

IS GOVERNMENT REALLY CARES FOR LABOUR CLASS?

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Introduction-

“Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration.”

----- Lincoln’s First Annual Message to Congress,

(December 3, 1861)

“All wealth is the product of labor”. ----- John Locke

Labour Day is celebrated on 1st May to celebrate the achievements of workers.

- Labour Class people refer to the ones who are employed in relation to the economy of India.
- As per survey of 2012, there were around 487 million workers in India, which is held to be second largest after China.
- About 94% of the workers are in unorganized sector. The organized sector generally refers to the workers employed by the government, State owned enterprises and private sector enterprise.
- Majority of Labours in India is employed in unorganized sector. These include *family owned shops & street vendors*.
- Organized sector also known as *formal sector*-
 - Licensed organizations
 - They are registered one
 - Pay GST(Goods & services Tax)
 - Example- *Hotels, Shopping Malls, Factories & other large business*
- Unorganized sector also named as *Own account enterprises*-
 - Unlicensed
 - Unregistered economic activity
 - Low productivity & Low Wages
 - Example- *Rural traders, Farmers, Handloom & Handicraft workers*

- **According to 2008 report-** India's Ministry of Labour has classified unorganized labour in India into-
 - *Occupation*
 - *Nature of Employment*
 - *Distressed Category*
 - *Service Categories*
- Poverty rates to be significantly higher in families where all working age member have worked only in unorganized sector throughout their lives.

Labour Law-

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- Combined body of law
 - Administrative ruling
 - Precedents
 - Enactments & Precedents
 - Addressing- To legal rights & duties of working people and their organization.
 - Rights and obligations of Workers, Union Members & Employers at a workplace. Also called *Employment law*.
 - *Law relating to labour & employment- "Industrial law"*.
 - *Labour laws include-*
 - Certification of Union, Labour management relation, Collective bargaining & unfair labour practices [Industrial relations]
 - Workplace health as well as safety.
 - Employment standards- working hours, annual leave, layoff procedure, unfair dismissals, general holidays etc...

Indian Labour Law-

- It refers to the laws which are enforced for **regulating labour in India**.
- Labour to be subject under the **Current List of the Indian Constitution**.
- Labour laws of India first originated from **the idea & view of leader Nehru** from pre-independence movement struggle.
- Later through debates held in constituent assemblies and many recommendations made by the International Labour Organisation these laws were expanded.
- Laws includes the following-

- Right to work of one's choice
 - Right against Exploitation
 - Prohibition of child labour
 - Fair & humane condition of work
 - Social security
 - Protection of wages
 - Redress of grievances
 - Right to organize & form trade union
 - Collective bargaining
- Rigid rules & regulations of India as per labour laws-
 - Put limitations on employers on retrenchment & layoffs.
 - Maximum no. of employees per company in certain sectors of economy when comparing to the other countries of the world Indian labour laws are regarded as highly rigid & regulated.
 - But these laws have *been criticized* as India has not been successful in implementing these laws because of the following demerits-
 - *Large unorganized sectors*
 - *Underground economy*
 - *Low employment growth*
 - *Low per capita income*
 - In India, there are over 50 acts as well as many laws to regulate employers & employees in any matter related to industrial relations.
 - As Labour is a subject of Concurrent list therefore labour matters are in jurisdiction of both Central & State government.

Labour laws in India (Enactment & Enforcement)-

- *By Central government- Central government has sole responsibility for enforcement-*
For Example:
 - The employees' State Insurance Act, 1948
 - The Employees' Provident fund & Miscellaneous Provision Act, 1952
 - The Mines Act, 1952
- *Enacted by Central government & enforced by both Central and State government-*

For Example:

- The Payment of Bonus Act, 1965
 - The Payment of Wages Act, 1936
 - The Minimum Wages Act, 1948
 - The Payment of Gratuity Act, 1972
- *Enacted by central government & enforced by State government-*

For Example:

- The Factories Act, 1948
- The Motor Transport Workers Act, 1961
- The Personal Inquires (Compensation Insurance) Act, 1963
- The Employers' Liability Act, 1938

- *Enacted by State government & enforced by State government-*

For Example:

- Madhya Pradesh Workmen's Compensation (Occupational Disease) Rules, 1963
- Gujarat Workmen's Compensation Rules, 1967
- Workmen's Compensation (Madhya Pradesh) Rules, 1962

History-

- After I World war, the need for definite labour laws was felt for the first time.
- Previously organizations made their leaders work with little or no power & with minimal pay.
- After that voices of the workers were **raised against such labour practices**. Workers were demanding **better working atmosphere, increased wage & the right to organize**.
- But organization was trying to restrict the power of the workers & to keep labour costs low.
- **This conflict between the working class labour & organization highlighted for the need of set of regulations i.e. Laws.**
- *International Labour Organization (ILO)* was the first organization to deal with labour issues.
- Labour legislation in India is mostly pre-constitutional.
- Until 1919, there was no important labour legislation in India.

- Indian labour law is related to the Indian Independence Movement, when India was under colonial rule by the Britishers all the labour rights, trade unions & freedom of association were suppressed.
- Then after, when India won independence in 1947, Constitution of India 1950 included a series of fundamental labour rights-
 - *Right to join & take action in a trade union*
 - *Principle of equality at work*

Evolution of Labour Legislation-

- Early Industrialism
- Colonial rule
- Rise of Trade Union
- Growth of Humanitarian ideas
- Concept of Social justice

Purpose of Labour Laws-

- Establish legal system to provide social security for workers of unorganized sector.
- To improve the production of the economy.
- Interact with work related issues.
- Guarantee fundamental principles & right at work.

Labour Policy in India-

- Social security cards for workers.
- Social security for workers of unorganized sector.
- Model of employee-employer relationship.
- Functioning of Labour department to be efficient.
- Child Labour Act to be enforced.
- Medical facilities to workers.
- Industrial training.

Constitutional right-

[Article 14-16, Article 19(1)(c), Article 23-24, Article 38, Article 41-43A] – Labour rights

Article 14-16, Article 19(1) (c), Article 23-24- Part III of Indian Constitution & are enforceable in the court of law.

Article 14- Everyone should be equal before the law.

Article 15- State should not discriminate against citizens

Article 16- Right of “*Equality of Opportunity*” for employment or appointment under the State

Article 19(1)(c)- Right to form Association or Union

Article 23- Prohibits all trafficking & forced labour

Article 24- Prohibits child labour less than 14 years in a factory, mine or “any other hazardous employment”.

Article 38, Article 41-43A – Part IV of Indian Constitution & are not enforceable rather than it creates duty of the State to apply these principles in making laws.

Article 38(1)- State should “strive to promote the welfare of the people” with social order in which justice, social, economic & political shall inform all the institution of national life.

Article 38(2) - “Minimize the inequalities in income”.

Article 41- “*Right to Work*” which National Rural Employment Guarantee Act 2005 also attempts to put into practice.

Article 42 - State to make provision for securing just & human condition of work and for maternity relief.

Article 43 - Right to a living wage for workers & also “conditions of work for ensuring decent standards of life”.

Article 43A- [*Inserted by 42nd amendment act in 1976*] – State to legislate to secure the participation of workers in the management of undertakings.

Classification of Labour Laws in India-

(1) Industrial relations-

- Trade Union Act, 1926
- Industrial Employment Standing Order Act, 1946
- Industrial Dispute Act 1947

(2) Wages-

- Payment of Wages Act, 1936
- Minimum Wages Act, 1948
- Payment of Bonus Act, 1965
- Working Journalists (Fixation of Rates of Wages Act), 1958

(3) Working hour, Condition of service & Employment-

- The Contract Labour (Regulation & Abolition) Act, 1970
- Mines & Mineral (Development & Regulation) Act, 1957
- The Apprentices Act, 1961

(4) Equality & Empowerment of Women-

- Maternity Benefit Act, 1961
- Equal Remuneration Act, 1976

(5) Social Security-

- Workmen's Compensation Act, 1923
- Employees' State Insurance Act, 1948
- Employees' Provident Fund & Miscellaneous Provision Act, 1972
- Payment of Gratuity Act, 1972
- Employers' Liability Act, 1938

(6) Deprived and Disadvantaged Sections of the Society-

- Bonded Labour System (Abolition) Act, 1976
- Child Labour (Prohibition & Regulation) Act, 1986
- Children (Pledging of Labour) Act, 1933

Participation in workplace-

- *Trade Unions- Article 19(1)(c)-* Right to form Association or Union.
- Trade Union Act 1926, which was amended in 2001, contains rules on

governance & general rights of trade union.

- Many of the great fighters of Independence movement were of the view that the workers also had a right to participate in the management of the firm as that of the shareholders.
 - *In 1978, the Sachar Report* recommended legislation for inclusion of workers on boards. However, this report has not been implemented yet.
- ✓ **CASE- NATIONAL TEXTILE WORKERS UNION V. RAMAKRISHNAN 1982**
 – In this case it was held that the employees had a right to be heard in a winding up petition of a company as their interests were also directly affected.

Equality-

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- **Article 14-** Equality before the law
 - **Article 15-** State should not discriminate against citizens.
 - **Article 16-** Right of Equality of Opportunity for employment or appointment under the State.
 - **Article 23-** Prohibits all trafficking & forced labour.
 - **Article 24-** Prohibits child labour under 14 years old in a factory, mine or “any other hazardous employment”.

Vulnerable groups-

- *In 1976, an Act- Bonded Labour System (Abolition) Act* was enforced to abolish bonded labour, but estimates suggested that 2-5 million workers were still in debt of bondage in India.
- Child Labour (Prohibition & Abolition) Act 1986.
- Juvenile Justice (Care & Protection) of Children Act 2000.
- For protection of Child Labour in India, *Article 24 has prohibited children from working in factories, mines & hazardous employment.*
- **Article 21A-** State should provide free & compulsory education to child up to 14 years of age.

Discrimination based on Gender-

- **Article 39(d)** – Men & Women should receive equal pay for equal work.

- Act- Equal Remuneration Act 1976

CASES-

- ✓ **LANDMARK CASE- RANDHIR SINGH V. UNION OF INDIA 1982-** In this case, Court relied on “socialist” envisage in the Preamble of Constitution & it was held that the principle of Equal pay for equal work is deducible from Article 14 and 16 of Constitution.
- ✓ **INDER SINGH & OTHERS V. VYAS MUNI MISHRA & OTHERS 1987-** When two groups of persons are doing in similar post and performing same kind of work, either in same or different departments then “Equal Payment” will be paid to both of them without any unreasonable discrimination.
- ✓ **BHAGWAN DASS & OTHERS V. STATE OF HARYANA & OTHERS 1987-** Court held that when it is proved that the nature of duties & functions discharged by employee and work done by him/her is similar, then the mode of selection and period of appointment will become irrelevant and immaterial for applicability of equal pay for equal work.
- ✓ **SITA DEVI & OTHERS V. STATE OF HARYANA 1996-** “Doctrine of Equal pay for equal work” is recognised as an important aspect of equality clause under Article 14 of the Constitution.
- ✓ **S.NAKARA V. UNION OF INDIA 1983-** “*Equal pay for equal work*” has assumed to be the status of a fundamental right.

Dismissal of Workmen-

- *Under Industrial Dispute Act 1947-* A workman who has been employed for over a year can be dismissed only if permission has been granted by appropriate government office.
- Before dismissal there must be **valid reasons for it & there is a wait for at least 2 months for government permission so that lawful termination can take effect.**
- **Misconduct or habitual absence is also an important ground for which a workman can be terminated.**
- Dismissed worker has a ***right to appeal***, even if the appropriate government has granted his dismissed application.
- Indian labour regulations provide for a no. of appeal-
 - Conciliation Officers

- Conciliation Boards
- Court of Inquiry
- Labour Courts
- Industrial Tribunal
- National Industrial Tribunal

Beyond these appeals case can proceed to State High Court and later Supreme Court.

- ✓ **CASE- BHARAT FORGE CO. LTD V. UTTAM MANOHAR 2005-** In this case, worker was dismissed under Industrial Employment Act 1946 for sleeping for fourth time in 1983. Worker was found guilty and was dismissed. Later, he appealed to Labour Court, pleading that his dismissal was unfair as per Indian Labour Laws. Labour Court took decision in favour of worker. Case went through several rounds of appeal and after 22 years, Supreme Court upheld his dismissal in 2005.

Government plans in relation to Labour laws-

- Modi government working on new labour law aims to *protect dignity of workers and their well-being at the workplace.*
- Government has taken steps for drafting *four Labour Codes on Wages; Industrial Relations; Social Security & Welfare and Safety and working Conditions, by simplifying, amalgamating and rationalizing the relevant provisions of the existing Central Labour Laws*
- Government is working on simplifying labour laws; *Santosh Gangwar.*
- Central government has also launched the *Atal Pension Yojana, Pradhan Mantri Jeevan Jyoti Bima Yojana and Pradhan Mantri Suraksha Bima Yojana* for all citizens especially targeting unorganised workers to provide them comprehensive social security.
- Government has also enacted *the Unorganised Workers' Social Security Act, 2008* for providing social security benefits to the workers in the unorganised sector.
- Central government has focused on welfare of the workforce of India in the prevailing scenario and striving towards *“Making India a Better Work Place for All”.*

- **Shram Suvidha Portal** – Launched in October 2014, and it brought four major organisations under the Ministry of Labour and Employment to one platform. Those are-
 - Office of Chief Labour Commissioner (Central)
 - Directorate General of Mines Safety
 - Employees’ Provident Fund Organisation
 - Employees’ State Insurance Corporation.

Portal has helped in *bringing transparency and accountability* leading to better enforcement of the Labour laws.

- *The Second National Commission on Labour* had recommended for the enactment of a special law for small manufacturing units and also that the existing Labour laws should be broadly grouped into four or five Labour Codes on functional basis.

Drafting of four Labour Codes-

- Labour Codes on Wages
- Labour Code on Industrial Relations
- Labour Code on Social Security & Welfare
- Labour Code on Safety & Working Conditions

Latest Labour Law Judgements

- ✓ **SC-** Loss of confidence in employee would justify his dismissal from service.
- ✓ **Madras HC-** Unauthorised habitual absence of a workman is a grave misconduct.
- ✓ **Delhi HC-** A salesman engaged in sales and publicity of company’s products is not a ‘workman’.
- ✓ **Rajasthan HC-** Selling tea and running grocery shop not necessarily ‘gainful employment’.
- ✓ **Delhi HC-** Repeated dispatching of letters at wrong address justifies dismissal.
- ✓ **Rajasthan HC-** One cannot claim accident compensation under two different Acts.
- ✓ **Punjab & Haryana HC-** Failure of workman to support his claim on repeated opportunities shows he is not diligent.
- ✓ **Punjab & Haryana HC-** Failure to prove Employer-Employee relationship would not entitle any relief.

- ✓ *Orissa HC*- Aggrieved workman can avail remedy under the Industrial Dispute Act 1947.
- ✓ *SC*- Misconduct in causing loss by a worker for his personal gain would justify dismissal.

Steps taken by the government for the Labour Class people-

- To stop the exploitation of poor, voiceless and helpless labour force, women and children in particular.
- To stop the practice of illegal engagement of Child Domestic Labour.
- **Promote Right to Education** programmes for all the children, mainly those of poor children and who are from remote villages and districts that have been deprived so far of this basic right in spite of various laws and acts passed by the government.
- To **revive dignity of labour class people** among youth in India and they must be given the label of “**dignified work**” and to remove the negative misconception from the minds of the people likewise of ‘slaves/servants/kancha’.
- Employers and employee will *have proper standard guidelines*. Security, mutual benefit and respect to be ensured for both.
- To prevent and address the issues of exploitation of all kinds, theft and robbery, misbehaviour, run away cases etc...

Conclusion-

- Although the government has made these various acts & schemes for the betterment of the workers. The implementation of Labour welfare scheme & security scheme is not satisfactory.
- The aim of these acts is to provide reasonable wages and work condition for the workers at the work place and provide facilities like education, medical etc... Implementation of these acts become very difficult, as many of the workers were ignorant about their rights. In many acts, workers has been given right to be away from hazardous operation which remained unnoticed.
- Workers do not get effective medicines and proper Medicare from the doctors because of improper implementation of Employees State Insurance Scheme. So, government must take proper steps regarding this issue and it's important to provide proper medical facilities in the Industries.

- Still there are some small scale industries and labour in unorganized sector where wages paid to them is very low and they do not have sufficient money to provide them food, clothes and shelter & the workers do not have proper knowledge about their rights.
- The pre-independence era laws are now being amended but the process of amendment is very slow.
- It is important for the people to change their mindset in respect of labours and they should start giving honour and respect to the hard work and efforts of the labour class people in India.

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