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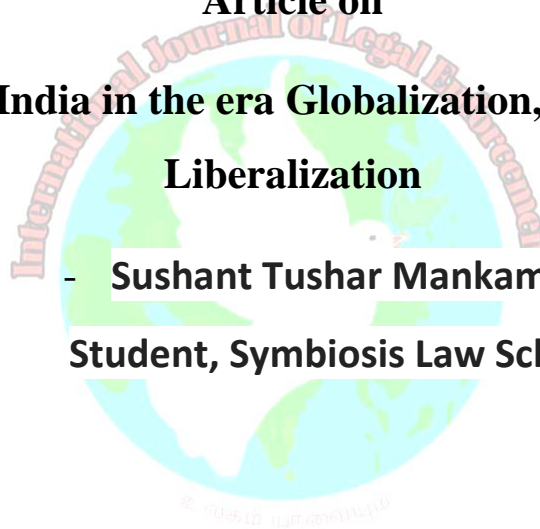
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“Dharma is to protect the Needy”

Article on
Labor Laws of India in the era Globalization, Privatization and
Liberalization

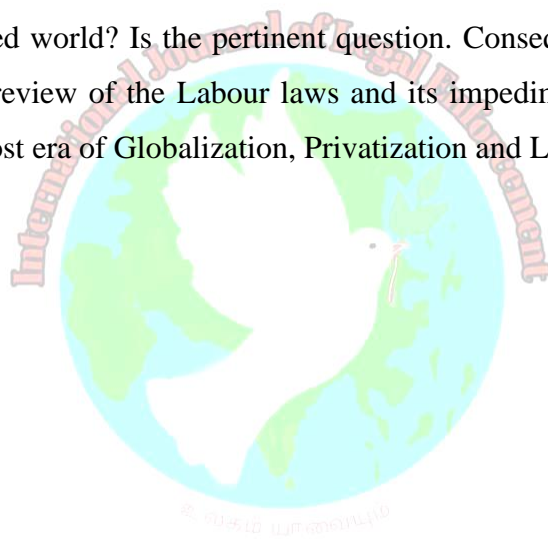
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Abstract

Reformations in labor laws is frequently partitioned into discrete time periods, reflecting significant stages and conditions of the existing economic and social development¹. Thus, the said brackets in India can be broadly divided into Pre-Independence (before 1948), Post-Independence period (after 1948) and the period after the adoption of New Economic Policy (after 1991). In the post-independence period, the interest and the rights of labour were carefully protected by legislating relevant provisions in the Constitution and also by enacting some of the protective labour legislations like the “Factories Act 1948”, and the “Minimum Wages Act of 1948” and so forth; as an answer to the then contemporary state of affairs. However, has India maintained the same pace of reform as regards to the Labour laws in the post Liberalized and Globalised world? Is the pertinent question. Consequently, this paper makes an endeavor to introduce a review of the Labour laws and its impediments, particularly the Trade Union Act, 1926 in the post era of Globalization, Privatization and Liberalization.



¹ Richard Mitchell, Petra Mahy and Peter Gahan, ‘The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development’ (2014) 1 Asian Journal of Law and Society 414

Introduction

The current Central Government of India which was empowered with the ideology of progression is going full courageously with labour deregulation². However, the same has not always been the case towards the reformation of Labour laws in the post Liberalized India. Prior to the current government, efforts at the reformation of Indian Labor laws have been rather slow.³ Time and again numerous International Institutions including the International Monetary Fund (IMF)⁴ called for a complete reshaping of Indian Labor Laws. No wonder why the nation till now has failed, despite being potent, to be the manufacturing hub of the world.

Labor Laws prior to Independence

The evolution and enactment of the labor Laws in India can be traced back to the establishment of the International Labor Organization (ILO) in 1919. Indian labor Laws have always been dynamic and have always been constantly changing and catering to the needs of the then British Government; giving limited scope to the requirements of social justice and economic development.

The looming and surfacing of industrialization have seen a static shift in the labour force from rural areas to the cities, the labour work was not paid much heed by the colonial government apart from the penal provisions present at that time, which was formulated for labour supply and for progression of British owned industries. Most of the British enacted labour regulations majorly revolved around “forced labour”.

The “Workmen’s Breach of Contract Act 1859” was one of the few labour-oriented legislation enacted by the Britishers. The said act made the breach of employment contract penalized and also asked for its specific performance.⁵ Substantial use of these provisions was made for labour welfare.

Further from 1880’s working hours in factories and mines, Child and women employment became the basis of labour legislation of the then government. However, selective

² P J Secki, ‘Seismic Shifts in Indian Labour Laws’ (2016) 40 The Economic and Political Weekly 19

³ Srirang Jha, ‘Labour Reforms in India: Issues & Challenges’ (2014) 5 Journal of Management & Public Policy.

⁴ ‘IMF calls for quick reform in Indian labour laws’ DNA (E-paper Apr 20, 2006)

⁵ MITCHELL R, MAHY P and GAHAN P, “The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development” (2014) 1 Asian Journal of Law and Society 413

implementation of these labour policies by the industrial sector hindered the smooth flow of the benefits to the end labours.⁶

The growing emergence of a strong independence movement and nationalistic environment led to the formation of many labour unions which in turn led to the foundation of “All India Trade Union Congress in 1920”. Communist influence thus got its eventual presence in the labour movements. “The Factories Act of 1922”, The “Mines Act of 1922” and the “Workmen Compensations Act 1923” were some of the labour-oriented enactments made by the British government. This period made the labours more aware about their rights with regards to their relation with their employer.

The Trade Dispute Act of 1926, did not heed anything for the ‘collective bargaining’ system. The employers and the other stakeholders had no obligation to bargain and understanding with these registered and un registered unions. On the contrary, it did provide for a legal status and immunity against any legal liability to the labour unions. Further, the Trade Dispute Act of 1929 curtailed the right to strike and provided for extensive jurisdiction to the courts for the enquiry of any industrial dispute. Both the legislation faces severe criticism from the “All India Trade Union Congress”.

The world economic depression of 1930 led to mass unemployment. This period of uncertainty led to the foundation of “Royal Commission of labor 1929”. Further during the 1930s, there was an advent of two conclusions from the Report of the Royal Commission. Firstly, the central and provincial government introduced a few new labour legislations. These laws mostly revolved around mines regulation and protective factor.

Secondly, and the most significant development which emerged out of the Government of India Act, 1935, which under new constitutional arrangement gave rise to newer expectations that increased “labour” or “union” friendly policies would further be catered in the provincial government level.

⁶ Richard MITCHELL et al., The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development, (2014) 1 Asian Journal of Law and Society, 413-453

This further led to a period of extensive strike actions. Before the said statute of, several provincial governments had started finding ways while discovering contributions, that could be made and implemented for better working conditions at the workplace.

The introduction of “**Trade Disputes (Conciliation) Act 1934**” by the provincial government of Bombay was encapsulated with the changes in the collective labour relations by designating a Labour Officer to act as a representative of the workers by putting forth their interest and grievances.

The establishment of the “**Industrial Dispute Act, 1938**” introduced by the Bombay Provincial Government had a significant impact as it made it legally obligatory on the part of the employers to acknowledge the trade unions⁷. However, these measures were limited and did not possess a general acceptance by the Indian trade Union Movements. The Bombay bill of 1938, was described as “uncalled for, reactionary, prejudicial and harmful to the interest of the workers” and “calculated to create slave unions” by the AITUC.⁸

Policies and regulations during the World War 2 were continuously under industrial unrest and strikes in relation to the conditions. These legislations were aimed at bringing the central and state-level coordination among the labour force.

Mechanism of compulsory arbitration was provided under section 49 A of the Bombay Industrial Dispute Act of 1941. The said act empowered the Bombay government to address the dispute by the Industrial courts and banned all lockdown and strikes prior to it. With some minor amendments the said act continued to function even after the war.

Factories Act 1948 and Minimum Wages Act of 1948 were some of the few significant enactments of pre independence periods amongst others. Many of these enactments were similar to the Industrial disputes Act 1947 having its application restricted only towards certain business establishments.

⁷ ACT, AUTHORITIES UNDER THIS. "The Industrial Disputes Act, 1947." *Maternity Benefits Act* (1923).

⁸ Richard MITCHELL et al., *The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development*, (2014) 1 *Asian Journal of Law and Society*, 413-453

Post-Independence Period

The Central government after independence adopted the sole responsibility of enacting new labour legislation through a 'five-year plan of development' for protection of their interest, welfare, housing, working conditions and wages. "Employment State Insurance Act of 1948" empowered labours to access insurance on occurrence of death, sickness, paternity and its ilk. Employees' "Provident Fund and Miscellaneous Provisions Act 1952" provided for social security while the "Plantation labor Act of 1951" protected the interest and welfare of rubber and plantation workers.⁹

Further prioritizing labour welfare 'collective bargaining' was recognized, strikes and lockdowns were legally accepted which in turn promoted 'industrial peace'¹⁰.

Various aspects that hampered the industrial dispute resolution between the unions, workers, employers under the "Industrial Dispute Act of 1947" were withdrawn. Retrenchment, layoffs, closure of plant was eventually latter included in the "Industrial Dispute Act" amendments of 1953, 1976 and 1982. To sum up both central and state governments played crucial role to promoting labour welfare.

Post New Economic Policy, 1991 onwards

India had a series of complex labour regulations which strengthened the job security provided for bargaining powers of union prior to the adoption of New Economic policy of 1991. However, Deregulation and privatization led to a competitive spirit and environment, influenced growth and limited the powers of the union. Along with labour market few other important segments of market continued to be under the strict monitoring of the government. Yet there led to instances which increased the competitive environment poised greater risk of lay offs and retrenchment. This led to the unprecedented change in the industries and its stakeholders.¹¹.

The complex, antiquated labor laws, boundless control of the administration and the bureaucracies over the owners of the industrial enterprises at the cost of prosperity, security and

⁹ Richard MITCHELL et al., The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development, 1 Asian Journal of Law and Society, 413-453 (2014)

¹⁰ ACT, AUTHORITIES UNDER THIS. "The Industrial Disputes Act, 1947." *Maternity Benefits Act* (1923).

¹¹ Zagha, Roberto. "Labor and india's economic reforms." *The Journal of Policy Reform* (1998) 2, no. 4: 403-426.

health of its workers hampered the entry of Foreign Direct Investment in labor intensive industries like the textiles, handicrafts and the like wise¹². The New Economic Reforms of 1991 called and to an extent paved the way for Foreign Investment in the country, however the protectionist labor laws of post independent India failed to reap the expected opportunities. The Planning Commission (2001) agreeing to the argument of need for change in labor laws in post liberalized era opined for urgent need for change¹³. However, the Federal and the several other state governments of India prior to the current government hardly made any efforts to enact and implement it¹⁴.

The concurrent list under the Seventh schedule of the constitution provides for the labour laws thus making it a subject amenable under both Parliament and State legislatures. Though majority being State labour laws in India, Trade Union Act (1926) is one of those central laws which causes the most dissension amongst the concerned stakeholders¹⁵.

“The Trade Union Act, 1926” cast in the pre independence time frame and developed along the lines of the then common British law simply accommodates willful enrollment of trade organizations, manages particular sorts of assurance and directs rather gravely the inside issues of the trade unions¹⁶.

Among many other archaic laws section 22 of the “Trade Union Act, 1926”, is one such which hampers the employer employee relationship thus further acting as restraint on entry of investment (foreign or domestic) in labour intensive industry and further limiting productivity and economic growth.¹⁷ Section 22 provides “one-third or five officers, whichever is less, are permitted to be outsider office-bearers of a registered Trade Union(unorganized sector) thus permitting those who are not directly employed under a particular employer to also stand against that employer in the event of any dispute”; thus facilitating political, public interference¹⁸. Thus,

¹² Srirang Jha, 'Labour Reforms in India: Issues & Challenges' (2014)5 Journal of Management & Public Policy

¹³ Anamitra Roychowdhury, 'Recent Changes in Labour Laws' (2014) XLIX Economic and Political weekly 14

¹⁴ Nagaraj, Rayaprolu. "Trade and labour market linkages in India: Evidence and issues." (2002).

¹⁵ Soo, Kwok Tong. "From licence raj to market forces: The determinants of industrial structure in India after reform." *Economica* (2008) 75, no. 298: 222-243.

¹⁶ K R Shyam Sundar, 'The biggest problem with labour laws' The Hindu (E paper November 27, 2014)

¹⁷ R. C. Datta Milly Sil, 'Contemporary Issues on Labour Law Reform in India An Overview' (2007) Atlmiri Discussion Papers assessed 9th Oct 2020

¹⁸ Soo, Kwok Tong. "From licence raj to market forces: The determinants of industrial structure in India after reform." *Economica* (2008) 75, no. 298: 222-243.

the repercussions of this provision have led to most of the renowned trade unions getting affiliated to the political parties. These political institutions to meet their own political interests make every grievance of workers a political issue thus further making the international investors skeptical about Indian labour-intensive industries¹⁹.

Also, there is a pressing and dire need to address the incomprehensible conducts and actions of trade unions by introducing democracy in the election of their office bearers, similar to what is been in the countries like UK and Japan²⁰.

While what has been proposed by the current Federal government as regards to the inclusion of section 10A for recognition of trade union and to facilitate transparent tripartite discussion is a step forward, there are many more such provisions and other labour legislation which needs immediate actions owing to the existing environment.²² Thus, above mentioned fiasco very well displays that though honest attempt have been made to make India a global manufacturing hub by adopting the New Economic Policy of 1991, embracing globalization, privatization and liberalization, its archaic laws on the other hand fails to reap the expected benefits. Thus there is a greater need for the Central and State legislations of India to understand that its labour laws need to be in line with its global counterparts to be relevant in these times of fierce competition²³.

There have been various legislations catering and addressing to the different labour law issues. These Acts have been enacted to bring into light the social and economic issues faced by the worker class. Labour Laws are very dynamic in nature, hence new legislation should be formulated in order to adapt to the changing environment and need to evolve continuously. There have been various future prospects and projects being formulated by India in collaboration with

¹⁹ S. Rajesh, Dr. Manoj P K 'POLITICIZATION OF TRADE UNIONS AND CHALLENGES TO INDUSTRIAL RELATIONS IN INDIA: A STUDY WITH A FOCUS ON NORTHERN KERALA' (2014) 1 International Journal of Business and Administration Research Review 45

²⁰ Kott, Sandrine, and Joëlle Droux, eds. *Globalizing social rights: the International Labour Organization and beyond*. Springer, 2013.

²¹ R. C. Datta Milly Sil, 'Contemporary Issues on Labour Law Reform in India An Overview' (2007) Atlmiri Discussion Papers assessed 9th Oct 2020

²² *Mrs. Archana Sawant, 'CONTEMPORARY ISSUES AND CHALLENGES IN LABOUR LAW REFORMS: AN OVERVIEW' (2015) Bharati Law Review 41

²³ Priti Suri & Neeraj Dubey, 'Globalization and Labour Laws in India ' (2008) India Investor 7

ILO²⁴. The ESIS (Employee State Insurance Scheme) is considered as the major contributory scheme in India with regards to social health insurance of workers, employed in the formal sector, earning less than Rs 21,000 per month in non-seasonal factories employing 10 or more persons. The object of the project initiated by ESIS is to improve access to health care services in India²⁵.

The “Work in Freedom” is a future project programme by ILO, formulated to provide support to women and girls in countries like India, Bangladesh and Nepal to help them with decent jobs, provide dignity and safety and having a fair recruitment procedure for the same^{26,27}.

In India, we should analyse and assess the multi-faceted approach of labour regulations²⁸. In situations where the traditional ideas of labour laws are ineffective than relevant and a newer outlook is warranted. There cannot be a mere assumption that developing countries, will necessarily industrialize in likewise patterns that were set by previous developers. Hence these legislations need to be investigated in order to understand the factor that truly is ‘regulating labour’ in a country like India.

Though India adopted the New Economic Policy (NEP) 1991, to attract foreign investment in the country among other things; the government could not reap the expected benefit particularly in labour intensive industries because of its over protective labour laws.

If India further fails to bring its labour legislations in line with global practices, the foreign investment in country will further get jeopardize.²⁹ Thus, to reap the expected benefits of

²⁴ Standing, Guy. "The International Labour Organization." *New Political Economy* (2008) 15, no. 2: 307-318.

²⁵ Kott, Sandrine, and Joëlle Droux, eds. *Globalizing social rights: the International Labour Organization and beyond*. Springer, 2013.

²⁶ International Labour Office, “Independent Evaluation of the ILO’s Decent Work Country Programme for India: 2007–2012” (2012)

²⁷ Maupain, Francis. *The future of the International Labour Organization in the global economy*. Bloomsbury Publishing, 2013.

²⁹ ²⁹ R. C. Datta Milly Sil , ‘ Contemporary Issues on Labour Law Reform in India An Overview ’(2007) Atlmiri Discussion Papers assessed 9th Oct 2020

²⁹ R. C. Datta Milly Sil , ‘ Contemporary Issues on Labour Law Reform in India An Overview ’(2007) Atlmiri Discussion Papers assessed 9th Oct 2020

the NEP, the central and state governments have to alter its labour laws which to bring it in consensus with the contemporary standards without harming the basic rights of the workers³⁰.

The nation lacks consensus amongst its concerned shareholders. Though time and again various governments in the country have shown their intention for reformation of labour laws, however no reforms were ever made to effect.

Conclusion:

The primary theme of the labour reforms in the period of globalization thus has been to get rid of the archaic laws. Thus, it has now become imperative to dispense with idiocies, dualities and ambiguities from existing work laws so that industry is in a superior situation to use maximum capacity of the labour market in the nation with no dread of the law. Labour laws should be of such nature that it should encourage an empowering climate so far as business rehearses are concerned. It is high time that the government should focus on coalescing all the existing labour laws into one unified piece of legislation with specific sections covering labour-management relations, wages, social security, safety at workplace, welfare provisions, terms and condition of employment, recognition of trade unions, provisions regarding collective bargaining, and above all, enforcement of international labour standards.

Most of the authors have thus held that despite of India adopted the New Economic Policy (NEP) 1991, to attract foreign investment in the country among other things; the government could not reap the expected benefit particularly in labour intensive industries because of its over protective labour laws. Having said that it is pertinent to note that some the eminent authors have also held that stringent labour laws over these years hardly had any effect on the economy in any way.

To put an end to this argument it can be said that though to a certain extent archaic labour laws in India did have an effect on its corporate sector and in turn on its economy.

Amongst such various laws is the one such archaic law of Trade Union Act, 1926 which has been elaborately been discussed in the researcher's article.

³⁰ Alakh N. Sharma, 'FLEXIBILITY, EMPLOYMENT AND LABOUR MARKET REFORMS IN INDIA' 37 IHD WORKING PAPER SERIES 1