ignored. The responsibility of following these guidelines without violating the fundamental rights of citizens lies with the elected government. As Dr. Rajendra Prasad had said in a speech in 1949, "If the people who are elected are capable, and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country." Despite the potential problems with implementation, these progressive measures have created some attainable targets for our public institutions. If we can successfully expand our social security system to make it more inclusive and reliable, it will indeed be a major achievement for our democracy.

References

1. [1983] 2 SCR 271
2. AIR 1982 SC 1473
3. AIR 1984 SC 802
4. Article 14 reads as follows: "Equality before Law.- The State shall not deny any person's equality before law or the equal protection of the laws within the territory of India."
5. Article 24 reads as follows: "Prohibition of employment of children in factories, etc.- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."
6. Article 38 reads as follows: "To secure a social order for the promotion of welfare of the people.-"
7. Cited from G.B Pai, Labour Law in India-Volume I (New Delhi: Butterworths India, 2001) at p. 158-159 The key question in the case was whether a writ petition under Article 32 was maintainable for mere violation of labour laws. The Court of course went on to equate these instances of statutory violations with breaches of fundamental rights. Also see G.B Pai, Labour Law in India-Volume I (New Delhi: Butterworths India, 2001) at p. 159
8. V.V.Giri, Industrial Relations