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LABOUR LAWS BACKGROUND

INTRODUCTION TO LABOUR LEGISLATION

Law is an instrument to control, restrain and guide the behaviour and courses of action of individuals and their groups living in a society. Law is a dynamic concept. It changes with the growing needs of the society – developments in the field of technology, economy, and other spheres of society influence it. Law is also a universal phenomenon, having presence in all the societies of the world. Law is like the sun. The sun caters to the physical needs; law caters to the social and cultural needs. No walk of life, especially business and industry, can escape from law.

Judicial creativity and its expanding horizon have to be kept in view while studying labour laws. Our efforts should be understanding, appreciating, analysing than just traditional parroting of sections and sub-sections. We must assimilate the spirit of labour laws and not just follow it in letter.

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Industrial Revolution and the Need for Labour Legislations

Industrial Revolution is an epoch-making event, which completely changed the lifestyles of society from agricultural and pastoral to industrial one.

Every society on its onwards march revises, reviews, refurbishes and reinvents its legal concept and civilised ways of living. The changes brought about by the industrial revolution created some gaps, which forced society to invent a special class of legislation, known as Labour Legislation.

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Factors Influencing Labour Legislations

Early Exploitative Industrial Society

The origin of labour legislation lies in the excesses of the early industrialism that followed Industrial Revolution. The early phase of industrialisation in the capitalist countries of the world was an era of unbridled individualism, freedom of contract and the *laissez-faire*, and was characterised by excessive hours of work, employment of young children under very unhygienic and unhealthy conditions, payment of low-wages and other excesses. The conditions of life and labour in the early periods of industrialization in India were extremely rigorous – hours of work were excessive, and the industrial labour drawn from the rural areas was severely exploited.

Naturally, such excesses could not have continued for long without protest and without demand for reforms. Therefore, it can be safely said that the labour legislations are the natural children of industrial revolution.

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Impact of Contemporary Events

- a. Along with Industrial Revolution, revolutionary thinking of Rousseau, J.S. Mill, the French Revolution, Hegel. Marx & Engels and Russian Revolution greatly influenced the thought processes and hastened the pace of labour jurisprudence.
- b. The world wars made it possible for the labourers to realise their importance that unless they produce, it will be difficult for warring nations to win.
- c. The revolution in science, technology, the communication and telecommunication also helped in bringing the world closer.

The Growth of Trade Unionism

The Trade Union movement, which itself springs from industrial revolution has been another factor which has quickened the growth of labour legislations.

Political Freedom End of Colonial Rule and Extension of Adult Franchise

Gradual extension and adoption of universal adult suffrage placed in the hands of the working class, a powerful instrument to influence the cause of state policy.

Rise of Socialist and Other Revolutionary Ideas

In his analysis of capitalism, Marx showed that the exploitation of labour was inherent in the capitalist economic system. Therefore, he advocated the overthrow of capitalist system. They readily grasped labour legislations as antidote to the spread of revolutionary ideas.

The Growth of Humanitarian Ideas and the Concept of Social Welfare and Social Justice

The humanitarian ideas and role of humanitarians, the philanthropic and social reformers influenced the shape of labour legislation. Early Factories Acts were made possible because of the efforts of the humanitarians like Hume, Place, Shaftesbury and others.

Researches in Social Sciences like Sociology, Psychology and Anthropology exploded the myth of the natural elite and gave a powerful push to the movement of social reforms, social change, social justice and labour legislations.

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Establishment of I.L.O.

ILO, through Conventions and Recommendations, has undertaken the task of creating international minimum standards of labour, which constitute the International Labour Code. They cover a wide range of subjects including wages, hours of work, annual holidays with pay, minimum age of employment, medical examination, maternity protection, industrial health, safety and welfare, social security, freedom of association, right to organise and bargain collectively, employment conditions of seamen and employment.

Influence of Colonial Rule

Most of the early labour legislation came into being because of the pressure from the manufacturers of Lancashire and Birmingham; because labour employed in factories and mills in India were proving very cheap in comparison to their British counterparts. No doubt, these legislations were beneficial to Indian labour but this benefit was incidental to the main purpose i.e. the protection of the interests of British Capitalists.

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The Struggle for National Emancipation and Adoption of Indian Constitution

The Industrial Workers got support from the freedom struggle and nationalist leaders who made tireless efforts to get protective labour legislations enacted. The Indian Trade Unions Act, the appointment of Royal Commission on Labour etc. was because of pressure from freedom struggle.

The leaders of the national movement had promised the establishment of a better and just social order after independence; which was ultimately embodied in the Preamble, Fundamental Rights and Directive Principles of State Policy of the Indian Constitution.

Repressive Labour Laws were replaced by Progressive Labour Laws.

Approach to Labour Law and Labour Relations

Labour law seeks to regulate the relations between an employer or a class of employers and their employees. There has been a remarkable change in the approach to Labour Law and industrial relations since the World War II. Philadelphia Charter adopted in 1944 provided that “Labour is not a commodity” and that “poverty anywhere is a danger to prosperity everywhere”.

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The Nature of Labour Legislations

1. The labour legislations are the products of Industrial Revolution and they have come into being to take care of the aberrations created by it.
2. Labour legislation regards individuals as workers, whereas the general legislation regards him a citizen.
3. Labour legislation seeks to deal with problems arising out of occupational status of the individual. Consequently, such problems as hours of work, wages, working conditions, trade unions, industrial disputes etc. come to be the main subject matter of labour legislations.
4. Individuals have different roles to perform and different laws are designed for regulating the different roles.
5. As labour legislations are to regulate the conditions of labour in the industrial milieu, it is required to be adjusted as per the changing requirements of industry.
6. - Not only contractual obligations, but beyond it by creating new rights and obligations.
 - Labour Law can operate along with General Law. A 'theft' can be dealt by
 - Labour Law as well as IPC and No jurisdiction of civil courts

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Principles of Modern Labour Legislation

In the British colonial rule in India, a few labour laws such as the Tea District Emigrant Labour Act, 1832 and Workmen's Breach of Contract Act, 1859 were enacted to serve the interests of the employers and were repressive in character. Similarly, the Assam Labour Emigration Acts 1863-1901 declared desertion of tea gardens in Assam without staying for the prescribed period and without permission, a punishable offence. Examples of repressive labour laws are available in other countries as well.

Principle of Protection

The principle of protection suggests enactment of labour legislation to protect those workers who are to protect their interests on their own and also workers, in particular industries against the hazards of industrial process.

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Principle of Social Justice

The principle of social justice implies establishment of equality in social relationships. It aims at removing discrimination suffered by particular groups of labour. History is replete with examples where certain groups of society or labour have been subjected to various sorts of disabilities as compared to other groups or workers in general.

Principle of Regulation

The principle of regulation generally seeks to regulate the relationships between the employers and their associations, on the one hand, and workers and their organisations, on the other. As the relationships between the two groups have repercussions on the society.

Principle of Welfare

Although the protective and social security laws have the effect of promoting labour welfare, special labour welfare or labour welfare fund laws have also been enacted, with a view to providing certain welfare amenities to the workers, and often to their family members also.

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Principle of Social Security

Generally speaking, the principles of social security may be considered to be a part of the principle of welfare, but in view of its special connotation, it is desirable to keep it under a separate category. In industrial societies, income insecurity resulting from various contingencies of life such as disablement, old age and death and others, has become a serious problem.

Principle of Economic Development

Labour laws have also been enacted keeping in view the need for economic and industrial development of particular countries. Improvement of physical working conditions, establishment of industrial peace, provision of machineries for settlement of industrial disputes etc. These areas are covered under different pieces of labour laws.

Principle of International Obligation

This principle postulates enactment of labour laws with a view to giving effect to the provisions of resolutions, adopted by international organisations like ILO, UN and other similar bodies.

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Objectives of the Labour Legislations

1. Establishment of justice - Social, Political and Economic.
2. Provision of opportunities to all workers; irrespective of caste, creed, religion, beliefs; for the development of their personality.
3. Protection of weaker sections in the community.
4. Maintenance of Industrial Peace.
5. Creation of conditions for economic growth.
6. Protection and improvement of labour standards.
7. Protect workers from exploitation.
8. Guarantee right of workmen to combine and form association or unions.
9. Ensure right of workmen to bargain collectively for the betterment of their service conditions.
10. Make state interfere as protector of social well being than to remain an onlooker.
11. Ensure human rights and human dignity.

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The Classification of Labour Legislations

On the basis of specific objectives, which it has sought to achieve, the labour legislations can be classified into following categories:

1. Regulative
2. Protective
3. Wage-Related
4. Social Security
5. Welfare both inside and outside the workplace

The Regulative Labour Legislation

The main objective of the regulative legislation is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes.

- ❖ The Trade Unions Act, 1926
- ❖ The Industrial Disputes Act, 1947
- ❖ Industrial Relations Legislations enacted by states of Maharashtra, MP, Gujarat, UP, etc.
- ❖ Industrial Employment (Standing Orders) Act, 1946.

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The Protective Labour Legislations

Under this category come those legislations whose primary purpose is to protect labour standards and to improve the working conditions. Some of these are the following:

- ❖ Factories Act, 1948
- ❖ The Mines Act, 1952
- ❖ The Plantations Labour Act, 1951
- ❖ The Motor Transport Workers Act, 1961
- ❖ The Shops and Establishments Acts
- ❖ Beedi and Cigar Workers Act, 1966

Wage-Related Labour Legislations

Legislations laying down the methods and manner of wage payment as well as the minimum wages come under this category:

- ❖ The Payment of Wages Act, 1936
- ❖ The Minimum Wages Act, 1948
- ❖ The Payment of Bonus Act, 1965
- ❖ The Equal Remuneration Act, 1976

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Social Security Labour Legislations

They cover those legislations, which intend to provide to the workmen, social security benefits under certain contingencies of life and work.

- ❖ The Workmen's Compensation Act, 1923
- ❖ The Employees' State Insurance Act, 1948
- ❖ The Coal Mines PF Act, 1948
- ❖ The Employees PF and Miscellaneous Provisions Act, 1952
- ❖ The Maternity Benefit Act, 1961
- ❖ Payment of Gratuity Act, 1972

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Welfare Labour Legislations

Legislations coming under this category aim at promoting the general welfare of the workers and improving their living conditions. The laws coming under this category have the specific aim of providing for improvements in the living conditions of workers. They also carry the term “Welfare” in their titles.

- ❖ Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
- ❖ The Mica Mines Welfare Fund Act, 1946
- ❖ The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
- ❖ The Cine Workers Welfare Fund Act, 1981
- ❖ In addition, some state governments have also enacted legislations for welfare funds
- ❖ Beedi Workers Welfare Fund Act, 1976

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Miscellaneous

Besides the above, there are other kinds of labour laws, which are very important. Some of these are:

- ❖ The Contract Labour (Regulation and Abolition) Act, 1970
- ❖ Child Labour (Prohibition and Regulation) Act, 1986
- ❖ Building and other construction workers (Regulation of Employment and Conditions of Service) Act, 1996
- ❖ Apprentices Act, 1961
- ❖ Emigration Act, 1983
- ❖ Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
- ❖ Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979
- ❖ Sales Promotion Employees (Condition of Service) Act, 1976
- ❖ Working Journalists and other Newspapers Employees (Condition of Service and Miscellaneous Provision) Act, 1955.

Indian Constitution And Labour Legislations

Introduction

To be called civilised, a society has to concede to its working class the right to live with dignity and security as human beings. This thinking finds expression in the Universal Declaration of Human Rights, the preambles of League of Nations and United Nations Organisation. The aspiration of the working class finds expressions, at national level, in the Constitution of the nation.

After India became independent, it adopted a Constitution on 26 January 1950. Indian Constitution is a unique, basic national document. Besides providing basic principles for governance, it presents the aspirations of the Weaker Sections of Society, specially the working classes.

Constitution is the supreme law of a nation and all legislations draw their inspiration from it.

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Preamble of Indian Constitution and Labour Legislations

The importance and utility of the Preamble has been pointed out in several decisions of our Supreme Court. Though, by itself, it is not enforceable by the court of law, the preamble states the objectives, which the Constitution seeks to establish and promote.

The Preamble to our Constitution serves two purposes:

1. It indicates the source from which it derives its authority
2. It starts the objectives which it seeks to establish and promote.

The preamble states to secure all its citizens:

- ❖ Justice, Social, Economic and Political
- ❖ Liberty of thought, expression, belief, faith and worship
- ❖ Equality of status and of opportunity
- ❖ Fraternity, assuring the dignity of the individual and unity and integrity of nation

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Fundamental Rights and Labour Legislations

Part III (Articles 14 to 35) deal with Fundamental Rights. They can be grouped together as:

1. The Right to Equality (Articles 14 to 18)
2. The Right to Freedom (Articles 19 to 22)
3. The Right against Exploitation (Articles 23 to 24)
4. The Right to Freedom of Religion (Articles 25 to 30)
5. Cultural and Educational Rights (Articles 29-30)
6. The Right to Constitutional Remedies (Articles 32 to 35)

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Directive Principles and State Policy and Labour Legislations

Articles 36 to 51 form Part IV of the Constitution and they deal with the goal of economic democracy, the socio-political content of political freedom and the concept of Welfare State. Though earlier decisions of the Supreme Court paid scant attention to the Directives on the ground that they are not enforceable in law courts, later decisions, especially from Keshavanand Bharati case onwards, the following propositions have come before the courts for consideration:

1. There is no disharmony between Directive Principles and Fundamental Rights. They supplement each other.
2. Even Fundamental Rights cannot be ensured unless Directive Principles are implemented.
3. Parliament is competent to amend or abrogate any Fundamental Right to enable the State to implement Directives.

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Judicial Wisdom of the Courts and Labour Legislations

It is interesting to note the judicial wisdom displayed by Indian Courts in making a harmonious construction of Fundamental Rights and Directive Principles is simply unique. This has helped the courts to uphold legislation aimed at social justice on the ground that such legislation was in line with Directive Principles, which are reasonable restrictions on certain fundamental rights. Thus, such legislation would be in public interest. In this matter of relative importance of the Fundamental Rights and Directive Principles, there has been one important controversy between legislature and judiciary. This was in regard to property as fundamental right, which appeared to clash with social justice as prescribed in Directive Principles. The controversy finally got resolved in the 44th Constitutional amendment, which deleted ownership of property from Fundamental Rights and made it a legal right.

ILO AND ITS INFLUENCE ON LABOUR LEGISLATION IN INDIA

The Objectives of the ILO

The objectives of the ILO are enunciated in the preamble to its constitution; supplemented by Article 427 of the Peace Treaty of Versailles, 1919; as well as by the Philadelphia Declaration of 1944. The ideology of the ILO is defined by these three instruments in the following terms:

1. Whereas universal and lasting peace can be established only if it is based upon social Justice.
2. And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled.
3. Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations, which desire to improve the conditions in their own countries.

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International Labour Standards

The International Labour Standards, the quintessence of worldwide experience in the progress towards higher social and economic objectives continue to be the principal means at the disposal of the ILO to achieve social justice throughout the world.

❖ Conventions and Recommendations

There is a fundamental difference between Conventions and Recommendations. While Conventions are obligation-creating instruments, Recommendations are guidance providing instruments. In other words, once the Conventions are ratified by the member state, they become binding international obligations, whereas Recommendations are essentially guides to national action and do not create international obligations. At times, a Recommendation may act as a forerunner to a Convention and may pave the way for subsequent adoption of a Convention.

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❖ **International Labour Code**

The international labour code covers an enormous range of important subjects in the labour and social fields, which have been classified as under:

No. Subject

1. Basic Human Rights
2. Labour Administration and Industrial Relations
3. Employment Policy and Human Resources Development
4. General Conditions of Employment
5. Employment of Children, Young Persons and Women
6. Industrial Safety, Health and Welfare
7. Social Security and Social Policy
8. Seafarers
9. Indigenous and Tribal Populations Migrants and Plantation Workers

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Influence on Indian Labour Legislation

A study of the contents of many of the Conventions and Recommendations described above and those of the specific pieces of labour enactments dealt with earlier will reveal similarities in quite a number of specific provisions. So far, India has ratified 39 out of 185 Conventions adopted by ILO. The ratification of the Conventions has put her under the obligation of implementing their provisions through their incorporation in labour laws and collective agreements or in other effective ways.

Conditions of Work

- ❖ Hours of Work
- ❖ Weekly Rest
- ❖ Holidays with Pay
- ❖ Protection of Wages
- ❖ Minimum Wages
- ❖ Labour Administration

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Employment of Children and Young Persons

India has ratified quite a few Conventions relating to employment of children and young persons. These include: (a) Minimum Age (Industry) Con. (No.5), 1919; (b) Minimum Age (Trimmers and Stockers) Con. (No.15), 1921; (c) Minimum Age (Underground Work) Con. (No.123), 1965; (d) Medical Examination of Young Persons (Sea) Con. (No.16), 1921; and (e) Night Work of Young Persons (Industry) Con. (No.6), 1919 and (No.90), 1948.

Employment of Women

The relevant Conventions relating to women workers ratified by India are: (a) Night Work (Women) Con. (No.4), 1919; (b) Night Work (Women) (Revised) Con. (No.41), 1934; (c) Night Work (Women) (Revised) Con. (No.89), 1948; (d) Equal Remuneration Con. (No.100), 1951; (e) Discrimination (Employment and Occupation) Con. (No.111), 1958; and Underground Work (Women) Con. (No.45), 1935. Provisions of Conventions relating to night work, that is, No.s 4, 41 and 89 have been incorporated in the protective labour laws like Factories Act, 1948; Mines Act, 1952; Plantation Labour Act, 1951; Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and other similar laws.

Health, Safety, and Welfare

Existing safety and health provisions of labour laws relating to factories, mines, docks, and others also contain many provisions of a few other Conventions and Recommendations.

Social Security

Social security legislation in the country has also been influenced by Conventions not formally ratified by India, and also by standards set by a few Recommendations in the area.

Industrial Relations

The Conventions relating to industrial relations ratified by India are: Right of Association (Agriculture) Con. (No.17), 1921, Rural Workers Organization Con. (No.141), 1975, and Tripartite Consultation (International Labour Standards) Con. (No.144), 1976. The provisions of Conventions No.s 11 and 141 have been included in the Trade Unions Act, 1926.

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Employment and Unemployment

The provisions of the Conventions relating to unemployment and employment have been given effect to by administrative orders and practices, supplemented by a few labour laws such as Employment Exchanges (Compulsory Notification of Vacancies) Act, 1976.

Other Special Categories

Other special categories of Conventions ratified by India include: Inspection of Emigrants Con. (No.21), 1926, Seamen's Articles of Agreement Con. (No.22), 1928, Marking of Weight (Packages Transported by Vessels) Con. (No.27), 1929, Final Articles Revision Con. (No.80), 1947 (excluding Part II), Indigenous and Tribal Population Con. (No. 107), 1957 and certain Articles of Labour Statistics Con. (No.160), 1985.

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Difficulties in the Adoption of Conventions and Recommendations

As has been mentioned earlier, Conventions and Recommendations of ILO, seek to prescribe and indicate internationally uniform minimum labour standards. The purpose is to see that the labour standards in the Member countries are not below the ones prescribed by ILO. As the Member countries of ILO are at different stages of economic growth and industrial advancement, the capacity to maintain and preserve labour standards differs from country to country, depending upon their relative economic prosperity. Some of the countries are extremely poor, economically and technologically backward having, therefore, very poor labour standards, and are incapable of securing any immediate improvement in the same.

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Problems of Ratification

The process of evolving internationally uniform minimum labour standards does not end with the adoption of a Convention or Recommendation.

It is appropriate to examine the difficulties which some of the Member States experience in formally ratifying these Conventions. These Member countries may, for the sake of convenience, be grouped under the following heads:

1. countries with higher labour standards;
2. countries having a federal set-up;
3. countries where the subject matters of the Conventions are regulated by collective agreements; and
4. industrially backward countries.

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International Labour Standards and India

The International Labour Organization has played a significant role in promoting international labour standards. India is a founder member of the ILO and has contributed to the codification of standards. It is in turn benefited from the international labour standards in framing its own legal and institutional framework on social and labour aspects.

International Labour Standards

The conventions adopted by the International Labour Organization constitute international labour standards (ILS). Their purpose is to maintain certain basic minimum standards, worldwide. As a means of reconciling globalisation and social justice, efforts are made to link international trade with a system of social cause so that developing countries cannot enjoy the benefits of trade liberalisation on the basis of comparatively low labour costs. There is a sound justification for international labour standards.

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On 18 June 1998, at its 86th session, the International Labour Conference adopted a Declaration on Fundamental Principles. It reiterates the binding nature of the Philadelphia declaration and requires the compliance of the core conventions covering the following aspects even by those countries that have not ratified the relevant conventions:

- a. Freedom of association (No.87) and the effective recognition of the right to collective bargaining (No.98);
- b. The elimination of all forms of forced or compulsory labour (Convention No.s 29 and 105);
- c. The effective abolition of child labour (Convention No.138); and,
- d. The elimination of discrimination in respect of employment and occupation (Convention No.s 100 and 111).

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From International Labour Standards to Corporate Codes

International labour standards have proved effective and useful in formulating national policies, legislation and practices on diverse areas concerning social and labour aspects: The ILO's conventions and recommendations cover aspects ranging from tripartite consultations at national level to communications and grievance procedures within undertakings; wages, working hours, leave, holidays, to occupational safety and health; non-discrimination to affirmative action for the aged, disabled, women and other vulnerable groups; labour market aspects, labour law, labour administration, human resource development, etc. In these matters, the ILO conventions and recommendations are not binding, except when a state ratifies the concerned ILO Conventions and/or reiterates the relevant principles in national legislation.

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Components of Social Clause and Indian Legislation

| Social Clause Aspect | Indian Constitution/Legislation |
|--|---|
| <p>Freedom of Association and Right to Collective Bargaining (Convention Nos. 87 and 98 respectively)</p> | <p>Freedom of Association is guaranteed as a fundamental right in the Indian Constitution. The Trade Union Act, 1926 meets with part of the objectives of Convention Nos. 87 and 98. Both conventions have, however, not been ratified by the Government of India.</p> |
| <p>Forced Labour Convention, 1930 and Abolition of Forced Labour Convention, 1953 (Convention Nos. 29 and 105). These provide for progressive abolition of forced labour in all its forms. Convention No.182 concerning Immediate Action to End the Worst Forms of Child Labour.</p> | <p>Article 23 of the Constitution and the Bonded Labour System (Abolition) Act, 1976. India has ratified Convention No. 29, not 105. India is moving towards ratifying Convention Nos. 105 and 182.</p> |
| <p>Equal Remuneration Convention, 1951 (Convention No.100). Its purpose is to eliminate sex-based discrimination in remuneration and provide for equal remuneration, to both men and women, for work of equal value. The four underlying bases for determination of work of equal value are: skills, efforts, responsibility and working conditions.</p> | <p>The Constitution upholds the principle of equality between men and women. The Equal Remuneration Act, 1926 seeks to provide for equal remuneration to men and women.</p> |
| <p>Discrimination (Employment and Occupation) Convention, 1958 (Convention No.111). It covers any discrimination, exclusion or preference '...which has the effect of nullifying or impairing equality of treatment' and which can be the result of not only legislation but also of existing factual positions or practices.</p> | <p>The Constitution upholds equality, denounces discrimination and encourages preferential treatment to disadvantaged groups in society. Convention No.111 has been ratified.</p> |
| <p>Minimum Age Convention, 1973 (Convention No.138). It provides that minimum wage for employment should ordinarily be 15 and raised to 18 in dangerous occupations.</p> | <p>The Child Labour (Prohibition and Regulation) Act, 1986 bans employment of children below the age of 14. In several laws, the minimum age is variously defined. Employment of children in certain heavy and hazardous industries (Schedule A, part 3) is prohibited by law and the government is taking steps to enforce it strictly. Several court Judgements under public interest litigation actively support the prohibition and regulation of child labour.</p> |

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