

## INTRODUCTION

Industrialisation is the modern trend in almost all developing countries now a days, as industry plays an important role in shaping the economic structure of a society. For the planned, progressive and purposeful development of the society proper regulation of employer - employee relationship is a condition precedent. This relationship is therefore one of the most important factors of success of the industrialisation programme. The workers and employers are two pillars of our national economy. It cannot be denied that labour has a vital role in increasing

Democratic ideas have also been grown simultaneously with the growth of industrialisation in our country which have pleaded for and also helped in mass awakening and consciousness for greater power amongst the working class. Therefore labour legislation and industrial jurisprudence are based on certain fundamental principles, like Social Justice, Social Equity, International Uniformity and National Economy. This paper intends to highlight these principles in a nutshell.

### (A) SOCIAL JUSTICE

The concept of social justice has become an integral part of industrial law. It is founded on

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# Principles of Labour Legislation and Industrial Jurisprudence

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productivity, and management has to create conditions in which workers can make their maximum contribution towards this objective. In this connection, the social and economic upliftment of the labour is very important for securing industrial peace.

With the growth of industrial jurisprudence the concept of master and servant has been abolished and in that place the employer and employee concept came out, where the former may hire the latter but he can no more fire them at his will. The interest of an employee is now in many respects protected by legislations.

the basic idea of socio-economic equality. In an industrial set-up social justice implies two things; first an equitable distribution of profits and other benefits accruing from industry between the owner of the industry and workers; and secondly, providing or affording protection to the workers against harmful effects to their health, safety and morality.

The Constitution of India has affirmed social and economic justice to all its citizens. The fundamental rights and the directive principles of state policy enshrined in our Constitution need a special mention in view of their supreme importance in directing and influencing the labour

legislations in the country. These provisions provide sufficient guarantee against exploitation.

In this regard Article 24 of the Constitution specially provides that “no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

Likewise Article 38 says that “the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice— social, economic and political shall inform, all the institution or the national life”.

Article 39 ordains that it shall be the duty of the State to apply certain principles of social justice in making laws. Thus, it specifically says that “the State shall, in particular, direct its policy towards securing -

- a) that the citizen, men and women equally, have the right to an adequate means of livelihood;
- b) that there is equal pay for equal work for both men and women;
- c) that the health and strength of workers, men or women and the tender age of children, are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- d) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

The Constitution of India further provides<sup>1</sup> that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of

unemployment, old age, sickness and disablement, etc.

Article 42 again directs the State that it shall make provision for securing just and humane conditions of work and for maternity relief.

The State shall also endeavour 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 etc.<sup>2</sup>

Article 43 – A further 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 organizations engaged in any industry.

In India, labour laws have been codified in consonance with the above principles of state policy.

### **Social Security**

The concept of social security has become an integral part of social justice. It is based on ideas of human dignity and social justice. The underlying idea behind social security measures is that a citizen who has contributed or likely to contribute to his country’s welfare should be given protection against certain hazards.<sup>3</sup> Social security means a guarantee provided by the State through appropriate agencies, against certain risks to which the members of the society may be exposed. Its measures are significant from two view points, i.e. they constitute an important step towards the goal of a welfare state; and secondly, they enable workers to become more efficient and thus reduce wastage arising from industrial disputes. Lack of social security impedes production and prevents formation of stable and efficient labour force. Therefore, social security

measures are not a burden but a wise investment which yields good dividends.<sup>4</sup>

### **Adoption of Social Security measures in India**

In 1952, International Labour Organisation has adopted the Social Security (Minimum Standards) Convention, which embodies universally accepted basic principles and common standards of social security. The application of these principles has guarded developments of this field throughout the world.<sup>5</sup> Accordingly, in India, a number of social security legislations have been enacted from time to time to promote the condition of the labour keeping in view the development of industry and national economy. Some of these enactments are as follows:

#### ***The Workmen's Compensation Act, 1923***

This Act is one of the earliest measures adopted to benefit the labourers. It was passed in 1923, but came into force on 1<sup>st</sup> July, 1924 and was originally applied to railway, tram, factory, mine, sea, dock, building, trade, sewage and fire-brigade workers. The Act provides compensation for death, permanent total disablement, permanent partial disablement and temporary disablement caused either by accident or by occupational diseases, in the course of and arising out of employment. It laid down compensation according to the degree of injury sustained while on duty. The employers are responsible for paying such compensation in accordance with the provisions of the Act and rules made thereunder.

#### ***The Trade Union Act, 1926***

A trade union, in common parlance, means an association of workers in a particular craft or industry for the purpose of maintaining the conditions of their lives. In legal sense, it means

a combination whether permanent or temporary, formed primarily for the purpose of regulating the relations between workmen and employers; or between workmen and workmen; or between employers and employers; or imposing restrictive conditions on the conduct of any trade or business. The main function of trade unions is to enable the workers to act together. An individual, by himself being in a weak bargaining position to negotiate with employers, the strike being the weapons of last resort to be used by the Trade Union only after negotiations have broken down. The Act contains detailed provisions for formation, procedure, registration, including conditions of registration, advantages of registration and the immunities available to the union leaders both from civil and criminal laws while engaging themselves in the union activities of a registered Trade Union.

#### ***The Industrial Employment (Standing Orders) Act, 1946***

The absence of standing orders in industrial establishments was one of the most frequent causes of friction between the management and workers in industrial undertakings in India. To avoid this friction, the Industrial Employment (Standing Orders) Act was passed with the objects to regulate the conditions of recruitment, discharge disciplinary action, holidays etc. of the workers employed in industrial undertakings.

#### ***The Industrial Disputes Act, 1947***

The Industrial Disputes Act, 1947 is a progressive measure of social legislation aiming at the amelioration of the conditions of workmen in industry.<sup>6</sup> This Act intends to minimize the conflict between labour and management and to ensure, as far as possible, economic and social justice. The object<sup>7</sup> of this Act is to make provision

for the investigation and settlement of industrial disputes.

The principal objectives of the Act are to secure industrial peace:

- i) by preventing and settling industrial disputes between the employers and workmen;
- ii) by preserving amity and good relation between the employers and workmen through an internal works committee; and
- iii) by promoting good relations through an external machinery of conciliation, courts of enquiry, labour courts, industrial tribunals and national tribunals.

#### ***The Minimum Wages Act, 1948***

The Minimum Wages Act was passed in 1948 for the welfare of the labourers. This Act has been enacted to secure the welfare of the workers in a competitive market by providing for a minimum limit of wages in certain employments.<sup>8</sup> The main object of this Act is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour.

The Act provides for the fixation of a minimum rate of wages for time work; a minimum rate of wages for piece work; a guaranteed time rate; and an overtime rate, for different occupations, localities or classes of work and for adults, adolescents, children and apprentices.

However, like other branches of labour legislations the security of industrial peace and efficiency may be kept in view when giving effect to the provisions of this Act. It may also be observed that this Act is in consonance with Article 43 of the Indian Constitution providing for living wage, conditions of work ensuring a decent standard of life etc.

#### ***The Employee's State Insurance Act, 1948***

This is another important social security legislation. This piece of legislation aims at bringing about social and economic justice to poor labour class. The object of the Act is to introduce social insurance by providing certain benefits to employees covered under this Act in case of sickness, maternity and certain other matters. It is the first measure of social insurance which provides benefits financed from the contribution of employees, employers and the Government.

#### ***The Factories Act, 1948***

The Factories Act, 1948 is also a social enactment meant to achieve social reform. The objective of this Act is to regulate the labour and provisions of the Act clearly show that said regulations are intended for the benefit and welfare of workers. The main purpose of the Act is to regulate working conditions in factories and to take proper steps for the safety, health and welfare of the workers, to regulate working hours and to provide effective machinery for the administration of the Act. The Act aims to protect the workers employed in factories against industrial occupational hazards and ensure safe and healthy conditions of life and work. It contains detailed provisions regarding health, safety and welfare of the workers in order to provide good working conditions and other facilities to enhance their welfare.

#### ***Maternity Benefits Act, 1961***

This Act was enacted with an object of doing social justice to women workers. This is a social welfare legislation making provisions to provide different kinds of benefits to female wage earners. The Act was passed to regulate the employment of women in certain establishments for certain period before and after child birth and

to provide for maternity benefit and certain other benefits.

### **(B) SOCIAL EQUITY**

Another principle on which labour legislation is based is social equity. Any legislation which is based on social justice prescribes a definite standard for adoption in future, taking into consideration the events and circumstances of the past and the present. Once a standard is so fixed by legislation it remains in force until it is changed or modified by another legislation passed in conformity with the legislative procedure. The Government is only empowered to make such changes and the rules may be modified or amended by the government to suit the changed situation. Such legislation is therefore said to be based on the principles of social equity.

### **(C) INTERNATIONAL UNIFORMITY**

This is another principle on which labour laws are based. The pivotal role played by the International Labour Organization in this connection is praiseworthy. It has produced a large number of International Conventions and Recommendations covering unemployment, general conditions of employment, wages, hours of work, weekly rest periods, holidays, employment of children, young persons, women, industrial health, safety, social security, industrial relations and many other allied subjects.

### **(D) NATIONAL ECONOMY**

In enacting a labour legislation, the general economic situation of the country has always to be taken into account. Because in any country the state of national economy is a key factor in influencing labour legislation.

## **CONCLUSION**

Workers are the dominant partners in the industrial undertakings and without their co-operation, effort, discipline, integrity and character the industry cannot survive. Therefore, there should always be a good relationship between the employer and employee which is very important. The profits of the industry must also be shared between the employers, workers and the community. At the same time, as mentioned above, the workers must be safe, secured and they should be provided with sufficient welfare measures, healthy working conditions so that not only the employers will be benefited but the society and the nation shall also get the positive result.

### **References :**

1. See Article 41.
2. See Article 43.
3. I.L.O., *Approaches to Social Security*, 1942, p. 80, as quoted in *Report of the National Commission on Labour*, 1969, p. 162.
4. V.V.Giri, *Labour Problems in Indian Industry*, p.248.
5. *Report of the National Commission of Labour*, 1969, p. 162.
6. *S.N. Rai v. Viswanath Lal*, AIR 1960 Patna 10.
7. See the *Preamble* of the Act.
8. See the *Preamble* of the Act.

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Trafficking of children can be attributed as the recruitment, transportation, transfer, harbouring and/or either by force or by a third person or a group for the purpose of exploitation. It is a worldwide phenomenon that affects a large number of boys and girls. Children and their families are often lured by the promise of better employment and a more prosperous life far from their homes. A large number of children are trafficked not only for the sex trade but also for other forms of non sex based exploitation which include servitude of various kinds as domestic labour, industrial labour, begging, organ trade and false marriage. There are many contributing factors for child trafficking which include economic deprivation, lack of employment opportunities, illiteracy, social status and political uprisings and

beyond that. Alarmed at the growing incidence of trafficking in women and children in Odisha, the state government in Dec 2009 formulated a policy to address the issue. The policy among other things provides adequate steps for psychological support, economic and empowerment and reintegration to ensure that the rescued victims of trafficking not get down in to the trade again due to non-availability of other option for livelihood. Besides it, the state government on the heels of the Hon'ble Supreme Court directive (1990), has decided to extend the Integrated Anti-Human Trafficking Units (IAHTU) to twenty five more districts police headquarters besides the existing twelve numbers police headquarters to combat this crime of

## Child Trafficking and Forced Criminality : A Discussion

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the like. It is also a fact that children, particularly girls are found more vulnerable than boys, as they are looked upon as more expandable than the rest of the population. Often young girls become sex slaves and forced into prostitution.

As per the data available with the state government, there are as many as 3,578 women, mostly minor and young girls remained untraced between the year 2000 and 2005. Out of them 1,418 were minor girls and 1,342 young girls, of them the state police have rescued as many as 299 young girls and 492 minor girls from different places as the figure revealed.

Legally, children are allowed to do light work, but they are often trafficked for bonded labour, domestic work and are also worked

trafficking, kidnapping, forcible marriage, sexual abuse etc.

### Various provisions and schemes

India has a fairly wide framework of laws enacted by the Parliament as well as some state Legislatures. Article 23 of the Constitution categorically guarantees the right against exploitation, prohibits traffic in human being and forced labour and makes their practice punishable under law. Article 24 of the Constitution prohibits employment of children below 14 years of age in factories, mines or other hazardous employment. Besides this specific legislations have been enacted relating to trafficking in women and children (Immoral Traffic (Prevention) Act, 1956,