

A Bird View of Labour Welfare in India

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“Labour welfare means such services, facilities and amenities which may be established in, or in the vicinity or undertaking to enable persons employed there in to perform their work in healthy and congenial surroundings and to provide them with amenities conducive to good health and good morals” -

International Labour Organisation.

Indian Constitution provides labour welfare through promotion of welfare of the labour for human condition of work and securing to all workers leisure, social and cultural opportunities. Labour welfare is measure to promote the efficiency of labour and this activities designed for the promotion of the economic, social and cultural well being of the employees. The various welfare measures provided by the employer will have immediate impact on the health, physical and mental efficiency, alertness, morale and overall efficiency of the workers and thereby contributing to the higher productivity. In addition to this the workmen needs protection from certain disaster which sovereign their efficiency. Social security measure provided by employer will act as a protection to the workers. Social security objectives at providing collective measures to protect the employee of a community against social risk as their individual resources are hardly adequate to after protection against hardship. Both assistance and social insurance from integral parts of the system of social security. Labour welfare provides the extra quantity to industrial relationship which ever a adequate wage alone cannot provide. The term labour welfare includes anything concluded for intellectual, physical, moral and economic betterment of worker by government or by other agencies over and above what laid down by law in various contingencies like illness, unemployment, disability and death which have direct impact on the well being of the worker and the dependent.

Keywords: Constitution, welfare, efficiency, community, sovereign

I. Introduction

Labour legislation in India grew with the growth of industry. In the 18th century India was not only a great agricultural country but a great manufacturing country too. Especially after the Second World War, labour law has changed a significant place in developed as well as developing economies. It is expected to work as an important instrument of welfare state. It has helped countries to lay down foundations of societies as well as some of suggestion of organizational governance. The subject has occupied a prominent place in general economic and social discourse as well. Labour law—especially industrial relations law—can also be seen as an instrument of maintaining some kind of balance between incomes of people as also a medium of securing dignity of work life to working people.

Most the nations are viewed labour rights as fundamental that are ensuring fairness in the carrying out of the labour process. In actuality, labour rights reflect some kind of compromise between notions of efficiency, productivity and freedom of contract on the one hand and social justice and labour standards on the other. After Independence from the colonial rule in 1947, the Indian state cognizant chose the path of passing labour legislations on different spheres of work.¹ A number of such laws were enacted with the active role of trade union leadership. This root of law has come to be accepted as distinct from rest of the Indian legal system. This has adopted a system of Five-Year plans for planning its economic development. Most five-year plans have made particular mention of promoting growth with social justice; and labour laws were given a prominent place in this regard. The Indian judiciary has played a vital role in progressive interpretation of these laws.

This Paper attempts to explain the structure of Indian labour law in the overall context of the notion of social and economic justice as enshrined in the Constitution of India. It also focuses on the working of the labour law framework in terms of its stated objectives as also the changing needs of a globalizing economy. It deals with questions, among others: the constitutional context of labour law; the structure and functioning of different branches of labour law i.e. law of working conditions, labour relations law, law of social security; and a review of the working of these laws.

¹ M.P. Jain, Indian Constitutional Law 98 (Kamal Law House, Calcutta, 5th edn., 1998).

Constitutional Framework and Labour Law

The Constitution of India – the super-ordinate law of the land – guides all legislative, executive and judicial actions in the country. The Seventh Schedule of the constitution envisages distribution of legislative powers between central and state legislatures on different matters. The Schedule contains three lists – Central List (List I), State List (List II) and Concurrent List (List III). For matters contained in List I only Parliament, the Central Legislature, can enact a law; for matters specified in List II only the State Legislature concerned can enact a law; and for matters contained in List III, both Central and State Legislatures can enact a law. In case a matter falls in List III, and a case of repugnancy arises between the laws passed by the Central Legislature and the State

Legislature, then the Central law will prevail over State law. But in case such legislation is submitted to the President for his assent, and which is duly accorded, then the State law will prevail over the central law. Most labour matters find place in List III (Concurrent List). Among others, these includes: trade unions; industrial and labour disputes; social security and social insurance; employment and unemployment; welfare of labour including conditions of work; old age pensions; and maternity benefits, provident funds; employers' liability; workmen's compensation;

However, regulation of labour and safety in mines and oilfields is the exclusive domain of the Central Legislature as these matters are specified in list I. Likewise, relief for the disabled and unemployable is under the exclusive jurisdiction of the State Legislatures as these matters are specified in list II. Since most labour matters fall in the Concurrent List, Parliament has enacted labour laws in almost all these matters. However, states have made amendments in the central Acts as per their local requirements and have obtained the President's assent to the changes made.

Perhaps the most important parts of the Indian Constitution are provisions of Chapters III and IV. The former is titled, the Fundamental Rights and the latter, the Directive Principles of State Policy. The Fundamental Rights are modeled after the American Bill of Rights. Their violation can be challenged through the writ jurisdiction of the Supreme Court and the High Courts. These rights limit the power of the legislature to enact laws. Among others, the Fundamental Rights pertain to right to equality before law, along with rights to particular freedoms. These particular freedoms include speech; association; movement throughout the territory of India; residence; profession, trade and business; protection of life and personal liberty and religion. The Constitution confers a fundamental Right on children, as per which it prevents employment of children below 14 years of age in hazardous employments. It also prevents traffic in human beings and employment of forced labour.²

The Preamble of the Constitution is also an important source of power to the legislature for enacting laws for the protection of labour. It promises to secure to the people "justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity" The Directive Principles of State Policy as envisaged in Part IV of the Constitution are not enforceable in any court of law. But they have been held by the Supreme Court of India to be 'nevertheless fundamental in the governance of the country'. And, the judiciary in general has time and again expressed its advice to the Government/legislature to apply them in making laws.³

It has often taken the support of this chapter in holding the constitutional validity of many labour laws. A reading of Part IV of the constitution and its Preamble helps to know the basic philosophy of the Constitution. The Directive Principles contained in Part IV represent certain key values which are to be rooted in the "reconstruction of Indian society and Government along lines of a modern welfare state".

²Later on, this right was more specifically provided by the Bonded Labour System (Abolition) Act in 1976, which apart from specifying the manner of freeing the bonded labourers also envisages their rehabilitation after their release. This legislation prohibits making of any advance to a worker which can become a bonded debt and prohibits to compel any person to render bonded labour. It declares any custom of bonded labour in a family void, abolishes liability to pay bonded debt, and frees any attachment of the bonded labourer. The District Magistrate has been obliged to promote welfare of freed bonded labourers and protect their economic interests. It creates Vigilance Committees to identify and ensure abolition of bonded labourers. An important social protection question in the country is the rehabilitation of bonded labourers.

3 P.M. Bakshi, The Constitution of India, Universal Lexis Nexis 17th Edition Pg. 207

Some of these directives relate to promotion of welfare of people⁴ including minimizing inequalities;⁵

directing the State's policy towards securing fulfillment of certain minimum needs;⁶ to work, education, and to public assistance in certain cases; provision of just and humane conditions of work and maternity relief;⁷ living wage,⁸ participation of workers in management of industries;⁹ free and compulsory education for children;¹⁰ and to improve public health.¹¹ Interestingly, much of the development of labour jurisprudence in the country owes to the above mentioned provisions contained in Part IV.

⁴ 2. Article 38(1) obliges the State to "strive to promote the welfare of the people by securing and promoting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life".

⁵Article 38(2) provides that "the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations". Article 38(2) provides that "the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations".

⁶ Article 41 states that "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

⁷ Article 42 provides that “the State shall make provision for securing just and humane conditions of work and for maternity relief.”

⁸ Article 43 provides that “the State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co- operative basis in rural areas.

⁹ Article 43A provides that “the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organization engaged in any industry.

¹⁰ Article 45 provides that “the State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

¹¹ Article 47 provides that the State shall regard ‘the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties . . .’

This part in a way legitimizes the labour’s demands raised through demand charters submitted to managements. While delivering many judgements, the judiciary has often reminded the executive and the legislature to enact legislations that provide for basic needs of the people and to enforce them as per the spirit in which they have been created. The

directive principles are considered so important that some jurists have described them as the “soul of the Constitution” (Dhavan, 1989: xxii).

Premised in the framework of the directive principles, labour legislation in the country provides a large number of central (federal) labour statutes. These laws can be classified into mainly four categories: conditions of work; labour relations; wages and monetary benefits; and social security.

In all many major central and state legislatures labour legislations have been enacted by the central legislature. Similarly, about over 150 labour legislations have been enacted by the state legislatures; each of these legislations is specific to the needs of the state concerned. Some of the central labour legislations in India that are considered to be important are as follows:

Apprentices Act, 1961

Beedi & Cigar Workers (Conditions of Employment) Act, 1966 Bonded Labour System (Abolition) Act, 1976

Building and Other Construction Workers (Regulation of Employment Service) Act, 1996

Child Labour (Prohibition & Regulation) Act, 1986

Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981

Contract Labour (Regulation & Abolition) Act, 1970 Dangerous Machines (Regulation) Act, 1983

Dock Workers (Regulation of Employment) Act, 1948 Dock Workers (Safety, Health and Welfare) Act, 1986 Emigration Act, 1983

Employees Provident Fund & Miscellaneous Provisions Act, 1952 Employees' State Insurance Act, 1948

Employment exchanges (Compulsory Notification of vacancies) Act, 1959 Employers' Liability Act, 1938

Equal Remuneration Act, 1976 Factories Act, 1948

Industrial Disputes Act, 1947

Industrial Employment (Standing Orders) Act, 1946

Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979

Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 Maternity Benefit Act, 1961 Mines Act, 1952

Minimum Wages Act, 1948

Motor Transport Workers Act, 1961

National Commission for Safai Karamcharis Act, 1993 Payment of Bonus Act, 1965

Payment of Gratuity Act, 1972 Payment of Wages Act, 1936 Plantations Labour Act, 1951 Public Liability Insurance Act, 1991

Sales Promotion Employees (Conditions of Service) Act, 1976 Trade Union Act, 1926

Weekly Holidays Act, 1948 Workmen's Compensation Act, 1923

Legislation is only one of the sources of labour law. Almost each labour legislations is supplemented by a commensurate secondary legislation, which consists of Regulations and Rules made by the appropriate Government—Central as well as state—to give effect to the legislations or to administer them. Thousands of such decisions have been delivered; many of them have been overruled to bring in fresh perspectives of the legal position concerned. Further, terms and conditions of a labour contract could be derived from a collective bargaining contract or an individual contract between employer and employee. International standards laid down by bodies like International Labour Organization (ILO) too have been referred by especially the higher judiciary to support its decisions; thus they are considered as important sources of labour law in appropriate situations.

The Law of Working Conditions

There are several classes of work organization where people are employed. These include: factories, establishments, shops, mines, plantations, etc. Agriculture too is a major activity, which employs the largest number of workers in India; but most parts of agricultural operations are not regulated through law. The issue of conditions of employment needs state attention in case of contract workers; they are normally made to work in difficult work environment. Inter-state migrant workers and child workers too are highly susceptible to exploitation. Indian state has enacted legislation for regulating conditions of work of such categories of workers. Most of the provisions of laws regulating conditions of work relate to health, safety and welfare of workers.

The Factories Act, 1948

The Factories Act, 1948 regulates the work conditions of most workers employed in the organized manufacturing sector in India. The first legislation on factories in India dates back to 1881. Ten years later it was replaced by the Indian Factories Act, 1891. Soon after independence the Factories Act, 1948 was enacted to further humanize the conditions of work in factories. The word 'factory' has been defined as premises or precincts where a manufacturing process is carried on by 10 or more workers with the aid of power or by 20 or more workers without the aid of power. The word manufacturing process has been given a very wide definition; and includes even processes such as repairing of movable things for the purpose of sale or disposal; and pumping of oil, water, etc. The word worker too has a wide definition and includes all persons involved in the manufacturing process; the scope of this definition was further widened in 1976 to include workers employed through or by contractor.

The Shops and Establishments legislation

India does not have any central legislation for shops and establishments. It has been left to be enacted by the state legislature. Each state has enacted its own legislation, and has framed its own rules under the Act. Most state legislations have similar provisions, with minor differences here and there. This area of work pertains to mostly workers in the unorganized sector, as most shops and establishments are

small. However, larger establishments are also covered. Those units which do not fall in the definition of the Factories Act, 1948 due to less number of people employed are covered under the Shops & Establishments law. Mostly the state governments can exempt, either permanently or for a specified period, any establishments from all or any provisions of its shops and establishment legislation.

It is applicable to all persons employed in an establishment with or without wages, except the members of the employer's family. The Act provides for compulsory registration of shop/establishment concerned. Provisions related to hours of work per day and week as well as the guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work, etc. are usually there in each such law. The Delhi Shops and Establishments Act 1955 has extended the provisions of workmen's Compensation Act 1923 to all workers covered by that Act. Most Acts are administered by inspectors.

The Mines Act, 1952

The Mines Act, 1952 contains provisions for measures relating to the health, safety and welfare of workers employed in mines. According to the Act, the term 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes all borings, bore holes, oil wells and accessory crude conditioning plants, shafts, opencast workings, conveyors or aerial ropeways, planes, machinery works, railways, tramways, slidings, workshops, power stations, etc. or any premises connected with mining operations and near or in the mining area. Among others, the Act provides for supply of drinking water, conservancy, and medical appliances. There is provision also for giving notice to appropriate authorities in case of accidents and certain diseases. Over time rate has been provided to be twice the daily wage both for workers working above and below the ground work. Women workers are not allowed to work below the ground. A person below the age of 18 years is not allowed to work in a mine. But apprentices and other trainees not below the age of 16 years may be allowed to work under proper supervision by the manager. Provision has also been made for annual leave with wages. Such leaves are to be calculated at the rate of one day for every fifteen days' work.

The Act is administered by inspectors and certifying surgeons. Since it is fully under the central jurisdiction, the central Ministry of Labour and Employment through the

Directorate General of Mines Safety (DGMS) as been entrusted the responsibility for administering this law. DGMS conducts inspections and inquiries, and issues competency tests for the purpose of appointment to various posts in the mines. It also organizes seminars/conferences on various aspects of safety of workers.

The Plantations Labour Act, 1951

The Plantation Labour Act, 1951 regulates the conditions of work for plantations labour. It applies to tea, coffee, rubber, and cinchona plantations. The state governments may apply it to any other plantation. All plantations are required to be registered with a registering officer. It mainly provides for health and welfare measures. According to the Act, the term plantation means “any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation...”. Among others, the Act provides for drinking water, conservancy, medical facilities, canteen, crèches, recreational facilities, educational facilities, and housing for workers and their families. Also, there is provision for supply of umbrellas, blankets and rain coats. Employers are obliged to provide and maintain necessary housing accommodation for every worker (including his family) residing in plantation; and for every worker and family residing outside the plantation, who has put in six months of continuous service in the plantation and has expressed a desire to reside in the plantation. Children under 12 years of age are prohibited for employment in any plantation. Children of workers between the age of 6 and 12 have to be provided free educational facilities.

The Act regulates working hours, provides for a weekly holiday, and leave with wages. It also provides for appointment of suitable inspecting, medical or other staff for the purpose of securing compliance with various provisions of the Act. The Act is administered by inspectors and certifying surgeons.

The Contract Labour (Regulation & Abolition) Act, 1970

Contract workers are subjected to intense exploitation by contractors as well as the principal employers. These workers are generally engaged in agricultural operations, plantation, construction industry, ports & docks, oil fields, factories, railways, shipping, airlines, road transport, etc. The Contract Labour (Regulation & Abolition) Act, 1970 (CLA) was enacted to regulate employment of labour employed by contractors so as to provide some sense of security to workers working with them. It also regulates the conditions of work of such workers. The Act provides for registration of all employers covered by the Act, and licensing of contractors and sub- contractors. It requires payment of wages by the contractor in the presence of the representative of the principle employer, who has to certify that correct payment has been made in his presence. There is provision for constitution of Central and State Advisory Boards for advising the appropriate government for administering the CLA.

Chapter V of the CLA provides for certain welfare and health measures for contract labour. In case 100 or more contract labourers are employed a canteen has to be provided. Where contract labour is supposed to halt at night, rest rooms have to be provided. First-aid facilities have to be readily made available. Other welfare facilities to be provided include: wholesome drinking water; sufficient number of latrines and urinals; and washing facilities.

The Act is implemented both by the Centre and the State Governments. The Central Government has jurisdiction over establishments like railways, banks, mines, etc. and the State Governments have jurisdiction over units located in that state.

The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMWA) was enacted to protect the rights of migrant workers, and thus safeguard their interest. It regulates their employment and provides for minimum conditions of work for this category of workers. It applies to every establishment and the contractor that employs five or more inter-state migrant workmen. Among others, it provides for compulsory registration of principal employers and licensing of contractors.

The Act fixes responsibility on the contractor and the principal employer for payment of wages. It is provided that all liabilities of migrant labourers are deemed to be extinguished after the completion of the period of employment.¹¹ The Act has provision for issue of Pass-Book to every inter-state migrant workman with full details, payment of displacement allowance, payment of journey allowance including payment of wage during the period of journey, suitable residential accommodation, medical facilities and protective clothing, payment of wages, equal pay for equal work irrespective of sex, etc. The Act fixes the responsibility of wage payment on the contractor as well as the principal employer. The Act is administered by inspectors.

Child Labour (Abolition and Regulation) Act 1985

No enlightened society can allow its children to be subjected to work at a tender age. World over child labour is a serious issue for human right activists. There is considerable pressure on states for its complete abolition. Indian situation on employment of child labour is quite bad. Even as the best 9 friends of children were waiting for compulsory primary education to become a reality and abolish child labour altogether, the Indian Parliament passed the Child Labour (Prohibition and Regulation) Act 1985. This Act banned the employment of children below the age of 14 years in hazardous occupations; which among others, include glass and glassware, fireworks and matchmaking, and carpet weaving. The Act regulates the work of children where they are permitted to work. It fixes the number of hours for child work. It is provided that the total spread over of child's work shall not exceed 6 hours. There is a provision of weekly holiday.

There are provisions for health and safety of children employed or permitted to work in any establishment. It lists 24 areas in which governments are expected to frame rules for the protection of child labour. These, among others, include cleanliness, disposal of wastes, lighting, drinking water, safety issues, maintenance of buildings, etc. The Act provides stringent punishment for violation of the Act.

Industrial Relations Law

The individual contract of employment is known to favour the employer, who is a stronger side in the employment relationship. The common law envisages some strong managerial prerogatives for employers that they exercise over workers. This gives rise to the need to allow labour to unite, form collectives, and thus struggle to seek workplace justice on its own. Unionization and collective bargaining lie at the root of most labour relations issues. Interestingly, Article 23 of the Universal Declaration of Human Rights adopted by the United Nations Organization as a common standard of achievement for all people in all nations recognizes the legitimacy of union rights. It provides, among others, for everyone “the right to form and to join trade unions, for the protection of his interests”.

The constitutional guarantee provided by Article 19 (1) (c) of the Indian Constitution, envisages provision of association/union rights to citizens in general. The IR law provides a framework to operationalize the spirit behind this fundamental guarantee. The disputant parties also need to be made available a system of effective industrial dispute resolution. In India, the industrial dispute resolution law can be found in the Industrial Disputes Act, 1947 (IDA). The Industrial Employment (Standing Orders) Act 1946 provides that every employer should make available to its employees just and fair terms of employment.

Perhaps, the most crucial aspect of labour laws in any country is the law of industrial relations. As per this thinking, the state should so evolve a legal framework of IR that it is able to play the role of a neutral referee. Also, it should enable the weaker party to safeguard itself against the use of unfair labour practices (ULPs) by the other side. If the state is able to ensure this, then the parties can develop some kind of bilateral bargaining framework to carve out rules of workplace working. The principal IR legislations in India are: the Trade Unions Act 1926 (TUA); the Industrial Employment (Standing Orders) Act 1946; and the Industrial Disputes Act 1947 (IDA).

The Trade Unions Act, 1926

The Trade Unions Act, 1926 (TUA) is one of the oldest labour legislations in India. The early enactment of the TUA and the constitutional provision of guaranteeing freedom of association have helped trade unions to legitimize their existence and operations. It envisages the procedure for 10 registration of unions. A union can be organized by workers employed in industry; however, the definition of worker is wide enough to include even managers. A trade union can be registered by any seven or more members. But this is subject to a minimum of 10 per cent of workers employed in an industry or 100 whichever is less. When registered, a trade union gains the status of a legal entity distinct from the members of the union.

The Industrial Disputes Act, 1947

The Industrial Dispute Act, 1947 (IDA) is the principal industrial relations law in India, which deals with machinery for industrial disputes resolution. It provides a conciliation-arbitration-adjudication model of collective as well as individual disputes resolution. It envisages seven forums for processing of industrial disputes. There is provision for constitution of works committee in every industry employing 100 or more workers. This committee consists of representatives of employer as well as workers, and is expected to promote amity and good relations especially in the shop floor working.

The Law of Social Security

The Directive Principles of State Policy as enshrined in the Constitution of India recognize the right to social protection for all citizens. Following these directives, the Indian state has provided for, or reinforced the existing provisions of, some measures of social protection through legislation and policy. Collective agreements in the formal sector between employers and unions also reflect provision of social security measures by the employers. At the global level, social security consists of two forms of protections: social insurance and social assistance. The Indian system of social security in the organized sector can be divided into five broad types, namely: creation of employer’s unilateral liability; social insurance; provident fund; social assistance; and welfare funds. The most usual type of Indian social security with widest coverage envisages creation of employer’s unilateral liability. Four laws can be said to fall under this heading: Workmen’s Compensation Act 1923 (WCA); Maternity Benefit Act 1961 (MBA); Payment of Gratuity Act 1972 (PGA); and Industrial Disputes Act 1947 (IDA). The key law falling in the category of social insurance laws is the Employees’ State Insurance Act 1948 (ESIA). Countries in South Asia including India have a unique system of social protection called the provident funds. They are envisaged, among others, by laws such as the Employees Provident Funds (and Miscellaneous Provisions) Act, 1952 (EPFA). The state Governments also provide for some amount of social protection, especially to senior citizens and disabled people. This falls in the category of social assistance. In some spheres of employment—like bidi making, film production, etc.—welfare funds have been created by the Central Government for protecting the employees concerned.

The Workmen’s Compensation Act 1923

India had no social security system before the British Indian Government enacted the Workmen’s Compensation Act 1923 (WCA). This Act symbolizes the beginning of social security in India. It was passed in 1923 on the model of a similar Act in Britain. It provides for payment of compensation unilaterally by the employer to his workmen in certain cases. Compensation under this Act is also payable to the dependants in case of death of the employee. Certain categories of occupational diseases too are

covered. Injuries by accident also include contracting of some diseases in certain circumstances. The WCA applies to any person who is employed, otherwise than in a clerical capacity, in railways, factories, mines, plantations, construction, electricity generation, cinemas, circus, and other hazardous employments as specified in Schedule II of the Act. The Act excludes those who are covered by the Employees' State Insurance Act 1948 (ESIA). Interestingly, the employer's liability is not based on any negligence on the part of the employer.

The Employees' State Insurance Act 1948

The key social insurance law in India is the Employees' State Insurance Act 1948 (ESIA), which envisages an employees' state insurance scheme (ESIS) administered by the Employees' State Insurance Corporation (ESIC) created by this Act. The ESIA applies in the first instance to factories employing 20 or more persons. The provisions of the Act have been gradually extended to smaller power-using factories employing 10 to 19 persons, shops, hotels and restaurants, and cinemas. It applies to workers getting salary up to Rs. 7,500 per month. It also covers administrative staff. The ESIS is contributory in character whereby employers, employees and to a little extent the State contribute to a fund, out of which various types of benefits are provided to the beneficiaries.

The Employees' Provident Fund (and Miscellaneous Provisions) Act 1952

Along with the ESIA, the Employees' Provident Fund and Miscellaneous Provisions Act 1952 (EPF Act) too is a key social security legislation in India. It applies to any factory relating to any industry specified in Schedule I to the Act in which 20 or more persons are employed, and also to other establishments employing 20 or more persons which may be specified by the central government by a notification in this regard. As on 31 March 2005, this includes 180 industries; and covers 41.11 million workers under the Employees' Provident Fund Scheme (EPFS) both in exempted and unexempted sectors.

Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961 (MBA) seeks to regulate the employment of women workers in certain establishments for certain period before and after child birth. This law provides that all women employees shall be paid maternity benefit in case of child birth, miscarriage or sickness arising out of pregnancy. A worker when governed by the ESI Act cannot claim maternity relief under the Maternity Benefit Act. This Act also envisages a unilateral responsibility of the employer and the scheme contains no insurance element in it. It applies to factories, mines, circus, plantations, and shops and establishments employing 10 or more persons. However, in case a women employee is covered by the ESI Act, then this Act does not apply to her. The application of this legislation can be extended to other establishments by a State government after the prior approval of the central government. The central government is responsible for administering this Act in mines and circuses, and the state governments are responsible for its administration in factories, plantations and other establishments.

The Payment of Gratuity Act 1972

Payment of gratuity is another important social security benefit in India. Gratuity is a lump sum payment which is payable under the Payment of Gratuity Act 1972 (PGA). Gratuity is believed to be an award which the employer pays to the employee on retirement out of gratitude for a long and meritorious service. It replaces at least partly the loss of income at the time of superannuation, retirement or resignation, and death and disablement due to accident or disease. The PGA applies to factories, mines, oilfields, plantations, ports, railway companies, shops and other establishments where 10 or more persons are employed.

Gratuity is a benefit payable by the employer for termination of service of an employee. But it is also payable in case of superannuation, retirement, resignation, death or disablement due to accident or disease.

II. Conclusion

Post-independence India sought to implement the concept of welfare state as mentioned in the Preamble of the Constitution of India and on the Directive Principles of State Policy. A number of labour laws were enacted in all its own broad categories. The Indian judiciary gave liberal interpretation to many provisions of these laws; often rooting the liberal interpretation in the Directive Principles of State Policy in doing so.

This also energized many non-governmental organizations (NGOs) in the informal sector to play a more active role in labour law implementation. But cases of labour law violation were still too many. This included even some of the Supreme Court and high Court decisions. The Indian labour law model, as also those of the advanced Europe, was built on the basic postulates of the welfare state.

In fact, Indian labour market can be said to be characterized in It is understandable that labour law is creating inflexibility for the organized sector which is difficult to sustain the era of globalization. At the same time, a large number of establishments in the unorganized sector remain outside any regulation, while the organized sector has been regulated fairly stringently. The organized sector is believed to have provided too much of job-security for too long, resulting into inertia and inefficiency, while the unorganized sector has provided too little to too many. In their present form, many aspects of Indian labour laws do not suit the globalizing environment.

These laws apply only to the organized sector. Consequently, these laws have restricted labour mobility, have led to capital-intensive methods in the organized sector and adversely affected the sector's long-run demand for labour. Since labour is a subject in the

Concurrent List in the Constitution of India, state-level labour regulations are also an important determinant of industrial performance. States like Kerala which have enacted more pro-worker regulations have lost out on industrial production in general. Interestingly, countries like China learnt to adjust to the environment much faster.

In a country like India, the executive branch of the state has many constraints in performing its constitutional duties. There is a need for greater degree of public interest litigation for enforcing minimum labour standards and developing some basic postulates of sound labour relations. It can be a very useful instrument in the Indian context. But this needs to involve people who are genuinely interested in poverty alleviation. Globalization can not take away the need for labour law. The state needs to focus on better implementation and ensure that these laws do not become a mockery.

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