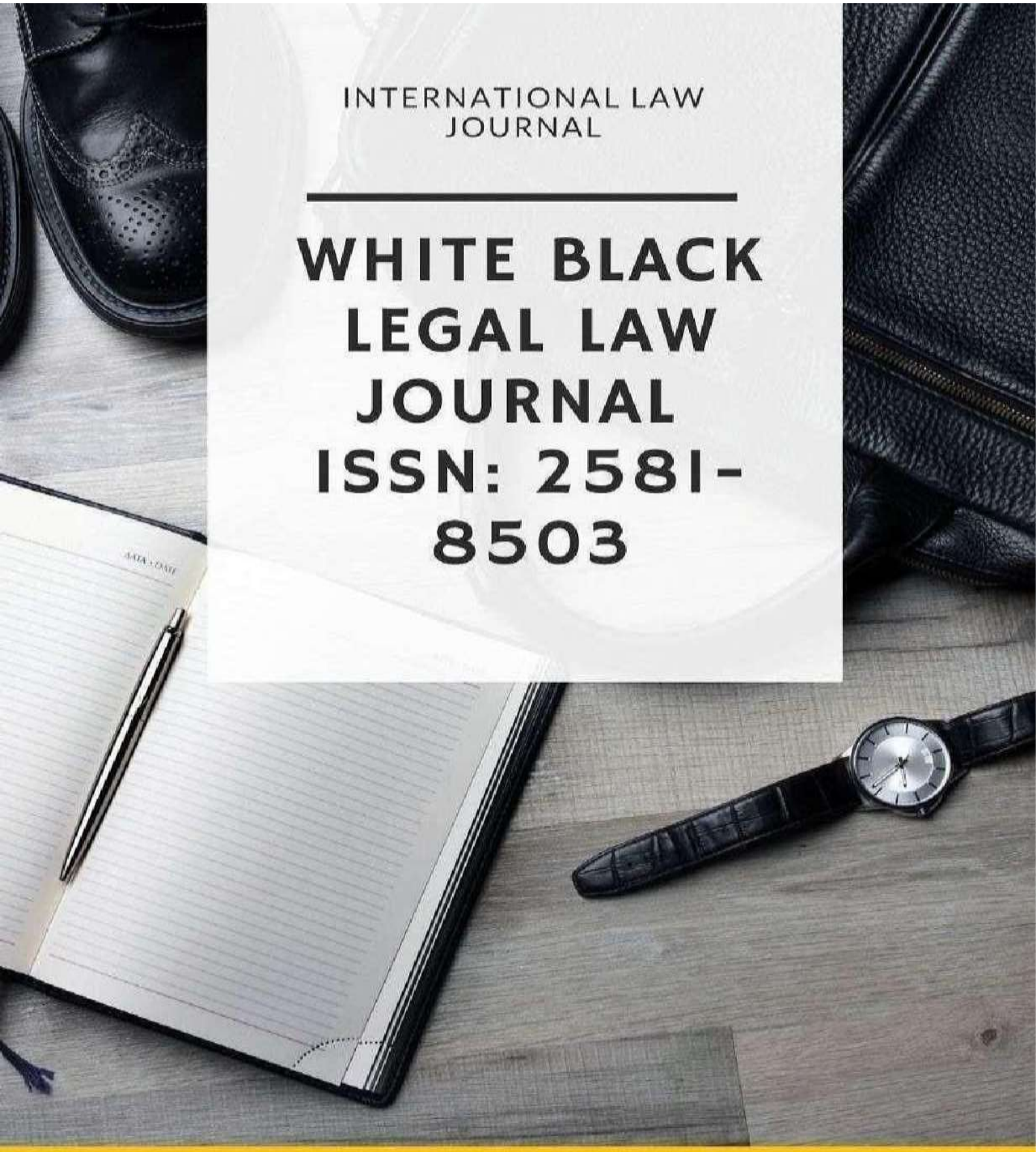

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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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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

UNFAIR LABOUR PRACTICES AND VICTIMIZATION

AUTHORED BY - AYESHA A, B.E LLB (HONS)

INTRODUCTION:

Unfair labour practice is defined, and the practices which are considered as an unfair labour practice were mentioned in the Industrial disputes act 1982. Unfair labour practices is one of the main objectives of the Industrial disputes act. The acts that are done by the labor practice are mostly on the part of the employer and the trade union, which may lead to the violation of rights and protection guaranteed by the labor laws. If any of the employers, the trade union, or the workers engage in unfair labour practices, then they will be liable under the Industrial Disputes Act of 1982, which contains provisions for punishment and the prohibition of unfair labor practices. Unfair labour practice will depend on the specific facts, circumstances and the ruling of the court State legislation also enforces an act to prevent unfair labor practices.

Victimization is not defined in any code. The literal meaning is that an individual is being victimized when they are threatened or subjected to harm by another person. Victimization is explicitly defined as unfair labor practice under the Industrial disputes (Amendment) act,1982.

HISTORY OF UNFAIR LABOUR PRACTICES UNDER INDUSTRIAL DISPUTE ACT,1982

Prior to 1947, when the country gained its independence, there was no law in place to control or prohibit unfair employment practices. However, the Trade Unions (Amendment) Act, 1947 was introduced in 1947 and began to identify the following actions by recognised trade unions as unfair work practices:

1. The majority of trade union members participating in an unauthorised strike.
2. The action taken on behalf of the trade union executive to actively encourage, counsel against, or start any type of irregular strike.

3. The act of the trade union officer submitting false statements that are required by or under the Trade Unions (Amendment) Act, 1947.

The following actions by the employer were considered unfair labour practices:

-The act of preventing, coercing, or interfering with workers when they exercise their rights tocreate, support, organise, or join a trade union, or to participate in coordinated actions for the sake of protection or mutual aid.

-The act of hindering the trade union's creation or providing it with any kind of financial or otherhelp. Discriminating against an officer of a recognised trade union based alone on his position is unacceptable.

-The act of terminating or treating a worker differently just because he has testified or made accusations in a case involving any of the topics covered by Trade Unions (Amendment) Act,1947, Section 28-F (1).

-the noncompliance with Section 28 F's requirements.

The Trade Union Amendment Act of 1947 had not came into force and has ceased to exist.

People were therefore bound to rely only on the judgments of the court, as there was no

legislation concerning unfair business practices. The Code of Discipline, which was in effect in1958, listed a number of actions and procedures that were considered unfair by the employer,
trade union, and both. However, this code was only ever used as a gentlemen's agreement andwas never enforced. As a result, the National Commission on working suggested later in 1969
that legislation be needed to define the actions that the employers and trade unions considered to be unfair working practices. The Industrial Disputes Act of 1947 has to be amended immediately, according to this recommendation. The Maharashtra Recognition of Trade unions and Preventionof Unfair Labour Practices Act, 1971 was passed by the State of Maharashtra because there was no central legislation at the time. This act is seen as a turning point in the evolution of laws
against unfair employment practices. Schedule II, III, and IV of this act specify what constitutesunfair labour practices as well as the kind of activities that fall under this category. Additionally,under this act's Chapter VI, VII, and VIII, the Industrial and Labour Courts have the authority toaddress unfair practices.

DEFINITION:

Unfair labour practices (ULPs) refer to various actions or behaviours by employers or labour organizations that violate the rights of employees or undermine the collective bargainingprocess. These practices are considered detrimental to the interests of workers and disrupt the balance of power between employers and employees. ULPs are typically regulated and enforcedby labour laws and can lead to legal consequences and remedies.

Section 186(2) of the Labour Relations Act 66 of 1995 (LRA) defines "Unfair labour Practice"as "any unfair act or omission that arises between an employer and an employee involving-

1. Unfair conduct by the employer relating to the promotion, demotion, probation (excluding dismissals of probationers) or training of an employee or relating to theprovision of benefits to an employee);
2. The unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;
3. A failure or refusal by an employer to reinstate or re-employ a former employee in termsof any agreement; and
4. An occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 on account of the employee having made a protected disclosuredefined in that Act."

In the case of **SAPU obo Louw vs SAPS**[1] (2005) The arbitrator concluded that withholding amerit award from the employee qualified as an unfair practice. This is in contrast to the judgement rendered by a different arbitrator at the same forum a short while ago, who stated that payments of merit awards are not considered unfair labour practices.

Section – 2 (ra) of Industrial disputes Act, 1947 defines Unfair labour practice means any of the practices specified in the Fifth Schedule

The fifth schedule has two parts. The first part refers to unfair labour practices on the part of the employers and trade union of employers and the second part refers to unfair labour practices onthe part of the workmen and trade union of workmen

[1] (2005, 1 BALR 22)

Devendra Kumar C. Solanki v. State of Gujarat and Others[2](2016)

According to the ruling of the Gujarat High Court, the work performed by the affected workerswas equivalent to that of permanent workers, and they spent a comparable number of hours.
However, the worrying wage disparity between permanent and non-permanent employees couldbe seen as unfair labour practices under section 2(ra) of the Act.

I. Unfair labour practices on the part of employers and trade unions of employers:

1. Interfering with, preventing, or coercing workers to exercise their rights to form, join, organise, or support a trade union, or to engage in coordinated activities for collective bargainingor other forms of mutual aid or protection. This includes:

a. threatening to fire or terminate employees if they join a union;

b. threatening to lock out or close the union if one is already established; and

c. awarding wage increases to workers at pivotal times when the union organisations are trying to strengthen their position.

2. To control, obstruct, or provide financial or other support to any trade union. This can bedefined as follows:

a. An employer actively participating in the organisation of a trade union among his employees;

b. An employer exhibiting favouritism or showing preference to one of several trade unions seeking to organise their employees or members, even in cases where such a union is notofficially recognised.

3. to create worker trade unions that are supported by employers

[2] (2016) 148 FLR 266: (2015) 3 LLJ 493: (2016) LLR 272

4. To discriminate against any worker in order to promote or discourage their membership in atrade union. This includes:

a. firing or punishing a worker because he encouraged other workers to form a union;

b. firing or dismissing a worker for participating in a strike (provided that the strike is not considered illegal under this act);

c. lowering a worker's seniority rating due to union activity; and

d. refusing to promote a worker to a higher position due to their union activity.

e. Promoting some employees unfairly in order to create division among their coworkersor weaken the position of their trade union

f. Removing office holders or current union members due to their involvement in the union.

5. To fire or remove employees:

a. Via victimisation;

b. In bad faith, but by lawfully exercising the employer's rights;

c. By falsely accusing a worker in a criminal case based on fabricated or false evidence;

d. For plainly untrue reasons;

e. Based on fabricated or false accusations of absence without leave;

f. Completely disregarding the principles of natural justice when conducting a domestic inquiry, or acting in haste;

g. For minor technical misconduct, without taking into account the specifics of theoffence or the worker's record or service; and so, receiving disproportionate punishment.

6. To stop having workers perform regular tasks and instead assign contractors to complete themin order to terminate a strike.

7. To dishonestly relocate a worker under the pretence of adhering to management policy.

8. To require the signing of a good conduct bond by each individual worker who is on a lawfulstrike before permitting them to return to work.

9. To be partial or exhibit favouritism to a certain group of employees notwithstanding theirmerit.

10. To hire workers as "badlis," casuals, or temporaries and keep them in this capacity for an extended period of time with the intention of denying them the status and benefits of permanent workers.

11. To fire or treat unfairly any employee who reports a problem or provides testimony critical ofan employer in an investigation or legal action pertaining to a labour dispute.

12. To hire workers in the course of an authorised strike.
13. Not carrying out a settlement, agreement, Or award.
14. To use force or engage in violent behaviour.
15. To decline to engage in sincere collective bargaining with the authorised trade unions.
16. Considering or carrying out a lock-out that this Act deems unlawful.

II. <u>Unfair labour practices on the part of workmen and trade unions of workmen:</u>

1. To counsel against, actively promote, or incite any strike that this Act deems unlawful.
2. To force employees to exercise their right to self-organization, to join a union, or to abstainfrom joining any union. This includes:

a. Having a trade union or its members picket in a way that physically prevents non-striking employees from entering the workplaces;

b. Using force or violence, or threatening to use intimidation in connection with a strike against managerial staff or non-striking employees.

3. For an officially recognised union to decline to engage in sincere collective bargaining withthe employer.

4. To engage in coercive actions that go against a negotiating representative's certification.

5. To organise, support, or incite coercive behaviours such as deliberate "go-slow" behaviour, squatting on the job site after hours, or "gherao" of any managerial or other staff personnel.

6. Hold protests in front of managers' housing or the houses of employers.

7. To encourage or engage in deliberate destruction of employer-owned property related to the industry.

8. To use force or violence against any worker or to threaten or intimidate him in order to keephim from showing up for work.

PROHIBITION OF UNFAIR LABOUR PRACTICE:

Unfair labour practices are prohibited under Section 25T of the Industrial Dispute Act of 1947. It also mentioned about the several provisions that employees, employers, and trade union, whetheror not they are registered under the Trade Unions Act of 1926, must comply to. These provisionsinclude:

1. Trade union formation: Indian labour laws protect employees' freedom to organise trade unions and participate in collective bargaining. Employers are required to respect this freedomand permit employees to freely organise unions.

2. Prohibition of discrimination: Employers are not allowed to treat employees differently on the grounds of gender, caste, religion, or any other category. Discrimination can occur in a variety of ways, such as when someone is denied training opportunities, a promotion, or equitable compensation.

3. Protection of union activity: If an employee engages in union activities, employers are notallowed to take adverse action against them. These covers being terminated, demoted, or subjected to any other type of punishment.

4. Bargaining in good faith: To agree on work conditions, employers and trade unions must engage in good faith bargaining. This includes making fair offers, responding to offers promptly,and engaging in sincere negotiations.

5. Compliance with standing orders: Employers are required to follow the guidelines set forth inthe 1946 Industrial Employment (Standing Orders) Act. This includes maintaining standing orders, making copies for employees, and displaying them in a prominent place.

PUNISHMENT FOR COMMITING UNFAIR LABOUR PRACTICE:

Section 25U of the Industrial Disputes Act, 1947 specifies penalties for committing unfair labour practices. The penalties may include:

Fine: if an employer or trade union of employer engages in unfair labour practices, they may befined up to Rs. 5000

Imprisonment: If The employer or the trade union of employers are found guilty for commitingan unfair labour practices then they may be imprisoned for up to six months.

Compensation: If an employer engages in unfair labour practices and causes injury to anemployee, they may liable to pay the compensation to employee.

Reinstatement: Depending on the circumstances, the employee affected by the unfair labourpractice may be returned to work with or without back wages.

VICTIMIZATION:

1. The first situation is when an innocent worker is disciplined for aggravating his employer in any way. For instance, by actively participating in a union of workers that was operating againstthe employer's best interests.

2. The second situation involves an employee who has committed a crime but receives a punishment that is disproportionate to the seriousness of the crime, either because the employeris upset with him or because the penalty is so harsh that it is shockingly out of proportion to thecrime or exceeds what any reasonable employer would be required to impose in the given situation. It would be reasonable to assume that an employee is victimised by being used as a scapegoat by his employer if the person is disciplined for a transgression that someone else committed

WORKMEN OF M/s. WILLIAMSON MAGOR& Co. LTD. V. M/s.WILLIAMSONMAGOR& CO. LTD[3] (1982)

The court ruled that the legislation does not define the term "victimisation" in this particular case. The court cited the Bharat Bank Limited v. Employees of Bharat Bank Limited[4] decision, wherein it was held that an individual is victimised only if they are subjected to an injustice. Thecourt cited the KCP Employees Association, Madras v. Management of KCP Limited, Madras and others[5] case to gain a clearer understanding of the matter. In this case, it was noted that an
industrial law case should be decided in favour of the weaker section, or labour, based on the facts and the law while taking part IV of the Constitution into consideration.As a result, the appeal in this case was granted, and it was held that even though promotion might not be a sine qua non of employment in a private company, it must still be made by management in accordance with the guidelines established as directed, consulting with employees and operatingunder the direction and control of the regional Labour Commissioner.

STATE LEGISLATIONS ON UNFAIR LABOUR PRACTICE:

In India, most of the labour legislations are enacted by the Central Government but apart from this, states have also introduced legislation that governs labour laws. Few state labour laws are :

Bombay Industrial Relations Act ,1946

This Act when it went into effect in April 1946 and it applied to the entire Maharashtra. Itattempts to regulate the provisions and settle the disputes between an employer and its workers. In addition to a few other functions, it controls the interaction between employers and employeesand facilitates the settlement of labour disputes. It is important to incorporate and modernise the laws governing the settlement of labour disputes, regulate employer-employee relationships in specific circumstances, and accomplish several other goals.

[3] AIR 1982 SUPREME COURT 78, 1982 SCR (2) 42

[4] 1950 AIR 188, 1950 SCR 459

[5] 1978 AIR 474, 1978 SCR (2) 608

Maharashtra Recognition of Trade Unions and Prevention of unfair labour practices Act,1971

The Maharashtra Act was the nation's first state-legislated measure of its sort designed to stop unfair labour practices and the victimisation that follows. It was a comprehensive legislative tooldesigned to root out unfair labour practices implemented by trade unions, employees, and employers alike. Chapter VI of the Act is entitled as "Unfair labour practices" .The MaharashtraAct was passed in order to stop unfair labour practices as well as to recognise trade unions.
Section 26 of the Act defines an unfair labour practice as any of the actions specified in Schedules II, III, and IV. The Act's Section 27 prohibits any employer or union from participatingin unfair labour practices with an employee. The procedure for handling complaints pertaining thereto is outlined in Section 28.

With the reference to the Maharashtra Act above, unfair labour practices were identified and regulated for the first time. Nonetheless, with regard to the Industrial Disputes Act, Central Law,unfair labour practices were codified and made enforceable on August 21, 1984, by the Amending Act, 46 of 1982.

The Maharashtra Act's and the Central Act's (the Industrial Disputes Act) laws on unfair employment practices vary to some extent. The Maharashtra Act forbids employers, labour unions, and employees from participating in any unfair labour practices, whereas the Industrial Disputes Act forbids employers, labourers, and trade unions from conducting any unfair labour practices. While the Maharashtra Act stipulates that the involved parties cannot engage in any unfair labour practice, the Industrial Disputes Act prohibits unfair labour practices from being committed.

S.G. Chemical and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Limited and Another[6] (1986). Under Section 28 of the Maharashtra Recognition Trade Unionand Prevention of Unfair Labour Practices Act, 1971, the trade union in this case filed a complaint against the company. The company had announced that it will be closing its Churchgate, Bombay, office. The notice was forwarded to the Bombay Secretary of the

[6] 1986 SCR (2) 126, 1986 SCC (2) 624

Maharashtra Industries and Labour Department. The notification was contested by the union since eighty-four workers had not received their wages. The Labour Court granted the complaint, concluding that the company's closure was unlawful and the employees' service terminations constituted an unfair labour practice. The company was mandated to compensate its workers.
Employees whose employment was terminated due to an illegal closure will remain employed bythe company and are eligible to receive their entire salary as well as additional perks.

The Industrial Relations Act of Madhya Pradesh, 1960

The Act was came into force in 1960. According to this Act, an employer is not permitted to punish any of his workers for engaging in lawful trade union activity like lockouts or strikes. TheAct establishes guidelines for resolving labour disputes and governs some aspects of the relationship between employers and employees.

UNFAIR LABOUR PRACTICE AND CONSTITUTIONALITY:

To be considered as an unfair labour practice, an act must exhibit elements of arbitrary and unreasonableness; if this is proven, the Indian Constitution's Article 14 will be invoked to protectthe fundamental right. In the case **of Durgapur Casual Workers Union v. Food Corporation of India**[7] (2015) regularisation workers had worked on a contract basis in the Modern Rice Mill of the Corporation, which closed down in June 1991, and were directly employed by the Corporation as casual workers on a daily wage basis at its Food Storage Depot. The CIDT found that continuous casualization of workmen's employment was an unfair labour practice and according to the principle of social equity, an order of absorption should be imposed on the FoodCorporation Management. Consequently, it was ordered that 49 casual workers should be absorbed by the Management of the Food Corporation. The judgment of the CIDT was upheld bythe single bench of Calcutta high court, but was later annulled by the Division bench due to backdoor nominations and violation of Article 14 and 16 of Constitution.

It is important to note that even if there is no unfair labour practices, the Labour Courts cannot grant regularisation relief to a worker just because he or she has worked as a daily wage worker,an ad hoc worker or a temporary worker for several years.

[7] 2015 AIR SCW 25, 2015 (5) SCC 786

L.H. Sugar Factories and Oil Mills Limited v. Its Workmen[8](1961)

In this case, the court decided that the term "unfair labour practices" cannot have a generaldefinition; rather, its meaning must be determined by the specific facts of each case.

Furthermore, it is impossible to create a comprehensive criterion to identify whether a certain conduct qualifies as an unfair labour practice or not. The sole fundamental rule that would applyis that anything that violates Article 43 of the Constitution is unambiguously unfair labour conduct.

JUDICIAL DECISION:

1. **Regional Manager, SBI v. Mahatma Mishra**[9] (2006)

The respondent's employment was terminated before to the completion of his 88-day temporary appointment in 1982. The Labour Court determined that this case was under the purview of unfair labour practices because the defendant was hired on May 3, 1982, and their employment was terminated on September 3, 1982. The Labour Court held that the employee's termination was permanent in character, given that he was hired on May 3, 1982, and his work ended on September 3, 1982. Furthermore, the management was found to have disclosed unfair labour practices.

In addition, the Labour Court determined that the respondent had not received written notice of the termination of his employment, which made the action unlawful in accordance with the 1947 Industrial Disputes Act.

2. **General Labour Union (red flag) Bombay v. B.V. Chavan and others**[10](1984)

Under the Industrial Dispute Act, the trade union in this case filed two complaints against the company, claiming that they had implemented lockouts and unfair labour practices. Following consideration of the arguments put forth by both sides, the Supreme Court determined that the company's closure was appropriate because it had been losing money for some time, there was

[8] AIR1962ALL70, [1961(2) FLR421]

[9] 2006 AIR SCW 5957, 2007 (1) AIR JHAR R 836

[10] 1985 AIR 297, 1985 SCR (2) 64

no chance of turning the company around, it could not carry on with its industrial operations onthe property, and the employer had a sincere desire to close the business. Since the business hasnot engaged in any unfair labour practices, the allegations were dismissed.

3. **Eveready Flash Light Company v. Labour Court Bareill**[11] (1961)

On January 18, 1958, the company hired a worker on a daily wage basis after giving him four days of trial. He was placed on probation on April 12, 1958, with the possibility of an additional six months at the company's discretion. On September 9, 1958, he was chosen to join the union'sworking committee.

The management gave him a notice of caution on September 10th, stating that he had not

improved his job despite several warnings. On October 11, the warning was issued once more. On November 21, 1958, his employment was terminated. The labour court dismissed the union's industrial dispute, ruling that there was no basis for placing the worker on probation following his trial and that the purpose of the probationary period, as stated in the letter dated April 12, wasto postpone his appointment as a permanent employee. A petition filed with the Allahabad High Court was preferred by the firm. According to the ruling, an employment contract that gives the employer the arbitrary authority to control an employee's chances of being promoted permanently and eventually deprive them of such opportunities would be considered an unfair
labour practice. The view point was made that an employer could be found guilty of unfair

labour practices for just one employment contract, and that multiple transactions are not requiredfor the employer to be found guilty of such practices.

4. **Sports Authority of India v. Labour Commissioner, Delhi Administration** (2014)

Chowkidars, security guards, and watch and ward staff are all regularly employed. Regularemployees like watchmen, guards, and chowkidars are employed by the Sports authority of
India. The role of watch and security guards requires the employment of a sufficient number offull-time employees. The major employer, the Sports Authority of India, has been consistently involved in unfair labour practices as specified under the Industrial Disputes Act 1947's Fifth Schedule, as well as contract labour laws.

[11] AIR1962ALL497, [1961(2) FLR598], (1961)IILLJ204ALL

CONCLUSION:

The Industrial Disputes Act of 1942, which is the basic law governing the investigation and resolution of all labour disputes, was revised in 1982 and now contains boundaries against unfair labour practices by employers, employees, and their respective trade unions. Another significant state law that provides workers with essential legal protections from being victimisedand persecuted by their employer and guards against other unfair labour practices is the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

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