EVOLUTION OF LABOUR LAW IN INDIA: A THREE DIMENSIONAL APPROACH

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ABSTRACT

It has been seen that there has been very little research work done especially when it comes to the evolution of labour laws in India. Although there has been great research work done on the labour laws which are prevalent in India, hardly any research has actually focussed on how the labour law actually evolved in India. The present paper seeks to provide a broad perspective on the development of labour law and how it evolved over time. The present paper intends to examine the evolution in two phases. The first phase will deal with the important period through which labour law has evolved in India. The second deals with the impact and purpose of the labour laws. In the second perspective the paper won't be restricted in covering only the purpose of labour law but the paper would also find out the lacunas and the loopholes which are present in the labour law in India.

Keywords: Labour, Industry, Evolution.

INTRODUCTION

The main reason why labour law evolved in India was because there was a huge demand by the labourers across the country for better working conditions, right to organise, and also by the employers to curtail the rights of the labourers to keep the cost of labourers on a lesser side. The employer's main focus was that the cost of labour should not be increased and this can solely happen when labourers go on a strike to increase wages or when they demand a better, healthy and safe working environment[1].

So in short labour law is nothing but the struggles and conflicts which arise in different classes of society.

CHAPTER 1 - THE EVOLUTION

Evolution of labour law in India

The laws relating to labour and employment are also called industrial law in India. The history of labour law in India is linked with British colonialism. The labour legislations which were introduced by the British were basically meant to protect the interest of the employees who were working under the British domain. Britishers had a huge contribution in the early development of labour law and the footprints of which can be seen even till today.

Factories act

After the Britishers left their footprints in the labour then came the factories act. It was a well-recognised fact that the Indian textile goods offered a very good competition to the British textile mills mainly in the export market. hence in order to make Indian labour more costlier in India factories act was introduced in 1883. factories act 1833 was the first act which somehow made the labour-related rules more formalised and structured[2].

Thus the very first law which introduced the concept of 8 hours of work as the factories act of 1883. the abolition of child labour, abolition of restriction of women in night jobs, and the

[1] Prashant chaturvadi, The Evolution of Labour Law in India,The legal services India, (June 2018) https://www.legalserviceIndia.com/legal/article-1010-the-evolution-of-labour-law-in-India.html
[2] Atul mittal, How employees' working hours, annual leave will change under the new labour laws, the Economics times, (30th june 2022),https://economictimes.Indiatimes.com/wealth/earn/how-employees-working-hours-annual-leave-will-change-under-the-new-labour-laws/articleshow/91982663.cm

introduction of overtime wages for extra work beyond 8 hours was all introduced under the factories act. All these provisions which were inserted in this act was mainly in the favour of the labourers but the real act which solved the conflict both between the labour and employers was the trade dispute act, 1929 under this act the rights related to lockouts and strike was abolished but again there was no mechanism to solve the dispute between the workmen and the employers.

PHASES IN WHICH LABOUR LAW EVOLVED IN INDIA

PHASE 1

Pre 1920s

During the earlier period of industrialisation and when there was a gradual shift of the labour from rural to urban areas very less focus was given to the condition and the rights of the labour. The only thing which matters the most for the Britishers was to make sure that the continuous supply of labour is maintained. The earliest legislation which focused on the service contract was the workmen ***breach of contract act of 1859*** which basically imposes fine for the breach of employment contract. and also during that time labour organisations were just a matter of the family. there hardly existed any concept of master servant relation, service rules etc.

Post world war 1 and the period after 1920s

This was a period in which a strong nationalist movement emerged around the country, development of trade unions (the formation of all India trade union congress in 1920) and the introduction of communist ideology in the labour movement which came after the bolshevik revolution which became successful in 1917 in Russia[3]. During that time only an ***international labour organisation*** was created which somehow influenced the labour policies in India to a very large extent. The main legislation that was passed during such legislation were the ***factories act 1922, the mines act 1922 and the workmen compensation act 1923.*** All this enactment somehow dealt with the traditional way of dealing with labour rights. The two major

[3] Simon Deakin Priya Lele and Mathias Siems, The evolution of labour law: Calibrating and comparing regulatory regimes, ILO, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_834131.pdf

enactments which were passed during such a period which basically was the modern approach to the regulation were the **trade union act 1926 and the trade dispute act 1929.**

International Labour Organisation

The International Labour Organisation was the first organisation which actually dealt with labour issues. ILO solely works with the primary objective to make sure that labour rights get protected at all costs. Ilo was established as an independent agency of the league of nations after the treaty of Versailles which ended world war 1. After the first world war labour rights were given the top most priority as most of the developing and developed nations were talking about the protection of labour rights. For example, in Great Britain, the Whitley 4 commission, which was a subcommittee of the reconstruction commission, recommended in 1918 that an industrial council should be set up around the world. The British labour party issued their own labour reconstruction schemes in the document titled "labour and the new social order". in February 1918 third inter-allied labour and the socialist conference issued its report and they basically talked about setting up a labour body at the international level.

Doctrine of added peril

"The employer is not responsible for covering the costs of injuries when an employee undertakes a task that is beyond the scope of his or her job and poses additional risks". **Devidayal Ralyaram v. Secretary of State** is the matter at hand. The notion of additional risk was found to have been employed as a defence, and the employer was not held responsible for the compensation.

Only in certain situations is compensation for personal harm possible. The employee's injury must be physical in nature. Example: If a person is subjected to discrimination because of

- Age
- Sex
- Sexual Orientation
- Transsexual person
- If a person is having a disability

- Religion and belief
- Colour, Nationality
- Pregnancy and Maternity leave
- Marriage or Civil Partnership

In the 2008 case of **Richmond Adult Community College v. McDougall,** M had psychiatric issues and suffered from mental injuries as a result of being given a position as a database assistant in a college. However, the college rescinded the invitation when it learnt about M's medical background and psychiatric condition. M sued the college for handicap discrimination. The tribunal acknowledged that M had a mental disability, but determined that she was not handicapped as defined by Section 1 of the Disability Discrimination Act of 1995.

Trade Union Act 1926

Trade union act provided for the registration of trade unions which gave unions a legal status and also it gave trade unions a protection against any liability related to civil and criminal. The only drawbacks which were there in the act was that the act was limited to the registered trade union. all the unregistered trade unions were excluded from this list. and also the act did not provide for any bargaining system as a whole[4]. There was no such regulation which talks about the bargaining between the employers and the union. The trade union act which came in 1929 placed a limitation on strike and also placed an obligation that the matter should be referred to the conciliation board.

The period of 1930s

There was a time when the demand for independence was at surge and during this period all India trade union congress played a major role. This was also the period where the economic depression was at its peak and hence there was mass dismissal of the workers. A huge population of the labour force used to go on strikes.

World war 2 and the Post Independence period

[4] ncb.in,https://ncib.in/pdf/n,cib_pdf/Labour%20Act.pdf, (June 2020)

World 2 left a severe impact around the globe including India. There was a huge economic barrier in India followed by labour shortage. In order to deal with all such problems the very first legislation which was enacted after world war 2 was the **bombay industrial dispute act** which gave power to the bombay government to refer the industrial dispute to the compulsory arbitration. Another relevant provision which was enacted during that period was the central **government essential service act of 1941. then came the industrial dispute act of 1947** which somehow gave power to the central government to take control in their own hands on all the matters related to the industrial dispute. The major limitation of the industrial dispute act was the act was applied only to the workmen in industries. all the various categories of the workers who are engaged in a particular occupation are excluded from this definition.

Most scholars have noted that the path taken by the labour legislations after world war 2 was mainly restricted to the older approach. Most of the control was exercised by the government and there were few states who used their own independent and discretionary power of not to refer the matter to the compulsory adjudication. a few states recognised the need of the employers to recognise the trade unions. one such provision was the Bombay industrial relation act 1946. This act overpowered the criticism of the previous act that was bombay industrial disputes act 1938.1946 act distinguishes various types of unions and also extended the union that they can represent workers in certain specific industries.

Post independence

After the independence it was agreed and stated that the Indian government in India would be responsible for all the labour legislations which would be enacted in India after independence. The government was handed responsibility for the protection of labour interest, providing better working conditions, welfare, and fair wages. Many of these values are even incorporated in the constitution of India 1950. The preamble itself talks about the protection of economic, political and social justice.

Protective Legislation after the independence

After independence various protective legislation were enacted which primarily focussed on the protection of rights of the labourers. ***factories act 1948, minimum wages act 1948***. Both this act provides for the protection of the basic rights of the labourers. ***dock workers (regulation of employment act) 1948*** was passed to decasualise the dock labour. Similarly the ***plantation***

labour act of 1951 was passed to regulate the employment in one of the most employed industries that is tea and rubber plantation. Similarly, employees provident fund act regulates the provision related to the provident fund to the employees.

CHAPTER 2 - HOW LABOUR LAW EVOLVED IN CONSTITUTION

Chapter 3 of the constitution which deals with the fundamental rights protects the dignity of the labour and it also talks about the need for protecting and safeguarding the interest of the labour force. Main articles of the chapter 3 which deals with the rights and dignity of the labour are article 16,19,23,24. chapter 4 of the constitution also talks about the protection of the rights of the labour. (Articles 39[5], 41[6], 42[7], 43[8], 43A[9] & 54) of the Constitution of the DPSP talks about the provision relating to the labour protection rights Article 39, 39A, 41, 42, 43 and 43A collectively can be termed "Magna Carta of the working class in India."

Brief overview of the important provisions dealing with labour rights

Article 14 - states that states should treat everybody equally. there should not be any discrimination among individuals.

Article (19)(1) grants citizens the right to form associations and trade unions.

Article 21[10] - talks about the protection of life and personal liberty.

Article 24 - prohibits employment of children below the age of 14 years

Article 39(a) - states that it is the duty of the state to provide means of livelihood to the citizens.

Article 39(A) - provides that the State shall secure the equal opportunities for access to justice to its citizens and ensure that such opportunities are not denied by reason of economic or other disabilities.

[5] INDIA CONST. art. 39
[6] INDIA CONST. art. 41
[7] INDIA CONST. art. 41
[8] INDIA CONST. art. 47
[9] INDIA CONST. art. 43A
[10] INDIA CONST. art. 21

Article 41 - “”provides that within the limits of its economic capacity the State shall secure for the Right to work and education.

LANDMARK JUDGEMENT

EQUAL PAY FOR EQUAL WORK

The Supreme Court ruled in **Randhir Singh v. Union of India** that even while our Constitution does not directly define the notion of "equal compensation for equal labour" to be a basic right, it is unquestionably a constitutional objective under Articles 14, 16, and 39(c) of the Constitution. Therefore, this power may be used to enforce unfair pay ranges based on illogical categorisation. The Supreme Court has repeatedly applied the ruling in the Randhir Singh case.

According to the ruling in **Dhirendra Chamoli v. State of U.P**. casual employees who are paid on a daily basis are likewise covered by the concept of equal compensation for equal effort.

Because "bound labour" falls under the definition of "forced labour" in Article 23, it is prohibited.

Children under the age of 14 are prohibited from working in factories and other dangerous jobs under Article 24 of the Constitution.

Appropriate Government: Central Government as well as State Government

Steel Authority of India Limited v. National Union Waterfront Workers, AIR 2001, Appeal (civil) 6009-6010 of 2001

In this instance, the appellants, a Central Government Enterprise, and its management are engaged in the manufacture of iron and steel goods. Through its marketing division, the Central Marketing Organisation, the Company also engages in the import-export of its commodities. The business has branches spread throughout several regions of India. The contractors were given the task of handling items at the stockyard.

In rejecting the writ petition, the Division Bench of the Calcutta High Court ruled that the "State Government" was the proper government on the relevant date of the ban proclamation.

The Supreme court in appeal held that the appropriate government was Central Government under the Contract Labour (Regulation and Abolition) Act, 1970.

CHAPTER - 3 SHORTCOMINGS

Industrial Relation Code, 2020 (Lacunas and Shortcomings)

One of the four main labour codes that make up the greatest reform programme the Central Government has undertaken in decades is the Industrial Relations Code, 2020. In relation to the resolution of labour disputes and collective bargaining agreements, it consists of three basic fundamental legislation, namely[11]:

1-1947 industrial Disputes Act

2-The 1926 Trade Unions Act

3-Act of 1946 governing industrial employment (standing orders)

Major limitation of Industrial Relation code[12], 2020

The majority of trade unions and employees disagree with the government's assertion that these standards are essential for the economy to recover from COVID and are in everyone's best interests. Due to the potential for these regulations to grant employers excessive authority and worsen working conditions, there has been a significant amount of resentment among the workforce. The laws also fail to take into account the fact that despite numerous restrictions, workers frequently wind up working more than 8 hours each day. This is due to the fact that they disregard the time and effort required for daily commutes, getting ready for work the following day, etc.

1- Massive power to the employers to hire and fire workers

[11] Sneha Kulkarni,, New Labour codes: Key changes in annual leave, working hours, The economic times, https://economictimes.Indiatimes.com/wealth/earn/new-labour-codes-key-changes-in-annual-leave-working-hours/4-new-labour-codes/slideshow/92511405.cms (28 Jun 2022)

[12]By Yuvaraj Mandal & Anushka Chib,New Labour Codes: Pro-business or Pro-labour?, The Economics times, (June 9, 2022), https://nickledanddimed.com/2022/06/09/new-labour-codes-pro-business-or-pro-labour/

Workers have also complained about the new guidelines since they give businesses more freedom to terminate and recruit staff as they see fit. The Code changes the present requirement of 100 or fewer workers by allowing enterprises with up to 300 or less employees to terminate their employees without obtaining prior government clearance.

The workers become uncertain about their employment terms as a result, which puts them in a precarious situation all the time.

2- Increasing political interference in the industrial sector

The excessive government involvement in the daily operations of industrial facilities, which has a negative effect on the establishment's productivity and work environment, is another weakness of the labour regulations.

In reality, if the state or federal government deems it essential for the public good, they may exclude any or all sorts of establishments from the Industrial Relation Code's rules.

3- **Depriving workers of the Right to Strike**

Additionally, by outlawing unannounced strikes, these Codes rob workers of their immediate right to strike. The employees' capacity to go on a spontaneous strike in protest of difficult working conditions and other unfair practices is greatly hampered by this.

4-No safety standard for small and unorganised sectors

Because this law does not mandate that safety standards be applied for companies with less than 250 employees, concerns have been expressed concerning the safety conditions of workers. This suggests that employees in small firms and loosely organised organisations are nonetheless at risk for dangerous working conditions.

CONCLUSION

When considering labour law in India, it's important to consider more than just how a specific society's legal or regulatory framework applies to the regulation of labour. Additionally, it makes us consider what "labour law" can entail in various economic and social settings. The labour laws of industrialised industrial nations and those of India are similar in certain ways. There are a lot of laws that set minimum requirements for employment, social security,

workplace health and safety, and other things. A foundation for resolving labour disputes is provided by its labour legislation, which also legalises trade unions and their operations. It makes it acceptable to engage in collectively beneficial industrial action. However, as we've seen, only a very small portion of the Indian workforce is nominally covered by the country's labour laws, and even among those, the law's actual implementation is, to put it mildly, sloppy. In actuality, it doesn't appear that either of the two main goals of the labour law system were achieved. As a result, this system is essentially non-functional.