

## Labour Welfare Measures for the Protection of Labour: A Legal Perspective

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### Abstract

From the time immemorial, a constant struggle has been going on between labour and capital. In fact, the history of labour struggle is nothing but a continuous demand for fair return to labour expressed in different forms, e.g., (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and other benefits. Labour is necessarily dynamic and has been interpreted in different ways from country to country depending upon from time to time and even in the same country according to social institutions, degree of industrialisation and general level of social and economic development. Labour welfare constitutes the provision of service facilities, amenities as it helps in creating healthy and congenial environment. The Government of India evinced interest in the welfare programmes introduced for labour in their ordinance, ammunition and other factories engaged in production.

**Keywords:** Labour, Act; Welfare; Government.

## INTRODUCTION

The concept of Labour is necessarily dynamic and has been interpreted in numerous ways from country to country depending upon from time to time and even in the same country per social institutions, degree of industrialisation and general level of social and economic development. Thus, the concept of welfare will be approached from various angles as it may be a relative concept and also related to time and place and change with the economic and scientific advancement of the country. It connotes a condition of well-being, happiness,

satisfaction, conservation and development of human resources. Labour welfare constitutes the supply of service facilities, amenities because it helps in creating healthy and congenial environment. The State had to intervene using its persuasive powers by enforcing legislation. So as to simply accept the financial burden on account of welfare activities and amenities a matter of paternalistic approach to labour instead of a recognition of workers needs. The govt. of India evinced interest within the welfare programmes introduced for labour in their ordinance, ammunition and other factories engaged in production. The necessity of labour welfare work in India was emphasised in the Constitution of India on the idea of Directive principles of State Policy.

## IMPORTANCE OF LABOUR WELFARE IN INDIA

Labour welfare is plays significant place from three different points of angles. From humanitarian

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point of view, the economic labour should tend certain facilities and amenities. because the worker plays a very important role in the present day industrilisation and he's the key of production which will active member moves the wheal of the machines but also living resources of production.

From economic point of view, labour welfare is crucial because the efficiency of labour and productivity mainly depend on welfare facilities within the production either in agriculture or industry or in other sectors. The importance of labour welfare works has been increasingly in various countries of the globe. The welfare activities are largely introduced for the organized labour as they're employed in industrial sector yet as within the industrially advanced countries. As regards India and other underdeveloped countries like Bangladesh, Sri Lanka where the labour is in abundance, labour-intensive schemes are mostly utilized in the industry and therefore the agriculture; and his living and working conditions are very bad and not satisfactory; the welfare works within the interest of labour classes automatically become rather more important in these countries as compared to advanced countries.

The workers in India have to add the factories, sometimes within the adverse conditions for long hours and don't receive sufficient safety measures against disease, accident, maternity and disability. However, labours are migrated from the villages, separated from the families and shifted within the big cities in strange and uncongenial environment; they easily become the victims of drinks, prostitution, gambling and other social evils. Labour welfare schemes can provide them security against different evils. The importance of social service is therefore, greater in India than within the western countries. It's no doubt as regards the psychological effects of welfare measures within the atmosphere of the factory and maintenance of commercial peace.

Labour welfare schemes can also helpful in reducing labour turnover and absenteeism and improve workers' health and efficiency. However it's to be noted that education and training may prompt them to be the nice citizens of the country. The labour welfare schemes raise the efficiency of workers and put into them a replacement spirit of self-relaliation and consciousness. it's rightly admitted that "welfare work should be considered wise investment instead of a barren liability by the employers."

The govt of India evinced interest within the welfare programmes of labour during the Second

warfare. The schemes of labour welfare in their ordinance, ammunition and other factories engaged in war production. The services of reputed labour leaders were availed for advising government on important aspect of the workers' life. the need of labour social service in India was emphasized within the constitution of India supported the Directive principles of State Policy.

The State shall within the boundaries of its economic capacity and development, make effective provision for securing the correct to figure, education and public assistance in cases of unemployment, old-age, sickness and disablement and in other cases of undeserved want. The State shall make provision for securing just and human conditions of labour and for maintaining relief. The State shall to secure by suitable legislation or economic organisation to all or any workers, agricultural, industrial work, a earnings, conditions of labor ensuring a good standard of life and financial condition of leisure and social and cultural opportunities . The Labour welfare activities carried on by the subsequent factors:

- In making the service in mills attractive to the workers;
- To create a permanent settled labour force;
- To reduce labour turnover and absenteeism;
- Improve the efficiency of workers;
- Improving the relations between employer and employees.

Besides above, the subsequent are a number of the benefits of the welfare activities for the nice importance.

1. So as to boost the physique for the availability of canteens, where cheap, clean and balanced food is out there to workers.
2. The health of the workers and their families bring down the rates of maternal and morbidity.
3. The mental efficiency and economic productivity also increase the tutorial facilities.

Thus, the social service has been recognized by all because it is now considered as integral a part of industrial management all told countries. It increases the productive efficiency of the workers and infuses in them a replacement spirit of self-realisation and consciousness. Labour work tends to inculcate outlook on the a part of the employers and workers.

Working hours, conditions of working, safety, insurance, housing, rest rooms, canteens, crèches,

wash places, toilet facilities, lunches, cinemas, theatres, music, reading rooms, holiday rooms, worker's education, co-operative stores, excursions, playgrounds and scholarship and other help for education of employee's children. Payment of Wages Act, 1936, The Merchant Shipping Act, 1958, The Motor Transport Worker's Act, 1961, The Beedi and Cigar Workers' Act, 1966 and Contract Labour Regulation and Abolition Act, 1970 are basic enactments which contain elaborate provisions for safeguarding the health and safety of workers inside the workplace and for providing for their welfare.

#### (a) *The Factories Act, 1948*

The State regulation of the working conditions in factories in India started only in 1881 when the first Indian Factories Act was passed. Prior to this enactment the government had a policy of non-interference towards labour. Therefore, the Factories Act (1881) was the government's first step to safeguard the interest of the workers.

In *Triveni K.S. and Others vs. Union of India and others*,<sup>1</sup> the Constitutionality of Section 66 (1) (b) was challenged being discriminatory on the basis of sex. The High Court held that women should not be employed during night for their own safety and welfare was a philosophy of a bygone age out of tune with modern claims of equality, especially between sexes. With regard to exception given to fish currying and canning industry, it was observed that it looked an absurd argument that women would be safe in such industries but not safe in the textile industry. Consequently Section 66(1)(b) of the Act was struck down unconstitutional by the High Court and declared that the same safeguard as provided women in fish industry should be given to women workers in others industries during night time.

#### (b) *The Workmen's Compensation Act, 1923*

The Act was established in 1923 with the three things (a) that the injury was the result of an accident with his employment (b) that the employer was somehow responsible for the accident (c) the amount of compensation due to his injury. The workmen were entitled to compensation from the employer in case of personal injury caused by accident arising out of and in the course of employment with certain reservations relating to the duration of incapacity and negligence of workman himself. The amount of compensation was mainly dependent on the incapacity or disability of workmen.

In a case between *T.N. Sitharama Reddiar vs. A.*

*Ayyaswami Gounder*<sup>2</sup>, the owner of the land employed a gang of diggers to deepen a well situated over his field. A worker was injured by explosion of dynamite used for digging operation. He lost his three fingers of left hand and one of his arms was amputated up to his elbow. The injured person was held to be a workman within the meaning of section 2(1) (n) and Schedule II, clauses (15) and (16) of the Act and entitled to compensation.

#### (c) *The Mines Act, 1952*

Legislation for mining industry started with the aim of regulating labour conditions and safety in mines. These Acts were amended from time to time with a view to re-enforcing and were passed in 1952. The earlier Mines Act of 1923, the working hours were fixed at 60 for the workers above ground and 54 for underground workers. The weekly working hours for all categories of workers were 54 in a week or 9 per day. Elaborate provisions have been made in the Act for safeguarding the death and safety of workers and promoting the welfare. Every mine is required to make arrangement for supply of wholesome drinking water to workers, maintaining first-aid boxes, construct required number of latrines and urinals and maintain first-aid room with suitable equipments. Since it paid more attention to safety measures and provision of medical facilities in the nature of first-aid rather than comprehensive medical aid to workers.

In a case *M/s. Vedanta Aluminium Limited vs. Unknown*<sup>3</sup>, it has been observed that only building and other construction work in relation to a factory or mines have been excluded. Therefore, as this Act only excludes building or other construction work to which the provisions of the Factories Act and the Mines Act shall apply. This Act further intended to exclude a factory under construction and in the process of being established, even before it is registered and commences its manufacturing process. Thus, the provisions of the Factories Act can only apply to the petitioner's establishment after it is registered as a factory and commences manufacturing process for generating transforming or transmitting power. The construction works in relation to generation, transmission and distribution of power within the fold of the BOCW Act, is the plea of the petitioner and the construction of its Independent Power Plant for generation of 2400 M.W. of Thermal Power, which requires prior approval and permission under the provisions of the Factories Act and Orissa Factories Rules would be excluded from the application of this Act is erroneous and misconceived.



**(d) The Plantations Labour Act, 1951**

It makes the provision for the health and welfare of the plantation workers. The need for provision of housing, medical aid, recreational and educational facilities required in accordance with the rules framed by State Governments. The workers are entitled to sickness allowance and maternity allowance under the prescribed conditions. The planters, are employing more than 150 workers are required to provide and maintain canteens. The crèches are to be maintained in plantations where more than 50 women workers are employed. The employers are required to make effective arrangements for supply of wholesome drinking water and protective clothing to the workers. Welfare officers are to be appointed where more than 300 workers are employed subjected to the state government rules. Tea, coffee, rubber and cinchona plantation, measuring 10,117 hectares or more is covered under this Act has since been extended to the cardamom plantations in Tamil Nadu and Kerala. The Act further lays emphasis on the medical care of workers and their families. Rules prescribed the State Governments; workers covered under this Act are eligible for cash benefits in sickness and maternity.

**(e) Employee's provident fund Scheme, 1952**

The EPF Act is now basically applicable to factories / enterprise which have completed three years existence and fall within 177 allocated industries employing 20 or more workers. From the date of set-up factories Act will be applicable of a period of 3 years. The benefits to the subscribers may include advances from P.F., Financing of life insurance policy, house construction, unemployment relief, sickness, marriage and education of children.

In *Noor Niwas Nursery Public School vs. Regional P.F. Commissioner*<sup>4</sup> it has been held that a common management ran a higher secondary school as well as a nursery school by which only four employees in all. The school had different interests, maintained separate and independent accounts managed by two different committees, they claimed that since the appellant was a separate establishment was not covered by the provisions of E.P.F. and M.P. Act, 1952. The respondent on the other hand contended that an inspector visited the school to make enquiries he was not only given the particulars of the higher secondary school but also of the nursery school. On the basis of this information the Commissioner had held these two institutes constituted one and the same establishment come within the purview of the Act. However, the Supreme Court held that where

an establishment consists of different department or has branches or different place situated shall be treated as parts of the same establishment. The link between the two cannot be ruled out.

**(f) Employment Exchange (Compulsory Notification of vacancies) Act, 1959**

This Act provides for the compulsory notification of vacancies to employment exchanges. It was enacted on the recommendations of the Training and Employment Services organization committee set up in 1952. Thus the employers should be required on a compulsory basis to notify the employment exchanges all vacancies other than vacancies proposed to be filled through promotion. (ii) On the other hand, employer should also be required on a compulsory basis to render to the employment exchanges staff strength returns at regular intervals. The Act further recommended that the measure of compulsion suggested may be embodied in suitable legislation.

In *Employment Officer, Employment Exchange, Kerala vs. Abdul Nagar*<sup>5</sup> the Supreme Court held that on a requisition of Superintendent of Post offices, Employment Exchange sent nine names for the post of Extra Departmental Branch Post Master. The names were sent as per seniority of registration. Last person whose name was sent was registered on 31.12.1986 however respondent was junior in as much as he was registered on 16.5.1988. He challenged non-sending of his name as arbitrary and Central Administrative Tribunal allowed his claim. Moreover, the Supreme Court set aside the said order of the Tribunal and observed that there was nothing arbitrary or illegal about the method of forwarding the names of candidate for consideration in respect of a notified vacancy.

**(g) Equal Remuneration Act, 1976**

As per Article 39 (d), Parliament has enacted the Equal Remuneration Act, 1976. In *Randhir Singh vs. Union of India*<sup>6</sup> the Supreme Court has held that the principle of 'Equal pay for equal work through not a fundamental right' is certainly a constitutional goal capable of enforcement through constitutional remedies under Article 32 of the Constitution. This Act is applicable in case of persons employed on a daily wage basis. Persons who are entitled to the same wages as other permanent employees in the department employed to do the identical work.<sup>7</sup>

**(h) Apprentices Act, 1961**

Apprentices Act were governed by the standing provisions contained in the Model Standing Orders

framed under the Industrial Employment (Standing Orders) Act, 1946. Under this Act, employers in specified industries are obliged to train a certain number of apprentices for designated trades according to prescribed national standards. The trade or occupation or any subject field deals with engineering or technology or vocational course as applicable by the central Government which is further amended by the Apprentices (Amendment) Act, 1997.

It has been held that *Babu Lal S/o. Sri Heera Lal vs. Rajasthan State Road Transport Corporation*<sup>8</sup> apprentices are only trainees and not workers. They cannot claim any benefit under provisions of I.D. Act seeking absorption in employment as executed by petitioners did not provide for absorption of petitioners in employment of respondents after period of their apprenticeship was completed. Moreover, they cannot claim any relief to absorb them in employment of respondents.

**(i) The Employees' State Insurance Act, 1948**

The recommendations on the adoption of a health insurance scheme were not accepted by the government of India on account of financial difficulties. The ESI Scheme started with a coverage of about 1.20 lakh industrial workers in Kanpur and Delhi and has continued to progress over all these years. As on March end 2009, 1.29 cores insured persons covering 5.20 crore beneficiaries are covered under ESI scheme. ESI Corporation provides medical care, either through its own Employee's State Insurance Hospital or through reservation of beds in State Government hospitals.

The Supreme Court of India and several High Courts have played a vital role in the socio-economic reconstruction of the society as the Constitution of India guarantees fundamental right to every citizen that include right to life and the Supreme Court also point out that the right to livelihood is inherent in the right to life. Article 21 of the Indian Constitution guarantees right to life and the Supreme Court has laid down in the cases like *Olga Tellis vs. Bombay Municipal Corporation*<sup>9</sup>, that the right to livelihood is inherent in the right to life under Article 21. The ultimate object of social security is to ensure that everyone has the means of livelihood. It follows, therefore, that the right to social security is also inherent right in the right to life.

**(j) Bonded Labour System (Abolition) Act, 1976**

The Bonded Labour System (Abolition) Ordinance 1975, was promulgated by the President on the 24th October, 1975 with the objective bonded labour

system was abolished and the bonded labourers were freed and discharged from any obligation to render any bonded labour and their bonded debts were also extinguished. Contraventions of the provisions of the Ordinance have been made offences punishable in accordance with law.

For abolition of bonded labour, in a case between *Neeraja Choudhary vs. State of M.P.*<sup>10</sup> the bonded labourers must be identified and released and on release they must be suitably rehabilitated. Any failure on the part of the State Government in implementing the provisions of the Bonded Labour System (Abolition) Act, 1976 would be violative of Articles 21 and 23 of the Constitution of India.

**(k) Child Labour (Prohibition and Regulation) Act, 1986**

Child has been defined under the Act as a person who has not completed his 14th year of age. Act, 1986 repealed the Employment of Children Act, 1938 which provided for regulation of the terms and conditions of employment as well as the working conditions admissible to child labour. Employment of children below the age 14 years and 15 years in certain specified employment including the engagement of children in certain occupations and processes which are considered unsafe and harmful to child workers who are of tender age and aims at regulating the conditions of work of children.

In a PIL filed by the *M.C. Mehta vs. State of Tamil Nadu*<sup>11</sup> Supreme Court gave certain directions in the matter of employment of child labour and discontinuation of the same. These directions include payment of compensation of Rs. 20,000/- per child if employment is illegal, providing of education to the responsibility of employer, obligation of the State in the matter, working hours of child labour in non-hazardous jobs creation of welfare fund and so on.

**(l) Trade Union Act, 1926**

The history of Trade Union movement was came into existence during 1890 when the Bombay Millhands Association was formed. The industrial unrest and economic discontent led to a number of strikes by workers, guided and controlled by the action committees consisting of representatives of workers themselves. On different occasions, these strikes were successful because the demand of workers fulfilled. The success of the strikes, uprising of labour consciousness and establishment of International Labour Organisation in 1919 influenced the growth of Trade Union movement in India. The Trade Union provided for registration

fulfilling the various specified requirements imposed no obligation to recognize or deal with it as it was a registered one. Compulsory recognition is required for trade unions by employers. The Labour Court appointed which was decided concerning the dispute. The executive of recognized trade union is entitled to negotiate with the employer in respect of matters connected with the employment, non-employment, terms of employment, conditions of work of all or any other acts were declared to be unfair practices from the point of trade and certain others for the employers.

The Supreme Court observed in *Newspapers Ltd. vs. State of Industrial Tribunal U.P.*<sup>12</sup> an individual dispute cannot per se be a trade dispute as it is caused by a Trade Union or by a substantial number of workmen.

#### **(m) The Maternity Benefits Act, 1961**

The Mines Maternity Benefit Act, 1941, the Employees' State Insurance Act, 1948, and the Plantations Labour Act, 1951 were among the Central Act which had provided maternity benefit to women workers better and more far-reaching benefits. The State Acts lost their importance because of the Central Act adopted on a gradual basis.

The Supreme Court of India, in case of *Dhanwatey vs. Commissioner of Income Tax*,<sup>13</sup> has formulated that the law is a social mechanisms to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. The Maternity Benefit Act has been of great value in social justice oriented welfare state in securing adequate rest and financial assistance to factory women workers. Maternity Act gives a special protection to the women and increase the dignity of motherhood.

#### **(n) Beedi and Cigar (Conditions of Employment) Act, 1996**

The aim of the Act is to regulate the working and service conditions of the beedi workers and related measures. This Act obligates the employer to hold a valid license to use any place or premises as industrial premises.<sup>14</sup> It also provides for cleanliness, ventilation and prohibits overcrowding of the premises.<sup>15</sup> The Act Provides for arrangement sufficient supply of wholesome drinking water<sup>16</sup> and also other welfare measures like sufficient latrine and urinal accommodation, washing facilities, creches, first aid and canteens.<sup>17</sup> It provides for working conditions such as working hours, wages for overtime, interval for rest, spread

over in any day and weekly holidays, substituted holidays etc.

#### **(o) The Indian Dock Workers Act, 1948**

This Act is to regulate the working conditions of dock workers employed in the vicinity of port on work. The act covers "any person employed or to be employed in or in the vicinity of any port on work in connection with the loading, unloading, movement of storage of cargoes or work in preparation of ships or other vessels for the receipt or discharge of cargoes leaving port".

#### **(p) Contract Labour (Regulation and Abolition) Act, 1970**

Contract Labour (Regulation and Abolition) Act, 1970 was enacted not only to regulate the contract labour but also to abolish it. To lessen their burden and to avoid liability towards regular employees, employer devised a Scheme of getting their work done through contract workers. Contract labour which forms a unorganised sector of employment were Subjected to lot of discriminations and expenses. Contract Labour Act came to mitigate their sufferings and to regulate their employment.

In a case of *Secretary State of Karnataka and Ors. v. Umadevi and Ors*<sup>18</sup> it was held that under the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment.

#### **(q) Payment of Gratuity Act, 1972**

The Payment of Gratuity Act, 1972 is applicable to factories, mines, oil fields, plantations, ports, railways, motor transport undertakings, companies, shops and other establishments. The Act provides for payment of gratuity at the rate of 15 days wages for each completed year of service subject to a maximum of Rs. 3,50,000/- In the case of seasonal establishments, gratuity is payable at the rate of seven day's wages for each season. The Act does not affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. Gratuity is a reward for long and meritorious service in a Landmark judgement the *Bombay High Court observed that Bombay Union Dyeing and Bleaching Mills vs. Narayan*



*Tukaram More (1980)*<sup>19</sup>

**(r) Workmen's Compensation Act, 1923**

Workmen had raised their demand for the payment of compensation in 1884 and 1985. This Act came into existence in July 1924. According to this Act, Workmen's Compensation designed to meet the contingency of invalidity and death of a worker due to an employment injury or an occupational disease specified under the Act and is at the sole expense of the employer.

**(s) Payment of Bonus Act, 1965**

The main objective of the Act is to provide for the payment of bonus to persons employed in certain establishments and for matters connected. The Act extends to the whole of India and applies to all factories covered under the Factory Act, 1948 and the establishments in which twenty or more persons are employed on any day during the accounting year.

In *M/s. K.K. Mohd. Hanif vs. Jhansi Bidi Mazdoor Union*<sup>20</sup> it has been held that certain persons engaged by the petitioner concerned for packing of bidis and they had the option to work in the factory or not but they worked under the control and supervision of the petitioner. It was held that the packers who were claiming payment of bonus did not constitute casual, heterogeneous, miscellaneous and irregular group but were regularly working as packer in the premises of the petitioner. Thus, they are employees of the petitioner within the meaning of the Bonus Act since on those days on which they did work they worked under the control and supervision of the petitioner. Section 22 of the Payment of Bonus Act clearly applies to a dispute of this kind.

**(t) Payment of Wages Act, 1936**

The purpose of laying down a machinery for evolving a proper wage structure is defeated if malpractices in the payment of wages cannot be checked. The Royal Commission on Labour observed that unfair deductions are made at the time of payment of wages labour. The main purpose of the Act is to ensure regular and prompt payment of wages and to prevent the exploitation of wage earners by prohibiting arbitrary fines and deduction from wages. The Act is applicable in case of workers employed in construction industry, civil air transport services, motor transport services, mines plantation, oil fields, docks, wharfs or jetties and establishments declared as factories under section 85 of the Factories Act, 1948.

In case of *S.R.T. Corporation vs. Industrial Court*<sup>21</sup> it was held that anything agreed to be paid in kind capable of being expressed in terms of money and paid in coins or currency will come within the ambit of Section 6.

**CONCLUSION**

Indian judiciary has played significant role in the enforcement and interpretation of labour welfare laws. It has adopted new methods and devised new strategies for the purpose of providing access to justice to weaker sections of society who are denied for their basic rights and to whom freedom and liberty have no meaning. Indeed the court assumed the role of protectionist of the weaker by becoming the courts for the poor and struggling masses of the country. The courts have also enlarged the contours of the fundamental rights and thereby gave new dimensions to employment, bonded labours, right to health through public interest litigation etc.<sup>22</sup>

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