



# Constitutional And Legal Framework For The Protection of Labours In An Unorganized Sector in India

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## **ABSTRACT:**

*Most of the labour laws originated from the period of British Colonialism. In the 18<sup>th</sup> century, India was both a great agricultural and manufacturing country. Foreigners used to buy these products and sent it to their homes countries. The Indian remained poor and used Indian made products. The British oppression in India continued for some time, which led to the growth Indian nationalism. Several acts were passed, such as the Factories Act, Mines Act, Trade Union Act, Minimum Wages Act. But the most important Act that was passed to protect the interest of the workers was the Workmen's Compensation Act, 1923 (now the Employee's Compensation Act, 1923). Later, other labour related acts were enacted according to the International standards. These acts were made to give safeguards to the workers and keep a good relation between employer and employee and to have a healthy atmosphere in the workplaces. This paper focuses on these Acts and how these Acts are protecting the labours in an unorganized sector.*

**Keywords:** *Employee, Labour, Products, Unorganized, Wages.*

## **INTRODUCTION:**

Most of the labour legislations enacted before 1947 were related only to the organized sectors. After the independence enactment of important legislations in the areas of employee security, social security, labour standard and welfare of organized as well as of the unorganized sector derive their origin from the provisions of the Indian Constitution. These laws were also influenced by important international human rights conventions and their recommendations that have emerged from the United Nations. These includes social security, right to work of one's choice, right against discrimination and exploitation, prohibition of child labour, abolition of contractual labour, abolition of bonded labour, equal remuneration, just and humane conditions of work, service conditions for workers and livelihood rights.<sup>1</sup>

## **BASIC PRINCIPLES OF LABOUR LEGISLATION:**

These laws consist of the principles of social justice, social equity, international uniformity and

<sup>1</sup> United Nations- Wikipedia.

national economy.

### **Social Justice: -**

Social justice indicates two things: a) equitable distribution of profits and other benefits of employment between owner and workers and b) providing protection to the workers against harmful effects to their health, safety and morality.

Justice P. N. Bhagwati, the 17<sup>th</sup> Chief Justice of India, said that the concept of 'social justice' does not emerged from the grotesque notions of any particular adjudication but must be founded on a more solid foundation<sup>2</sup>.

### **Social Equity: -**

Any legislation which is based on social justice prescribes a definite standard for adoption in future. Such standard is fixed after taking into account the past and present circumstances. Once a standard is so fixed by legislation it remains in force until it is changed or modified by another legislation passed in accordance with the legislative procedure. No discretion is given to change such law to the authority administering such law. However, if it found that the law should be flexible and should be changed as the circumstances and conditions change, the law empowers the Government to make such changes. When power under the Act is given to the Government the rules may be modified to suit the changed conditions. Such legislation is said to be based on social equity.<sup>3</sup>

### **Social Security: -**

The concept of 'social security' is based on ideals of human dignity and social justice. The idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards. It also means a guarantee provided by the State through its appropriate agencies, against certain risks to which the members of the society may be exposed.<sup>4</sup>

Social security measures are significant from two view points: a) they constitute an important step towards the goal of a welfare state and b) they enable workers to become more efficient and thus reduce wastage arising from labour disputes.

In our country, the Constitution of India and several labour legislations under its provisions enshrined all basic principles and common standards of social security as embodied in International Labour Organizations's social security convention, 1952<sup>5</sup>.

### **CONSTITUTIONAL FRAMEWORK:**

Indian Constitution provides a wide framework for regulation of conditions of work as well as protection and promotion of livelihoods of labours under *chapter III (Fundamental Rights)* and *chapter IV (Directive Principles of State Policy)*. The Fundamental Rights guaranteed by the Constitution provides equality before law; abolish untouchability and prohibits discrimination and exploitation of labour whether of organized or unorganized sector.

- **Fundamental Rights<sup>6</sup>:-**

*Article 14* declares that 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'. Thus, Article 14 uses two expressions "equality before the law" and "equal protection of the law". Both these expressions aim at establishing what is called "equality of Status" in the preamble of the Constitution. Thus, preamble as well as Article 14 provides equal

<sup>2</sup> *Muir Mills Co. Ltd. v. Suti Mill Mazdoor Union, Kanpur*, AIR 1955 SC 170 (India).

<sup>3</sup> S. N. Mishra, *Labour & Industrial Laws*, 11 (27<sup>th</sup> edn., 2013).

<sup>4</sup> *Ibid.*

<sup>5</sup> International Labour Organisation, the Social Security (Minimum Standard) Convention, 1952:Wikipedia.

<sup>6</sup> INDIA CONST.

status to all persons.

*Article 15* of the Indian Constitution prohibits discrimination. Clause (1) prohibits the State from discriminating citizens on grounds only of religion, race, sex, caste and place of birth or any of them. The rights guaranteed in clause (1) is conferred on a citizen as an individual and is available against his being subjected to discrimination in the matter of rights, privileges and immunities pertaining to him as a citizen generally.

*Article 17* of the Indian Constitution abolishes “Untouchability” which is an inherent problem of migrant labour working in an unorganized sector. The right against ‘untouchability’ has also been provided under the Protection of Civil Rights Act, 1955. Under the Act, the expression ‘Civil rights’ is defined as ‘any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution.

*Article 19(1)(c)* of the Constitution of India guarantees to all its citizens the right “to form associations or unions or co-operative societies.” Clause (4) of Article 19, however, the State may impose law for reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. It has the right to form companies, societies, partnership, trade unions, and political parties. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.<sup>7</sup>

*Article 21* of the Constitution says that: “No person shall be deprived of his life or personal liberty except according to procedure established by law.” The scope of the right to life, conferred under this Article is wide and far reaching. It includes right to live with human dignity, right to livelihood, right to shelter, right to health and medical assistance, etc. The Supreme Court in *Peoples Union for Democratic Rights v. Union of India*<sup>8</sup> case, held that: Non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with the basic human dignity and violative of Article 21 of the Constitution.

This decision of the Supreme Court has paved a new legal revolution. It has clothed millions of workers in factories, fields, mines and projects sites with human dignity. They had fundamental right to maximum wages, drinking waters, shelter crèches, medical aid and safety in the respective occupations covered by the various welfare legislations.

*Article 23* of the Constitution prohibits human trafficking and begar and other similar forms of forced labour. The Article protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of “traffic in human beings” and begar and other similar forms of forced labour wherever they are found. In the case *Peoples Union for Democratic Rights v. Union of India*, the Supreme Court considered the scope and ambit of Article 23.

*Article 24* of the Constitution prohibits employment of children below 14 years of age in factories and hazardous employment. This provision is certainly in the interest of public health and safety of life of children. Under this Article, no child below the age of 14 years can be employed in the construction work even if construction industry is not specified in the schedule to the Employment of Children Act, 1938.

- **Directive Principles of State Policy:<sup>9</sup>**

The Directive Principles of State Policy is laid down in the Part IV of the Constitution. In the case of *Air India Statutory Corporation v. United Labour Union*<sup>10</sup> the Apex Court held that:

The Directive Principles in our Constitution are fore-runners of the U.N.O. Convention of Right to Development as inalienable human right and every person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights, fundamental freedoms would be fully realised. It is responsibility of the State as well as the individual, singly and collectively, for the development taking into account the need for fuller responsibility for the

<sup>7</sup> Dr. J. N. Pandey, *The Constitutional Law of India*, 77 (49th edn., 2012).

<sup>8</sup> AIR 1473, 1983 SCR (1) 456 (India).

<sup>9</sup> INDIA CONST.

<sup>10</sup> AIR 1997 SC 645 at 667 – 668, Para 38 (India).

human rights, fundamental freedoms as well as the duties to the community which alone can ensure free and complete fulfilment of the human being. They promote and protect an appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principles are imbedded as integral part of our Constitution in the Directive Principles. Therefore, for establishment of just social order in which social and economic democracy would be a way of life inequalities in income should be removed and every endeavour be made to eliminate inequalities in status through the rule of law.

*Article 38* states the concept of ‘social justice’ which is essential for the promotion and welfare of labour working in an unorganized sector.

*Article 39* deals with certain principles to be followed by the state while enacting any law. Clause (d) of Article 39 consist the principle of equal pay for equal work for both men and women. In pursuant to this clause, Parliament has enacted the Equal Remuneration Act, 1976.

The Directive Principle also states that “The State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, for just and human conditions of work and maternity relief. Laws such as the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961 and the Employee’s Compensation Act, 1923 etc. implement this provision.

Thus, the Constitution of India under the provisions of Fundamental Rights and Directive principles of State Policy has conferred indirectly innumerable rights on the protection of labours working in an unorganized sector. Besides these Constitutional safeguards, there are certain specific Central legislations which provide protection and welfare of the migrant labour working in an unorganized sector. These are discussed below.

### **CENTRAL LAWS<sup>11</sup>:**

Central laws, which regulate the conditions of work in the unorganized sector fall into three groups. These are:

- **The Equal Remuneration Act, 1976: -**

Article 39 of the Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, parliament passed this Equal Remuneration Act in 1976, which provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in matters of employment. The Act imposes duty upon the employer to pay equal remuneration to men and women workers for same work or work of a similar nature and also prohibit discrimination while recruiting men and women workers.

- **The Bonded Labour System (Abolition) Act, 1976:**

Indian law as well as International law prohibit the use of bonded labour. Under its own law and as a party to international instruments, India is obliged to prohibit all forms of slavery including debt bondage, child servitude and forced labour, as well as to affirmatively protect children from economic exploitation and hazardous.

- **The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014:**

The Act defines ‘Street Vendor’ as a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure

<sup>11</sup> Wikipedia.



or by moving from place to place and includes hawkers, peddler, squatter local or region specific

The Act provides for constitution of Town Vending Authority in each Local Authority, with preference to SC, ST, OBC, women, persons with disabilities and minorities

- **The Trade Unions Act, 1926:**

Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action. They are the most suitable organisation for balancing and improving the relations between the employer and the employees. They are formed not only to provide worker's demand, but also inculcating in them the sense of discipline and responsibility. This act aim to secure fair wages for workers and improve their opportunities for promotion and training; safeguard security of tenure and improve their conditions of service.

- **The Minimum Wages Act, 1948:**

In unorganized sector, where labour is vulnerable to exploitation due to illiteracy and having no effective bargaining power, minimum rates of wages are fixed both by the Central and State Governments in the scheduled employment falling within their respective jurisdiction under the provisions of the Minimum Wages Act, 1948. The Act provides for fixing, reviewing and revising the minimum rates of wages in certain employments where workers are engaged in the unorganized sector. It is applicable both to agricultural, non-agricultural and to rural as well as urban workers.

Moreover, the appropriate Government may also fix hours for a normal working day and increase the scope of this Act by adding schedules. Units employing one worker are also covered under this Act. Thus, the Act is meant to ensure that the market forces, and the laws of demand and supply are not allowed to determine the wages of workmen in industries where workers are poor, vulnerable, unorganized and without bargaining power.

- **The Child Labour (Prohibition and Regulation) Act, 1986:**

There are a number of enactments which prohibit the employment of children below 14 years and 15 years of age in certain specified employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions. Therefore the Child Labour (Prohibition and Regulation) Act, 1986 has been enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain employments and to regulate the conditions of work of children in certain other employments.

It is important to mention that The Child Labour (Prohibition and Regulation) Amendment Act, 2012 was passed in Parliament, which seeks to amend the Child Labour (Prohibition and Regulation) Act, 1986 with following provisions;<sup>12</sup>

- (a) The Act adds a new category of persons called 'adolescent'. An adolescent means a person between 14 and 18 years of age. The Bill prohibits employment of adolescents in hazardous occupations as specified (mines, inflammable substance and hazardous processes).
- (b) The Act enhances the punishment for employing any child in an occupation. It also includes penalty for employing an adolescent in a hazardous occupation.
- (c) The penalty for employing a child was increased to imprisonment between 6 months and two years (from 3 months – one year) or a fine of rupees 20,000/- to 50,000/- (from rupees 10,000/- to 20,000/-).
- (d) The penalty for employing an adolescent in hazardous occupation is imprisonment between 6 months and two years or a fine of rupees 20,000/- to rupees 50,000/- or both.

<sup>12</sup> <https://prsindia.org/billtrack/the-child-labour-prohibition-and-regulation-amendment-bill-2012#:~:text=The%20Act%20prohibits%20employment%20of,industry%2C%20mines%20and%20domestic%20work.>

- (e) The Government may confer powers on a District Magistrate to ensure that the provisions of the law are properly carried out.

- **The Employee's Compensation Act, 1923:**

The Act is applicable to employees and provides for the payment of compensation to the workmen and their dependents in the case of injury by industrial accident including certain occupational diseases arising out of and in the course of employment resulting in death or disablement. The Act applies to certain railways servants and persons employed in hazardous employments such as factories, mines, plantations mechanically propelled vehicles, construction work, etc., specified in Schedule II of the Act. However, the Act is not applicable to the employees who are covered under the Employees' State Insurance Act, 1948.

- **The Payment of Wages Act, 1936:**

The general purpose of the Act is to provide that the employed persons shall be paid their wages in a particular form and at regular intervals and without any unauthorized deductions. The deduction authorised under the Act, for example for absence from duty, for damage or loss caused by the worker, for services rendered and accepted by the worker, for recovery of advances or loans received by the worker, or for payments to co-operative societies and insurance schemes, only may be made from the wages. The Act also provides provisions for the attachment of property of employer or other person responsible for payment of wages to the employed person. Moreover, provision for payment of undisbursed wages in cases of death of employed person has been also provided under the Act.

- **The Maternity Benefit Act, 1961:**

The Maternity Benefit Act, 1961 was enacted to regulate the employment of women in certain establishments. It is solely devoted to working women making provisions to provide different kinds of benefits to female wage-earner. The Act is applicable to the women workers and seeks to regulate employment of women in certain establishments for certain periods before and after childbirth and provides for maternity and certain other benefits. It applies to every establishment, being a factory, mine or plantation including any such establishment belonging to Government.

- **The Beedi and Cigar Workers (Conditions of Employment) Act, 1966:**

The Beedi and Cigar Workers (Conditions of Employment) Act is for the welfare of labour and not an Act of industries. It is for enforcing better conditions of labour amongst those who are engaged in the manufacture of beedis and cigars. The Act is intended to achieve welfare benefits and amenities for the labour. For the purpose of preventing injury to the health of workers, the Act provide that every industrial premises shall be kept clean and shall be maintained with lighting, ventilation and temperature.

- **The Contract Labour (Regulation and Abolition) Act, 1970:**

This Act is applicable to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour and to every contractor who employs or who employed twenty or more workmen on any day preceding twelve months. This Act does not apply to establishments in which work of casual nature is performed. "Workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

## **The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996:**

The Act regulate the employment and conditions of service of building and other construction workers and provides for their safety health and other welfare measures. It covers all Central and State Government establishments.

The Act defines “Building and Other Construction Work” means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works, oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph, overseas communications, etc.

### **Conclusion:**

Decent work is a broad concept which is related to social and economic goals of development. It brings together different types of freedoms. There are four types of dimensions of decent work, such as work and employment itself, rights at work, security, and representative at work dialogue. The International Labour Organization has played a significant role in promoting International Labour Standards. India has advocated the promotion of labour standards within the frame work of the ILO Constitution. More than 90 percent of the total workforce is engaged in the unorganized or informal sector, like migrant labour and other workforce.

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