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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UPHOLDING LABOR RIGHTS: A COMPARATIVE ANALYSIS OF INTERNATIONAL STANDARDS AND INDIAN LEGISLATION

AUTHORED BY - OSHO D¹

ABSTRACT

The paper delves into the complex landscape of international labor standards, focusing on the pivotal role of the International Labour Organization (ILO) and its interaction with Indian legislation. It explores how the rapid industrial and technological advancements have reshaped labor dynamics, often leading to exploitation and unethical practices. The United Nations, through the ILO, intervenes to uphold fair labor practices and protect workers' rights globally. Highlighting the tripartite structure of the ILO, the paper underscores its efforts in setting international labor standards that encompass fundamental principles such as freedom of association, collective bargaining, and the elimination of forced labor and discrimination. It examines India's partnership with the ILO, emphasizing its commitment to promoting decent work and aligning national laws with international standards. The analysis extends to key Indian legislations like the Industrial Disputes Act, Trade Unions Act, Payment of Wages Act, and the Child Labour Act, evaluating their alignment with international standards and their efficacy in protecting workers' rights. Despite India's ratification of numerous ILO conventions and incorporation of international standards into its laws, challenges persist in implementation due to factors like illiteracy, unequal treatment, and weak enforcement mechanisms. Ultimately, the paper underscores the importance of collective efforts to address these challenges, advocating for a more equitable and just global workforce where the rights and dignity of every worker are upheld.

Keywords: international labor standards, International Labour Organization, tripartite structure, Industrial Disputes Act, Trade Unions Act, Payment of Wages Act, and Child Labour Act.

INTRODUCTION

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The rapid growth of the industrial and technological sectors over the past century has led to a significant increase in the employment of human labor. However, this has often resulted in workers being assigned to unconventional and demanding roles, which can take a toll on their physical and mental well-being. Many workers endure long hours without adequate breaks to sustain themselves properly. Furthermore, the expansion of industries across borders has led to the employment of labor forces in ways that are often unethical and sometimes even illegal. This exploitation of workers by employers has shed light on the hardships faced by labor forces worldwide. In response to these issues, the United Nations has intervened to address the situation. Through its various agencies and initiatives, the UN works to promote fair labor practices, protect workers' rights, and combat exploitation. Its interventions may include advocating for improved working conditions, enforcing existing labor laws, providing assistance to affected workers, and raising awareness about the issue on a global scale. Addressing the exploitation of labor requires collaborative efforts involving governments, international organizations, corporations, and civil society. This may involve implementing and enforcing stricter regulations, encouraging ethical business practices, investing in education and skills training for workers, and fostering economic development that prioritizes human rights and dignity.

Achieving a more equitable and just global workforce necessitates a collective commitment to prioritize the well-being and rights of workers, ensuring that no one is subjected to exploitation or inhumane working conditions. One major step by the United Nations is the formation of the International Labour Organization in 1919.

INTERNATIONAL LABOUR ORGANIZATION

The International Labour Organization (ILO) stands as a beacon of global cooperation and advocacy for labor rights and social justice. Established in 1919 as a specialized agency of the United Nations, the ILO has played a pivotal role in shaping international labor standards and promoting decent work for all. With a tripartite structure that brings together governments, employers, and workers, the ILO serves as a unique forum for dialogue and collaboration on labor issues. Over the decades, it has championed key initiatives such as setting minimum wage standards, combating forced labor and child labor, promoting workplace safety, and fostering social protection policies. Through its tireless efforts, the ILO continues to strive towards its noble vision of ensuring that labor rights are respected, protected, and fulfilled for every worker, regardless of nationality or occupation. The International Labour Organization (ILO) boasts a membership of 186 countries, each actively participating in its

tripartite governance structure. This structure incorporates representatives from governments, employees, and employers, ensuring equitable representation and the integration of diverse viewpoints into the organization's policies. These policies, known as International Labour Standards, reflect the collective principles upheld by the ILO and guide its efforts in promoting fair labor practices worldwide.

In addition to its broad mandate of promoting social justice and decent work globally, the International Labour Organization (ILO) plays a pivotal role in setting and promoting international labor standards. These standards encompass a wide range of issues, including fundamental principles and rights at work, such as freedom of association, collective bargaining, the abolition of forced labor, and the elimination of discrimination in employment and occupation. The process of setting international labor standards involves extensive consultation and negotiation among representatives of governments, employers, and workers from around the world. Through this tripartite approach, the ILO ensures that the standards are comprehensive, balanced, and reflective of the diverse needs and perspectives of its constituents.

Once established, these standards serve as a benchmark for national labor laws and policies, providing guidance to member states on best practices in areas such as wages, working hours, occupational safety and health, and social protection. They also serve as a reference point for employers, trade unions, and other stakeholders in the labor market, facilitating dialogue and cooperation on labor-related issues at the international, regional, and national levels.

Moreover, the ILO monitors the implementation of these standards through various mechanisms, including regular reporting by member states and technical assistance to help countries strengthen their capacity to comply with their obligations. By promoting adherence to international labor standards, the ILO contributes to the creation of a fair and inclusive global economy where all workers enjoy fundamental rights and decent working conditions.²

INTERNATIONAL LABOUR STANDARDS

International Labour Standards, established by the International Labour Organization (ILO), serve as a cornerstone of global efforts to ensure fair and dignified work for all. Covering areas such as fundamental rights at work, occupational safety and health, and social protection, these standards are developed through a tripartite process involving governments, employers, and workers. They provide

² WELCOME TO THE UNITED NATIONS, <https://www.un.org/youthenvoy/2013/08/ilo-international-labour-organization/>, (last visited MAR. 2, 2024).

a framework for national legislation and policies, guiding countries in promoting decent working conditions, fair wages, and equal opportunities. Monitored by the ILO, adherence to these standards fosters a more equitable and inclusive global economy, where the rights and well-being of workers are respected and protected.³

INTERNATIONAL LABOUR ORGANIZATION AND INDIA

The relationship between the International Labour Organization (ILO) and India is significant, with both entities collaborating closely to address labor issues and promote decent work in the country. India, as a founding member of the ILO since its inception in 1919, has been actively engaged in advancing the organization's objectives and implementing its international labor standards. India's partnership with the ILO spans various areas, including labor laws and policies, social protection, occupational safety and health, and skills development. The ILO provides technical assistance, capacity building, and expertise to support India in formulating and implementing labor-related initiatives that align with international standards and best practices. Furthermore, India actively participates in the governance structure of the ILO, contributing to discussions and decision-making processes on global labor issues. As a member state, India also submits periodic reports to the ILO on the implementation of international labor standards and progress made in promoting decent work and social justice within its borders. Overall, the collaboration between the International Labour Organization and India plays a crucial role in advancing the rights and well-being of workers, fostering inclusive growth, and promoting sustainable development in the country. Through shared efforts and cooperation, both entities work towards creating a more equitable and just society where all individuals can enjoy dignified and productive work.

India, a founding member of the ILO, adopts a cautious approach to ratifying ILO conventions, only doing so when they align with national laws and practices. Ratification typically involves incorporating the conventions in accordance with the Indian constitution. Despite this cautious approach, India maintains a positive stance towards international labor standards and has ratified 43 conventions to date. Notably, India is a party to ILO Convention No. 144 International Labour Standards.

INDIAN CONSTITUTION AND INTERNATIONAL LABOUR STANDARDS

³ International labour organization,, <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm>,(last visited MAR. 2, 2024).

The Indian constitution not only lays the foundation for the current democratic governance but also prioritizes the welfare aims for the nation and its citizens. It guarantees fundamental rights such as equality, dignity, personal liberty, and religious freedom, along with the power to seek legal recourse if these rights are violated by individuals or the state.

The labor force in India, comprises majority of the population, plays a vital role in the nation's societal fabric, particularly within the industrial and trade sectors, which form the basis of its growth. The Constitution of India includes provisions aimed at safeguarding the rights of minorities, women, children, economically disadvantaged individuals, tribal communities, and other vulnerable groups. Protecting the interests of the working class was a fundamental consideration during the constitution's drafting. In line with the principles of a Welfare State, it is essential to provide assistance in cases of illness, old age, physical and mental incapacity, unemployment, underemployment, and lack of economic power. Such assistance is not charity but rather the recognition of basic rights, which individuals can invoke if violated.

The Fundamental Rights enshrined in the Constitution ensure political democracy, while the Directive Principles of State Policy address the socioeconomic and cultural aspects of this democracy. Implementation of these principles gives rise to a welfare state. The Directive Principles of State Policy are:

Article 38⁴ of the Indian Constitution emphasizes the state's duty to promote the welfare of the people by securing a social order that ensures justice, social, economic, and political, and to minimize inequalities in income, status, facilities, and opportunities.

Article 41⁵ of the Indian Constitution highlights the responsibility of the state to ensure the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement. It emphasizes that the state should make provisions for these rights within its economic capacity and development.

Article 42⁶ of the Indian Constitution lays down the directive for the state to secure just and humane conditions of work and maternity relief. It emphasizes the importance of providing safe working conditions and ensuring that women are granted adequate relief during maternity. Additionally, it

⁴ I NDIA CONST. art.38

⁵ I NDIA CONST. art.41

⁶ I NDIA CONST. art.42

prohibits the employment of children below the age of fourteen years in factories, mines, or hazardous occupations.

Article 43⁷ of the Indian Constitution places a responsibility upon the state to secure for all workers, whether in agricultural, industrial, or other sectors, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. It emphasizes the promotion of cottage industries on an individual and cooperative basis in rural areas to improve employment opportunities and living standards.

Legislations were enacted to safeguard and promote the interests of the labor community by addressing key aspects of their employment, such as fair wages, working conditions, holidays, safety, health, welfare, social security, industrial relations, protection of women and child labor, labor indebtedness, housing, recruitment, and training. These laws cover all forms of workers, including those in factories, mines, plantations, railways, motor transport, and shops. The Constitution of India sets clear goals for the central and state governments to ensure the all-round development of the labor community, emphasizing that they should not lag behind in social or political life. Labor legislation, introduced after the constitution, aims to achieve this objective.

The Fundamental Rights serve as the enforcer and protector of labor law legislation in India. The concept of Equality, introduced within Fundamental Rights, extends beyond mere equality before the law. It entails treating equals equally, recognizing that absolute equality may not be attainable due to varying physical and mental abilities. Essentially, it entails the absence of special privileges based on factors such as birth, caste, or class. This principle was upheld in the case of *Randhir Singh vs Union of India*⁸, where the Supreme Court affirmed the principle of "equal pay for equal work," enshrined in Articles 14, 16, and 39(c) of the Indian Constitution.

Article 19(1)(c) grants citizens the fundamental right to form associations and unions, although the state retains the power to impose necessary restrictions. This right encompasses the formation of companies, partnerships, societies, and trade unions. In the case of *Balakotiah vs Union of India*⁹, the Supreme Court clarified that while the right to form a trade union falls under Article 19(1)(c), it does not guarantee the right to effective bargaining, striking, or lockouts. Instead, it includes the right to life and the means of livelihood necessary for survival.

Article 21 of the Indian Constitution, which guarantees the Right to Life and Personal Liberty, holds

⁷ I INDIA CONST. art.43

⁸ *Randhir Singh vs Union of India*, 1982 AIR 879, 1982 SCR (3) 29.

⁹ *Balakotiah vs Union of India*, 1958 AIR 232, 1958 SCR 105.

profound significance and implications. It extends beyond mere physical existence, encompassing the right to livelihood. Recognizing that life entails more than mere survival, this provision safeguards an individual's right to earn a livelihood, essential for the proper functioning of life. Depriving someone of their means of earning a livelihood would effectively violate their right to life.

In the landmark case of *Olga Tellis vs Bombay Municipal Corporation*¹⁰, also known as the "pavement dwellers case," a five-judge bench of the Supreme Court affirmed that the right to livelihood is inherent within the Right to Life enshrined in Article 21. This ruling underscored the importance of ensuring that individuals have the opportunity to sustain themselves through lawful means, emphasizing the inseparable link between the right to life and the right to earn a livelihood.

ANALYSIS OF INDIAN LEGISLATION AND INTERNATIONAL LABOUR STANDARDS INDUSTRIAL DISPUTES ACT, 1947

To foster peaceful resolution of disputes and cultivate harmonious relations between workers and employers, this legislation was enacted. It applies to all units within the industrial and commercial sectors, encompassing all workers and employees earning up to a maximum of Rs. 1600 per month, excluding those in managerial or administrative roles. The primary mechanisms outlined in the legislation facilitate the investigation and resolution of disputes through various avenues such as committees, consolidation officers, conciliation boards, courts of inquiry, labor courts, tribunals, and voluntary arbitrations.

Moreover, the legislation safeguards the interests of workers during ongoing proceedings and grants them the right to appeal. It delineates procedures and compensation frameworks for various labor-related matters including strikes, layoffs, retrenchments, transfers of undertakings, closures, and reopenings of closed establishments. Additionally, provisions for penalties are outlined for breaches of regulations by either employers or employees.

This legislation also incorporates certain provisions inspired by unratified conventions and recommendations of the International Labour Organization (ILO), including those pertaining to collective bargaining, collective agreement recommendations, and voluntary conciliation and arbitration.

TRADE UNIONS ACT, 1926

¹⁰*Olga Tellis vs Bombay Municipal Corporation*, 1986 AIR 180, 1985 SCR Supl (2) 51.

The objective of the Act is to formalize labor-management relations to facilitate the lawful organization of labor. It outlines provisions for the protection and privileges afforded to registered trade unions. While the registration of trade unions is voluntary, there are specified conditions that must be adhered to for registration. The Act also encompasses regulations governing the dissolution and amalgamation of trade unions, which can be a complex process.

The inspiration for this legislation can be traced back to the Tripartite Consultation Convention of 1976, which empowered tripartite bodies under the Act. Additionally, the Trade Unions Act draws upon two conventions of the International Labour Organization (ILO): the Freedom of Association and Protection of the Right to Organize Convention of 1948, and the Right to Organize and Collective Bargaining Convention of 1949. These conventions grant autonomy to union organizations to advocate for and defend workers' interests through collective bargaining and action, while also providing protection against discrimination for union membership and participation in collective actions. Moreover, the Act reflects elements of the Rural Workers Organization Convention of 1975 in its formulation and amendment processes.

PAYMENT OF WAGES ACT, 1936

In addition to regulating wages, the Act also ensured timely payment and protection against exploitation by employers. It outlined methods for remuneration, including bonuses or sums payable upon termination of service. A significant provision of this legislation was the mandate for equal remuneration for both men and women.

Inspired by the Minimum Wage Fixing Convention of 1970 by the International Labour Organization (ILO), the Act introduced various concepts such as deductions from wages, periodic payment of wages, notification to workers regarding employment conditions, maintenance of wage statements and payroll records, and keeping records of any deductions made by the employer from worker payments. This convention played a crucial role in preventing unjustified wage deductions, ensuring that workers have reasonable opportunities to contest deductions that they believe were not within their control.

THE CHILD LABOUR ACT, 1986

This act was established with the aim of prohibiting the employment of children in hazardous occupations and regulating the working conditions of children in other forms of employment. It outlines a procedure for determining various reforms related to prohibited occupations and imposes

penalties for employing children in violation of its provisions.

The act ensures consistency in the definition of "child" across contexts. It stipulates that no child should work between the hours of 7 P.M. and 8 A.M., and their daily work period should not exceed three hours before they have had at least one hour of rest, with a maximum total of six hours of work per day. Additionally, every employed child must be granted a weekly holiday, specified by the employer.

To enforce compliance, the act imposes penalties, including imprisonment for a term ranging from three months to one year, along with fines ranging from Rs. 10,000 to Rs. 20,000, on employers who allow children to work in contravention of its provisions.

CONCLUSION

Upon examining the various conventions of the International Labour Organization (ILO), it becomes evident that India is committed to enhancing labor standards and addressing issues within the labor sector. India has not only ratified relevant conventions but has also incorporated provisions from unratified ILO conventions into its existing laws to effect improvements. However, certain conventions remain unratified due to inconsistencies with India's current legal framework. While international standards are designed with specific countries in mind, India's unique circumstances may not align with those standards. Enforcing universal standards without considering individual contexts may not be just or appropriate in terms of jurisprudence. From this analysis, it is apparent that laws have been established to protect workers and mitigate exploitation. However, challenges persist in the implementation of these laws due to various reasons, including:

The challenges to effective implementation of labor laws in India are multifaceted. First, illiteracy among workers contributes to their lack of awareness about their rights, leaving them vulnerable to exploitation. Additionally, there is often unequal treatment in the workplace, with benefits and privileges disproportionately favoring those with power, wealth, and influence.

Moreover, workers in hazardous industries, such as bidi and cigar factories, endure inhumane treatment, posing grave risks to their health and safety. Despite existing legislation aimed at protecting workers, the method of implementation is hindered by weaknesses. Penalties for violations are often low, failing to act as a significant economic deterrent to offenders. Furthermore, imprisonment terms are typically short and frequently bail-able, undermining the punitive impact of the law. These systemic shortcomings perpetuate the cycle of exploitation and hinder efforts to ensure fair and safe working conditions for all.