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Labour Laws: Examining Through the Glass Doors of International & Indian Standards

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ABSTRACT

Conflict is intrinsic to labour relations and also forms the basic structure of labour law. The transnational solution for labour conflicts has an extremely important role to play in this globalized era, to national frameworks, for the most part in the present setting of globalization and trans-nationalization, of modern relations. For this reason, the International Labor Organization (ILO), an organization of transnational work clashes guideline and a directing substance of center work.

Industrial harmony is an integral part of progress, especially in developing countries. This is needed to maintain a suitable work-life balance and vital to the survival of the economies. There cannot be any unilateral imposition by the employer or the union on the employee. This will in turn disregard the cordial industrial relations.

International Labour Organizations aims at solving the above mentioned disputes. They have tried setting out some minimum standards that need to be abided by most of the organizations around the globe for better experience at the workplace. The member states needs to adopt the guidelines mentioned by ILO for better sustainability in the long run.

This paper is aimed at highlighting the definition of International Labour Law, the various sources from where it has come into existence, the International Labour Standard- its creation and the Australian ratification. Lastly, the paper discusses about the Indian Labour laws and how they aim at protecting the livelihood of people.

Keywords: Labour laws, conventions, ratifications, ILO NORMLEX, decent and productive work.

I. INTRODUCTION

Labour law, the fluctuated collection of law applied to such issues as business, compensation, states of work, trade union, and industrial relations. In its most complete sense, the term incorporates social security and disability insurance also. In contrast to the laws of contract, tort, or property, the components of labour law are to some degree less homogeneous than the

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principles administering a specific legitimate relationship. Notwithstanding the individual authoritative connections becoming out of the customary business circumstance, labour law manages the legal prerequisites and aggregate connections that are progressively significant in large scale manufacturing societies, the legitimate connections between organized financial interests and the state, and the different rights and commitments identified with certain kinds of social administrations.

II. DEFINITION OF INTERNATIONAL LAW:

From the time we have entered into the realm of civilization, we have felt the utmost necessity of doing some work which will fetch us livelihood and will help us improve the standard of living. The word 'labour' in its generic term means the physical work or effort that is put on an individual. But, if we peek into the pages of history, then it can be observed that doing work did not mean something to be "paid for".

International Labour law is that branch of law which deals with international rules and regulating governing issues concerning work. The law covers both the substantive and procedural portion. The substantive aspect deals with the rule of law established at the international level and the procedural aspect deals with the adoption and implementation at the national level.

III. SOURCES OF INTERNATIONAL LABOUR LAW

The mother organisation which governs the labour law internationally is 'International Labour Organization'. This institution governs and enforces the laws relating to labour put on by a certain individual. International Labour Organization is a particular office of the United Nations with the command to advance social equity and globally perceived human and work rights. Its primary points are to advance rights at work, empower not too bad business openings, improve social insurance and fortify exchange on business related issues.

The labour standards set up by the ILO form the basis of the structure of international labor law. The below pointers will explain few important things briefly:

The targets of the ILO are contained in the Preamble to the ILO Constitution, and the Annex to the Constitution, entitled Declaration concerning the points and reasons for the International Labor Organization (the 'Revelation of Philadelphia'). These targets structure the reason for the arrangement of the worldwide work gauges.

ILO Declaration on Fundamental Principles and Rights at Work- this declaration is authoritative on all Member States and submits them to regard and advance standards and

rights in four classes, regardless of whether they have sanctioned the pertinent Conventions. These four classifications are: opportunity of affiliation and the powerful acknowledgment of the privilege to aggregate dealing, the disposal of constrained or mandatory work, the cancelation of kid work and the end of segregation in regard of business and occupation (Article 2).

IV. VARIED OTHER SOURCES OUTSIDE THE DECLARATION OF ILO:

Treaties established other than the ILO framework and certain principles of standard global law additionally structure some portion of worldwide labour law.

Various UN Human Rights Conventions suffices International Labour Law. Huge numbers of the rights and commitments presented by UN Treaties incorporate some that are proposed to be practiced explicitly with regards to work, for example, the rights to approach pay and to join and structure worker's organizations. Likewise, UN instruments give rights that are proposed to be practiced for the most part, yet in addition influence the work relationship. For instance, instruments that assurance free affiliation necessitates that singular labourers ought to reserve the option to frame and join worker's guilds.

The Proclamation by the UN Human Rights, Treaties and Pacts that form part of international labor law include:

1. The Universal Declaration of Human Rights 1948 (Article 23 states the right to work, to equal pay and the right to form and join trade unions).
2. The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
3. The International Covenant on Civil and Political Rights, 1966³
4. The International Covenant on Economic, Social and Cultural Rights, 1966
5. The Convention on the Elimination of All Forms of Discrimination Against Women, 1979
6. The Convention on the Rights of the Child, 1989⁴

V. INTERNATIONAL LABOUR STANDARDS:

International Labour Standards are an extensive set of legal regulations that establish basic principles and rights at work, with an objective of escalating the global working conditions.

³ The University of Melbourne, Public International Law: International Labour Law, last accessed on 14.06.2020 at 10.30 AM, http://unimelb.libguides.com/internationallaw/labour_law#:~:text=International%20labour%20standards%20are%20a,form%20the%20international%20labor%20standards.

⁴ The University of Melbourne, Public International Law: International Labour Law, last accessed on 14.06.2020 at 10.30 AM, http://unimelb.libguides.com/internationallaw/labour_law#:~:text=International%20labour%20standards%20are%20a,form%20the%20international%20labor%20standards.

The Conventions and Recommendations of the ILO form the basis of International Labour Standards.

Conventions are basically less formal than a treaty and are defined as legally binding International Agreement that may be ratified by the Member States who are signatories to the agreement. Recommendations are suggestions or proposals for carrying out the best course of action. For instance, it can be seen that a convention can be put to the use of laying basic principles for the implementation by the ratifying countries, whereas recommendation suffices the convention by putting up more intricate guidelines on the process of application. Recommendations can be applied on an autonomous basis as well i.e., it can stand independently.

The International Labour Standards were set up to promote the equality between women and men while they are at work. The main objective is to provide them with decent and productive work with proper conditions of freedom, equity, security and dignity. In the present globalized economy, worldwide labour guidelines are a basic segment in the universal structure for guaranteeing that the development of the worldwide economy gives advantages to all.

“Labour is not a commodity”. Labour is intrinsic to a person’s dignity, well-being and development. Economic development is a facet which is necessary for the improvement of lives of human beings. At the United Nations General Assembly in September 2015, better than average work and the four mainstays of the Decent Work Agenda – business creation, social assurance, rights at work and social exchange – turned into the focal components of the new Sustainable Development Agenda 2030.

VI. CREATION:

There is always an element of ‘Concern’ behind creation of any ‘standards’. Likewise, the International Labour Standards were established for ensuring safe working conditions while the people are at work. As an initial step, the Governing Body consents to put an issue on the plan of a future International Labor Conference. The International Labor Organization readies a report that investigations the law and practice of part States concerning the issue in question. The report is imparted to Member States and to labourers and member associations for remarks and is then submitted to the International Labour Conference for a first discussion. A subsequent report is then arranged by the Office with a draft instrument, which is likewise sent for remarks and submitted for conversation at the accompanying meeting of the Conference, where the draft instrument is talked about, altered as important and proposed

for selection. This "twofold conversation" technique gives Conference members adequate chance to analyze the draft instrument and offer remarks on it. Ratification is a process whereby a State accepts the Convention and Protocol as a legal instrument. An embraced Convention or Protocol ordinarily comes into power a year in the wake of being confirmed by two part States. When it has sanctioned a Convention or Protocol, a nation is dependent upon the ILO ordinary administrative framework, which is answerable for guaranteeing that the instrument is applied.

The ILO NORMLEX International Standards and Instruments database contains all Conventions, Protocols to Conventions, and Recommendations.

The ILO's Governing Body has distinguished eight shows as 'key', covering subjects that are considered as central standards and rights at work. The eight crucial shows are:

1. Opportunity of Association and Protection of the Right to Organize Convention, 1948.
2. Option to Organize and Collective Bargaining Convention, 1949.
3. Constrained Labour Convention, 1930.
4. Cancellation of Forced Labor Convention, 1957.
5. Least Age Convention, 1973.
6. Most exceedingly awful Forms of Child Labor Convention, 1999.
7. Equivalent Remuneration Convention, 1951.
8. Separation (Employment and Occupation) Convention, 1958.

Under Australian law, ratification of a treaty doesn't give it restricting power domestically - a settlement just turns out to be a piece of Australian law as an 'immediate wellspring of individual rights and commitments' the point at which it is consolidated into local enactment (*Minister for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995)183 CLR 273 [25]).

Of the 7 major ILO Conventions confirmed by Australia, just one has been unequivocally consolidated into Australian local enactment: the Discrimination (Employment and Occupation) Convention, 1958 has been executed by the Australian Human Rights Commission Act 1986 (Cth) as Schedule 1.

In any case, when Australia is involved with an arrangement however has not executed this locally by enactment, there is an assumption that while instituting enactment, Parliament, by all appearances, plans to offer impact to Australia's commitments under global law (*High Court of Australia - Mason CJ and Deane J in Teoh* (1995) 183 CLR 273 [26]).

Notwithstanding this legal understanding of Australian rules, one of the unequivocal objects of Australia's essential resolution overseeing modern relations, the Fair Work Act 2009 (Cth), is to 'consider Australia's global work commitments' (s 3(a)).

VII. LABOUR LAWS IN INDIA

The labour laws in India fundamentally flow from the Constitution, specific legislations in relation to the subject matter both at the central and state level along with judicial pronouncements along with administrative rulings and regulations. The pertinence of a particular legislation is mostly contingent inter alia on the nature of the industry; the number of breadwinner employed; stipend payable to the employee, regime of employment amongst others. Of the numerous legislations that exist both at the central and state level, the crucial ones have been summarised below.

A. EMPLOYEES STATE INSURANCE ACT, 1948

The ESI Act make provisions for the sake of the employees in case of sickness, maternity and employment injury.

Features of the act-

1. The ESI Act covers

- Factories;
- Other classes of establishments (industrial, commercial agricultural) as may be informed by the suitable government.

2. Employees drawing wages up to a certain extent in institution covered by the ESI Act are needed to be insured, with a commitment on the employer to make certain contributions in relation thereto.

3. In addition, the employer is also needed to register himself under the ESI Act and keep prescribed records and registers along with filing of forms with the concerned authorities.

B. THE PAYMENT OF GRATUITY ACT, 1961

The Payment of gratuity Act furnishes for payment of gratuity to employees employed in factories, shops and institutions or establishments who have put in uninterrupted service of 5 years, in the event of their superannuation, retirement, resignation, death or disablement.

Features of the act-

1. Covers every shop or establishment in which at least ten or more persons are employed.
2. The regulation of '5-year continuous service' is however moderated in case of death or disablement of an employee.

3. Gratuity is generally calculated at the rate of 15 days' wages for every concluded year of service with the employer.

4. Under this Act, an employer is compelled for a maximum gratuity pay out of Rs. 350,000 for an employee.

5. The POG Act also stipulates the employer to obtain and keep an insurance policy for the employer's duty towards payment of gratuity.

C. THE EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

The legislation furnishes the institution of compulsory Provident Fund, Pension Fund and Deposit Linked Insurance Funds for the interest of eligible employees in factories and establishments as may be mentioned.

Features of the act-

1. Covers every establishment or institution employing twenty or more persons.
2. A liability is put down on the employer and employee to make precise contributions to the funds specified above after obtaining the required registrations.
3. There is also a need to keep prescribed records and registers and filing of forms with the concerned authorities.

D. THE MATERNITY BENEFITS ACT, 1961

The Maternity Benefits Act manages the employment of women in prescribed establishments for a certain period of time before and after child-birth and to come up with maternity benefit and other benefits.

Features of the act-

1. Covers every shop or establishment in which at least ten or more persons are employed.
2. It lays down paid leave of 12 weeks, payment of maternity benefits and legislates prohibitions on dismissal, reduction of wages paid to pregnant women, etc.

E. THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

The Standing Orders Act requires with definite precision the conditions of employment of breadwinners employed and to make them known to such workmen.

Features of the act-

1. Needs employers in industrial establishments, which employ 100 or more workmen or

employees.

2. The Standing Orders Act needs every employer to which the Standing Orders Act covers to validate and register the draft standing order proposed by him in a definite and prescribed manner.

3. However until the draft standing orders are validated, the prescribed standing orders given in the Standing Orders Act must be adhered to.

F. THE INDUSTRIAL DISPUTES ACT, 1947

This enactment Contains provisions regarding lockouts, retrenchment, investigation and settlement of industrial disputes and unfair or discriminatory labour practices.

Features of the act-

1. Covers all commercial and industrial establishments.
2. This act is not applicable to workers recruited in a managerial or administrative capacity.
3. This act is Not applicable to workers who are hired in a supervisory capacity, drawing wages exceeding ten thousand rupees per month.

G. FACTORIES ACT, 1948

Factories Act incorporates provisions for ensuring the wellbeing of the workers employed in factories in terms of health, safety, working hours, benefits, leave, overtime pay and so on.

Feature of the act-

1. This act has its applicability to premises that are involved in manufacturing process and employing at least twenty or more workers.

H. CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

This legislation prohibits the engagement and involvement of children in various occupations and to prohibit the involvement of adolescents in hazardous occupations.

Features of the act-

1. This enactment covers all establishment including a shop, commercial establishment, workshop, farm, residential hotel or restaurant, theatre or other place of public leisure or entertainment.
2. Lays down a list of industries/undertakings where employment of children and adolescents is strictly prohibited.

I. THE MINIMUM WAGES ACT, 1948

Under the Minimum Wages Act, the State and Central Governments have the authority to

notify the minimum wages payable to the employees.

Features of the act-

1. Under the Minimum Wages Act, every employer is directed to pay not less than the minimum wages to all employees engaged to do any kind of work whether skilled, unskilled, manual or clerical in any employment listed in the schedule to the Minimum Wages Act, in respect of which minimum rates of wages have been secured or revised under the Minimum Wages Act.
2. Minimum wages are determined on the basis of factors including the industry, location and nature of work performed.

J. THE PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act has been legislated to control the payment of wages in a specific form at regular intervals without unauthorized deductions and to secure a speedy and effective remedy to employees against illegal deductions and unjustified hindrance caused in paying wages.

Features of the act

1. This enactment applies to all the persons employed in a factory, industrial or other establishment, either directly or indirectly, through a sub-contractor and lays down the imposition of fines and deductions and lays down wage periods.
2. The Payment of Wages Act has its applicability in factories and industrial or other establishments where the monthly wages payable are less than 6,500 per month or any other higher sum as the Central Government may by notification prescribe.

K. THE EQUAL REMUNERATION ACT, 1976

The Equal Remuneration Act lays down the payment of equal remuneration to men and women workers for almost same or similar nature of work and elimination of discrimination on the basis of sex, against women in the proceeding of employment and for matters connected therewith or incidental thereto.

Features of the act-

1. Under the Equal Remuneration Act, there shall be no discrimination in recruitment and service conditions, except in cases where employment of women is prohibited or restricted by law.
2. This enactment also lays down that every employer should keep such registers and other documents in relation to the workers employed by him/ her in the specified manner.

L. SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

This enactment specifies a mechanism for prevention and forbiddance of workplace sexual harassment and for redressal of grievances or complaints concerning workplace sexual harassment.

Features of the act-

1. This enactment covers every private sector company or a private venture, undertaking, project, institution, establishment, community, trust, non-governmental organization, subdivision or service provider engaged in commercial, professional, educational, entertainment, industrial, health and well-being services or financial undertaking involving, production, supply, sale, distribution or service.
2. This enactment directs an employer to set up an 'internal complaints committee' at each office or branch, of a company employing at least 10 employees.

VIII. CONCLUSION:

It should be firmly accepted that labour laws needs to be accepted to its full swing by the enterprises and organizations, everywhere throughout the world. The average workers normally work under cruel conditions, and reserve the privilege to get sufficient remuneration for their hard work. The remuneration and privileges should stand on an equal pedestal. The privileges should not be set aside with the hope of getting the remuneration. The technology is put to use only when the human beings are ready to take up the same. Therefore, the human beings should be treated with utmost and dignity for carrying out their jobs and most importantly they should be recognized in an overall manner.
