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3rd Year, BBA LL.B. (Hons.)**INCUMBENCY OF LABOUR RIGHTS VIS-A-VIS HUMAN RIGHT PROTECTION OF
LABOURERS****Introduction**

The pace at which several states in the nation abolish the security provided to staff under different labour laws is worrying: these laws provide employees with many of the fundamental guarantees; ensure that employees are paid fair salaries on time, have reasonable working hours, and are not discriminated against. Employers are needed to provide employees with basic needs such as drinking water and clean toilets and protect them from injuries and occupational risks and diseases. In an effort to attract new corporations, removing these guarantees from the working population is an illegal, immoral and unethical move to revive an economy at the cost of its poorest citizens.

In this article we will discuss the adoption of these labour rights along with the protection of the human rights of the labourers in the Indian Legislation and go further into the details of the new legislations as passed in the year 2020 which has been a game changer for the labour laws in our country.

Brief overview of the legal structure of labour rights

In this section of the article, we shall discuss the legal framework that works towards the enforcement of Labour Rights in India through the means of Domestic Laws¹ and reliance placed upon International Conventions.

In India, Labour Laws fall under the Concurrent List, which means both the Centre and the States are allowed to legislate laws surrounding labour rights and human rights protection of labours. India, having representation at the Paris Peace Conference and being a signatory of the Treaty of Versailles, which led to the establishment of the International Labour Organisation (hereinafter referred to as “the ILO”). Thus, the International Labour Standards (ILSs) would apply to India at a vast scale. The ILSs would also apply to India since it is universal in nature.

In totality there are about 44-47 labour laws established by the centre and some 200 established by States respectively.²In fact a number of scholars have suggested that the system of labour laws followed in our country is “extensive and dauntingly complies.”³

The following are the elements that form the legal structure to protect the rights of labour workers in India: -

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A) Constitution of India:

The Constitution of India provides for various safeguards for the protection of the rights of labour in India.

i) Labour rights as Fundamental rights:

Part III of the Constitution of India promises the fundamental rights to the citizens of India some of which also cover the rights of labour workers which are discussed as follows: -

¹MALCOLM N. SHAW, INTERNATIONAL LAW EIGHTH EDITION 215 (2018).

²R. C. DATTA & MILLY SIL, CONTEMPORARY ISSUES ON LABOUR LAW REFORM IN INDIA, AN OVERVIEW, MUMBAI 47 (2007).

³ Richard Mitchell, Petra Mahy and Peter Gahan, The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development, University of Monash (July 2012) <http://www.buseco.monash.edu.au/blt/wclrg/working-papers.html>

- **Article 14:** This provision emphasizes upon the right to equality and no discriminatory/unequal treatment on the basis of birth, creed, gender etc. In the words of Sir A.V. Dicey the concept of equality can be defined as, “*no one is above law and that every person whatever his rank or conditions is subject to the jurisdiction of ordinary courts.*”

This article is usually applied to cases in which the issue surrounding the concept of “Equal pay for equal work” since it does not expressly come under the purview of fundamental rights in the Constitution but is certainly implied as an objective of Article 14, 16 and 39(c).⁴ The Supreme Court under this concept has adopted the rights of the labours in the cases of its applicability on casual workers employed on daily wage basis⁵, when the educational qualifications prescribed for two job positions is different but the duties and functions are similar⁶, two compare the pay scales of the Armed forces being dissimilar for ministerial staff and those attached to battalion units⁷ and various other cases along the same lines.

- **Article 19(1)(c):** This article provides for the fundamental right enjoyed by the citizens of India to form unions and associations. The court under this made a note of the fact that the right to be a member of a union or an association is not the same as the right to not be discontinued from a government service which is not a fundamental right.⁸

- **Article 21:** This talks about the right to life and also livelihood of a person. The right to life correlates with the right to livelihood as without it a person will be deprived of their right to live with human dignity.⁹ When we talk about the right of livelihood the various factors that were taken up by the Supreme Court were the service termination of a worker without being provided with a reasonable opportunity of hearing being unjust and illegal,¹⁰ paying of a

⁴Randhir Singh v. Union of India, AIR 1997 SC 3014.

⁵Dhirendra Chamoli v. State of U.P, (1986) 1 SCC 627.

⁶Mewa Ram v. A.I.I. Medical Science, AIR 1991 SC 2342.

⁷Gopika Ranjan Chawdhary v. Union of India, AIR 1990 SC 1212.

⁸Balakotiah v. Union of India, AIR 1958 SC 232.

⁹Maneka Gandhi (Petitioners) v. Union of India, 1978 AIR 597.

¹⁰D.K. Yadav v. J.M.A. Industries, (1993) 3 SCC 258.

nominal subsistence of only Re. 1 per month on the suspension of a government official to be unconstitutional,¹¹

- **Article 23:** Prohibits the trafficking of human beings like goods for immoral purposes such as begging, forced labour and slavery and any form of it which violates human dignity and basic human values.¹²
- **Article 24:** This prohibits the employment of children who are below the age of 14 years in a factory or a mine or a hazardous form of employments. The tackles with the human rights of not just labour but also children as, if the occupation is not considered under a schedule of the Employment of Children Act, 1938 then it is considered to be hazardous.¹³



ii) Labour rights as Directive Principles of State Policy:

- **Article 39:** This provision directs the States towards securing the principles of Equal right of men and women to adequate means of livelihood¹⁴, Equal pay for equal work for both men and women¹⁵, protection of health and strength of workers and tender age of children, to ensure that the children are not forced by economic necessity to enter avocations unsuited to their age or strength¹⁶. As a follow up of this provision the parliament enacted the Equal Remuneration Act, 1976 as even though “Equal pay for equal work” is not a fundamental right it is still considered to be a constitutional goal.¹⁷
- **Article 39A:** This makes it the states responsibility to secure its citizens equal opportunities for access to justice and ensure that they are not denied due to economic reasons and other disabilities.
- **Article 41:** This provision makes it a mandate for the State to ensure the citizen of India with education and public assistance in cases of old age, unemployment, disablement and sickness.

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¹¹State of Maharashtra v. Chandrabhan, (1983) 3 SCC 387.

¹²Peoples Union for Democratic Rights v. Union of India, AIR 1982 SC 1943.

¹³People's Union for Democratic Rights v. Union of India, AIR 1983 SC 1473.

¹⁴ Art. 39(a), The Constitution of India, 1950.

¹⁵ Art. 39d), The Constitution of India, 1950.

¹⁶ Art. 39(e), The Constitution of India, 1950.

¹⁷Randhir Singh v. Union of India, 1982 AIR 879.

- **Article 42:** This provision makes sure that the conditions of the work of labour are humane in nature.
- **Article 43:** This provision ensures the following for the workers in the agricultural or industrial sector a decent standard of life, a living wage (not to be confused with the term “minimum wage” along with the full enjoyment of social and cultural opportunities for leisure.
- **Article 43A:** According to this provision the State needs to take steps in order to ensure the workers participate in the management of establishments, undertakings or any other organisation engaged in any type of industry by means of a suitable legislation or any other way.

All the directives principles discussed can be grouped and referred to as the “Magna Carta of Working Class in India”.

B) Industrial Relations Code, 2020:

The new Code which was passed in 2020 will lead to the repeal of the following erstwhile legislations:

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

The changes to the Industrial Code that have been incorporated in the new code are as follows:

- The definition of the term ‘**industry**’ has been changed and now means,

“any systematic activity carried on by co-operation between an employer and worker (whether employed directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature)”.¹⁸

¹⁸ §2(p), Industrial Relations Code, 2020.

- The term of **'fixed term employment'** which means, "engagement of a worker for a fixed period based on a written contract" has been newly introduced.¹⁹
- Their used to be certain special provisions which were contained in the previous Industrial Disputes Bill, 2019 which served the requirement of employers to obtain permission of an appropriate government prior to laying off or retrenching any employees or closing down an establishment if it has 100 or more workers. This threshold now has been pushed to 300 workers.
- The **wage ceiling** of a workman has been pushed from Rs. 10,000/- to Rs. 18,000.
- A notice has to be given 60 days prior to the conducting of a **strike or a lockout** or within 14 days of such notice. The code has made the provision related to strikes and lockouts applicable to all industrial establishments instead of just restricting it to public utility service.
- The **penalties** prescribed for various offence in the code have been changed.
- While the previous IR Bill, 2019 only allowed for the **compounding** of offences that are punishable with fine only the new Code allows the compounding of offences which are not punishable with imprisonment only or imprisonment with fine.
- A new concept has been introduced in the Code for recognition of negotiating unions and councils to be considered for registered **trade unions**. Even membership of minors in trade unions has been lowered from 15 years to 14 years.

C) Legislation for Social Security:

The legislation for social security that applies to the "organized sector" for larger workplaces includes the following social security programmes:

- i) **The Workmen's Compensation Act, 1923:** This act has been established for the compensation of workers in the case of the occurrence of any accident during the course of their employment.

¹⁹ §2(o), Industrial Relations Code, 2020.

- ii) **The Employee's State Insurance Act, 1948:** This vouches for the medical facilities and insurance for unemployment for industrial workers during their period of illness. The benefits for the labour incorporated in this act are medical benefit, sickness benefit, maternity benefit, disablement benefit and dependent's benefit.
- iii) **The Employee's Provident Funds and Miscellaneous Provisions Act, 1952:** This enacts the provision of financial security for retired workers using provident funds, deposit linked insurance and family pension.
- iv) **The Maternity Benefit Act, 1961:** It regulates the employment of women for a specified period of time before and after childbirth in industrial establishments.
- v) **The Payment of Gratuity Act, 1972:** It provides for economic stability and assistance to employees after their termination on the completion of 5 years of service.

All of the legislations discussed above have now been replaced by the new Social Security Code, 2020. Some of the changes that have been incorporated in the new code are as follows:

- This doesn't only extend to the organised sector but also the unorganised sector, gig workers and platform workers.
- The code has made an alteration to the Employees' Provident Fund Scheme and its applicability which is now extended to every establishment with an employment of 20 or more employees.
- The thresholds for gratuity too have been altered by the new code which is now being extended to any shop and establishment with 10 or more employees are or were employed on any day of the preceding twelve months. Also, now, a continuous period of five or more years is not mandatory for the eligibility of the gratuity if the termination of the employment is due to death, disablement due to an accident or a disease.
- For the Employment State Insurance, the Government now has the power to extend it to any hazardous job/occupation regardless of the number of employees that are employed in the business.
- The term "wages" has been redefined under the code.
- The definitions of 'employee', 'inter-state migrant workers', 'platform workers' have been expanded.

- The focus has been shifted to digital record and returns to expedite the exchange of information amongst the various Government constituents and schemes.

D) The Occupational Safety, Health and Working Conditions Code, 2020

Some of the key legislations that were subsumed by this Code are as follows: -

- a) Contract Labour (Regulation and Abolition) Act, 1970
- b) Factories Act, 1948
- c) The Mines Act, 1952
- d) The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955
- e) The Building & Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- f) The Dock Workers (Safety, Health and Welfare) Act, 1986 etc

The following are some of the elements and changes incorporated in the Code: -

- Its acts as a replacement to the various registrations given under separate enactments and combine them under one common registration one licence and one return. This will be helpful for the ease of doing business.
- The safety of the workplace needs to be maintained against hazards, injury causing work and diseases related to the occupation.
- Provision of conditions in relation to safety, holiday, working hours for female employees is considered under the new code.
- In construction businesses the employer cannot hire workers with defective vision, deafness, giddiness etc.
- Due to the COVID-19 scenario at present the government has reserved the the power to frame regulations for general safety and health of the workers.

E) International Labour Organisation : International Labour Standards and Conventions

International Labour Standards (ILSs) are drawn up by the tripartite constituents of the ILO by taking the form of conventions and recommendations. The group of

conventions which are categorized as fundamental basic rights to be enjoyed by the labour are known as the ILS.

Ratifications of Conventions by India: -

- Out of the 8 fundamental core conventions as established by the ILO, India has ratified 6, those being: -
 - i) Forced Labour Convention, 1930, No 29
 - ii) Equal Remuneration Convention, 1951, No 100
 - iii) Discrimination (Employment and Occupation) Convention, 1958, No 111
 - iv) Abolition of Forced Labour Convention, 1957, No 105
 - v) Minimum Age Conventions, 1973, No. 138
 - vi) Worst Forms of Child Labour Convention, 1999, No. 182
- India has further ratified 3 Governance Conventions out of 4.
- 38 Technical Conventions out of 178.
- India has also ratified 1 Protocol under the International Labour Standards.

Issues surrounding the new legislation set for Labour Rights in India

The latest health crisis or pandemic of COVID19 has brought to the fore the absolute disregard of India's unorganized sector. For the financial and social security of these unorganized employees in the industry, no stringent sanctions or regulations were formulated.

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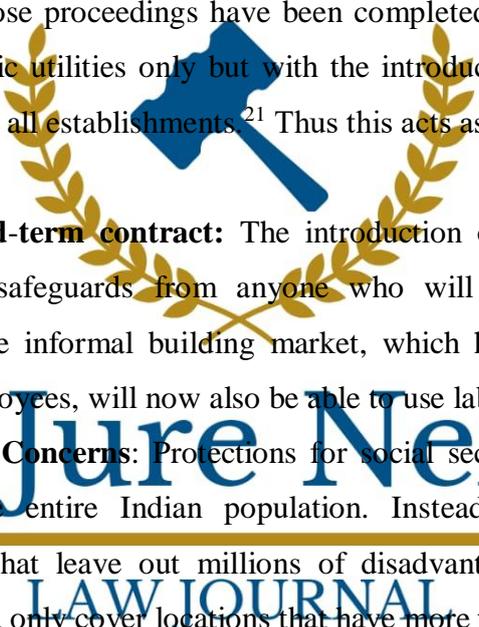
Although there is a social security law called the Unorganized Sector Social Securities Act, 2008, it does not explicitly define what social security entails, nor is it clear what kinds of unorganized sector institutions will become beneficiaries. Clearly, therefore, there are loopholes in the statute.

Successful implementation is another problem that many social security laws in India still face, which essentially means that the real beneficiaries end up largely deprived of their rights. If labour laws are applied in their true meaning, India will be able to achieve its expected labour empowerment objectives, as envisaged by the framers of our Constitution.

Some of the other issues highlighted in the new Labour Code are as follows:-

- i) **Hire and fire of workers:** In the form of the right that employers would have to recruit and fire employees, the first big change comes. Currently, during the

retrenchment process, any organisation with over 100 employees requires permission from the government. This threshold has been raised to 300 now.²⁰ This makes it easier for organisations to lay off employees but at the same time paves the way to vast unemployment all over the country especially in the time of the pandemic.

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- ii) **Restriction on strike:** One of three laws passed in the upper house, the Industrial Relations Code, also makes it almost impossible for workers to strike. The new legislation will also force employees before striking to hand in a 60-day notice. In the case of pending proceedings before a court of law, a strike can take place only 60 days after those proceedings have been completed. These rules were initially restricted to public utilities only but with the introduction of the new Code have been extended to all establishments.²¹ Thus this acts as an obstacle for the labour's right to strike.
- iii) **Issue with fixed-term contract:** The introduction of fixed-term contracts can strip away all safeguards from anyone who will now be given short-term assignments. The informal building market, which hires the largest number of unqualified employees, will now also be able to use labour at will.
- iv) **Social Security Concerns:** Protections for social security should be universally available to the entire Indian population. Instead, we now have arbitrary categorizations that leave out millions of disadvantaged working people. The legislation would only cover locations that have more than 10 employees. "Personal residential construction work" is also excluded and these are the areas where a lot of our unorganized employees find jobs and need security.
- v) **Safety at workplace:** Workplace safety has been stressed, but the provisions are extremely poor. In small institutions and in small groups, most of our unorganized workers operate. The safety committee that the new law aims to create would only apply to workplaces that employ more than 250 people. This implies that 90% of our labour is left out.

²⁰ §77, Industrial Relations Code, 2020.

²¹ §62, Industrial Relations Code, 2020.

Conclusion

An utter dilution of workers' rights is nothing more than an oppressive law in a country like India, where social justice is becoming a distant dream, which is totally contrary to the democratic values that the Constitution supports. In India, labour reforms were also required

The government has also fulfilled its obligation by adopting the three Labour Bills for 2020, which provide employers with greater organizational flexibility. Three codes have been developed by the central government that reform different action plans and provide measures to improve production.

It has also established a checklist for state governments to ensure that they faithfully obey the criteria. India needs reform from the ground floor, so these labour codes on Organizational Safety, Health and Working Conditions, the Industrial Code and the Social Security Code would contribute to a new labour revolution in India.



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