
PROTECTION OF HUMAN RIGHTS AMONG INDIAN LABOURS DURING COVID-19

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ABSTRACT

After labor unions were established in the 19th century because of industrialization, the current notion of labor rights emerged. The Indian independence movement and the campaigns of nonviolent resistance that preceded it are directly linked to the country's labor regulations. The development of industrial and labor law in India after 1950 is strikingly like the development of constitutional law. The foundation for every law enacted in our nation is the constitution. It has established protections to preserve the interests of the less fortunate and weaker class of laborers through the guiding principles of basic rights and state policy. One of the most susceptible populations in India during the Covid-19 pandemic's extraordinary worldwide calamity was the working class. These very workers had been pining to return home since the first lockdown was declared on March 24, when all transportation came to a halt and people were confined to their houses. Without any means of receiving their salaries, they were unable to pay their landlord's rent or buy food. The majority of host states, which profit from the labor and hard work of these "guest" or "migrant" workers, have simply failed to foster trust, let alone provide these workers with the resources they requested during this pandemic-driven crisis: some transparency and communication forgetting a life of dignity that would allow them to support their families and earn a living through their labors. The immense human tragedy that occurred when thousands of migrant laborers were left trapped during the lockdown and had no way to acquire food or employment. By utilizing the novel concept of public interest litigation, particularly during the pandemic period, the Indian judiciary has creatively protected the interests of bonded labor, child labor, contract labor, women workers, labor receiving less than the minimum wage, and labor losing their jobs when establishments close. In these difficult times, Indian courts have expanded on the idea of social justice and attempted to guarantee fair and compassionate working conditions. The author has attempted to learn as much as possible on the protection of workers' human rights in India, particularly during the Covid-19 epidemic, through this research article. The

author of this work used the doctrinal research technique, consulting a variety of sources including books, journals, reports, research papers, and verified information from websites.

Keywords: Human Rights, Pandemic, International Labour Organization, Judgment

INTRODUCTION

A set of legal and asserted human rights pertaining to labor interactions between employees and their employers are known as labor rights, or workers' rights, and are often acquired through labor and employment legislation. The foundation of imperialism throughout its early stages was the exploitation of the working class. As the International Labor Organization (ILO) has grown globally, the view of labor dignity has supplanted the cruel treatment of laborers. These rights are a very recent addition to the existing body of rights for people. After labor unions were established in the 19th century as a result of industrialization, the current notion of labor rights emerged. Among the first and most well-known proponents of workers' rights was Karl Marx. The UN's guiding principles on business and human rights acknowledge that commercial firms' operations may have an adverse effect on such rights. As a result, in 2008, the "Protect, Respect and Remedy" framework was developed, outlining the obligations of both states and corporations with regard to dealing with violations of human rights resulting from commercial operations.² The UN Human Rights Council unanimously adopted these three-pillared UN guiding principles in June 2011:

- 1) The obligation of the state to safeguard human rights is used by all parties, including corporations, by means of suitable laws, rules, and court decisions.
- 2) The duty of businesses to uphold human rights; they have an obligation to "avoid infringing on others' human rights and should address adverse human rights impact with which they are involved."
- 3) Giving victims of violations of human rights more efficient access to redress.

The Indian independence movement and the campaigns of nonviolent resistance that preceded it are directly linked to the country's labor regulations. There is no doubting that since the countrywide lockdown was hastily and carelessly imposed, our "workers" have been the most negatively impacted group or class of people. This is a rather broad phrase that applies to many

different industries; it includes migrant laborers, landless laborers, and the great majority of people who work in our unorganized sector. From masons, carpenters, Kedias, plumbers, and zardori embroidered artisans, to autorickshaw drivers and vendors, veggies as a source of income. In essence, this refers to anyone who leads a meager life and is in danger of losing even a single day's income, which would leave their family unable to buy a healthy dinner the following day. Academics, activists, and unions warned that workers in India will face a "race to the bottom" in terms of longer hours and poorer pay as six states want to suspend labor regulations in order to aid business in recovering from the coronavirus lockdown. Prominent Xavier School of Management professor and labor economist K.R. Shyam Sunder told the Thomson Reuters Foundation that it's not only regression, but a plunge into an infinite abyss and a race to the bottom of labor standards.

WORKERS' RIGHTS IN THE INDIAN CONSTITUTION

"The founding fathers of the Constitution cognizant of the reality of life-wisely engrafted the foundational Rights and Directive Principles...by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institution of the national life and to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only among individuals but also amongst groups of people residing in different areas and engaged in different vocations. "Six The development of industrial and labor law in India after 1950 is strikingly similar to the development of constitutional law. The constitution has established protections to defend the interests of the less fortunate and weaker class of laborers via fundamental rights and directive principles of state policy.

In India, the government is loosely federal. When it comes to legislative matters like labor welfare, law enforcement, interstate transportation, etc., which can be addressed by either the federal government, the state government, or both, the Indian Constitution clearly defines the boundaries of authority between the federal and state administrations. The items on the union list are those that the federal government alone may enact into law. The items on the state list are those that are subject to state legislation. The items on the concurrent list are those that the federal and state governments may enact into law. One topic on the concurrent list is worker welfare.

Any law made in India must adhere to the terms of the constitution. As a result, multiple laws are passed and implemented in India; some are passed by the national government and implemented by the state government, while others are legislated by the national government and implemented by both. In the interim, state governments have the authority to create laws or issue notifications in order to implement federal policy directives. This indicates that state-by-state variations exist in both the Acts' coverage and implementation processes. There are 200 state labor laws and 44 or 47 central labor laws overall, depending on which source is consulted. According to some academics, "the Indian labor laws system is very extensive and dauntingly complex." Working class-related benchmark legislation is mentioned in the basic rights and policy directives entrenched in Parts III and IV of the state constitution. The concepts of equality before the law and equal protection under the law are explained in Article 14 of the Indian Constitution. This idea suggests that no one has any particular rights based on their birth, faith, or anything similar, and that all people and social classes are equally subject to the general laws of the country. Dr. Jennings defines equality before the law as the idea that like should be treated similarly and that the law should be applied equally to all people.¹¹ The freedom of speech and expression, which includes the ability to organize into unions or groups, is protected by Article 19.

All forms of forced labor and human trafficking are forbidden under Article 23. This item forbids the trafficking of people, the use of beggars as forced labor, and other similar practices. Violating this provision will be illegal and will be punished as such. Children cannot work in industries, according to Article 24. It reads: "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any hazardous employment." In order to ensure that all citizens, men and women alike, have the right to a sufficient means of subsistence and that there is equal compensation for equal effort for both men and women, Article 39 lays forth specific policy guidelines that the state must ensure:

- A) The rights of all citizens, men and women equally,
- B) to a sufficient means of subsistence,
- C) equal pay for equal labor, protection against abuse of the health and strength of workers, including women and children, and freedom from being forced to pursue occupations that are inappropriate for their age or strength are among the issues that need to be addressed.

D) That childhood and youth be shielded from exploitation and from material and moral abandonment, and that the children are provided with the means and chances to grow up in a healthy way, in conditions of freedom and dignity.

According to Article 41, the state must, within the confines of its economic growth and capability, put in place adequate measures to guarantee the right to employment, education, and public assistance in circumstances of unjustifiable deprivation, old age, illness, or disability. According to Article 42, the government must guarantee maternity leave and fair and decent working conditions.

According to Article 43, the state must make every effort to ensure that all workers, whether in the agricultural, industrial, or other sectors of the economy, have access to a living wage, conditions of employment that ensure a respectable standard of living, and the freedom to enjoy their free time and take advantage of social and cultural opportunities. The state will specifically work to support independent or cooperative cottage enterprises in rural areas. According to Article 43-A, the state must take action to guarantee workers' involvement in the administration of businesses, establishments, or other organizations involved in any industry, whether by appropriate legislation or other means. Any legislation that violates a basic right, including labor laws, is null and invalid. Articles 32 and 226 grant every person impacted by such a statute the right to appear before the Supreme Court or a High Court, respectively. Article 136 gives the Supreme Court the authority to consider an appeal by special leave against an industrial tribunal award. Chief Justice Kania, for the majority, has confirmed that, although not being a court, the industrial tribunals' responsibilities and activities are quite similar to those of an organization carrying out judicial functions. A letter was considered public interest litigation by Justice P.N. Bhagwati in order to guarantee that the terms of numerous labor laws be observed with regard to workers engaged in the building of various projects related to the Asian Games. It brought a fresh perspective to minimum wage, child employment, and enforcement of labor regulations in cases involving the public interest. In this instance, the court determined that the Equal Remuneration Act, 1976's provisions are in violation of the fundamental constitutional principle of equality before the law, as stated in article 14. Article 21 is also violated by breaking the rules set out in the Contract Labour (Regulation and Abolition) Act of 1970 and the Inter-state Migrant Workmen (Regulation and Employment and Conditions of Service) Act of 1979. The court noted that the phrase "force" must be interpreted to encompass not only physical or legal force but force resulting from the coercion of another

person in order to explain the extent of the expression "traffic in human beings and beggar and other similar forms of forced labor" under article 23. This force also results from economic circumstances that leave a person in need with no other options and force him to provide labor or service even though the compensation received is far less than the minimum wage.

FEDERAL LAW CONCERNING WORKERS' RIGHTS

Similar to Anglo-American laws, Indian labor laws are derived from a disorganized collection of statutes and court rulings. The Workmen's Breach of Contract Act of 1859, the Employer's and Workmen's (Disputes) Act of 1860, and several sections of the Indian Penal Code of 1860 are among the oldest legislation discovered while tracing its lineage. However, the interests of workers were seldom safeguarded by these laws. Since 1919, when two significant events occurred—the passing of the Government of India Act and the founding of the International Labour Organization, of which India is a founding member—the situation has evolved¹.

Numerous labor laws can be linked, either directly or indirectly, to the International Labour Conference's enacted Conventions and Recommendations. A trade union may register with the state under the terms of the Trade Union Act, 1926, as modified by the Trade Union (Amendment) Act, 2001. In contrast to the claim that a trade union has to have a minimum of 100 members in order to get registered, a trade union must represent at least 100 workers or 10% of the workforce, whichever is less. The foundation for industrial relations is outlined in the Industrial Dispute Act of 1947. There is a highly formalized system in place to handle disagreements, and if one does not adhere to the phases, a strike or lockout may be deemed unlawful. The law's practical effect is to make it very difficult for trade unions to engage in any legal industrial action. The degree to which the state intervenes in the actual process of industrial relations and the importance placed on preserving "industrial peace" significantly limit the likelihood that collective bargaining will become the predominant method of industrial relations in India. The Child Labour (Prohibition & Regulation) Act, 1986, regulated the working conditions of minors in various employments and outlawed the involvement of minors under the age of 14 in certain dangerous occupations and procedures. In 2016, the government revised this law and passed the Child and Adolescent Labor (Prohibition & Regulation) Act, 1986, which became operative on September 1st. The revised law forbids children under the age of 14 from working or being employed in any capacity, and it also

¹ <https://labour.gov.in/childlabour/constitutional-provisions>, visited on 22-03-2024.

establishes a link between the age at which employment is prohibited and the age at which the Right to schooling Act of 2009 mandates free and compulsory schooling. The Act imposes harsher penalties on employers that violate its restrictions. The Child Labour (Prohibition & Regulation) Amendment Rules, 2017 have been formulated by the government, who has also revised and expanded the list of dangerous jobs and procedures.

NEW LABOUR LAWS' EFFECTS ON WORKERS' RIGHTS

The Government of India chose to combine twenty-nine central labor regulations into four labor codes in order to modernize the antiquated labor rules and make doing business in India easier. The Industrial Relations Code of 2020, the Occupational Safety, Health and Working Conditions Code of 2020, and the Social Security Code of 2020 were approved by the Indian parliament on September 23, 2020, during its most recent monsoon session. The session was shortened due to the Covid-19 pandemic and was delayed. Almost all of the opposition was present. In a desperate move, the opposition parties sent a unified letter to Venkaiah Naidu, the vice president and chairman of the Rajya Sabha. The parties claimed that the opposing parties were not present when the bills were passed. The lives of crores of workers nationwide are impacted by these bills. The fact that these bills were enacted tonight by a single party will be a serious stain on our democracy, they said². The parties contended that the Bills' passage through the Rajya Sabha was defective, and they had sent a joint note to President Kovind pleading with him to return the legislation. This legislation, which total over 300 pages and include 411 clauses and 13 schedules, have an impact on every Indian worker.

The flexibility that employers will have to hire and fire employees is the first significant shift. Currently, prior to beginning any layoff procedure, the government must grant approval to every firm employing more than 100 people. The current barrier has been raised to 300. The adoption of new terminology such as "inspector cum facilitator" creates the appearance that the regulations are labor-friendly. Surprising inspections would be challenging due to the hierarchy of these inspector-cum facilitators. Amalgamation has been used as a justification for the implementation of anti-worker laws.

Because of the new regulation requiring workers to give 60 days' notice before going on strike,

² <https://www.thehindu.com/news/national/parliament-proceedings-monsoon-session-2020-ends-in-a-flurry-of-protests/article32679892.ece>, visited on 20-03-2024

the Industrial Relations Code also makes it nearly difficult for workers to go on strike. If there are legal processes underway, the strike can only take place sixty days after those proceedings are over. The fact that the Indian Labour Conference, the highest tripartite organization, has not held its annual conference in the last five years is a good indicator of the government's commitment to labor. The assertion that the codes' provisions are for the welfare of workers in the unorganized sector, such as gig economy workers, is untrue because a sizable portion of the labor force—including migrant laborers, home-based employees, and independent contractors—has been left out. The codes have provided either no coverage at all or insufficient or partial coverage for these workers. These codes do not provide universal coverage for the benefits they claim to provide; instead, they categorize workers depending on the number of people engaged and employed. The NMW for all wage workers, regardless of sectors, skills, vocations, or rural/urban location, should be Rs. 375 per day or Rs. 9,750 per month, according to the experts committee of the Labour Commission of India. Indian Courts Concerning Workers' Rights By utilizing the novel concept of public interest litigation, the Indian judiciary has creatively protected the interests of women workers, bonded labor, child labor, contract labor, workers making less than the minimum wage, and workers losing their jobs when businesses close³.

INDIAN COURTS CONCERNING WORKERS' RIGHTS

By utilizing the novel concept of public interest litigation, the Indian judiciary has creatively protected the interests of women workers, bonded labor, child labor, contract labor, workers making less than the minimum wage, and workers losing their jobs when businesses close.

In fact, the court took on the responsibility of defending the nation's weaker, impoverished, and struggling people. Additionally, the courts have made an effort to preserve human dignity through the legal system. They have elucidated the concept of social justice and endeavored to guarantee equitable and compassionate working environments⁴.

The development of a code against sexual harassment by the Hon'ble Supreme Court in the case of *Vishaka v. State of Rajasthan*⁵ was a major advancement. The court decided that

³ https://labour.gov.in/sites/default/files/Committee_on_Determination_of_Methodology.pdf visited on 22-03-2024.

⁴ Suresh C. Srivastava, 'Industrial Relations Machinery', Deep & Deep Publications, Delhi (1983) p. 241.

⁵ (1997) 6 SCC 241.

employers and other responsible parties in workplaces and other institutions, whether in the public or private sector, now had a duty to take all necessary precautions to stop acts of sexual harassment from happening and to set up a process for resolving, settling, or prosecuting such incidents. In the landmark ruling in *Bharat Bank v. Employees of Bharat Bank*⁶, the court made it possible to appeal labor courts' and tribunals' decisions under article 136 of the constitution.

The Supreme Court ruled in the significant case of *M.C. Mehta v. State of Tamil Nadu*⁷ that it should be strictly forbidden to hire minors in match factories that are directly involved in the production of pyrotechnics or match sticks. In *Randhir Singh v. Union of India*⁸, the Supreme Court upheld the principle of equal pay for equal work in 1982. The court held that although the principle is not specifically mentioned as a fundamental right in the Indian Constitution, it is undoubtedly a "constitutional goal" and can therefore be enforced in cases where there are unequal pay scales based on irrational classification. Naturally, the right to a living is a component of labor rights. The right to livelihood is part of the right to life protected by article 21 of the constitution, according to a five-judge bench of the Apex Court's decision in the "pavement dwellers case." According to the court's opinion, taking away someone's means of subsistence is the simplest method to deny them their constitutional right to life if the right to livelihood is recognized as a component of that right. It would be purely formalistic to omit the right to livelihood from the definition of the right to life, given that articles 39(a) and 41 mandate that the state provide citizens the right to work and an appropriate standard of living⁹.

THE PLIGHT OF LABORERS IN COVID-19

Significant social and political turmoil has been brought about by the Covid-19 epidemic. The protection and rights that working people are entitled to under our laws and constitution have been one casualty of this turmoil. Human trafficking, which violates fundamental rights and core labor standards pertaining to forced labor, discrimination, freedom of association, and, occasionally, child labor, as enshrined in the ILO declaration Fundamental Principles and Rights at Work, has frequently been observed to use labor migration as the safest conduit. One

⁶ AIR 1950 SC 188.

⁷ AIR 1991 SC 417.

⁸ AIR 1982 SC 879.

⁹ *Olga Tellis v. Bombay Municipal Corporation*, (1985) SCC 45.

of the most susceptible populations in India during the Covid-19 pandemic's extraordinary worldwide calamity was the working class¹⁰.

These very workers had been pining to return home since the first lockdown was declared on March 24, when all transportation came to a halt and people were confined to their houses. Without any means of receiving their salaries, they were unable to pay their landlord's rent or buy food. The majority of host states, which profit from the labor and hard work of these "guest" or "migrant" workers, have simply failed to foster trust, let alone provide these workers with the resources they requested during this pandemic-driven crisis: some transparency and communication forgetting a life of dignity that would allow them to support their families and earn a living through their labors. The enormous human tragedy that thousands of Migrants. During the lockdown, employees found themselves trapped without a way to access food or employment. If the migratory worker regulations had all been properly applied and documented, a large portion of this might have been avoided. Many of these laborers have gone months without receiving pay. The Supreme Court ordered private industrial companies, including owners of factories, to bargain and reach agreements with their employees about the payment of salaries during a lockdown. After multiple companies filed a case in the Supreme Court challenging the Ministry of Home Affairs' order, which mandated that all employers pay workers' wages during the lockdown, the highest court requested that the government refrain from taking any coercive action against the companies. As a result, the Ministry of Home Affairs withdrew its important order. Once more, many of these individuals would not have been compelled to resort to drastic means like traveling thousands of kilometers back to their homes if the regulations pertaining to the timely payment of salaries had been upheld. The chance to enact laws restricting the acknowledged and hard-won rights of workers in both the organized and unorganized sectors has been taken by the union government and a number of state governments. The administration is blatantly ignoring the perilous situation of laborers in this unprecedented worldwide catastrophe brought on by COVID-19. According to reports, states like Gujarat and Uttar Pradesh are preparing the ground for the rights of these people to be diminished through the weakening of labor laws. On April 17, 2020, the Gujarat Labor and Employment Department issued a notification under section 5 of the Factories Act, 1948, allowing all factories registered under the Act to be exempt from "various provisions relating

¹⁰ Dr. Anuja S., 'International Labour Migration- A Human Rights Discourse with Special Focus on UN Strategic Intervention's, Vol. 45(1) IBR 83 (2018).

to weekly hours, daily hours, intervals for rest, etc. for adult workers" under section 51, 54, 55, and 56 of the Act, which provide "certain relaxation for industrial and commercial activities" from April 24, 2020, to July 19, 2020, with the extension of the expiration date to October 19, 2020. A petition under Article 32 of the constitution was submitted by two trade unions, one of which was active in the state and the other nationwide¹¹.

The Supreme Court stated in granting the writ petition that the presence of a public emergency is a requirement for the exercise of authority under art. 5, which is not susceptible to "subject satisfaction" but rather needs to be demonstrated as "objective fact." To qualify as a public emergency, the following conditions must be met: (1) A serious emergency needs to be present. A war, external aggression, or internal unrest must be the source of the threat in order for the security of India or any portion of its territory to be considered "threatened" by such an emergency. Since there must be a cause-and-effect link, the proportionality principle is implied in s. 5. The court also decided that even while the Covid-19 Pandemic has severely strained the nation's infrastructure—particularly in the area of public health—and sharply decreased economic activity, it does not qualify as an internal disturbance endangering the security of the state. According to the court, COVID-19 has not had an impact on India's security or that of a portion of its territory in a way that has disrupted the nation's peace and unity. Therefore, it was inappropriate to use emergency authorities to send the contested notices. The Supreme Court, Honorable The rights of labor have been raised to the status of fundamental human rights by this ruling, which majoritarian governments are required under the constitution to uphold and cannot easily revoke.

CONCLUSIONS AND SUGGESTIONS

"The saving of labour of the individual should be the object and honest humanitarian considerations, and not greed, the motive."- Mahatma Gandhi

The crucial issue of the day is how to preserve the human rights and dignity of Indian laborers who work in brick kilns, road construction, agriculture, beedi production, hand loom weaving, sugar factories, transportation, and other industries where a dignified living is a far-off dream. Among the difficulties experienced by Indian laborers during the COVID-19 epidemic include inadequate pay, physical, sexual, and psychological abuse, as well as job security and safety

¹¹ Gujarat Mazdoor Sabha and Others v. State of Gujarat, (2020)10 SCC459.

concerns. In the age of globalization, it is vital to debate crucial elements of labor laws and labor rights with the goal of establishing a framework that removes all obstacles to the efficient application of the law. Both urban and rural regions should adopt uniform labor rules for workers in the unorganized sector, such as migratory laborers. The establishment of worker self-help organizations and NGO projects should be encouraged by the government in order to create a dynamic movement for effective awareness-raising, networking, advocacy, and lobbying to stop worker abuse and exploitation. It goes without saying that in order to ensure the continuation of these rights, an engaged labor movement and a watchful judiciary will be necessary in the future.

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