
LABOUR LAW AND ITS PRESENT SCENARIO IN PANDEMIC

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ABSTRACT

Indian labour law is a term that refers to the legislation that governs labour in India. In this research paper, the researchers basically deal with labour laws. The objective of the researchers is to analyse the history of labour laws in India. The research paper will talk about various categorizations of labour laws. It will talk about what all laws are included in the labour laws. It will also discuss the present policy discussion in India over labour law reform.

This paper will also discuss the steps and role of government in the labour legislations. For a long period of time, female workers faced discrimination in the workplace, and it was widely believed that gender equality was not realised even at the hands of judges. If we truly wish to elevate the status of female workers, we must assign women prominent jobs. Because females are biologically distinct from males, equality here refers to an equal function in light of this distinction, but salary disparity constitutes discrimination.

The researchers emphasise in this research paper the provisions of labour laws pertaining to female workers and how they contribute to maintaining and sustaining socioeconomic justice and equality in order to preserve and increase the standard of living in our society. It also talks about the labour laws present scenario in covid pandemic.

Keywords: Labour law, government, female workers, discrimination and pandemic.

RESEARCH QUESTIONS:

The following questions are addressed in this paper:

1. What is the history of labour laws in India?
2. What are the steps and role of government in the labour legislation?
3. What are the provisions for female labour workers under labour laws?
4. What is the present scenario in covid pandemic in terms of labour laws in India?

INTRODUCTION:

India's political agenda is currently dominated by labour law reform, particularly in the aftermath of the election of a new Modi-led administration at the centre. India's labour regulations are centuries old and are claimed to be riddled with inflexibility, impeding economic development. Labour rules that protect workers, it is believed, discourage investment and delay the rise of formal employment. India's labour rules are excessively onerous for a growing economy that would otherwise be able to leverage low-cost labour as a source of competitive advantage. Labour law, alternatively referred to as employment law, is the collection of statutes, administrative judgements, and precedents that govern the legal rights and obligations of workers and their organizations. As such, it serves as a mediator in numerous facets of the interaction between unions, employers, and employees. In other words, labour law establishes the rights and responsibilities of employees, union members, and employers on the job. Labour law is divided into two broad divisions. To begin, collective labour law is concerned with the tripartite connection that exists between the employee, the employer, and the union. Second, individual labour law is concerned with employees' rights in the workplace and under the terms of their employment contract. In the nineteenth and twentieth centuries, the labour movement was essential in enacting legislation protecting workers' rights. Since the industrial revolution, labour rights have been important to social and economic growth.

HISTORY OF LABOUR LAW:

Labour legislation was enacted in response to worker demands for improved working conditions and the right to organize, as well as employer attempts to limit employees' power in multiple organizations and keep labour expenses low. Employers' expenditures may increase

as a result of unionized workers demanding higher wages or as a product of laws imposing expensive obligations such as safety and health or equal opportunity. Workers' organizations, such as unions, have the ability to transcend merely economic concerns and gain political power, a prospect that some firms may resist. Thus, the current state of labour law is both a product of and an element of societal conflicts between opposing interests. The Industrial Revolution in the late 18th century was a significant factor in the establishment of labour laws. There was an urgent need to put an end to the unjust and biased treatment of labour workforces, and we required some strong labour-oriented regulations to bring the situation under control and protect labour interests in order for global markets to function properly. It became vital to put an end to the employees' unjust treatment, as the rate upon which industries were growing at the expense of labour was a calamity. From the other hand, with the French Revolution in the background, society was advancing toward social justice, and as a result of struggle, labour regulations were enacted in the 18th century, but only gained widespread recognition in the twentieth century.

The history of Indian labour law dates all the way back to the British colonisation of our country. The Factories Act¹, was the first piece of labour regulation to manage the Indian workforce. India got the first clause limiting working hours to 8 hours, the eradication of child labour, the insertion of restrictions on women working at night for safety reasons, and the establishment of overtime pay for work performed beyond the permitted eight hours. Prior to its inception, the Indian labour market had seen the negative consequences of an unregulated market, with people subjected to various forms of mistreatment and viewed as mere cogs in the industrialisation wheel. The International Labour Organization (ILO) was one of the earliest organizations to address issues of labour. The ILO was founded as a League of Nations organization following the conclusion of World War I by the Treaty of Versailles. Many nations focused their attention on post-war reconstruction and labour union protection during and shortly after World War I. The first annual conference (dubbed the International Labour Conference, or ILC) convened in Washington DC on 29th October 1919 and adopted the first six International Labour Conventions, which addressed working hours in industry, unemployment, maternity protection, night work for women, minimum age requirements, and night work for young persons in industry. Albert Thomas, a prominent French socialist, was

¹ The Factories Act 1883

appointed as the organization's first Director General. Following the League's dissolution in 1946, the ILO became a part of the United Nations system.

EVOLUTION OF LABOUR LAW:

In India, labour legislation dates all the way back to British Colonialism. British Colonialism is claimed to have been the primary impetus for the development of labour laws in India. The emergence and expansion of capitalism gradually necessitated the adoption and enforcement of labour-oriented laws. Additionally, it became increasingly difficult for the British government to recruit sufficient regular Indian workers to work for them on a daily basis, which played a significant role in creating India's labour regulations. Within a short period of time, the Indian capitalistic system flourished and posed tough competition for British Textiles and clothing in the export market, which became a major source of concern for the British government, prompting them to adopt the Factories Act in 1883 to increase the cost of Indian labour. Thus, we achieved the first stipulation of 8 hours of work, the eradication of child labour, the restriction of women's night employment, and the establishment of overtime pay for work exceeding eight hours².

The 1980's and 1990's were dubbed the "Golden Age of Indian labour inventiveness". Numerous developments and changes occurred during this period, strengthening the Indian labour force. An increasing interest in labour history resulted in the organization of the first conference on Indian labour history at the International Institute of Social History in Amsterdam in 1995 and the subsequent formation of the Indian labour historians.

In recent years, particularly since 2014, a variety of initiatives aimed at altering the country's labour laws have been launched, including amending pre-existing legislation, sanctioning new regulations, and codifying them. Additionally, they include the release of recommendations for the collective economy's reform method by providing employers with legislative dispensations, so facilitating the convenience of doing businesses and facilitating the influx of considerable foreign investment into Indian sectors. Additionally, it has been asserted that liberalizing labour law inspection systems is necessary to liberate proprietors from the onerous regulations of bygone eras.

² J. S. Sodhi, Labour Law Reform In India, <https://www.jstor.org/stable/24547025>

DEVELOPMENTS IN LABOUR LAW:

We have witnessed a constant conflict between labour and capitalists, as capital has continued to exploit them for its own gain while failing to meet basic needs and legal protections. Thus, India has continued to enact a variety of labour laws targeted at enhancing employees' working conditions and safeguarding their rights. Numerous significant adjustments have been attributed to the growth of industry and the country's economy. These statutes have been crucial in modifying global labour rules and enhancing the capitalist market over time³.

In India, labour policy has been quite dynamic, adapting and reacting to the environment as a stimulation and meeting social justice concerns. In the early 1800s, the government started interfering with women's and children's work opportunities, as well as the working hours of factory and mine employees. Numerous government investigations have culminated in the passage of the vast bulk of laws. Following Independence of India, it was finally agreed that the Indian Central government will be fully responsible for labour regulations, acting in the workers' best interests and focusing a five-year development plan that included housing, welfare, great working conditions, and compensation.

The origins, inspiration, and strength of independent India's labour laws are derived from the views expressed by prominent nationalist leaders during the national freedom struggle, the Constituent Assembly debates, and the provisions of the Constitution⁴ and International conventions. Additionally, the Labour Laws were inspired by significant human protections and United Nations agreements and guidelines. And, over time, several legislations have been enacted to handle various aspects of labour law. These Acts were primarily enacted to draw attention to the economic and social problems confronting the working class. Due to the inherent dynamic nature of labour laws, new legislation was created to adapt to the changing situation and ensure that they continue to develop. India is working in collaboration with the International Labour Organization on a variety of potential projects and initiatives.

CATEGORIZATION OF LABOUR LAWS:

Labour legislations can be categorized as follows according to the precise objectives they sought to accomplish:

³ Gerard Delanty, The future of Capitalism: Trends, scenarios and prospects for the future, <https://journals.sagepub.com/doi/10.1177/1468795X18810569>

⁴ Constitution of India, 1949

1. Regulatory
2. Protective
3. Wage-Related
4. Social Security
5. Workplace welfare

The Regulative Labour Legislations

The primary purpose of regulatory legislation is to govern the relations between employees and employers and to establish techniques and procedures for resolving labour disputes. Additionally, these laws control the interaction between workers and their unions, the rights and responsibilities of employers and worker organizations, as well as their reciprocal relationships. Important Acts are:

- The Trade Unions Act, 1926
- The Industrial Disputes Act, 1947
- Industrial Relations Legislations enacted by states of Maharashtra, MP, Gujarat, UP etc.

The Protective Labour Legislations

This category comprises statutes whose primary objective is to protect labour standards and improve working conditions. This category contains legislation establishing minimum labour standards for hours worked, supply, employment of women and children, and other areas in factories, mining, plantations, transportation, and retail establishments, among others. They include the following:

- Factories Act, 1948
- The Mines Act, 1952
- The Plantations Labour Act, 1951
- The Motor Transport Workers Act, 1961
- The Shops and Establishments Acts

Wage-Related Labour Legislations

This category includes legislation that establishes the methods and mode of wage payment, and

even the minimum wage:

- The Payment of Wages Act, 1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

Social Security Labour Legislations

They encompass those statutes that seek to give workers with social security benefits in the event of specific life and work-related occurrences.

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

Welfare Labour Legislations

This area of law is concerned with promoting the welfare of employees to enhance their living conditions. Though all labour laws can be said to promote worker welfare and enhance their living situations in some respects, and while many protective labour laws include chapters on worker welfare, the legislation in this category are specifically designed to improve workers' living conditions. Additionally, their titles contain the term "Welfare."

LABOUR POLICY IN INDIA:

Post-independence, it was commonly considered that worker self-sufficiency should be emphasized in labour policy. From independence till 1954, when V.V Giri was Labour Minister, every official declaration emphasized the need of labour becoming self-sufficient. An equally strong position advocated for reliance on the government. This discrepancy in labour policy approaches resulted in the invention of a new system known as "Tripartism". The government depended on a three-party strategy during this time period, which includes the trade union employee representatives, businesses, and the government⁵. Representatives in this

⁵ Labour Law Policies, <https://labour.gov.in/policies>

system do not make decisions; rather, their primary role is to advice. They meet and discuss everything, but their primary responsibility is to advice. They convene, debate the points of contention, attempt to come to an agreement, and then make recommendations. The government's function is the most critical of the three. Tripartism's principal tools were the yearly labour conferences and permanent standing labour committees. These conferences promoted a range of themes, including worker participation and involvement, worker education and employment committees, and minimum wage laws. At the sixteenth conference in 1958, the approval of a Code of Industrial Discipline was a watershed moment. The code obligated the parties to avoid unexpected strikes and lockouts, to abstain from unilateral actions, and to resolve disputes through negotiation, voluntary arbitration, or any other methods permitted by law. Additionally, it guaranteed that they might avoid coercion and victimization, would abstain from partial strikes and lockdowns, and would adhere to grievance processes. Tripartism is a term that refers to the shared interests of labour and capital, suggesting that they are collaborators in preserving output and developing the national economy. Labour policy evolved out of the idea that both the society as a whole and individual businesses have a responsibility to protect employees' welfare and guarantee that they receive a fair share of benefits of economic success. This resulted in the 1965 enactment of the Bonus Payment Act, which provided for the payment of bonuses on the grounds of profits or output or productivity⁶.

The primary components of labour policy are as follows:

1. Recognize the state as a guardian of the society's interests, as a facilitator for "transformation" and welfare programs.
2. Recognize workers' right to peaceful direct action in the event of injustice. They were turned away.
3. Promotion of voluntary agreements, collectively bargain, and arbitration of voluntary agreements.
4. State involvement in favour of the losing party in order to preserve a therapeutic environment that is fair to all parties concerned.
5. Individual tranquillity is essential for the maintenance of individualized tranquillity.
6. Developing a collaborative relationship between employees and employers in order to maximize the fulfilment of the country's economic needs.

⁶ Shelley Marshall, John Howe, Colin Fenwick, Labour Law and Development, <https://www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper27a.pdf>

7. Ensuring equitable wage levels and social security coverage.
8. Collaboration for the purpose of boosting production and productivity
9. Adequate legislative enforcement
10. Improving the workers' status in industry.
11. Consultation in a tripartite fashion

GOVERNMENT'S ROLE:

The Centre and a majority of state administrations have recently insinuated an anti-labour law mood through a variety of legislative and policy actions. The Economic Survey of India for Fiscal Year 2020-21⁷ suggested that the low entrepreneurial index was due to India's severe labour laws. It reaffirmed the belief that the elimination of state rules could still be on the radar in order to boost employment numbers. The laws being attempted to be limited have been attempted to be limited in the past as well, via parliamentary initiatives at their reduction. Contract labour, minimum wages, interstate migration, and gratuity payment were previously covered by the Code on Wages⁸ and the Occupational Health, Safety, and Working Conditions Code of 2019. The fears are not unfounded, as the lockdown would have provided an ideal opportunity to carry out a long-held aim to modify pre-existing labour legislation. The critics of these statutes point out that the new codes appeared to be designed to protect businesses' interests while compromising worker rights. Critical measures, such as minimum wage laws, have been omitted, and government have been given the freedom to designate the sections according to their own plans of action. The owners have been absolved of criminal and financial liability in the event of workplace accidents or deaths. Additionally, disincentives such as disciplinary proceedings are eliminated, administration systems are eliminated, and proprietors are provided with a self-certification mechanism to demonstrate compliance with legislation.

Numerous state governments have used their concurrent powers to change existing labour statutes. In this regard, the Rajasthan administration has set the standard for all other states. In 2014, the Rajasthan cabinet enlarged the scope of the Factories Act, 1948, and the Contract Labour (Regulation and Abolition) Act⁹, thereby excluding a large number of workers from the protection afforded by these laws. Since last year, labour organizations have waged a

⁷ Economic Survey of India for 2020-21, <https://www.indiabudget.gov.in/economicsurvey/doc/echapter.pdf>

⁸ Codes on Wages 2019

⁹ The Contract Labour Regulation and Abolition Act 1970

protracted battle against the Trade Unions Amendment Bill¹⁰, which vests the government with ultimate authority to validate labour unions. The rationale for the passionate resistance to labour law revisions is that they undermine the rights of employees earned through considerable effort and open the path for more worker tyranny. This move has also been interpreted as undermining the trilateral accord between proprietors, workers, and the government, as well as workers' rights to bargain collectively for better working conditions, which is viewed as a critical component of workers' sovereign right to have a say in the matter affecting their working conditions and pay.

COVID 19- PANDEMIC:

In India, the COVID-19 pandemic's effects have impacted all classes, but the socioeconomically disadvantaged have borne the weight of the problem in the most terrible way possible. The Central government's state-wide lockdown exacerbated their plight, resulting in the enormous relocation of migratory labourers and informal sector workers, as well as their families with minimal or no social security coverage.

In April, in response to the COVID-19 health emergency, the Rajasthan, Himachal Pradesh, and Gujarat labour divisions issued directives extending industrial workers' working hours to a maximum of 12 hours a day to 72 hours per week. They were distributed in accordance with Section 5 of the Factories Act¹¹ and will be enforced for a three-month period. The union government demonstrated an almost complete lack of preparation, or any coherent framework for intervention, in dealing with the detrimental impacts that arose in the immediate wake of the unexpected lockdown, and it was left largely to state and local governments to shoulder the burden of crisis situation; as it happened, provided their resource capacities, health system, and so on, the appropriateness of responses across states was quite mixed. While some collaboration between both the union government and the state administrations has occurred gradually to address some of the most pressing issues, it would scarcely be an exaggeration to assert that the much-needed basic service of support for workers has been woefully inadequate to date. There has been less attention provided to some of the most vulnerable parts of society through the Pradhan Mantri Garib Kalyan Yojana (PMGKY) or supplementary support for MGNREGA of 400 billion rupees, for example. These, however, are insufficient in light of the crisis's magnitude. Cash transfers as part of the union government's announced packages for

¹⁰ Trade Unions Amendment Bill 2019

¹¹ Section 5 of Factories Act 1948- Power to exempt during public emergency

elderly people, widows, women, and others have been meagre at best; similarly, the free-supplementary-ration scheme is woefully insufficient, especially given the government's stockpiles of rice and wheat are well above the required levels. To stimulate the economy in the midst of the current Covid – 19 pandemic, some Indian states have lately passed ordinances and notifications exempting certain workers from adherence with certain labour rules. This suspension was requested to provide businesses and employers with additional flexibility in order to help mitigate the impact of the Covid – 19 required shutdown. While labour laws provides social security benefits to workers, they have also prompted concerns about the protection of the Indian labour force's rights.

WOMEN WORKERS:

Women have historically worked on farms, in road and home construction, and, more recently, in garment industries and electronic assembly lines. Skilled female workers have also been employed in traditional village industries, either as self-employed individuals or as paid employees. The quest for forest resources, especially fire wood, engages a sizable number of women in hill areas. Gender inequality remains in India, as it does in many developing nations, in terms of women's involvement in the labour force, lower incomes and salaries, and availability of resources. Females account for around 48% of the total population of India, however females account for only 26% of the workforce, compared to 52% of males. Apart from the Maternity Benefit Act¹², practically all significant central labour rules apply to women workers. The Equal Remuneration Act¹³ was enacted, requiring equal compensation for men and women workers performing the same or similar types of work. No discrimination in recruiting or employment circumstances is permitted under this rule, except for where employment of women is forbidden or restricted by law. The Central Department of Labour and the Central Advisory Board monitor the situation surrounding the enforcement of this law on a regular basis. In 1997, the Supreme Court of India declared in *Vishakha vs. State of Rajasthan*¹⁴ that sexual harassment of working women is a breach of gender equality rights. As a logical conclusion, it also constitutes a breach of the right to participate in any occupation, profession, or trade. Additionally, the verdict established a definition of sexual harassment, preventive measures, a complaint procedure, and the importance of raising knowledge about

¹² Maternity Benefit Act 1961

¹³ Equal Remuneration Act 1976

¹⁴ *Vishakha vs. State of Rajasthan* (1997) 6 SCC 241

women workers' rights. Employers have already begun implementing these standards by revising the Industrial Employment Act¹⁵.

Sexual abuse is a serious criminal offense that can jeopardize an individual's dignity and liberty. To ensure the safety and well-being of all female employees, the appropriate code of conduct has been established:

1. It is the employer's responsibility to prevent or dissuade the conduct of any case of sexual harassment on the job.
2. Sexual harassment includes any unwelcome sexually determined action by any individual or group of individuals, or by any person in authority, whether directly or indirectly, such as:
 - Eve-teasing
 - Inappropriate remarks
 - Jokes that cause or are likely to trigger awkwardness or embarrassment
 - Innuendos and taunts
 - Gender-based insults or misogynistic remarks
 - Unwelcome sexual overtones in any manner, including over the telephone (obnoxious telephone calls) and the like
 - Touching or brawling with any area of the body and similar conduct
 - Showing pornographic or other disparaging or insulting images, drawings, pamphlets, or sayings.
3. Sexual harassment of an employee is defined as the use of authority by anyone in charge of management or anyone hired by it to exploit the sexuality or sexual preference of a subordinate employee in order to harass her in a way that prevents or impairs the employee from fully utilizing employment benefits or opportunities. Additionally, it includes behaviour that uses the employer's or institution's or management's inherent power to negatively affect an employee's job experience or professional opportunities and/or to intimidate, coerce, or intimidate an employee into accepting unwanted intercourse or making employment decisions affecting the individual, or to create an intimidating, hostile, or offensive work environment.

¹⁵ Industrial Employment Act 1946

Equality is a fundamental tenet of the Indian Constitution. Parliament and state legislature are empowered to enact and enforce laws for the protection of those. The legislature has created a plethora of legislation, particularly in the area of labour, to ensure financial equality between men and women through the provision of special privileges to female workers. Apart from these specialized advantages, female employees also receive general benefits that are offered to both male and female employees in similar businesses. They include the abolition of bonded labour, the ban of child labour, worker insurance, provident funds, gratuities, weekly holidays, canteens, rest rooms, and medical benefits, among others. This is a non-exhaustive and illustrative list. Their inherent disadvantages and the specific characteristics of motherhood justify the need for special labour laws and the Indian Constitution, which specifies in Article 15 (3)¹⁶ that the State may create special arrangements for women and children. All of the preceding provisions have been adopted in accordance with the authority placed on the State by the aforementioned fundamental rights.

CONCLUSION:

In the midst of the COVID-19 pandemic, when the government has urged every citizen of India to isolate themselves inside the limits of their homes and develop social distancing, weakening workers' rights and trying to coerce them to work or else frightening them with the possibility of losing their means of subsistence is akin to confining them to forced labor and segmenting them as an entirely different class. It will be historic in such a difficult and unprecedented period if administrations at the federal and state levels reaffirm their commitment to the DPSP and ILO conventions by providing workers with the security to return home, as well as the certainty of safe work conditions and getting paid base salaries without having to worry about their sustenance. The epidemic has placed economies around the world under severe strain to strike a balance between the socioeconomic requirements of the weak and those of struggling businesses. A balance must be struck between the dangers to both interests. Any knee-jerk response will only impede the economic revival process. India should keep the long-term economic goals in mind while it deals with the current pandemic. The constitutional mandate established by directive principles must be re-established.

¹⁶ Article 12(3) of Constitution of India 1949- Nothing in this article shall prevent the State from making any special provision for women and children