



THE MECHANISM OF PROTECTION OF WORKERS UNDER THE INDIAN LABOUR LAWS IN THE ERA OF GLOBALISATION

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ABSTRACT

With the genesis of economic reforms in India, popularly known as the LPG Model of Economic Reforms in 1991, major changes were witnessed in the economic functioning and policies in the country. The onset of globalization was looked upon as an economic booster for India, however, it had certain impending hardships which probably could not be visualized by the government and the people. Gradually, the process of globalization started to affect the lives of labours in such a way that they are living in complete misery today. They have become the most vulnerable to easiest targets of exploitation, subjugation and dependence. Protection of labours has eventually become an alarming issue which must be dealt with efficiently in order to protect the human rights of labours and improve their living conditions. Though, the law makers have tried to formulate a number of legislations for protecting and promoting the rights of labours, nevertheless, the situation seems to contravene these legislations. In this paper, we shall study the impact of globalization on industrial workers and analyze the mechanism of protection given to them in India.

Keywords: Labours, labour laws, globalization, exploitation, protection

INTRODUCTION

Globalization is generally defined as the process of amalgamation of economies and businesses, people, government and companies around the world by encouraging free flow of trade, capital, products, technology, trade innovations, policies and strategies, investment etc., across boundaries. In India, globalization is the architect of entrepreneurs and entrepreneurship, federalism and other legal enactments and policies, technological innovations, space science, modern medicine, flourishing fashion industry, and so on. Thus, process of globalization has emerged as the most powerful forces in India which extends its impact on every person's life and perception, either beneficially or adversely.

Having said that, globalization is also the creator of a poisonous capitalist society in India. The first and foremost victims of adverse effects of globalization, are apparently the human rights, welfare, peace and security of workers in the face of their own employment given to them by industrialists. This is because of the fact that these industries run with the aim of profit maximization and to achieve this purpose, they employ exploitative policies, atrocious terms of service, insufficient wages and salaries, and other such factors. Thus, globalization is the cause of bringing down the dignity and leave the human rights of workers upon the mercy of their employers.

Although, a number of legislations are enacted by the legislature in order to protect the rights of workers but looking at the current trend in the industries, it must be an impossible task for the employers to



implement the prevailing labour laws in India and promote labour welfare practices. Market competition and labour exploitation are directly proportionate to each other. This means that due to constant increase in the magnitude of competition in the market, there is a constant hike in the graph of labour exploitation as well. Due to the cut-throat competition and the famous profit maximization formula, the employers take advantage of worker's compelling need of job, and they are then forced to work in unhealthy and miserable environment, on top of extreme workload and less wages. Thus, there is a fat boundary running parallel between the capitalists and the labourers, wherein the former plays the role of a cruel dictator over the latter for his own selfish deeds. In this context, it is imperative to ensure equal representation and cooperation between the capitalists and workers for smooth functioning of industries and proper growth of the Indian economy through strict labour welfare laws and ethical conduct and their implementation.

THE EVOLUTION OF LABOUR LAWS IN INDIA AND THEIR CHARACTERISTICS

Labour law is referred to as an elaborated set of rules and legislations which are responsible for governing welfare of workers, relationship between workers and employer, rights of workers, policies on working conditions and payment of wages, protection against exploitation by the employer or State, and trade unionism. Therefore, it provides for a codified set of vast laws that deal with almost every aspect of matter relating to employment and labour force. Ironically, the population for the welfare of which such laws are formulated are almost completely unaware of

these welfare policies and provisions, thus, the employers swoop in and take undue advantage of this scenario. Being a subject of concurrent list under Seventh Schedule, the government at both, Union and State levels enact different rules for ensuring higher protection of workers in India.

There are two facets of components of labour law in India, one is the legislation and rules, the other is constitutes judicial pronouncements by Indian Courts. A constant variation can be observed in the nature of labour laws prevailing in India owing to changing situations and different issues arising in different states.

PRE-INDEPENDENCE ERA- The earliest labour legislations were comprised more of protective provisions which aimed at protecting the workers from extremely inhumane working conditions and extend some relief to them in this regard. Later, the development of labour laws moved towards the direction of welfare provisions and better standards of service and health. This is the time when there was a sudden hike in the number of factories in India, especially in Calcutta and Bombay and export practices were in their initial stages during the middle of nineteenth century. It was the colonial government that introduced India to the first factories act in the year 1881 after the outburst anger and protest of factory workers. However, it dealt with the problem of long working hours and neglected other issues, such as wages, inhumane conditions, exploitative terms of service, human rights and so on. A number of international events at the onset of twentieth century, during the time of World War I had a boosting impact on growth and advancement of labour laws in India. Due to the devastating impact of World War I on low paid factory worker, inter-alia



poor population, and with ongoing Swadesh Movement created pressure on the colonial government for initiate the process of welfare of workers. The Bolshevik Revolution of Russia and establishment of International Labour Organization (ILO) added on to the pressure on the British government and thus, they were compelled to enact laws in favor of workers in order to eliminate their unnecessary struggle and distressing conditions. Thus, the Fourth Factories Act of 1922 was passed to regulate proper working hours of the workers according to their comfort, and it also ensured not to deteriorate the health of workers. One of the most crucial and reforming legislation was passed in the succeeding year in 1923 in the name of Workman's Compensation Act. It ensured the concept of fair compensation to those workers who gained some sought of disability while working in the factories. The concept of dependents, total and partial disablement were specified in the Act, on the basis of which the amount of compensation and the liability of the employer was determined. This was one of the major welfare steps taken by the British India government in favor of poor workers.

Eventually, the need for developing cooperative and better relationship between the employer and worker became an alarming issue. After a whole phase of struggle, the Trade Union Act, 1926 was the first legislation which equal representation of workers, focusing mainly on equality and empowering the workers against the arbitrary actions of employer. This was an initiative for promoting coincidence of labourers in capitalists in the British Indian economy.

Another reforming act was enforced in 1936 which regulated the composition and distribution of appropriate wages. Provisions

for authorized deduction of wages were also specified on the occasion of genuine violations or irregularities. Thus, with the onset of the twentieth century, the conditions of workers began to improve with the advent of labour welfare laws in India which ensured minimum standards of health and life for them and their dependents.

In spite of all these efforts, certain lacunae tend to exist in favor of the employers in the capitalist society. However, the Industrial Dispute Act, 1947 which was enforced on first day of April, 1947 blazed the trail in this context. It focused on curbing the arbitrary exercise of power by the employer by all means and is mainly comprised of labour-friendly provisions. Maximum welfare is imparted to the workers including equal representation and empowerment in terms of worker-employer relationships. Trade unions were recognized as inseparable part of industrial relations and arbitrary retrenchment of termination of services was discouraged. The Act almost completed the body of labour laws in India with maximum of welfare provisions in favor of workers of the industries.

In a nutshell, with the steady growth of labour laws in India, a shift from essential laws towards welfare legislations can be observed within a period of around 40 years. The scope of labour laws has gradually expanded for upliftment and betterment of conditions of factory workers.

BODY OF LABOUR LAWS IN THE POST-INDEPENDENCE ERA-

After independence, the body of labour legislations in India was extended to the Factories Act, 1948, Mines Act, 1952, Minimum Wages Act, 1948, Payment of Gratuity Act, 1972, Payment of Bonus Act, 1965. These acts have been backed by a number of judicial



pronouncements by which the courts try to protect the rights of worker and implement the purposes of labour laws in India. The Factories Act govern the working conditions of workers and ensure that they work in healthy, comfortable and humane environments which are suitable to work. Payment of Wages Act, govern various aspects of payment of appropriate wages and other aspects which are ancillary to it. Payment of Gratuity Act regulates the payment of gratuity by the employer on retirement of his employee as a token of appreciation for his contribution. Payment of Bonus Act ensure annual payment of minimum to maximum bonus by the employer to his employees and workers in establishments with 20 or more workers. Minimum Wages Act on the other hand, fixed a minimum amount which has to be paid by the employer as wages to workers and protect them from exploitation in scheduled industries. There are still a number of consolidated legislations which deal with different facets of protection of workers and employees. Some of them include Maternity Benefit Act, 1961, Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Employees' State Insurance Act, 1948, Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Unorganized Workers Social Security Act, 2008 and so on.

Presently, 29 such labour laws have been replaced, or consolidated into four labour laws so as to remove the complex and confusing nature of these laws. These new labour codes include, Code on Wages, 2019, Occupational Safety, Health and Working Conditions Code, 2019, Industrial Relations Code, 2019, and Code on Social Security, 2019. Other than these, certain complementary central laws exist to complete the organized body of labour

regulating enactments in India. These include Apprentices Act, 1961, Bonded Labour System (Abolition) Act, 1976, Public Liability Insurance Act, 1991, Sexual Harassment at Workplace Act, 2013 and so on. Therefore, this amendment was brought, prima facie, with a vision to wipe out all the confusion and adopt a more systematized body of labour laws in India, and enact similar aspects of legislations governing labour into one consolidated uniform code.

CONSTITUTIONAL PROTECTION TO THE RIGHTS OF LABOURS

The Constitution of India is the best blueprint a government can formulate for the purpose of welfare of the people. It constitutes of all welfare provisions which could possibly be inculcated for overall well-being of the people without any discrimination. From the Preamble to Part III and IV of the Constitutions, various provisions can be found for protection, upliftment and empowerment of the labours across the country, in addition to all other labour legislations. There are certain general as well as specific provisions with regards to welfare of workers.

1. PREAMBLE- The Preamble, on one hand, guarantees the elementary premises, the constituents of which are secured to every citizen as an obligatory duty of the State. The Preamble strives to secure to all the citizens, among other, justice, social, economic and political.....liberty of thought and expression, equality of status and



opportunity.¹ Thus, the Preamble as an aim of the Constitution secures a reasonable, just and dignifies life to all the citizens, including the industrial workers.

- 2. PART III-** Part III of the Constitution enshrines a number of human rights which are unconditionally guaranteed to every citizen. Since it forms an inseparable part of the Basic Structure Doctrine, these rights cannot be compromised by the State, come what may. Article 14 guarantees Right to Equality in the eyes of law and Equal Protection of law, which curbs the existence of discrimination and any arbitrary practice on this criterion. Therefore, all the workers shall be treated equal to other citizens and they shall be subject to protection of the law if their rights get violated, without any discrimination. No arbitrary practice against such factory workers shall be entertained by law. Rights of labours are highlighted specifically under Article 19(i), 19(ii), and 19(iii). These articles have laid the main foundational grounds for formulation of modern labour laws post-independence. Article 19(i) ensures the Right to freedom of speech and expression, Article 19(ii) guaranteed the Right to assemble peacefully, which is the most popular means of protest adopted by the labours against their exploitation. Article 19(ii) is a facet of Article 19(i) and is one of the methods which can be adopted while enjoying one's freedom of speech and expression. Article 19(iii) is directly connected with trade union and labour associations. It

declares that forming unions and association, including industrial trade unions and labour associations, is one the fundamental rights guaranteed by the Constitution and no one shall be deprived of it. One of the most important provisions for welfare of workers, and those which empower or forms the basic idea behind the above discussed articles, are Articles 23 and 24, i.e., Right against exploitation. Article 23 eliminates the old and miserable practice of labour exploitation in the form of bonded labour and slavery. Thus, all workers shall now enjoy their birth right of supreme independence in all aspects of life. Another brutal practice which was resorted to by the capitalists has been wiped out by the Constitution, i.e., the concept of child labour. Thus, according to Article 24 no child below the age of 14 years shall be employed in any factory or mine or any other hazardous employment. Child labour is now a punishable offence by virtue of the Indian Constitution.

- 3. PART IV-** Owing to Part IV of the Constitution, the State shall have certain positive obligations towards every citizen, including workers, and the State shall be guided or directed by these principles given under Part IV in order to establish a welfare society and fulfil the purposes of the grundnorm. Article 38 provides that the State shall strive to create a society in which social, economic and political justice prevails and protect well-being of masses, including workers. Certain objectives have been specified under Article 39 for protection of labour

¹ Rajendra Prasad Pandey, 'Globalisation and Legal Protection of Labour in India' (2010) (71)(1) IJPS

<https://www.jstor.org/stable/42748374?seq=3#meta_data_info_tab_contents> accessed October 13, 2021.



in India which must be adhered to by the State. Article 41 secures the Right to work, education, and public assistance for every citizen, as a duty of the State, in case of unemployment, old age, sickness, disablement and other such circumstances. Article 42 is specifically significant as it provides for ensuring just and humane working condition for workers and maternity relief. Article 43 further obligates the State to make sure, through laws or any other manner, that the workers enjoy a decent standard of life and earning a living wage and good conditions of work. Article 43A, which was inserted via Forty Second Amendment Act of 1976, also promotes representation and participation of workers in the management of the enterprises through legal enactments, which is a big step forward in empowering our workers.

In this elaborated way, the Constitution of India protects every aspect of human rights of the labourers in the country and establishes the basic framework on which the modern labour laws are based upon. From time to time, the government is obligated to bring measure for ensuring decent living standards for labours and these laws have been successful to some extent. But in spite of all these efforts they are still subject to exploitation, mainly because of unawareness regarding rights and laws in their favour.

GLOBALISATION AND OUR LABOUR LAWS

The whole purpose of enforcing these labour legislations was to protect the human rights of workers, maintain cooperation between worker and employers, and improve the working and living conditions of workers across the country, and thus, follow the

principles and directions laid down by the International Labour Organization (ILO). Although, the bitter truth is that we stand far behind achieving welfare of workers because of rapid economic development as a part of the prevailing process of globalization in the country. It turns out that exploitation of workers and employees in industries is directly proportionate to growth of globalization. As a trend of globalization, the present model of working and organization of market is such that it is inculcating inequalities, biasness, exploitation, insecurity, migration to urban areas and unemployment day by day. Thus, with the growth and nourishment of globalization in India, the conditions of workers and their rights are being compromised simultaneously, contrary to the intensions of legal provisions and principles.

The effect of globalization is often observed even on the mental aspects of people in India. With the growth of industries, the minds of employer or industrialist, as well as the workers and employees develop eagerness of expanding trade and getting employment respectively. The former often enjoys a dominant position over the latter. Though, labour laws came in to erode such arbitrariness, apparently, they turn out to be mere words written on water because of the dominating impact of globalization. In India, globalization has increased employment opportunities and promoted job-oriented mindset, and reduced self-employment. Job security and social protection has been endangered and closure of less efficient enterprises due to immense market competition is a common incident. Thus, there is overall deterioration of quality of environment in the market and employment brought by globalization with legal protection fading away gradually in a



structured way. The whole idea of globalization is systematically minimizing the impact of legal mechanism and institutions which protect the workers, including the authority of labour commissioners and the organization of provident funds in offices.

CONCLUSION

The basic intention of labour law was to extend legal protection to the workers as a part of weaker section of society, and help reduce the vulnerability towards exploitation so that they enjoy social upliftment and a decent income. The main aim was to ensure a dignified life and a reasonable standard of living for factory workers and their dependents. The struggle of workers became fruitful when a comprehensive body of legislations were enacted covering most of industrial issues around independence. The Constitutional provisions in this regard enacted by the makers of the Indian Constitution were the cherries on the cake. When these laws seem to settle in the country and began to solidify its impact, globalization swoop in to chop this legal protection from the root itself. As a citizen of the country, it is our duty to enlighten our labour brothers regarding their rights and encourage them to take responsibility of protecting themselves. The government and entrepreneurs have to coordinate to reinforce constitutional provisions and statutory provisions for labour protection so as to negative the adverse impact of globalization in India. The real aim of globalization was to flourish trade worldwide and ensure equal economic development of countries. We must ensure that the aim of globalization must be fulfilled without dismantling the protective system.
