

**Course: PGDLL-05**



**Vardhaman Mahaveer Open University,  
Kota**

**Industrial Jurisprudence  
And  
International Labour Organization**

---

**Course Development Committee**

---

**Prof. (Dr.) Leela Ram Gurjar**  
Director (Academic) Chairman  
Vardhaman Mahaveer Open University, Kota

---

**Convener and Members**

---

**Dr. Yogesh Sharma**  
Convener, Department of Law  
Vardhaman Mahaveer Open University, Kota

**Prof. (Dr.) H.B. Nanadwana.**  
**Director, SOCE**  
Vardhaman Mahaveer Open University, Kota

1. **Prof. B.L. Verma**  
University of Studies in Law  
University of Rajasthan, Jaipur
3. **Prof. N.V. Paranjpe**  
Dean, Law Faculty  
Barkattulla University, Bhopal
5. **Mr. Sudhir Kher (Retd.)**  
Department of Law, VMOU, Kota

2. **Prof. Krishan Bahadur**  
Deptt. Of Law  
Banaras Hindu University, Varanasi
4. **Prof. I.P. Massey**  
Chairman, Law Faculty  
Himachal Prades University, Shimla

Revision	<b>Dr. Yogesh Sharma, VMOU, Kota</b> <b>Prof. V.K. Sharma, JNVU, Jodhpur</b> <b>Prof. C. M. Chaudhary, (Retd) Jaipur</b>
----------	--

---

**Editing and Course Writing**

---

**Editors**  
**Dr. Yogesh Sharma, Convener- Law**  
Vardhaman Mahaveer Open University

**Prof. Krishna Bahadur**  
BHU, Varanasi

---

**Course Writing**

---

1. Prof. Krishna Bahadur, BHU, Varanasi
2. Dr. R.L. Bhatt, Su. Uni. Udaipur
3. Mr. R.N. Prasad, JNV Uni. Jodhpur
4. Mr. A.K. Mishra, Gorakhpur
5. Mr. K.D. Sharma, Kota
6. Mrs. Raj Bhanti, Udaipur
7. Mr. M.M. Jain, Kota
8. Dr. Pahwa, Uni. of Raj. Jaipur
9. Dr. L.C. Dhingra, MDSU, Rohtak
10. R.K. Sharma, Advocate, Jaipur

---

**Academic and Administrative Management**

---

**Prof. Vinay Kumar Pathak**  
Vice Chancellor  
Vardhaman Mahaveer Open  
University, Kota

**Prof. (Dr.) Leela Ram Gurjar**  
Director (Academic)  
Vardhaman Mahaveer Open  
University, Kota

**Prof. (Dr.) Karan Singh**  
Director (Material Production)  
Vardhaman Mahaveer Open  
University, Kota

---

**ISBN : 13/978-81-8496-414-1**

---

All Rights reserved. No part of this book may be reproduced in any form by mimeograph or any other means without the Permission in writing from the V.M. Open University, Kota  
Printed and published on behalf of the Registrar, V.M. Open University, Kota  
Printed by :



Vardhaman Mahaveer Open University, Kota  
Industrial Jurisprudence and  
International Labour Organization

<b>Unit No.</b>	<b>Unit Name</b>	<b>Page No.</b>
<b>Unit-1</b>	<b>Conceptual Aspects of Labour Jurisprudence</b>	<b>6</b>
<b>Unit-2</b>	<b>Social Justice</b>	<b>20</b>
<b>Unit-3</b>	<b>Natural Justice</b>	<b>43</b>
<b>Unit-4</b>	<b>Constitution and Labour</b>	<b>63</b>
<b>Unit-5</b>	<b>Public Interest Litigation</b>	<b>80</b>
<b>Unit-6</b>	<b>I.L.O. (Genesis, Aims and Objectives)</b>	<b>92</b>
<b>Unit-7</b>	<b>I.L.O.(Structure and Officers)</b>	<b>107</b>
<b>Unit-8</b>	<b>I.L.O. (International Labour Code)</b>	<b>123</b>
<b>Unit-9</b>	<b>I.L.O. (Standard Setting)</b>	<b>130</b>
<b>Unit-10</b>	<b>I.L.O. (Regional Conferences)</b>	<b>145</b>
<b>Unit-11</b>	<b>I.L.O. (I.L.O. and India)</b>	<b>162</b>
<b>Unit-12</b>	<b>I.L.O. (I.L.O. and Human Rights)</b>	<b>181</b>
<b>Unit-13</b>	<b>I.L.O. (Achievements, Problems and Prospects)</b>	<b>205</b>
<b>Unit-14</b>	<b>Tripartism (Part-i)</b>	<b>218</b>
<b>Unit-15</b>	<b>Tripartism (Part-ii)</b>	<b>236</b>
<b>Unit-16</b>	<b>Case Laws</b>	<b>257-280</b>

## LL-5 Course Introduction

---

This course is conceived and produced for the students of PGDLL who need to study different aspects of industries and Labour .It will provide understanding, skill and elementary knowledge of Labour and Industrial Laws along with Personnel Management .It will train learner for career as labour, industrial and personnel professionals .It will also inculcate the understanding of national and International dimensions of these fields.

This Block contains Sixteen Units. First Unit will introduce you with conceptual aspect of labour jurisprudence, its evolution and its importance .In second unit you will be able to appreciate the concepts of social justice and its underlying principles. Similarly unit three is related to Natural Justice .You should be able to appreciate the underlying concepts of it, apply the process of natural justice and involve policies and actions in the context of industries.

Unit four will introduce with underlying objects of Constitution of India for labour and industries. You will also appreciate constitutional remedies available in case of violation of constitutional provisions related with labour. Unit fifth will introduce you with Public Interest Litigations. It is a method used to redress public grievances.

Unit sixth will make you understand the objectives and underlying conceptual analysis of ILO. It will help you evaluating the functions performed by ILO and its Member States through its agencies. Unit seventh will introduce you with characteristics, powers, functions and objectives of the International Labour Conference, Governing Body and International Labour Office. Unit eighth will introduce you with the concepts of I.L. Code, its meaning, nature, scope and importance in development of labour and industries. It will also introduce you about the applicability of various conventions and recommendations adopted and applied in India. Unit ninth will help you in identifying the ILO Standard Settings which are designed as conventions and recommendations and its minimum standard shall be observed in all the domains.

Unit tenth discusses the nexus and objectives between International Labour Organization and the Regional Conferences. Unit eleven will help you in appreciating the underlying concept of ILO and process of technical cooperation. It will help you in knowing India's role and impact of policies of ILO on India. Unit twelfth will introduce you with concept of Human Rights and Universal Declaration of Human Rights and ILO and Human Rights as put forth by ILO. Unit Thirteen will introduce you with achievement, problems and prospects faced by ILO.

Unit fourteen and fifteenth will introduce you will origin, concepts and forms of Tripartism in industrial relations. You will also appreciate the role of tripartite machinery in India. It will also introduce you with voluntary arbitration and code of discipline in the industries. The last unit sixteenth is case laws to appreciate judicial analysis with special reference to Industrial Relations and Labour Jurisprudence.

---

# UNIT-1

## Conceptual Aspects of Labour Jurisprudence

---

### Objectives :-

After going through this unit you should be able to:

- Appreciate the conceptual aspect of labour jurisprudence.
- Its meaning, evolution and its importance.
- Labour Jurisprudence and Indian legislations.

---

### Structure :

---

- 1.1 Introduction
- 1.2 Conceptual Aspects of Labour Jurisprudence.
- 1.3 Meaning
- 1.4 Importance of labour jurisprudence.
- 1.5 Summary Meaning and Evolution
- 1.6 Self Assessment Test.
- 1.7 Key words
- 1.8 Suggested Readings.

---

## 1.1 INTRODUCTION

---

This unit has been prepared to acquaint you with the conceptual aspects of labour jurisprudence its meaning, evolution and importance.

Labour jurisprudence is one of the importance aspects of the province of jurisprudence. The term “jurisprudence” denotes knowledge of law. The subject-matter of law is human behavior. Towards the end of nineteenth century, changing human have brought many changes in the human perceptions. As a result, jurisprudence today is envisaged in an immeasurably broader and more

sweeping sense than that in which Austin understood it. At present jurisprudence may tentatively be described as any thought or writing about the law and its relation to other discipline, such as philosophy, psychology, economics, anthropology etc. To some jurist, jurisprudence is the examination of law in light of other discipline. According to Prof. Julius Stone, jurisprudence then in the present hypothesis is the lawyers' extra version. It is lawyers' examination of the precepts, ideals and teaching of law in light of the knowledge derived from present knowledge in discipline other than law. To be master of any branch, you must master those which lie next (see Julius Stone: Province of Jurisprudence). Thus the study of law also requires the study of other branches of knowledge which had bearing on the knowledge of law. Various branches of Jurisprudence have therefore, developed in the halls of jurisprudence, such as medical jurisprudence, dental jurisprudence, equity jurisprudence and sociological jurisprudence and labour jurisprudence etc. Here our discussion is only confined to the labour jurisprudence, its meaning and evolution etc.

---

## **1.2 CONCEPTUAL ASPECTS OF LABOUR JURISPRUDENCE**

---

The industrial revolution in England and elsewhere opened new vistas of knowledge in the wake of scientific and technological development. Within the nations, new forces reared their heads to claim their rights and powers. The exploitation of labour arose out of industrialization. The Industrialization created the capitalist employer and factory workers on one side a class of men acquiring wealth, power and privileges through organizing and hiring of labour and on the other side, a body of the wage-earners, giving their labour on hire forced into a practical economic dependence by necessity of subsistence and lack of capital ambitions, enterprises or organizing skill on third account. Thus, the exploitation of labour was expressed in several ways and there was a demand for amelioration of working conditions of labour. This impulse had been expressed in three ways, i.e. rise of trade unions, the emergence of humanitarian or reformist class and the rise of socialist thinking. From the beginning of the nineteenth century, until (and including) 1<sup>st</sup> World War, a line of thinking developed which was favorable to the

international legislation of labour of labour- and to a permanent international organization specifically devoted to legislation arose as early as in the 19<sup>th</sup> century as a result of ethical and economic reflection on the human cost of industrial revolution. Such legislation was supported by a number of outstanding industrial chiefs such as Robert Owen and Daniel Le Grand, by the politician Charles Hindley, the doctor of Hygiene, Louis Rene Villerme and the economist J.A. Blanqui Sr. and Daniel Mareska. There were three arguments in favor of such legislation. First argument pointed out that the necessity of improving the harsh lot of the working class who suffered both materially and morally. The second argument more political emphasized the importance of consolidating social peace in industrial countries. Third argument was economic and sought to make it clear that an international regulation of labour would prevent countries which had protective legislations in labour matters from paying doubly for their social policies in the form of economic disadvantage in international trade. In other word, international regulation would allow equalizing of conditions for international trade.

During the First World War, several international meetings of trade unions took place and the participants at those meeting argued for the creation of an international institution specialized in the domain of working conditions.

All these argument resulted in the creation of an International Labour Organization (ILO) at the Peace Conference of 1919 at Paris (i.e. after 1<sup>st</sup> World War). The constitution of ILO contained the spirit of these arguments and those were further clarified in the Declaration of Philadelphia. These fundamental principles are

(a) labour is not a commodity ;

(b) freedom of expression and of association are essential to sustain progress;

(c) poverty anywhere constitutes a danger to prosperity-everywhere;



(d) the war against want requires to be carried on with unrelenting vigor within each nation, and by continuous and concerted international efforts in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to promote the common welfare.

These fundamental principles still provide ideological basis for the ILO. The constitutive act for the ILO was elaborated and Commission of International labour organization set-up the Peace Conference in Paris in 1919. It immediately constituted Part XIII of the Treaty of Versailles. Created as an independent body under the aegis of the League of Nations (and after its dissolution, working as an agency of U.N.), the ILO has worked with dynamism and become a source of inspiration and energy to its member-states. The 'Universal Peace' and 'Social Justice' are the main objective of the ILO. It was in fact, the culmination of efforts made for over a century starting from Robert Owen in the early years of 19<sup>th</sup> century when he visualized the international cooperation in safeguarding conditions of life and labour. There were forty-two original members of the ILO, including India along with Iran (Persia), Japan and Thailand (Siam) from Asia. The current membership of the ILO comprises one hundred and seventy of the world.

Its Tripartite Structure –States, Employers and workers representation-has enabled it to frame international labour standards in the Conventions and Recommendations to regulate various aspects of conditions of life and labour and the mutual relationship between labour and management. During the period between 1919 to 1994, the ILO adopted 175 Conventions and 182 recommendations on various aspects of labour management relations and other allied subjects. The aim of these texts has been to promote the material and moral interest of workers. The major Conventions of the ILO relate to freedom of Association, Abolition of forced labour, non-discrimination, equal remuneration, employment policy, social security, migrant workers, labour inspection, tripartite consultation, prevention of major industrial accidents etc.

6. Under Article 19 of the ILO's Constitution, each of its member-states is under obligation to ratify these conventions within the stipulated period of time and to inform the Director General of the ILO office of the measures taken in light of these Conventions.

These Conventions and Recommendations have been codified under the title "International Labour Code" with a view to serving as model code for its member-States. These standards have now been 'one of the main formative influences on the development of social legislations in many (member) countries for decades'. A new Edition of this Code is available in the name of International Labour Conventions and Recommendations' 1919-1991 which has been published by the ILO office Geneva in year 1992.

---

## **INDIA AND LABOUR LEGISLATION**

---

The imprints of the Preamble of the Constitution of the ILO can be traced in the Preamble of the Constitution of India. For instance, the Preamble of the ILO emphasis "Whereas reversal and lasting peace can be established only if it is based upon the social justice. Whereas the preamble of the constitution of India assures the citizens of India with justice-social, economic and political, the similarity of the approach is the common feature between the Constitution of India and that of the ILO including its Philadelphia Declaration of 1944. The part III and part IV of the Constitution of India provide for the welfare of the working class. The goals set out in the Constitution of India are mainly (i) to direct the 'State' to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of national life and to minimize the inequality in status, facilities and opportunities of national life and to minimize the inequality in status, facilities and opportunities etc. (ii) to endeavor to secure by suitable legislation or any other way to all industrial workers conditions of work ensuring a decent standard of life and full enjoyment of leisure; (iii) to direct states policy, securing inter alia, the health and the strength of workers; (iv) to direct the state to provide a living wage to the

industrial workers and (v) to secure the participated of workers in the management of industries or under takings or other organizations engaged in any industry (See Articles 38, 39,40,41,42,43 & 43-A of the Part IV of the Constitution).

In the words of Justice **V.R. Krishna Iyer**, these Directive principles play the tune in favor of the workers and they speak of living wage, decent standard and workers' participation in management. The industrial Jurisprudence is the value vision of all this.....<sup>1</sup>

In his Bank Award, Justice Gajendra gadker stressed the role of law for removing socio-economic inequalities in the country and observed:

"The Genesis and the Justification of all industrial legislations in a modern democratic state lies in the anxiety of the state to establish a social equality amongst all citizens. It may but that when a modern democratic state enacts laws for the purpose of establishing a socialistic pattern of society, some of its legislations may appear to bridge freedom of contract, of even private right to own property .But if the economic inequalities have to be removed, it would be necessary to realize that old notions of absolute freedom of contract and absolute right of own property must yield to what Justice Holmes described as the felt necessities of the time, that is why it seems to me that the trade and business must adjust themselves to the requirements of a welfare state and must be prepared to cooperate with regulatory laws in regard to industrial disputes without any mental reservation' (See Report of Bank Award Commission, pp,24-25 (1995)), Thus with the expansion of Socio- economic jurisprudence, as stated above, a new industrial or labour jurisprudence emerged in the country especially after 1950. In this context, Justice Gajendra gadkar has rightly observed: "The growth of Industrial in India since 190 bears a close resemblance to the growth of Constitutional law in relations to fundamental Rights to Citizens," (See National Commission on Labour Report, (1969) at Chapter 23).

---

<sup>1</sup> (See Gujarat Steel Co. v. Gujarat Steel Tube Co. Majdoor Sabha, 1980 I LLJ 137 (SC).)

After we attained freedom from British Rule, the Government of India adopted a labour policy which was designed to promote welfare of the labour. According a host of labour legislations were enacted by the Indian Parliament such as industrial Disputes Act, 1947; Minimum Wages Act,1948; Factories Act,1948; Equal Remuneration Act,1976 Bonded Labour Abolition Act, 1976; Inter-state Migration Act, E.S.I. Act,1948; Payment of Gratuity Act,1972; P.F. Act,192; Maternity Benefits Act,1961 etc. The existing laws such as Trade Union Act, 1926, Payment of Wages Act, 1936; Workmen's Compensation Act, 1923 etc. are there to guide. Since the subject of labour is in Concurrent List of the Seventh Schedule appended to the Constitution, The State Government has also enacted several labour legislations to promote the welfare of labour.

The Supreme Court of India has also expounded the labour law and has developed various jurial postulates of industrial jurisprudence, while interpreting the laws in relations to labour and management disputes. In many cases, where there has been inactivity on the part of Legislature, the judiciary has stepped into fill up the gap. For example, while expounding the meaning of the term "industry" as containing in the Industrial Disputes Act,1947 Justice Krishna Iyer observed:

"The Fundamental focus of this industrial legislation and the social perspective of part IV of the Paramount law derive us to hold that the dual goals of the Act are contentment of the workers and peace in the industry. Judicial interpretation should be geared to their fulfillment, not their frustration. A workers – oriented statute must receive a construction where conceptually the key- note thought must be the worker and community as the Constitution has shown concern for them, inter alia in Articles 38,39 and 43 (43-A also)."According he enlarged the scope of Industry, and covered every type of organized effort or activity in which labour and capital cooperate to produce material goods or render material services to the community at large. Through this process, the ambit of industrial or labour jurisprudence has been expanded to include educational and organizations, hospitals, and other organized activity<sup>2</sup>. The provocation for the judgment was the inactivity of the Legislature. There are several other instances also.

---

<sup>2</sup> (See Bangalore Water Supply and Sewerage Board V.A. Rajappa, AIR 1978 SC 548)

Thus, the law in relation to labour has developed in this country in a two-fold manner i.e. through statutory law and the judicial law-making.

---

### 1.3 MEANING AND EVOLUTION OF LABOUR JURISPRUDENCE

---

The term 'Labour or industrial Jurisprudence' primarily denotes a base of literature regarding Knowledge of law in relation to labour and industry, derived from labour legislations, constitutional frame-work and the judicial law-making in a given country.

Legislations and courts in India have both moved towards the common goal of securing social justice, economic justice to labour and to other weaker sections of the society. The Industrial Disputers Act, 1947 is a social legislation to resolve the labour-management disputes in the industrial sector. The adjudicators under the Act are required to settle the disputes in light of the statutory provisions and the constitutional philosophy contained in the Constitution of India. Though the awards of the adjudications are final, yet the aggrieved party is free to approach the high Court under Article 226 and the Supreme Court under Article 136 of the Constitution, as a matter of constitutional remedies. The two important decisions<sup>3</sup> are of outstanding significance. The decision in Bharat Bank case (Supra) enabled the Supreme Court to discuss the important questions involved in the industrial adjudication and thus called upon "to guide the development of the industrial law in the country." With the result, the growth of industrial jurisprudence in India since 1950 has been spontaneous. Explaining the nature of industrial jurisprudence, Justice Krishna Iyer has emotively stated. "Industrial jurisprudence is not static, rigid and textually cold but dynamic bargaining and warm with life. It answers in emphatic negative the biblical interrogation. What men is there of you if his son asks bread will give him a stone ? the industrial Tribunals of India in areas

---

<sup>3</sup> viz, western India Automobile Association v. Industrial Tribunal (1949 FCR 321) and Bharat Bank v. workmen of Bharat Bank (1950 SCR 459)

unoccupied by precise block letter law, go by the Constitutional mandate of social justice in the claims of little people.”<sup>4</sup>

The province of industrial jurisprudence is very wide, its sweep is Comprehensive. It covers a wide range of subjects relating to labour and management relations. The Supreme Court and industrial adjudication has evolved several juristic postulates which now form the part of Industrial Jurisprudence in the country such as

1. The old doctrine of freedom of contract and the “hire and fire” rule have been replaced by the doctrine of social welfare, public policy and social good.
2. That the labour should not be treated as a commodity but it should be treated as real partners in the Industrial management<sup>5</sup>
3. That the Directive principles of State Policy should be the basis of the new labour or industrial jurisprudence in the country. As a matter of fact, the preamble, fundamental Rights and Directive Principles constitute the trinity of the constitution, the social-economic justice, equality of status and of opportunity with dignity of the person to all citizens.
4. That the state has intervened with the freedom of contract and interposed by making statutory laws like..... social welfare and industrial laws and statutory rules prescribing conditions of service and a host of other laws.
5. That in the matters of wage fixation, the old principles of freedom of contract and the doctrine of laissez faire have yielded place to new principles of social welfare and common good. There are three types or categories of wages described as living wage, fair wage and minimum wage. There is also one principle which admits of no exception. No industry

---

<sup>4</sup> viz, *Western India Automobile Association v. Industrial Tribunal* (1949 FCR 321) and *Bharat Bank v. Workmen of Bharat Bank* (1950 SCR 459)

<sup>5</sup> (See Justice Krishna Iyer’s observation in *Gujrat Steel Tube case-Supra*).

has a right to exist unless it is able to pay its workmen at least a bare minimum wages.<sup>6</sup>

6. That the principle of region-cum-industry the doctrine that the minimum wage is to be assured to labour, irrespective of the capacity of the employer to bear the expenditure in this regard, the concept that the fair wage is linked with the capacity of the industry, the rule of relevancy of comparable concerns, the recognition of the totality of the basic wage and dearness allowance that should be borne in mind in fixation of wage structure are all well settled.<sup>7</sup>
7. That the aforesaid principles applies to private and public sector industries and ventures having foreign collaborations.<sup>8</sup> That the concept of bonus of has acquired a special meaning and significance in the Indian Industrial Jurisprudence. The Industrial adjudication has provided it contents and meaning.<sup>9</sup>

In *Associated Cement Co. v. their workmen*, case<sup>10</sup> the Supreme Court made a Suggestion that the full bench formula evolve, should be given a legislative shape. Consequently a Bonus Commission was constituted by the Central Government and on its recommendation, the Payment of Bonus Act, 1965 was enacted by the Indian Parliament. That Act Provides for statutory minimum Bonus to the industrial workers. The Supreme Court has upheld the validity of the Act.

That in the matters of Gratuity also, the industrial adjudication has evolved jural postulates for the benefit of industrial works.<sup>11</sup> The broad approach of the industrial tribunal vis-à-vis Gratuity is colored by social justice and informed by educe gathered from the Supreme Court dicta or judgments.

10. That in the matters of service jurisprudence relating to termination of service, the courts have controlled the management's right to dismiss or discharge or terminate the workmen and imposed restrictions based on the principles of social

---

<sup>6</sup> (See Justice Gajendragadkar's ruling in *Crown Aluminum Works V. Their Workmen*, 1967 II LLJ 53 (SC)).

<sup>7</sup> (See *Hindustan Antibiotics v. Their Workmen*, AIR, 1967 SC 945 for further details).

<sup>8</sup> (See *Hindustan Antibiotic case (Supra)* and *Unichem Laboratories v. Their workmen*- 1972 I LLJ 576).

<sup>9</sup> (See *Minakshi Mills v. their Workmen* 1958 SCR 579); *Lipton Ltd. V. Their Employees*, AIR 1959 SC 576.) See also *Mill Owner's Association, Bombay v. Rashtriya Mill Mazdoor Union*, 1950 II LLJ 1247 for further elaboration in this regard.)

<sup>10</sup> AIR 1959 SC 967,

<sup>11</sup> See *Indian Express News-papers (Bom.) v. Indian Express News-papers Employees' Union Pvt. Ltd.* 1978 II LLJ).

justice and fair –play. Now the reinstatement of the workmen is the normal rule in case of wrongful dismissal or discharge , through in certain cases, adequate and reasonable cash compensation may be paid to the workmen concerned in lieu of reinstatement.<sup>12</sup> That the industrial adjudication has also contained the freedom of employer to impose any service condition as he likes. The service conditions of the employees must be reasonable unless the employer justify any extra –ordinary conditions.<sup>13</sup> In This case, the Supreme, Court held that the Rule 8 (2) of the Indian Foreign Service (Conduct and Discipline) Rules 1961 is in defiance of Article 16 of the Constitution.<sup>14</sup> wherein the Supreme Court held that the regulation regarding pregnancy is invalid).

That the service regulation regarding termination of service by giving three months' notice and without assigning reason thereof is unreasonable and violative of Article 14 of the Constitution. In **Central Inland Water Transport Corporation v. B.N. Ganguly**,<sup>15</sup> case the Supreme Court held that Rule of 9(1) of the Central Inland Transport Corporation Service Rules, 1979, which inter alia laid down for termination of service of an employee by giving 3 months' notice as unconstitutional . The Supreme Court also held that “ Having regard to the unequal position of the employer and the employees, and unconscionable term in the appointment letter constituting contract of employment is void under Section 23 of the contract Act and violative of Article 14 even through the employee accepted such a term . Again in **D.T.C. v. D.T.C. Mazdoor Congress**,<sup>16</sup> Justice Ramaswamy observed that the law of contract like the legal system itself involves a balance between competing sets of values. The Supreme Court in this case also struck down the similar rule 9 (b) of Service Rules of D.T.C. which provided for termination of service without assigning reason and with three months notice. The Rule of Audi Alterm Partum was not excluded by the Service Regulation No.9 (b) of Service Rules. There was no guideline in that rule as and when and in which case the power of termination can be exercised. Considering form all aspects,

---

<sup>12</sup> (See *Western India Automobile Case (Supra)* 1949 FCC 321 . *Premier Automobile Ltd.v. K.S. Wadke* 1975 II LLJ 445 and *O.P. Bhandari v. Indian Tourism Corporations Ltd.* (1986) 4SCC 337.)

<sup>13</sup> (See 1996 I LLJ 917 at p.419); See also *C.B. Mathiamma v. Union of India*, AIR 1979 SC 1868).

<sup>14</sup> See also *AIR India v. Nargesa Mirza*, 1981 II LLJ314

<sup>15</sup> AIR 1986 SC 5171,

<sup>16</sup> 1991 I LLJ 395,



regulation 9 (b) of the service rules is illegal and void it was arbitrary, discriminatory and without any guideline for the exercise of the power.”

13. That the Contact of employment in public employment must be examined in the light of the change occurred due to social awakening and the new dimensions given to it.
14. That ‘Equal pay for Equal Work’ is constitutional mandate. In **Randhir Singh v. Union of India, AIR1982 SC 879**, the Supreme Court was called upon to examine the question of parity in pay scales of drives working in Delhi Police force Delhi Administration under a public Interest Litigation (PIL) and the Supreme court held that “ equal pay for equal work is not a mere demagogies slogan . It is a constitutional goal, capable of attainment through constitutional remedies by the enforcement of constitutional rights.” Therefore, the Court enforced that the principle of equal work and directed the respondent to fix the scale of pay of the Driver constable including the petitioner of Delhi Police at par with that of Drivers of the Railways Protection Force, both doing identical work under same employer.

Again in **Daily Casual Labourers v. Union of India**,<sup>17</sup> case the Supreme held that the right to work , the right to free choice of employment , the right to just and favorably conditions of work, the right of everyone who works for just and favorably remuneration ensuring a decent living for himself and his family, the right of every one without discrimination of any kind, to equal pay for equal work, the right to rest or leisure , reasonable limitation of working hours and periodic holidays with pay, the right to form trade unions of one’s choice and the rights which have to be ensured by appropriate legislative and measures. The Supreme Court, therefore, directed the respondent to prepare a scheme on a rational basis for absorbing as for as possible the casual labourers who have been continuously working for more than one year in the Post and Telegraph Department.

---

<sup>17</sup> 1988 I SCC 122; 1988 I LLJ 370,

---

## **1.4 IMPORTANCE OF LABOUR OR INDUSTRIAL JURISPRUDENCE**

---

The importance of labour jurisprudence is very significant from the point of view of the labour. It has given the several socio-economic rights to the working class as stated above. It has served the cause of social justice and has solved various problems of labour –management relationship. The judgments of Justice like Gajendragadkar, Krishna Iyer, D.A. Desai, R.N. Bhagwati, Chinnappa Reddy, Ranga Nath Mishra etc. given the last three or four decades are of immense value. They also show that our Court is alive to cause of labour. The norms set out by the Supreme Court have enriched the vision of labour or industrial jurisprudence in the country.

---

## **1.5 SUMMARY**

---

In this unit we have discussed the conceptual aspect of labour or industrial jurisprudence, its meaning and growth and importance. The growth of labour jurisprudence since 1950 has been spontaneous. It is a dynamic concept and the directive principle contained in Article 38 to 743-A are the value vision of Indian labour jurisprudence. The Legislature and the Supreme Court have done yeoman service to the cause of social to the poor and working class in the country. The industrial or labour jurisprudence, thus developed has set the pace of the future course of the industrial relations in the country. It is an evolutionary process.

---

## **1.6 SELF ASSESSMENT TEST**

---

1. What do you understand by the term 'labour Jurisprudence?
2. What are the basis Jural postulates for the industrial or Labour jurisprudence?
3. What is the importance of labour or industrial jurisprudence?

---

## **1.7 KEY WORDS**

---

**Labour or Industrial Jurisprudence:** It is a mass literature relating to knowledge of law derived from the labour legislation and the judgment of Courts in relation to labour and management relationship.

**Nature :** It is not static but dynamic;

**Contribution:** It has served the cause of social justice.

**Social Justice:** It is the corner –stone of industrial jurisprudence.

---

## 1.8 SUGGESTED READING

---

Shri Gulab Gupta : Our industrial Jurisprudence (1987, The Central Indian Law, Institute, Jabalpur).

Sri Mahesh Chandra: Industrial Jurisprudence

S.M. Johri : Industrial Jurisprudence, Labour Law Journals and AIRS.

---

# UNIT- 2

## Social Justice

---

### Objectives :-

After going through this unit, you should be able to appreciate

- the concept and meaning of social justice.
- its underlying principles in general, also in the context of labour and management relations.
- the policies and programmes in your factory, industrial plant, organization and establishment which may create industrial peace so that an era of prosperity for the country and for both-labour force and capital investing public may usher in.

---

### Structure :

---

2.1	Introduction
2.2	Meaning of Social Justice
2.3	Role of Social Justice in labour Legislation
2.4	Judicial Analysis
2.5	Summary
2.6	Self –Assessment Tests
2.7	Suggested Readings

---

## 2.1 INTRODUCTION

---

This unit has been prepared with a view to acquaint you with the concept of social justice. The concept denotes a philosophy of life and envisages social order of such a nature in which every individual without any distinction of caste, creed, sex and religion gets an opportunity to develop his personality. Historically, the

great revolutions of England, America, France, Russia, India, and China are responsible for the evaluation of the concept of social justice. Briefly, it is an outcome of a war between 'haves' and have not's.

The concept of social justice embraces a politico-socio-economic justice in such a social order where equality of opportunity to progress is proffered to every citizen by the society or the State. The social structure strives for a welfare state for promoting an egalitarian society. It is possible only when there is a political justice which stands for a right to rule and to be ruled. Under the system of political justice, there is a rule of law and not man-or men. The sovereignty vests in the general will of the people; where every individual has an equal right and opportunity to share directly or indirectly in the administration of each body institution or establishment serving his needs.

This is the general import of social justice, and it equally applies to industrial section where the interests of both –labour –force and the capital – investing –public have to be fulfilled in order to bring about an industrial peace serving the interests of labour, capital investor and the public at large.

---

## 2.2 MEANING OF SOCIAL JUSTICE

---

### Concept of justice

The concept of social justice is best understood as forming one part of the broader concept of justice in general. Before we understand social justice, let us understand justice, and then attempt to comprehend that the part of justice which we can call social justice. The terms 'just' and 'justice' have a very broad and wide use. To the Greeks, according to Aristotle, justice was equivalent to virtue in general. But we use the concept in many different contexts to make a **verification** of moral and political points. The terms 'just' and 'justice' are most confusing and ambiguous because an act may be just to one person and unjust to another. So, when we talk of just men, just society, just actions and just states of affairs, the word just is always used and understood as against unjust, and independently it can

never convey the sense in which it is being widely used. Thus, the terms 'justice' and 'injustice' are relative terms and describe the pleasure and pains suffered by a group of individual while not by another in similar circumstances.

To the theorists, the just state of affairs is that in which each individual has exactly those benefit and burdens are due to him by virtue of personal characteristics and circumstances. It implies that where two men are equal in the relevant respects, they should be treated in the same way. The principle to 'treat equals equally' or 'treat men equally except there are relevant differences between them' has often said as a general characteristic of justice .this presents the principle of equality of opportunity which is one of the modes of delivery of justice. Under this principle every individual of a republication society should get his due both pleasure and pain.

Broadly justice may be divided into legal and social justice .Legal justice concerns the punishment of wrongdoing and compensation of injuring through the creation and enforcement of the public laws and rules. It deals with two types of issues. First of all , it stipulates the condition under which punishment may be inflicted , adjust the scale of punishment to fit the nature of different crimes and also make a provision for giving reparation to the victims of crimes in certain circumstances only. We call this as criminal justice .The other part of the legal justice is civil justice .It regulates the amount of restitution which must be made for injuries. Under both –criminal and civil justice the principle of a fair trial, rights of appeal, etc. form part of the legal justice.

Social justice, on the other hand, concerns the distribution of benefit and burdens throughout a society .It deals with such matters as the protection of persons' regulation of wages, housing, medicine, social security and many other social welfare benefit .Since benefits given to individual largely depends upon the shape of the power structure a society has; therefore, the distribution of power is relevant to social justice.

A complete concert of an individual with his society is the hall-mark of a just social order .A just social order is based on a harmony of the individual with

his society; and it is through the nexus of his station in life this harmony can be attempted and achieved .Lawlessness or disorder, immorality or injustice result by throwing out of gear the relation between the individual and the society. It is either when the individual ego emulates itself as against the social ego, or when social over-reaches itself to the annihilation of the individual ego. Justice aspires for a concord of the individual with society so that there is chance neither for individual excesses nor for extreme social hegemony.

Social justice is the position of the station in life and status in society, the curious name of social justice is given to a creed committed to reduce reciprocity between an individual' duties and rights, between his liabilities and liberties. Society is constituted into a state only to enforce this reciprocity by authority. In the modern technique of social welfare this obligation is discharged through the agency of law enacted and enforced by the State.

## **Social welfare and Social Justice**

The doctrine of laissez –faire which dominated the whole of the eighteenth and a part of the nineteenth centuries in through and practice allowed each of us the fullest opportunity to accumulate the means of production and control of distribution was at one time believed to be the greatest number. But it was soon relished that if the means of production and distribution were left in the control of each one as he pleased, the process would soon result into concentration of wealth in a limited few hands to the material and economic detriments of others. Without a regulated social control over the means of production and distribution, it is difficult to achieve the common good or the welfare of the people in general. In recent years the idea of social welfare replaced the doctrine of laissez faire for achieving the common good of the people in general by planning's and programmers of the State.

The principle of social justice attempts to create and establish a welfare state for securing and promoting a just social order in the society .For securing social justice, it is the form and structure of the government which alone matters .In this context let us try to understand as to the form of social structure suited to social

welfare of its people .The end of democracy is liberty but the end of republic is equality .the democracy creates conditions for the liberty of the individuals. Republic enforces conditions for equality both of status and opportunity in the socio-economic field. A compound of both democratic and republic represent and stands for liberty and equality both and , is known as republic or democratic republic .Since a democratic fulfils the needs of society by regulating socio-economic activities by legislative process, it become a welfare state. Welfare state is a state that strives to secure the welfare of the people by establishing the condition of good living.

A welfare state endeavors to secure by suitable legislations , economics, economic planning and programme and otherwise to all workers agriculture , industrial or otherwise work ,a living wage, good conditions of work ensuring a decent standard of life with social security measures and full enjoyment of leisure and social cultural opportunities. The acts of such state are not confined to one particular class of the poor or rich, of owners or workers but spread to the society as a whole especially to the segment of the deprived weaker, socially and educationally backwards physically and handicapped people of the society.

A welfare state undertakes to establish harmonious relations between 'haves' and 'have not's without any favor and prejudice to the either of them. The state extends its activities to sub serve the general cause and basic needs of its citizens relating to food , health , shelter, work, leisure and the like , It is immaterial if the State's activities of this nature tends to affect the profit motive of private individuals. The distinction of public and private ownership does not stand in the way of the positive role the State has to play. The State owns almost all public utility services and concerns. The State can own or acquire such industries which are mismanaged in the public interest. In the interest of general public even state monopoly in certain trades to the total or partial exclusion persons is desirable if unregulated capitalism creates an overgrowing concentration of wealth which generates class conflicts posing a threat to public peace.

A welfare State has to protect the general social interests of its citizens. The legislative policies of the state are directed towards this objective. An elaborate



emphasis is given to the immediate social problems and on each social issue, and according to its merits a Solution is found out and that brings about justice. Thus, social welfare and social justice are not equivalent or synonymous expression. Social welfare is a measure while social justice is an achievement. In other words welfare is the means is the social justice is the ends.

Democracy is a government of the people by the people and for the people; but the representatives of the people who form the government may not be of one ideology for the entire one to come. Therefore, most of the countries have their written Constitutions envisaging the concept of social justice character in the governance of their countries. India is one of such countries which have its written Constitution. It is through this constitutional charter that the government of men turns into a laws. Let us, now, examine our constitution and various other laws and their functioning in the light of social justice.

## **Social justice under and Indian Constitution**

Social justice has been a long cherished desire of our people; and so, the founding fathers of our Constitution aspiring for a welfare state made several provisions for the delivery of social justice under part iii and iv of the Constitution respectively including its preamble.

The objective sought to be achieved by the Indian constitution have been explicitly couched in its Preamble which declares that 'we, the people of India having solemnly resolved to constitute India into a sovereign socialist democratic republic and to secure to all its citizens justice –social , economic and political ; liberty of thought, expression , belief , faith and worship equality of status and of opportunity and to promote among them all fraternity assuming the dignity of the individual and the unity Nation , 'The basic objective of the Constitution as expressed in its preamble seeks to secure social among justice to all citizens.

Article 38 require that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social economic , and political shall inform all the institution of national

life. Article 43 enunciates another directive principle by providing that the State shall Endeavour to secure by suitable legislation or economic organization or in any other way, to all workers –agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and culture opportunities. The concept of social and economic justice aims at to bring about the ideals of welfare State.

Article 39 of the Constitution enunciates certain broad principle which the State shall follow in order to direct its policy towards State.

- (a) That the citizens, men and women equally, have the right to an adequate means of livelihood.;
- (b) That the ownership and control of material resources of the community are so distributed as best to sub serve the common good;
- (c) That the operation of economic system does not result in concentration of wealth and means of production to the detriment ;
- (d) That the health and strength of workers , men and women , and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength;
- (e) That childhood and youth are protected against exploitation and against moral and martial abandonment.

The forgone discussions make it clear that it has not been convenient to formulate a precise and clear –cut definition of the expression social justice. It has always been treated as a concept and has been described in so many words. The concept denotes a philosophy of life and sets a way in which all social life should behave. The concept of social justice is an outcome of historical revolutions between ‘haves’ and ‘have not’ giving rise to the present day political philosophy of a welfare state.

Historical, the following revolutions have been responsible for the emergence of social justice in a welfare state. The Glorious revolution of 1688 in England with its achievement in the bill Right in 1689 , the American war of independence with its fruition in 1776, the French revolution culminating into declaration of Right of

Man in 1789, the Russian Revolution of 1917, the Indian independence Movement which achieved its success in 1947 and the Chinese Revolution of 1949 were political in their apparent outlook ; but the fact is that all were motivated by social causes and in their background it was the social philosophy which assumed political shape. It was so, because in the vision of the father of such revolution, the then existing political set-up was the only barrier in establishing harmonious relation of the individual with his society. Gradually no country in the world remained unaffected from the impact of these great revolutions and brought about a total change in its political set-up by providing social justice to its people. The area of social justice is not static but expansive and includes civil, political, social, economic and religious, and in course of time the social and economic rights of the individual have become a State liability. This is being recognized in one form or the other in the Constitutions of all the countries.

Ever since the formation of the United Nations, several declarations, conventions and commissions on human rights have been made at international levels but it has not been easy for them to define the pleasing but perplexing of social justice. However, Patanjali Sastri J., of the Supreme Court in *A.K. Gopalan v. State of Madras* ( A.I.R.1950 S.C. 27 at p.72) has expressed that it is an “ideals which assures to the citizens the dignity of the individual and other cherished human values as a means to the full evolution and expressed of his personality” Gajendra gadkar, J., (as he then was) in *State of Mysore v. Workers of Gold Mines* (A.I.R. 1958 S.C. 923) has said that it is a concept which gives sustenance to the rule of law meaning and signifying to the ideal of a welfare State. Hidaytullah, J., (as he then was ) *Golak Nath v. State of Punjab* (A.I.R. 1967 S.C. 1643 at p. 1693) has Stated that the concept is a device by which “the relationship of society to the individual and of Government both, and the right of the minorities and the backward classes are clearly laid down”. Subba Rao, C.J., in the *Golak Nath* case has said that it is precept directing “to work for an egalitarian society, where there is no concentration of wealth, where there is plenty, where there is equal opportunity for all, to education, and to work for livelihood. The above expression reveal that the concept of social justice is replace with multifarious connotations . It is equated with a welfare State .It is considered to be analogous to an egalitarian society. It is treated to be an incident of the rule of law. It is coextensive with

social welfare. It vouchsafes the rights and amenities of the minorities and those of socially, educationally and economically backward classes, undertakes to create an affluent society. But in all these expressions, there has been no attempt to define exactly what it is. These and many other such expressions are only indicative of what it might mean and include, It is, therefore, still a vague and fluid concept abounding in social philosophy, though its social content has throughout received a political sanction, In all these fluid and vague terms a solemn duty is cast upon the State to promote a general welfare of the people. Even Article 38 of the Indian constitution which is the central theme of our Constitution states that the State shall strive to promote the welfare of the people by securing protecting as effectively as it may social order in which justice –social, economic and political shall inform all the institutions of national life. By making a separate reference to social, economic and political justice, Article 38 has made an attempt to consider the implications of justice in its social, economic and political aspects.

It appears as if economic and political justice are entities distinct from social justice. Because social justice prescribes for the abolition of all sorts of inequalities of wealth and opportunity of Further, it attempts to do away with the man-made distinction between caste, creed, sex, religion, race, faith etc. It means all means all men are equal and must get equal treatment from the State without any difference based on caste, creed, sex, race, religion, faith, and place of birth, Economic justice pleads for equal remuneration for equal work. Article 39 of our Constitution directs the State to secure to its citizens economic justice: that the men and women equally have the right to an adequate means of livelihood; that the ownership and control of the material resources of the community are so distributed as to best subscribe the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment that there is equal pay for equal work for both men and women; that the health and strength of workers and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and that the childhood and youth are protected against exploitations and moral and material abandonment. The aforesaid represents a comprehensive view of economic justice.

Economic justice pertains to the material conditions of life, as much of social inequality arises from difference in the material conditions of life. Economic justice is not a programme of the prosperity of an individual or some individual in particular but aims at the improvement of the down-trodden sections of the society. Thus, the Social welfare theory of the State takes a comprehensive view of the State which both social and economic justice.

Social justice must conform to justice in all its social aspects. Without political justice economic justice is not possible and the vice-versa Political justice stands for an equal share in ruling and being ruled. Under political justice, Governments derive their powers from their people, i.e., sovereignty vests in the general will of the people or in other words the sovereign power resides with the people. It is the State or society which formulates its policies and programme; and the Government works out the details of the policies formulated by the State, All the social institutions, enterprises, and public utility concerns serving vital needs of the people are being gradually controlled by the State. Thus, now political justice consists in the ability and liberty of the individual to share directly or indirectly in the administration of each body, institution or established serving his needs. Now, it is evidently clear that political justice subserves the needs and is a part of social justice.

---

## **Origin and Growth of Trade Unionism**

---

In a welfare State, the government cannot ignore social interests of workers. Industrial revolution during the last quarter of the 19<sup>th</sup> century and the pitiable conditions of workmen working in the industries those days are responsible for the emergency of the principle of collective bargaining and trade unionism on the British Island. The mushroom growth of cotton and wool industrial in Manchester, Lancashire etc. and exploitation of coal and iron are required a huge employment of men-power. The owner of these industries exploited man-power without the least caring for the welfare activities of their employees; so much so that a workman was required to put 16 hours of work daily without any weekly off.

Several men and women workers were living in one room in most in congenial atmosphere, this led to strikes and lock-outs by employees as well as employers. This gave a rise to the concept of social securing based on ideals of human dignity and social justice in the industrial sector. The underlying principle behind social welfare measures is that a citizen who contributed his might to the country's welfare should get his due and be protected against certain hazard (report of the National Commission on Labour, Para 13.1 , 164, (1964).)

The terms 'Social justice' , 'public justice', 'social welfare', 'social security' , 'labour welfare', and 'labour justice', are multi-dimensional in their contents and forms they include social , economic and political overtones in addition to legal; and these terms are interchangeable with each other . The concept of social justice has been termed as 'social security ' . 'Social measures', 'labour welfare' measures 'or schemes' or 'social, services', 'social insurance', 'public welfare measures or scheme s'. 'Labour justice measures 'etc., but they all mean one and the same thing in the industrial fields. The forgone discussions make it clear that it has not been convenient to formulas a precise and clear –cut definition of the expression social justice. It has always been treated as a concept and has been describe in so many words. The concept denotes a philosophy of life and sets a way in which all social life should behave. The concept of social justice is an outcome of historical revolutions between 'haves' and' have not' giving rise to the present day political philosophy of a welfare state.

Historically, the following revolutions have been responsible for the emergence of social justice in a welfare state. The Glorious Revolutions of 1688 in England with its achievement in the bill Rights in 1689 , The American war of Independence with its fruition in 1776 , the French Revolution culminating into the declaration of Rights of Man in 1789, the Russian Revolution of 1917 , the Indian Independence Movement which achieve its success in 1947 and the Chinese Revolution of 1949 were political in their apparent outlook ; but the fact is this that all were motivated by social causes and in their background it was the social philosophy which assumed political shape. It was so, because in the vision of thyme father of such revolutions, the exiting political set-up was the only barrier in establishing harmonious relation of the individual with his society .Gradually no

country in the World remained unaffected from the impact of these great revolutions and brought about a total change in its political set-up by providing social justice to its people. The area of social justice is not static but expansive and include civil, political social, economic and religious, and in course of time the social and economic rights of the individual have become a state liability. This is being recognized in one form or the other in the Constitutions of all the countries.

Ever since the formation of the United Nations , several declarations , conventions and commissions on human rights have been made at international levels but it has not been easy for them to define pleasing but perplexing concept of social justice. However, Patanjali Sastri J., of the Supreme Court in *A.K. Gopalan v.State of Madras* (A.I.R. 1950 S.C. 27 at p.72) has expressed that it is an "ideal which assures to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality". Gajendragadakar, J., (as he then was) in *State of Mysore v. Workers of Gold Mines* ( A.I.R. 1958 S.C. 923) has said that it is a concept which gives sustenance to the rule of law meaning and signifying to the ideal of a welfare state. Hidaytullah, J., (as he then was) in *Golak Nath V. state of Punjab* (A.I.R. 1967S.C. 1643 at p. 1693) has stated that the concept is a device by which "the relationship of society to the individual and of Government both, and the right of the minorities and the backward classes are clearly laid down". Subba Rao, C.J., in the *Golak Nath* case has said that it is a precept directing "to work for an egalitarian society, where there is no concentration of wealth, where there is plenty, where there is equal opportunity for all, to education, and to work for livelihood."

The above expressions reveal that the concept of social justice has replaced with multifarious connotations. It is equated with a welfare State. It is considered to be analogous to an egalitarian society. It is treated to be an incident of the rule of law. It is coextensive with social welfare. It vouches safes the rights and amenities of the minorities and those of socially, educationally and economically, backward classes undertake s to create an affluent society. But in all these expressions, there has been no attempt to define exactly what it is. These and many other such expressions are only indicative of what it might mean and include. It is, therefore,

still a vague and fluid concept abounding in social philosophy, through its social content has throughout received a political sanction. In all these fluid and vague terms a solemn duty is cast upon the state to promote a general welfare of the people, Even article 38 of the Indian Constitution which is the central theme of our Constitution states that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice—social, economic and political shall inform all the institutions of national life. By making a separate reference to social, economic and political justice, Article 38 has made an attempt to consider the implications of justice in its social, economic and political aspects.

It appears as if economic and political justice is entities distinct from social justice. Because social justice prescribes for the abolition of all sorts of inequalities of wealth and opportunity of Further, it attempts to do away with the man-made distinction between caste, creed, sex, religion, race, faith, etc. It means all men are equal and must get equal treatment from the State without any difference based on caste, creed, sex, race, religion, faith and place of birth. Economic justice pleads for equal remuneration for equal work. Article 39 of our constitution directs the State for securing to its citizens economic justice; that the men and women equally have the right to an adequate means of livelihood; that the ownership and control of the material resources of the community are so distributed as to best serve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment that there is equal pay for equal work for both men and women; that the health and strength of workers and the tender age of children are not abused and the citizens are not forced by economic necessity to enter vocations unsuited to their age or strength; and that the childhood and youth are protected against exploitation and moral and material abandonment. The aforesaid represents a comprehensive view of economic justice.

Economic justice pertains to the material conditions of life, as much of social inequality arises from a difference in the material conditions of life. Economic justice is not a programme of the prosperity of an individual or some individual in particular but aims at the improvement of the down-trodden sections



of the society. Thus , the social welfare theory of the State takes a comprehensive view of the State which includes both social and economic justice.

Social justice must conform to justice in all its social aspects . Without political justice economic justice is not possible and the vice-versa. Political justice . Stands for an equal share in ruling and being ruled. Under political justice, Government derive their powers from their people, i.e., sovereignty vests in the general will of the people or in other words the sovereign power resides with the people. It is State or society which formulates its policies and programme; and the Government works out the details of the policies formulated by the State. All the social institutions , enterprises, and public utility concerns serving vital needs of the people are being gradually controlled by the State. Thus, now political justice consists in the ability and liberty of the individual to share directly or indirectly in the administration of each body, institution or establishment serving his needs, Now , it is evidently clear the political justice subscribe the social needs and is a part of social justice.

---

## **2.3 ROLE OF JUSTICE IN LABOUR LEGISLATION**

---

### **Origin and Growth of Trade Unionism**

In a welfare State, the Government cannot ignore social interests of workers . Industrial revolution during the last quarter of the 19<sup>th</sup> century and the pitiable conditions of workmen working in the industries those days are responsible for the emergency of the principle of collective bargaining and trade unionism on the British Island. .The mushroom growth of cotton and wool industries in Manchester , Lancashire etc. and owners of these industries and iron one required a huge employment of man-power . The owners of these industries exploited man –power without the least caring for the welfare activities of their employees; so much so that a workman was required to put 16 hours of work daily without any weekly off. Several men and women workers were living in one room in most in congenial atmosphere. This led to strikes and lock –out by employees as well as employers.

This gave a rise to the concept of social securing based on ideals of human dignity and social justice in the industrial sector. The underlying principle behind social welfare measures is that a citizen who contributes his might to the country's welfare should get his due and be protected against certain hazard (Report of the National Commission on Labour, para 13.1, 164, (1964).)

The terms 'social justice' , 'police justice' , 'social welfare', 'social security', 'labour welfare' and 'labour justice' are multi-dimensional in their contents and forms and they include social , economic and political overtones in addition to legal ; and these terms are interchangeable with each other . The concept of social justice has been termed as 'social securing'. 'social measures'. 'labour welfare measures' or schemes '. 'social , services'. 'social insurance', 'public welfare measures or scheme', 'labour justice measures' etc. , but they all mean one and the same thing in the industrial field.

Employees and employers have contradictory and conflicting claims interest against each other. In such a state of affairs struggles and frictions were bound to arise between 'have and 'have not's. The 'haves' tried to have as much as was possible at the cost of these who contributed to their wealth without the least caring for even minimal necessary condition of life for the living of 'have not's. Rise of capitalism and industrialism in the late eighteenth and nineteenth centuries resulted in a greater hardship for individuals and their families . The industrialists by their installed factory machines were so much concerned with their material gains that they ignored the conditions of workers who provided their labour without which machines could not have worked. All this resulted in mal-adjustment of labour –capital-relations. Against these uneven socio-economic conditions, the working class organized themselves to have a better working conditions, living standard and status.

In this way the capitalist class and labour class, i.e., 'haves' and 'have not's came into conflict with each other. The capitalist intended to achieve maximum gains and benefits out of their invested capital in an industrial establishment at the cost of labour class; and on the other hand, the labour class got united for the removal of socio-economic inequalities and for the protection of their interests .

They fought against exploitation .Thus trade unions emerged as reactions against these beliefs and practices that within the four walls of the unions of the factory the employer could exercise arbitrary control over workers against the philosophy of hire and free.

The trade union movement did not remain confined to one factory , industry or country but widened its premise and scope and in course of time assumed an international status which came to be known as International Labour Organization (ILO) for promoting labour welfare. Its Conventions and Recommendations recognized freedom of association ; and in industrial relation included many recommendations regarding freedom of employment , services , transfer, of labour , wage-policy, minimum wage fixing machinery , hours of work , rest period , holidays with pay , employment of women , children and young persons, industrial health , safety, welfare, social securing and administration of labour legislations which envisage consultations with the association of employers and workers organization in various ways in the application of these instruments before any action is taken. Co -operation of workers' and employers' organization in various bodies administering social legislation or their representation on advisory committees connected with such bodies are the result of social awakening of their rights in the industrial filed.

### **A conspectus of Labour Welfare**

The modern society being a welfare society has assumed the responsible of providing social and labour welfare schemes against risks of aliment, age and death. These labour welfare schemes and measures introduce an element of stability and protection against stress and distress of modern industrial life. The right of social securing is one of the significant human rights set out in the Universal Declaration of Human Rights adopted and proclaimed on December 10,1948 by the General Assembly of the United Nations. The declaration proclaims that everyone as a member of an each society has a right to social security and is entitled to in according with the resources of each organization and State economic, social and cultural rights for the dignity and free development of his personality.

Member Status of the International Labour Organization in May 1955 laid down a grand charter of Labour popularly known as Philadelphia Declaration which secures the extension of social securing measures by providing a basic income to all in need of such protection, a comprehensive medical care and makes a provision for maternity protection. With establishment of the International Labour Organization in 1919, seeds of universally acceptable principles for evolving and guiding labour welfare measures throughout the world were sown. The needs for providing social securing and labour welfare measures to labour class was recognized by the I.L.O. since its inception , and out of its twenty eight conventions , the convention 102 concerning Minimum Standard of social securing or labour welfare is significant . It envisages providing benefits in a large number of contingencies, e.g., sickness, unemployment, old age, death, employment injuries, invalidity etc.

### **Labour Welfare Legislations**

In India , after The Fatal Accident Act, 1855, the Workmen's Compensation Act, 1923, is perhaps the first legislation which may describe as social securing measures in wider perspective .As a result of the recommendations of the Royal Commission on Labour in 1931, several social justice measures applicable to the industrial labour were made in a course of time, and notable amongst those are: The Payment of Wages Act,1936; The Industrial Disputes Act,1947 ;The Factories Act,1948 ; The Employees' State Insurance Act,1948; The minimum Wages Act,1948; The Coal Mines Provident Fund and bonus Schemes Act,1948;The Employees' provident fund and Miscellaneous provisions Act,1952; The maternity Benefit Act, 1961; The Employees Family Pensions Scheme , 1971;The Payment of Gratuity Act,1972; and The Employees Deposit -linked Insurance Scheme,1976 are only illustrative social and labour welfare legislations but ,are not exhaustive , In course of time these Acts have been amended several times in order to meet the needs of social justice. Very recently a social justice oriented legislations of far reaching importance of general public called The public Liability Insurance Act,1991, came into force. The Act is the First of its kind and nature in any part of the world .It meets the long -felt demand for some mechanism industries or immediate relief to the victims of accidents or incidents

involving hazardous industries or operations. The workers who are the victims of such accidents, are protected under the workmen's Comprehensive Act, 1923 and the employees State insurance Act, 1948, but the members of the general public are not assumed of any relief except through long legal procedures; and very often the affected are from the weaker sections of the society who have very limited resources to go through the legal procedures.

In the background of the enactment and enforcement of the aforesaid legislations of social welfare or social justice it is the social philosophy of the labour justice and labour welfare which works. The term social justice is of multi-dimension and includes all those measures which aim at eradication of inequality, disparity, poverty, unemployment and disease. It offers equality of opportunity of economic employment or engagement without any distinction of caste, creed, sex, religion race, faith and place of birth; and to industrial labour it offers securing of employment benefit during and after service period if unable to earn livelihood due to age illness, invalidity, disability, death etc. A Social justice is genus while social securing, labour welfare and labour justice are species and are interchangeable in their meaning and scope.

---

## **2.1 JUDICIAL ANALYSIS**

---

The aforesaid social objective are found in the judicial pronouncements of the Supreme Court in *A.K. Gopalan v. State of Madras* (A.I.R. 1950 S.C. 27) Patanjali Shastri, J., (as he then was) of the Supreme Court has observed that the Indian Constitution by its preamble assures to his citizen personal dignity and other cherished human values to develop his personality and likewise, in *Golak Nath v. State of Punjab* (A.I.R. 1967 S.C. 1643), Hidaytullah, J., (as he then was) of the Supreme Court has, emphatically, said that "this social document is headed by a preamble which epitomize the principle on which the Government is intended to function and these principle are later expanded into Fundamental Rights in Part III and the Directive Principle of State Policy, in Part IV. The former are protected but the later are not. The former represent the limit of State action and the latter are obligations and the duties of the Government as good and

social Government .” It enjoins to bring about social , economic and political justice and directs to work for an equalitarian society where there is an equal opportunity for all to education and to work for livelihood .

In State of Mysore v. workers of Gold Mines (A.I.R.1958 S.C. 923) Gajendragadakar, J., (as he then was) of the Supreme Court has observed that social economic and political justice have been given a place of pride in our Constitution .Article 38 requires that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may social order in which justice social , economic and political shall inform all the institutions of national life.

The Supreme Court in Mills Co. Ltd., v. Suti Mills Mazadoor Union (A.I.R. 1995 S.C. 170) has confessed that social justice is a very vague and indeterminate expressions and that no clear –cut definition can be laid down which may cover all the situations .The Court tentatively adopted a definition proposed by Mr. Isaacs the counsel of the respondent in the case, and according to him “social justice can notes the balance of adjustments of various interests concerned in the social and economic structure of the State is order of various harmony upon an ethical and economic basis.” But this too been found not to be based on solid criteria. The Court, Further, said that “without embarking upon a discussion as to the exact connotation of the expression social justice we may only observe that the concept of social justice does not emanate from the fanciful notions of any adjudicator but must be founded on a more solid foundation.”

The definition proposed Mr. Isaacs was found deficient on two counts. First, it concerned with the balance of adjustments both in the social and economic structure of the State and; secondly, the definition concerned with one particular phase of society, i.e., labour relations between the employers and the State. The Court, then , referred to the Full Bench Formula of the Labour Appellate Tribunal which ensured to achieve an industrial peace in a given situation .According to this formula industrial peace could be achieved by having a contented labour force on the one hand and on the other hand an investing public who would be attracted to the industry by a steady and progressive return on the capital which the industry

might be able to offer. Industrial peace alone cannot constitute social justice though it is one of the essential conditions of the concept.

In *J.K. Cotton Spinning & Weaving Mills v. Labour Appellate Tribunal* (A.I.R. 1964 S.C. 737), The Supreme Court has said that the concept of social justice is not narrow, one-sided and is confined to industrial adjudication alone; but its sweep is comprehensive, as it is founded on the basic ideal of socio-economic equality and its aim is to remove socio-economic disparities and through industrial adjudication it has to adopt a pragmatic approach to bring about harmony between labour and capital in order to be just and fair to both.

Though a harmonious relation between Labour and industry is needed but it is not the only organ of this great social structure. Besides, labour and industry, there are other vocations, callings, trades and business which also operate on socio-economic structure. For instance, a Government servant or a teacher though not a labour in the strict sense of the term yet he is an employee of an employer drawing a salary commensurate with his work and a harmonious relation is needed between the two for a better output and likewise in cases of landlords and tenants, creditors and debtors, producers and consumers, merchants and dealers and all dealings of men with men jural relations exist.

All dealings of men have a tendency sooner or later to develop into jural relation because every dealing demands justice. Thus, it is not contentment of the labour force alone, but the contentment of each partner of society, the social justice has to ensure. If private justice operates on jural relations of men, social justice must operate on the jural relation obtaining between the individual or a class of individual and the society at large. The relation between the individual and the society works on the principle of give and take, so the individual has contributed the best of his physical and mental abilities to the progress of society and the society in turn has to afford to him all practicable opportunity of self-improvement relating to material conditions of life. The Supreme Court in *Punjab National Bank v. Ram Kumar* (A.I.R. 1957 S.C. 276) has observed that social justice does not conform to one-sided justice but justice to all in every aspect of life based on material gains.

Justice consists in the exercise of a right with reasonable restraint. The giver of justice sits with the pious obligation to test and declare whether a restraint imposed or to be imposed on the exercise of a right is or is not reasonable. Social purpose after being recognized become a social right in favor of an individual or class of individuals exercisable against the State but with reasonable social restraint. In this context social justice is a balance between social rights and control. Social justice demands that neither the rights nor the control should go into excess.

Justice is neither to give less nor more, but equal in proportion. Where social rights have been defined, the judges uphold the concept of social justice by testing whether amount of social control is reasonable. In Golak Nath's case (A.I.R. 1967 S.C. 1643 at p.1655) K. Subba Rao, C.J., has observed that the Indian Constitution constitutes higher rights of the State as the sentinel of the people's rights and the balancing wheel between the rights and obligation subject to social control. S

In Hindustan Antibiotics v. The Workmen (A.I.R.1967 S.C.948) the Supreme Court said that the object of the industrial law is twofold namely,

- (i) to improve the service conditions of labour so as to provide for them the ordinary amenities of life and
- (ii) by that process to bring about industrial peace which in its turn accelerates productive activity in the country resulting in its turn, helps to improve the conditions of labour which can be progressively raised from the stage of minimum wage, passing through need based wage and fair wage to living wage.

Equal pay for equal work is the foremost condition of a contented labour force. Article 39 of our Constitution directs the State policy towards securing equal pay for equal work for both men and women, and Article 43 enjoins on the State to secure by suitable legislation of economic organization or any other way to all workers –agricultural, industrial or otherwise work, a living wage, conditions of work insuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Even before coming into force of the Indian Constitution,



the Legislature in India had passed several Acts regulating the relationship and employee.

---

## 2.2 SUMMARY

---

The concept of justice is not a simple one, but multi-dimensional. One of its dimensional is social justice which is an outcome of social philosophy .A social philosophy of a nation largely depends on its policy it follows. A society is judged by the norms those govern the lives of its members. The norm that is enforced by the State is its system which reflect rights, privileges and obligations of its citizens.

The concept of social justice is not a pleasing but perplexing one. Its connotations are social economic and political .Under a polity embracing social justice discrimination based on caste, creed , race, religion, faith, sex and place of birth does not find place. The concept assures all citizens individual dignity and other cherished human values for the full evolution of his personality ,It envisages to established a welfare state where equal opportunity to education and work for livelihood is proffered to both –men and women without the least discrimination based on caste and creed socio-economic justice pleads for equal remuneration for equal work to both –men and worker without creating any difference of caste and creed . Social justice must be in conformity with justice in all aspects of social life of a given society. Without political justice economic justice vis-a vis social justice is not possible. Political justice stands for an equal share in ruling and also being ruled. It is a rule of law and not of men or men needs and under which sovereign resides with the people. As political justice serves the social needs and so it too is a part of social justice.

Economic justice for an equal opportunity for material gains to all citizens without any discrimination of caste and creed. It can notes adjustment of various interests in a given socio-economic structure of a State .In various Indian labour legislation the concept of social justice is describe in every industrial adjudication.

A galaxy of case law concludes that the adjudications strike a balance between the interest of labour force and the interests of capital investing public. It is because without striking a balance of adjustments of the two interest's industrial peace cannot be achieved and without the industrial peace neither the country will prosper nor the labour force will prosper. Thus, the concept of social justice demands the satisfaction of interests of various sections of the society and particularly those sections of people who did not opportunities to develop their personalities.

---

## **2.3 SELF-ASSESSMENT TEST**

---

1. What is social justice? Explain the concept of social justice with reference to any Labour Legislation in India.
2. Explain the provisions of the Indian Constitution providing social justice to labour force in industrial sector.
3. Distinguish between: (a) Social justice and Labour justice (b) Political justice and Economic justice.
4. Is Reservation in Government services on the basis of castes is a social justice? Discuss.
5. Trace the history of social justice with reference to labour legislation in India.

---

## **2.4 FURTHER READINGS**

---

1. Braham, Randolph L., Social Justice, Martinus N. Publishing Boston (1980)
2. David Miller, Social Justice, Clarendon Press, Oxford (1976)
3. Gajendragadakar P.B., Law, Lawyers and Social change, National Forum of Lawyers and Legal Aid, New Delhi (1976)
4. Chaturvedi R.G., Natural and Social Justice, All, Law Book co., Allahabad (1975)
5. Srivastava S.C., Social Security and Labour Laws, Eastern Book Co., Lucknow (1985)

---

# UNIT-3

## Natural Justice

---

### Objectives :-

After going through this unit, you should be able to appreciate

- the underlying principle of Natural justice,
- how to apply the process of natural justice and invoice policies and actions in the Context of your industry, organization establishment and employment so that the natural Justice is done to an employee.
- Role of Natural Justice in Labour Legislations

---

### Structure :

---

- 3.1 Introduction
- 3.2 Definition and Meaning
- 3.3 Rules of Natural Justice
- 3.4 Role of Natural Justice in Labour Legislations
- 3.5 Judicial Analysis
- 3.6 Summary
- 3.7 Self-Assessment Test
- 3.8 Further Reading

---

## 3.1 INTRODUCTION

---

This unit has been prepared to acquaint you the nature, meaning, rules, role and judicial analysis of natural justice which an employer is likely to experience in the course of employment in the context of an industry, factory, plant, organization an establishment.

The doctrine of natural justice interposes between an employer and a Government and an employee when any administrative action is taken either by the Government against the employer relating to his industry, plant, factory and establishment, or by the employer against the employee or employees. In the context of an industry, plant, factory, or establishment an employer is likely to face departmental enquiries and actions of the Government and likewise, a workman or employee is likely to face departmental enquiries and administrative actions where the principle of natural justice comes into play. The administrative enquiries and departmental actions of the Government may even result into closure of the industrial plant or establishment and if such result is arrived at in violation of the principle of natural justice, it will not be sustainable in a judicial enquiry.

Again, since the enactment of labour laws the rights of management to hire and fire workmen has been, considerably, abridged, because, the workers have acquired the right under the Industrial Dispute Act to question and challenge his suspension, dismissal and retrenchment. The Labour Courts, High Courts and the Supreme Court have been vested with the powers of judicial review of any such administrative actions of the employer and the employer has, now, to act in a bona fide manner and for a just, fair and reasonable cause. In fact, a big case law has been built up in England and India on the application of the natural justice for arriving at many such administrative actions affecting the legal rights of the individual or workers but here in only a few leading cases have been discussed and analysed in order to acquaint and warn you as a manager and employer that your action is subject to challenge and so it must stand in conformity with the principle of natural justice.

---

## **3.2 DEFINITION AND MEANING**

---

There is no single definition of natural justice that is both authoritative and comprehensive. Evered M.R. in *Abbott v. Sullivan* [(1952) 1 K.B. 189 at p. 195] has rightly observed that "the principle of natural justice are easy to proclaim, but their precise extent is far less easy to define". Here, only it is possible to enumerate with some certainty the main principles of which it is, in modern times,

said to consist. The qualification as to modern times has been made because the expression 'natural justice' was until the eighteenth century often used interchangeably with the expression 'natural law' (Jus Naturals) and other synonymous phrases. But, recently, the phrase 'natural justice' has acquired a restricted meaning and is used to describe certain rules of judicial procedure. According to Hamilton L.J. the expression 'natural justice' very much lacking in precision. Channel J., in *Robinson v. Fanner* [(1913) 3 K.B. 835, 842] has observed that "there really is very little authority indeed as to what it does mean".

The phrase 'Natural justice' has meant many things to different lawyers, authors and system of law. Professor Wade H.W.R. defines natural justice as "the name given to the certain fundamental rules which are so necessary to the proper exercise of powers that they are projected from the judicial to the administrative sphere". A more positive and definite pronouncement concerning the elements where of natural justice is composed is obtainable in *Spaceman v. Plummeted District Board of works* [(1885) 10 App. Case, 229, 240] where a superintending architect of the metropolitan Board of work was exercise judicial functions. The Earl of Selborne L.C. has said.

No doubt has in the absence of social provisions as to how the persons who is to decide is to proceed, the law will simply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word, but they must give the parties an opportunity of being heard before him and standing their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice. Bowen L.J., in *Lesson v. General Council of Medical Education*. [(1889) 43 Ch. D.366 at p. 383] has observed]

The Statute imports that the substantial elements of natural justice must be found to have been present at the inquiry. There must be due inquiry. The accused

person have notice of what he is accused. He must have an opportunity of being heard and the decision must be honestly arrived at after he has had a full opportunity of being heard.

Likewise, in *General Medical Council v. Spackman* [(1943) A. C. 644] Lord Wright has observed that the essential requirements that should be impartial and that the medical practitioner who is impugned should be given a full and fair opportunity of being heard.

The aforesaid are the views and opinions of the English Judges and writers. Let us, now, try to understand as to what the Indian Judges say about the expression 'natural justice'. In *H.S. & I.E., U.P. v. Chitra* (AIR 1970 S.C.1039 at p. 1040) Sikri, J. has said that the 'natural justice' is the price of the rule of law. Hedge, J., of the Supreme Court in *A.K. Kraipk v. Union of India* [(Air 1970) S.C. 150 at p. 156] has said that the aim of the rules of natural justice is to secure justice or put it negatively to prevent the miscarriage of justice. The rules can supplement the law but cannot supplant it. Thus, natural justice is a judicial instrument in the hand of Courts. Its extents differ from cases to case depending on approach and attitude of the Court. The rules of natural justice are not enacted and embodied statutory rules, but they operate only in areas not covered by any statutory law. These rules do not have overriding power over statute.

Thus, the rules of natural justice may be explained as the minimum standard to be followed by administrative while discharging their duties which impinge on the interests of the citizens. These rules aim at to make the administrative machinery objectively efficient. These rules insist on fairness of the procedure to be followed by administrative authorities in the exercise of the powers. Natural Justice is an essential part of the philosophy of life. There is nothing rigid or mechanical about it. Any analysis of natural justice much brings about a real relief rather than precise definition for its application. The Supreme Courts, in *Maneka Gandhi v. Union of India* (A.I.R. 1978 S.C. 597), has held that the natural justice is a great humanizing principle intended to invest law with all fairness to secure justice. The principle and procedures of law applied in a particular situation or set of circumstance must justness, fairness and

reasonableness of the procedure established by law .The expression 'natural justice ' is not capable of a static and precise definition .It cannot be imprisoned in the strait jacket of a cast iron formula .The Supreme Court in *Swadeshi Cotton Mills v. Union of India* [(1981) S.C.R. 533 at page 554] has observed that it is not possible to make an exhaustive catalogue of such rules. The rules of natural justice are a means to an end not an end in themselves. Natural justice, like ultra virus and public policy ,is a branch of public law and is a formidable weapon which can be wielded to secure justice to citizens .Further, in *Natural Textile workers Union v.P.R. Ramakrishna* (A.I.R.1983 S.C. at p. 89) the Supreme Court has observed that the principle of natural justice is not exclusively a principle of administrative law but a principle of universal law. The Indian law has been deeply influenced by the English common law. the cases having influenced the Indian law are ;*board of education v. Rice* (1911) A.C.179] *Local Government board v.Aldridge* [ (1964)A.C. 120] *R.V. Electricity commission* [ (1924) 1 K.B.171] and *Ridge v. Baldwin* [(1964) A.C. 40 ] In *board of Education v. Rice* ,the Board had to determine a dispute between a board of school managers and local education authority .pointing out the procedure which the board had to follow, the house of lords observed.

The Board of Education must act in good faith and fairly liaison to both sides ,for that is a duty lying upon everyone who decides anything .But ....(it) is not bound to treat the question as though it were a trial. They have no power to administer an oath ,and need not examine witnesses. They can obtain information to any way they think best always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to g their views. Lord Holdane L.C. expanding the above view in *local government Board v. Abridge* has observed; when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they give to each of the parties the opportunity of adequately representing the case made

Two important rules that a man cannot be judge in his own case and one who decides must hear the parties were laid down in the above judicial pronouncements.

With the dawn of independence in 1947 and the enforcement of the Indian Constitution in 1950, the role of the state and the Government changed and an administrative era has set in India. The Indian constitution, on one hand, has guaranteed certain basic rights to the citizens and on the other hand various limitations have been imposed on them. The enforcement of the basic rights has been secured through the supreme Court and various High Courts under Article 32 and 226 of the Constitution. The Courts have been empowered to enforce these rights by issuing directions orders and writs including those of the prerogative nature issued under the common law of England.

The Indian Courts have applied the principles of natural justice, more or less on the that pattern of English decisions in *Radheshyam v. state of M.P.* (A.I.R. 1959 S.C.107) the Supreme Court discussed the application of the principles of natural justice as laid down in the above English cases and following them held that the state Government could not appoint executive secretary to take all the powers of Municipal Committee and could not declare the two functions of the Committee as incompetent to discharge its duties without following the principles of natural justice. In this case the two functions of the Committee were not given opportunity of being heard. Further, the Court in *Express News (p) Ltd .v. Union of India* [(1959) S.C.R. 12] observed that if the functions of Wages Board were administrative or legislative in character, the decision could not be challenged on the ground that their procedure was contrary to the principles of natural justice.

In *Board of high school v. Ghanshyamdas* (A.I.R. 1962 S.C.1110) the supreme Court said that the action of the Board in cancelling the respondents results and in debarring them from appearing in the next examinations was without jurisdiction as the respondents were not provided with an opportunity of being heard. The court said that Examination Committee of the Board was acting quasi-judicially and the principles of natural justice must apply. The English case, *R.V. Manchester legal aid Committee, expert Brand* [(1952)all E.R. 480] where it was said that a "duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively".



The application of the principle of natural justice was, for the first time, put on the right track by the supreme Court in A.K. Kraipak v. Union of India(A.i.R.1970 S.C.150).in this case the Court ruled that the object of the principles of natural justice is to secure justice and to prevent miscarriage of justice. The aim of both quasi-judicial and administrative enquiries is to reach a just decision. The Court, thus, attempted to do away with the artificial distinction between quasi-judicial and administrative function.

In Maneka Gandhi v.Union of India (A .I .R. 1978 S.C.597) the Court has held that the soul of natural justice is a fair play in action and there can be no distinctions between a quasi-judicial and administrative function for the purpose. In this case the Court gave a new interpretation of the phrase procedure established by law of Article 21 of the Indian constitution as meaning just ,fair and reasonable ' procedure Further , the Court in Bachana Singh v. state of Punjab in 1980 re – wrote the content of Article 21 and the aforesaid two decisions revolutionized the concept of the 'procedure established by law' importing into it 'justness , fairness and reasonableness of the procedure established by valid laws

The Supreme Court, in Frances Cora lie Mullin v. The Administrator U.T., Delhi (A.I.R. 1981S.C. 746 ) vastly extended the scope and ambit of procedural fairness. The Court ruled that Article 21 within its scope and ambit includes the right of an individual to live with basic dignity and the State cannot deprive anyone of this precious and invaluable right because no procedure by which such deprivation may take place can ever be regarded just, fair and reasonable

---

### **3.3 RULES OF NATURAL JUSTISE**

---

The above extracts from the judgments of the highest Courts are sufficient to explain the two essential rules of natural justice which are in modern times usually expressed in the following forms :(a) no man shall be judge in his own cause ,or nemo judex in sue cause ;and (b) both sides shall be heard ,or audi alteram partem .

Other principle which have been stated to constitute elements of natural justice are that (i) the parties must have due notice of when the judge or tribunal will proceed with the case , (ii) the concerned individual who is to stand before an enquiry officer must have prior notice of all the charges and allegation against him so that he can prepare himself to meet them on the day of hearing and , is not taken by surprise , (iii) the court or tribunal should not act under the dictation of other persons who have no authority , and (iv) if the tribunal consists of several members , all must sit together all the time , These other rules are merely extensions and refinements of the two main rules of natural justice , which are discussed as follows:

**(a) No man shall be judge in his own cause (Nemo Judex in Cause Sun )**

The basic objective of natural justices is to make an unbiased , impartial and fair. To very great extent judges of Courts follow these standards and are expected to follow them. But an apprehension arises in case of administrative authorities charged with quasi-judicial functions between the administrative and individuals. They are likely to be biased 'officially, in cases of administrative ad judicial where a judicial Scrutiny is made, the Courts will scrutinize as to whether the principle of a just, fair and reasonable procedure has been followed or not. The main rules of bias and interest are (i) 'no person shall be judge in his own cause ' , and (ii) justice should not only be done appear to have been done.

When a judge or member of a tribunal has pecuniary interest the will apply with full vigor howsoever the exalted position , or trifling monetary interest of the member may be . The doctrine of bias and departmental bias are based on simple principle that where a public or private authority is charged with discharging public duty , it should function objectively , fairly and impartially.

**(b) Both sides shall Be Heard (Audi Alteram Partem)**

No one should be condemned unheard is the basic principle of natural justice , both sides to the dispute must have an opportunity of being heard by the Court or the tribunal. The rule has got two off shoots ; namely , (i) both sides , particularly the party charged with should have notice of the charges and

allegations to be met with and (ii) and opportunity to explain the charges in defense. This opportunity of hearing if not given before the decision taken, be given after the decision. The rules of natural justice may embrace number of sub – rules which may vary their application according to fact situation of a particular case. The Court only insist upon the result that the decision arrived at must be just and fair. Therefore the rules of natural justice do not go to the form but to the content.

Natural justice demands that a person whose legal rights are to be affected should be given a notice of the charges and allegations providing a reasonable time to explain them in his defense. At first a controversy arose that the rule audi – alteram partem applied only in judicial and quasi –judicial proceeding but, did not apply to administrative proceedings .But this controversy has been put o rest since the decision of A.K.Kraipak v.Union of India (A.I.R. 1970 S.C. 150). The Supreme Court in its land mark judicial pronouncement held that even administrative orders must be preceded by notice and hearing if the proceeding will have adverse civil consequence upon a person.

As regards the standard of hearing, it may be oral as well as in writing. It may be personal or through lawyer of representative depending upon the practical necessity of the situation. it may be a full-fledged hearing or a very brief and minimal. The hearing may be prior to a decision or even after the decision is made depending upon the situation of a particular case.

In quasi –judicial and administrative hearing the administrator is not a judge or Court in the proper sense of word, but he must give the parties an opportunity of being heard to state their cases and views. Here, hearing of the parties does not mean their examination according to the rules of evidence. Tribunals exercising quasi-judicial or administrative functions are not Courts and therefore, they are not bound to follow the strict procedure prescribed for trial in Courts nor are bound by strict rules of evidence.

The rule that no person shall be a judge in his own cause and, that the parties must have an opportunity of being heard will, further, be analysed and discussed under heading judicial analysis,.

---

### **3.4 ROLE OF NATURAL JUSTICE IN LABOUR LEGISLATIONS**

---

Any industry, factory or established, whether in public or private sector or wholly owned controlled by Central or a state Government, needs man power, and without which it cannot function. Two major factors, capitals and labour are required to remain contented for the development of the industry. Thus the industrial revolution within and outside the country gave birth to several labour legislations dealing with management, etc. The legislations as such are: the Industrial Disputes Act, 1947, Factories Act 1948 Coal Mines Act and many such others and social security. Legislations have been enacted, enforced and amended from time to time to accord with social needs with the changes of time.

Many time has been that labour management legislations have conferred sweeping powers on the management exercising administrative control over an industry, plant, factory or establishment. In such situations, when an administrative tribunal or a statutory body exercise expressive control over labour force; or when Government authority exercise unwarranted control and restrictions on management, conflict is bound to crept and there, the decisions of adjudicatory authority may not necessarily, be always in accordance with the principles of natural justice. Likewise, in the adjudications of labour management disputes, because of departmental bias or personal pecuniary interest, and such other related factors, the executive action may not be in accordance with the rules of natural justice and consequently justice may not be done to an individual. Thus, the rules of natural justice interpose in such situations and bring about justice by redressing the grievances of the individual.

In labour legislations , whether it is the Industrial Disputes Act , or the Factories Act , or the Payment of Provident fund Act or the Payment of bonus Act or the Payment of Gratuity Act in every labour legislation there is a vast scope of administrative action , and if exercised arbitrarily , capriciously and improperly , by justice may not be done to an individual .Initially ,the administrative in actions were excluded from the application of the rules of natural justice , but with the chance of time , and now the principle of natural justice apply for judicial scrutiny of an administrative action whether the authority has or has not exercised quasi-judicial functions it, arriving at particular decision.

---

### **3.5 JUDICIAL ANALYSIS**

---

**(a) No man shall be judge in his own cause ( Nemo Judexi in Sua Causa )**

The Indian courts have always followed the principle of justice enunciated by .the Court of Common Low principles in England. The rule of Dimes v.Grand Junction Canal [ (1852) 3H.C.L.759 ] and king v.Sussex Justices [ (1924 ) 1K.B.256] have consistently , been followed. In the former case, Lord Cottenhem had made several decrees in favor of Canal Company in which he had shares. On appeal the decisions of Lord Cottenhem was set aside on the ground of bias and interest , through it was fully established that he was not , even remotely , influenced by his share in the canal Company. In the other case, the clerk to the justices was associated with the firm of solicitor which was contending a claim for damages against the clerk who was convicted before the justice .His conviction was set aside although the justice has new consulted the clerk.

In *Khelwanti v. Chet Ram* ( A.I.R. 1952 Punj. 67 ), the Court set aside the proceedings as being contrary to the principles of natural justice on account of the tribunal having been consisted of close relations and friends of one of the parties. *State of U.P.v. Nooth*(A.I.R. 1958 S.C. 86 )is another case on the point. In this case of a departmental enquiry against the respondent, a police constable a witness went hostile and the Superintendent of police conducting the enquiry left his seat and

deposed as witness and on that basis gave his decisions. The Supreme Court set aside the decision on the ground of violation of natural justice.

In *Manak Lal v. Dr. Prem Chand* (A.I.R. 1957 S.C. 425 ) the Supreme Court held that the Chairman of the Bar Council who had earlier represented Dr. Prem Chand was not competent to be in the tribunal relating to an enquiry of professional misconduct against the appellant advocate. Though there was no real like hood of bias .but the Court said “justice not only be done but undoubtedly and manifestly seem to be done ‘Likewise, in *D.L. Ramesh v. State* ( A.I.R. 1978 Kant .3) the High Court held that the order of special deputy Commissioner as an appellate authority under the Karnataka Rent control Act was vitiated on the ground that when the appellant and his advocate went to see the special deputy Commissioner , they saw the wife of allotted coming out from the house of the special Deputy Commissioner ,The Court said that the decision of appellate authority was contrary to rules of natural justice which insists that justice should not only be done but manifestly and undoubtedly appear to have been done .The Supreme Court in *A.K. Kraipk v. Union of India* ( A.I.R. 1979 S.C. 150 )has held that mere suspicion of bias is not sufficient . It is the reasonable like hood of bias that will vitiate the proceedings. In this case the acting Inspector General of Forest of Jammu and Kashmir being a candidate for the post was a member of the Selection Board through when his turn came for his appearing before the Board, he withdrew himself from the Board yet his name was placed on the top of the selected candidates. The Supreme Court has observed that as the purpose of natural justice is to prevent and miscarriage of justice and that purpose has not been obtained in this case as the participation of the acting Inspector General of Forest in the Selection Board manifestly created a conflict between his duty and interest .He acted as a judge in his own case and that created circumstance abhorrent to our concept of justice and accordingly, the selection was set aside.

### **Personal Pecuniary Interest**

Direct pecuniary interest of judge disqualifies him from deciding a case. The rule applies with howsoever the exalted tribunal or the trifling interest may be. In *Annamalai v. State of madras* (A.I.R.1957 A.P. 739) where Regional Transport

Authority Constituted under the Motor Vehicles Act, 1939, had granted a permit to one of his members, the High Court had cancelled the permit on the ground of bias. Mineral Development Ltd. v. State of Bihar (A.I.R. 1960 S.C. 468) presents clear example of personal bias. In this case the proprietor granted mining lease for all minerals in the lashed property to the appellants. The company subsequently obtained a license under the Bihar Mica Act for Mica mining in which the proprietor was keenly interests .The proprietor's political rival was elected to the Bihar Legislative Assembly and was also, sworn in as Revenue Minster. He initialed an enquiry against and appellant and cancelled the license .The Supreme Court held that the Revenue Minister had personal bias against the proprietor and he should not have initiated the enquiry for cancellation of the license.

### **Department Bias**

The two cases of G. Nageshwar Rao v. Andhra Pradesh State Road Transport Corporation (A.I.R. 1959 S.C. 308 and 1376) present is a good example of departmental bias .In first case the objections to the scheme of nationalization of certain routes were heard by the Secretary to the Department of transport who overruled all the objections .The decisions on being challenged before the Supreme Court, It was held the hearing being given to the Secretary of the same department against whose proposed scheme the objections have been raised violated the principle of natural justice because the Secretary hearing the objections could not be said to have acted without bias. In the second G. Nageshwar Rao , case the minister heard the objections and rejected them. Again his distinction was challenged on the ground of bias , but the Minister's decisions was upheld by making a distinction between a Civil Servant and a Minister .The acts of the Secretary or any other official of the Department was considered as motivated by the department bias while the act of the Minister could not be said to be motivated as his acts are presumed to be based on public policy.

### **Bias and Mala-Fids**

Sometimes a distinction is made between bias and mala-fides .Mala -fide is known as had faith .Bias is principle of natural justice while mala-fide or bad faith

is linked with the discretionary powers .but both are subject to judicial review. The Supreme Court seems to have used mala-fides in the sense of bad faith in Pratap Singh v. State of Punjab (A.I.R. 1964 S.C.72) where the action taken by the Punjab Government at the instance of its chief Minister against the appellant a Civil Surgeon was set aside on the ground of mala-fides.

The describe of bias is based on the simple principle that a public authority of a private authority charged with public duty should discharge it functions objectively , fairly and impartially incase of bias the Courts have been rigid and have been struck down decisions on mere apprehensive or on likelihood of bias , while in the case of mala-fides the Courts have been liberal and have insisted on the charge of bad faith abuse of misuse of powers on being established .However ,in the sense of improper motive, bad faith need not be established by direct evidence and it may be inferred from the proved facts. If the proceedings involved are quasi-judicial the describe of bias is applied and where the proceedings involved are administrative the rule of mala-fides is applied. This is not a clear cut distinction as both –bias and faith are parts of the doctrine of ultra virus.

### **(b) Both sides shall be Heard (Audi Aleram Partem )**

It is the basic rule of natural justice that no one should be condemned unheard. The rule of 'Audi alteram partem' gives effect to just , reasonable and fair procedure .The origin of the rule dates back to the origin of Magna Carta (1215) and down to R.V. chancellor of Cambridge (1723) .The Principle was invoked in the investigation of the first offence on record that committed in the Garden of Eden, where it has been said that " the laws of God and man both give the party an opportunity to make his defense, if he has any ..... even God himself did not pass sentence upon Adam, before he was called upon to make his defense.

With the increase of public participation in the Governmental activities and the decline of laissez faire ,regulatory function of public authorities increased ,and the right of hearing was proclaimed by the court as a rule of universal application founded on the plainest principles of justice in copper v. Wandsworth Board of works in 1863. During the period of First and Second world was, a cut on the right was imposed but the same was lifted after 1950 and the principle recaptured its lost



glory in Ridge v. Baldwin [(1964) A.C.40] and now applies with vigor, Indian decisions have been much influenced by Ridge v. Baldwin as is found in Nawabkhan v. Abbaskhan (A.I.R. 1974.S.C. 1471).

In Ridge v. Baldwin, Ridge, a former Chief Constable was charged, prosecuted, tried and acquitted of the charges of conspiracy, but due to Court structure of his conduct, he was dismissed from his services without any notice and an opportunity of hearing being given to him. Against his dismissal he went from pillar to the post but, could not get justice. Lastly, he moved the High court which too dismissed his petition on the ground that administrative or executive action was not of Judicial or quasi-judicial nature; the court of appeal too rejected his appeal. Finally, the case came in appeal before the House of the Lords and it was held that dismissal was nullity as it was in total disregard of the rule of Audi alteram partem of natural justice.

Thus, the writs of certiorari and Prohibition will lie "wherever anybody of persons having legal authority to determine question affecting the right of the subjects, and having the duty to act judicially, act in excess of their authority; the principles of natural justice apply in the cases where an authority has to discharge a quasi-judicial function. The principle has three characteristics, namely (a) the right to be heard by an unbiased tribunal, (b) right to have notice of charges of misconduct and (c) right to be heard in answer to those charges.

The Indian constitution by Article 32 and 226 confers wide powers of judicial review of administrative action; and it was expected that the Courts would widen the horizons of natural justice. But the very first decision of the Supreme Court in Bombay Province v. Khushaldas Advani (A.I.R. 1950 S.C.222) was contrary to the expectation of Indian public. In this case the respondent was a tenant of flat in Bombay and was deprived of his tenancy by an order of the government without being heard, Against this decision of the Government he made a petition to the High Court under Article 226 of the Constitution which was allowed by the High Court, But, on appeal by the Bombay Government the Supreme Court, following the English precedents, reversed the decision of the High Court on the ground that the Government's order was an administrative one

and not a judicial or quasi-judicial, therefore, the principles of natural justice could not be applied.

When the petitioner was being professional for carrying out the business of a hotel without a license, had had challenged the order as violative of Constitutional guarantee of Article 19(1) (z), the Supreme Court rejected the appeal on ground of sweeping power conferred on the Police commission to refuse license without hearing under the Calcutta Police Act, 1866. The Aforesaid decisions of the Supreme Court were based on legislative analysis and were unfortunate in the context of the changed circumstances under the constitution.

The Supreme Court in its subsequent decisions modified its earlier view and held that an administrative authority discharging judicial or quasi-judicial function was obliged to follow the principle of natural justice notwithstanding the fact that the Act and the rules framed there under did not provide an opportunity of hearing being given to an individual affected by the order. This changed attitude of the Supreme Court is clearly discernible in Board of High School & Intermediate Education v. Ghanshyam elsewhere discussed. If the duty to act judicially has been expressly provided by a statute, the same may be inferred from the surrounding circumstance together with the nature of the rights affected (Board of Revenue v. Vidyavati, A.I.R. 1962 S.C. 1217).

The rule of Ridge v. Baldwin changed the judicial attitude of the English and Indian judiciary towards the principles of natural justice and the practice of 'inference becomes an established rule by the year 1965. The rules of natural justice are not statutory or codified rules, but judicially evolved and applied by the Courts in the context of writs of certiorari prohibition, Quo Warranto, Mandamus and Habeas Corpus and the breach of natural justice has been recognized as one of the grounds for granting such writs. The phrase "judicial acts" includes the exercise of quasi-judicial function for administrative bodies or authorities or persons obliged to exercise such functions. The emphasis of the court for a judicial act comprised four factors namely, (a) a body of persons, (b) having legal authority, (c) to determine questions affecting the right of subjects and (d) having the duty to act judicially. This duty to act judicially is gathered from Acts and the Rules

made there under, but where the duty and the rules do not provide for the duty to act judicially the Court would see the manner applied for arriving at the decision by the authority, and would read the duty of acting judicially on the basis of materials used for arriving at a decision.

The requirement of acting judicially is nothing but arriving at etc justly, Fairly and not arbitrarily or capriciously. In *A.K. Kraipk v. Union of India* (A.I.R. 1970 S.C. 150) the Supreme Court emphatically said that "if the purpose of the rules of natural justice is to prevent miscarriage of Justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not very easy to draw the line that demarcated administrative enquiries from quasi-judicial enquiries. Often times it is not very easy to draw the line that demarcates administrative enquiries from quasi-Judicial enquiries". Thus, *Kraipk* case has made it amply clear that the rules of natural justice are no more confined to only quasi-judicial acts, but also extend to administrative acts.

A reasonable notice of the change, and the date of hearing in defense is necessary, A notice should provide reasonable opportunity of hearing the representation. A one day's notice to a Person who is out of station cannot be said to be a reasonable notice. An oral notice with technical irregularity or with defective wording is sufficient provided it furnishes as opportunity to the concerned individual to represent his case.

### **Opportunity**

The person against who action is proposed to be taken, must be given a reasonable opportunity to explain and defend. What is a reasonable opportunity, cannot be defined precisely. It differs according to factual situations. It may be an oral and personal hearing or by representative and it may be by a written representation also. Reasonable opportunity of being heard of fair hearing requires that the concerned individual be informed of the charges and allegations beforehand so that he can prepare to meet them before the enquiry officer.

*Manku Gandhi v. Union of India* (A.I.R. 1978 S.C. 597) is a landmark decision where the Supreme Court imported the American due process clause under

Article 21 of the Constitution and opened a new vista in the field of natural Justice. In this case the passport of the petitioner was impounded by the Government and the reasons for impounding the passport were not supplied in the interest of general public. The petitioner challenged the order by a writ petition under Article 32 of the Constitution and amongst other things pleaded that the order was null and void as no opportunity to be heard was given to her. The petitioner, further urged that section 10 (3) © of the passport Act, 1967, was ultra virus to Article 21 since no procedure for impounding has been provided and that was highly arbitrary, unreasonable and contrary to Article 21 of the Constitution. The court has observed that the passport authority may impound the passport without giving any prior opportunity to the person concerned of being heard an opportunity of hearing as a remedial measure should be given. The hearing may be pre-decisional and if not, it must be post-decisional. It was further held that the Court was wholly unjustified in withholding the reasons for impounding the passport. The Court, further, observed that the procedure Applied has to be tested at the anvil of Article 21 of the Constitution which embodied Justice, Fairness and reasonableness of the procedure embedded under the doctrine of natural justice.

---

### **3.6 SUMMARY**

---

The expression, natural justice is very easy to proclaim “but far less easy to define.” The expression natural justice until eighteenth century was, often, used interchangeably with the phrase ‘natural law’. In course of time and with the change of circumstance divine principles of justice were replaced by a system of procedural Law known as due process of Law. Thus the principle of natural justice became the basic requirement to be followed by any Court or tribunal discharging judicial function: and its function became confined for securing justice and preventing miscarriage of justice.

The doctrine of natural justice in modern time is usually expressed in the two forms which constitute the cardinal principle of justice. The first essential element of natural justice is that no man shall be judge in his own cause (nemo iudex in sua causa) It means that a person whose interest is directly or indirectly involved in a dispute shall not act as judge or be a member of a tribunal for

deciding the dispute .It is because there will be a conflict between his interest and his duty and as such his decision is likely to be based .the elements of interest and bias have always been described and announced in the judicial pronouncement of Courts and tribunals.

The second essential element of natural justice is that both sides shall be heard; in other words , no one shall be condemned unheard. This principle is conceding in the maxim Audi alteram partem. In addition to the two essential elements of justice , a few other principle are stated to constitute natural justice and they are (i) the parties must have due notice of the charges and allegations.(ii) the Court of tribunal will proceed with the case , (iii) the Court of tribunal should not act under the dictation of other person who have no authority , and (iv) if he the natural consists of several member all must sit together all the time .these other rules are merely extensions or refinements of the two main elements of natural justice and are read in them.

Initially the principle of natural justice was made applicable by the Courts in England and India for scrutinizing the decision of an authority or tribunal exercising judicial function only. Gradually, the Courts released the efficacy of the principle due to a change in the circumstance and the phrase judicial function was read and interpreted as inclusive of quasi- judicial function discharge by an administrative authority or tribunal. with the passage of time and many fold increases in the regulatory and rules and procedures , now , the principles of natural justice ever since the decision of Ridge v. Baldwin in England and A. K. Kraipk. v. Union of India are made applicable to the acts of administrative tribunal exercising quasi- judicial as well as administrative functions where the legal rights of an individual has been involved . The artificial distinction made between quasi- judicial and administrative functions has been given a good bye . Further , the rule 'of Manka Gandhi v. Union of India has enlarged the scope and ambit of judicial review of an administrative action by reading in to Article 21 of the India constitution a procedure which is just , fair and reasonable and is in conformity with the American due process of Law .

---

### **3.7. SELF ASSESSMENT TEST**

---

1. Who do you mean by natural justice?
2. Briefly discuss the various elements of natural .
3. No man shall be judge of his own cause 'Discuss.
4. Discuss the principle of Audi alteram partem .
5. Distinguish between natural justice and justice in India.
6. Briefly trace the application of the principles of natural justice in labour legislation.

---

### **3.8. FURTHER READINGS**

---

- 1 Marshall H.H. Natural Justice , Sweet & Maxwell Ltd.,
- 2 Chaturvedi R.G. Natural Justice & Social Justice , Law Book Co. Allahabad (1975)
- 3 Sathe S.P. Administrative Law , N.M. Tripathi , Bombay (1980).
- 4 Joshi K.C. Administrative Law , A.L.A, Allahabad (1984) .
- 5 Srivastav S.C. Social Security and Labour Laws, E.B.C. Lucknow (1985).

---

# UNIT- 4

## Constitution and Labour

---

### Objectives :-

After going through this unit, you should be able to:

- Know and appreciated the under lying object of the constitution ;
- Know the provisions relating to labour in the constitution of India;
- Know the constitutional remedies available in case of violation of constitutional provisions;
- Know about the constitutional validity of labour laws;

---

### SCHEME OF THE STUDY:

---

- 4.1 Introduction
- 4.2 Constitution of India and Labour
  - Provision in Part III
  - Provision in Part IV
- 4.3 Constitutional Remedies
- 4.4 Constitutional validity of Labour legislation
- 4.5 Summary
- 4.6 Self Assessment Test
- 4.7 Key Words
- 4.8 Further Readings

---

## 4.1 INTRODUCTION

---

This unit has been prepared to acquaint you with the constitutional outlook towards labour in India.

Speaking generally the Constitution of a country seeks to establish its fundamental or apex organs of the government of the country and described their structure , composition power and principle functions . But many modern

constitutions describe the goals also to be achieved by the future government. The Constitution of a country is fundamental and Supreme law of the land and formal source of all powers it, therefore, controls and permeates each institution in the country.

The preamble to the constitution of India embodies the philosophy and goals of the Constitution. It aims at the creating a democratic government to secure for all citizens, judicial – social, economic and political with an assurance of the individual. These objectives and the social goals, for which the Indian constitution has been founded, reflect the concern and dedication of the people of India to establish a really welfare state for the good of all people as a dignified individual irrespective of race, religion, caste, creed, language, belief or occupation.

In a free democracy the dignity of man is the supreme value. It is inviolable and must be respected and protected by the State for the sake of his dignity, every individual must be guaranteed the largest possible scope for development of his personality, as it not enough for the state to look after only the welfare of subjects. The free democratic order also deduces from the idea of men's dignity and freedom, the task of insuring that justice and humanity exist in relationship among the citizens themselves. This relationship includes the duty of preventing exploitation of one individual by another. A liberal democracy considers it its task to prevent real exploitation, i.e., exploitation of an individual as a worker or labour, under degrading conditions and for no or insufficient wages. Therefore the executive, legislative and judicial processes are enjoined to adhere to this social philosophy and secure social services for the people. Indian Constitution has given a place of pride to the attainment of the ideal of social and economic justice, welfare and common good. For this reason, indeed, the modern labour legislation in India bears a striking inspect of the basic law of the land. The development and growth of industrial laws after the commencement of the Constitution presents a close analogy to the development and growth of constitutional law during the same period. The rights and benefits conferred on the workmen under these statutes are intended to ensure basic human dignity to the workmen, social justice and public welfare.



---

## 4.2 THE CONSTITUTION AND LABOUR:

---

It is of great importance in a democracy not only to guard the society against the oppression of its rulers but to guard one part of the society against the injustice of the other part. Different interests necessarily exist between different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure some measure is essential against this evil. The Constitution of India adopted a special measure. Accordingly, the state and every one of its agencies are commanded to follow certain fundamental principle while they frame their policies regarding the various fields of state activity. The principle, on the hand, are assurance to the people as to what they can expect from the state and , on the other , are directives to the Government –Central , State, and local-to establish and maintain a new social order in which justice – social , economic and political shall inform all the institutions of national life'. The first kind of principle , in the constitution of India are described as Fundamental Rights contained in Part III and second as Directive principles of State policy , contained in Part IV thereof. The Constitution of India contains a number of provisions in it for the welfare of labour as a special category of citizens along with other general provisions for the follow citizens. The constitutional provisions dealing with labour are discussed here in after.

### **I .Fundamental Rights and Labour:**

The glory of the constitution of India is that , while guaranteeing , fundamental Rights to each and every citizens of India, it has provided a good number of provisions with a specific relevance for the labour and workers . Parts III of the constitution guarantees a number of Fundamental Rights to the people of India , and the labours individually and collectively can claim these fundamental rights .Article 14 of the Constitution of guarantees right to equality in the words that 'the state shall not deny to any person equality before law or the equal protection of laws 'Article 19 (1) provides that all citizens shall have the right –(a) to freedom to speech and expression ;(b) to assemble peacefully without arms : (c) to form association and unions (d) to practice any profession, or to carry on any occupation , trade or business . Article 21 guarantees a right to life and personal

liberty which cannot be taken away except in accordance with the procedure established by law. The expression 'life, in Article 21 does not merely cannot animal existence or a continued drudgery through life but has much wider meaning. It means a life of a dignified of human being .Article 25 to 28 ensure religious freedom. Cultural and educational rights are guaranteed in Articles 29 and 30. Article 32 ensure the right to constitutional remedies in case of violation of the Fundamental Rights .Similar provision is contained in Article 226 to enforce fundamental and other constitutional rights.

In addition to all these fundamental rights which are guaranteed for each and every people of India and therefore, for a labour or workers also, Article 23 and 24 ensure fundamental rights especially for workers.

### **Prohibition of Forced Labour or Beggar:**

Article 23 and 24 deal with the rights against Exploitation. Article 23 prohibits trafficking in human beings and beggar and similar forms of forced labour .Article 23 designed to protect the individual not only against the state but also against other private citizens . it prohibits trafficking in human beings and begar and other similar forms of forced labour practiced by anyone else. Forced labour or service which a person is forced to provide o and 'force; which would make such labour or service 'forced labour, may arise in several ways. It may be physical force which may compel a person to provide labour or service to another, or it may be compulsion arising from hunger and poverty, want and destitution. The word ' force , must therefore , be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leave no choice or alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

### **Prohibition of Child Labour:**

Another important, Art. 24 of the Constitution of India deals with prohibition of child labour Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory, or engaged in any other hazardous employment. It imposes restrictions mainly with regard to minimum

age of the child worker and the nature or work in which such a child worker is to be engaged so that the children may be protected from the exploitation by the employer or industrialist. The Constitutional goal to eradicate child labour is pictorially visible both in the philosophy of the Preamble and various provisions of the Directives Principle of State policy contained in Part III of the Constitution along with Article 24. As the provisions of Article 21 are inserted in the constitution to promote the personal liberty and dignity of all persons. Article 24 is intended a predominant role to safe guard the personal liberty, dignity and basic human rights of children who are compelled to work .

In Short, the above mentioned fundamental rights of labour concerning freedom of speech, freedom of assembly , freedom to from association and the trade unions. The prohibition of forced labour, restriction on employment of children in factories, protect some of the basic human rights of the workers, necessary for their dignified life and liberty.

## **II . Directive Principle and Labour:**

Besides the Fundamental Rights, many provisions concerning labour are also found under chapter IV, of the Constitution of India. The philosophy of social justice has given a sweeping content of social Justice to Indian labour legislation .It is neither narrow , nor one sided , or pedantic, and it not confined to industrial jurisprudence alone. It's sweep is comprehensive .It is founded on the ideal of socio- economic equality and its aim is to assist the removal of disparities and inequalities. Indeed, modern labour legislation is enacted to carry out the constitutional promises and pledges to the people of Indian in general, and working class in particular .The constitutional commitment for labour is direct and it involves the creation of a new social order through law for the benefit of the common and needy man. The framers of the Indian Constitution realized the significance, the new wind of change, and incorporated Directive Principles of State Policy which it shall be the duty of the state to apply in making its laws .These Directive Principles include the principles of policy which are in the interest of every people including the labour and which are specially in the interest of labour only. These are:

1. Article 38 (1) directs the state to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social economic and political, shall inform all the institutions of the national life. This directive reaffirms what has been declared in the preamble to the Constitution.
  
2. Article 38 (2) directs the state to strive to minimize the inequalities in incomes, and Endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different vocations.
  
3. Article 39 requires the state is particular, to direct towards securing:
  - (i) That all citizens, irrespective of sex, equally have the right to an adequate means of livelihood, Art 39(a)
  - (ii) That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good: Art 39(b)
  - (iii) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment Art 39(c)
  - (iv) That the children are given opportunities and facilities to develop in a healthy manner and in conditions protected against exploitation and against moral and material abandonment, Art 39(d) Article 39 (b) and (c) are very significant provisions as they affect the entire economic system in India and Article 39(f) is supplemental to Article 24 which prohibits child labour:
  
4. Article 41 requires the State, within the limits of its economic capacity and development, to make effective provisions for securing the right to work, to education and public assistance of unemployment, old age, sickness and disablement and in other cases of underserved want.

5. Article 45 requires as the State to Endeavour to provide, within a period of ten years from the commencement of the Constitution , for free and compulsory education for all children until they the age of 14 years. It is not confined merely to primary education , but up to the age of 14 years, whatever the stage of education it may come to:
6. Article 46 obligates the state to promote with special care the educational and economic interests of the weaker sections of the people.
7. Article 47 obligates the state to regard, as among its primary duties, the rising of the level of nutrition and the standard of living of its people and the improvement of public health .In particular, the state is to endeavor to bring about prohibition of the consumption , except for medicinal purposes, of intoxicating drinks and drugs which are injuries to health.
8. **Equal pay for equal work:** Article 39 (d) requires the state to direct its policy towards securing that there is equal pay for equal work for both men and women .The principle is not expressly declared by the Constitution to be a fundamental right yet it may be deducted by construing Article 14 and 16 in the light of Article 39 (d)
9. **Health and Strength of workers not be Abused :** Again, Article 39 (e) directs that the State shall directs its policy towards securing the health and strength of workers , men and women , and tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength ,Article 39(e) is supplementary to Article 24 and thus imposes a ban on the employment of child workers in any occupation which is injurious to the lives of tender aged children .
10. **Condition of works:** Article 42 requires the state to make provisions for securing just and human conditions of work and for maternity .the

Constitution of India expresses a deep concern for the welfare of the workers.

11. **Living wage:** Article 43 requires the state to endeavor to secure, by suitable legislation, or economic organization or in many other way, to all workers, agriculture, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life employment of leisure and social culture opportunities.
12. **Participation of Workers in Management:** Article 43 (a) requires the state to take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertaking establishments or other organizations engaged in any industry.

The foregoing discussion of the Constitution of India clearly shows that the Constitution makers felt a deep concern for the welfare of the labour and working class along with the general public.

### **III CONSTITUTIONAL SCHEME OF DISTRIBUTION OF LEGISLATIVE POWERS CONCERNING LABOUR:-**

Under the Constitution of India there is three way distribution of legislative powers between the Union and the states-an exclusive area for the centre; an exclusive area for the states and a common or concurrent area in which both the central and State Legislatures may legislate. This distribution is subject to overall supremacy of the Parliament, i.e. in case of inconsistency of provisions of the State law with the parliamentary law, the later shall prevail. All the three lists containing subjects concerning labour, the most important are in Concurrent List. These are trade unions , industrial and labour disputes (also in union list –entry 61 , but concerning union employees only ), social securing and social insurance , welfare of labour including conditions of work, provident funds, employer's liability , workmen's compensation , old age provisions maternity benefit , vocational and

technical training of labour , factories boilers, electricity, newspapers , book and printing presses,

However, all central labour also laws are so framed that in either case both the central and state Government, termed as 'appropriate government' have power in their own sphere to implement the various labour laws and schemes

---

### **4.3 Constitutional Remedies:-**

---

Where there is a right , there is a remedy . A right without a remedy is a legal conundrum of a most grotesque kind .a right without a remedy is nothing. Therefore any law, statute or the Constitution which secure any right provides the remedy and the forum for enforcement of that right. The Constitution of India guaranteed some fundamental rights in part III and also provides for the remedy and the forum for enforcement in case of their violation. The remedy provided for the enforcement of the fundamental rights and other constitutional rights are the constitutional remedies since these are provided in the Constitution itself.

#### **Enforcement of Constitution Provisions :-**

The Constitution of India has not accepted the absolute supremacy of the parliament or of the State legislature. By Article 245 (1) the legislative power is definitely made subjects to the provisions of its constitution. Turning to the Constitution, Article 13 (2) clearly prohibits the state not to make any law which takes away or abridge the rights conferred by part (III) of the Constitution.

**Article 32 provides the remedy** for the enforcement of Fundamental Rights guaranteed by part III .Article 226 also provides for the similar remedy for fundamental and other constitutional and legal rights.

#### **Rights of Constitutional Remedies : -**

Article 32 guaranteed the right to move the Supreme Court for the enforcement of the fundamental right. Article 32 is a fundamental right itself. It provides:

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part (part III) is guaranteed.

Article 32 (2) provides :The Supreme Court shall have power to issue directions or orders or writs , including writs in the nature of Habeas Corpus , Mandamus Prohibition ,Quo Warranto and Certiorari ,which ever may be appropriate , for the enforcement of any of the rights conferred by this part. Article 32 (3) provides that the same right may be conferred by the parliament of any other court but without prejudice to the power of the Supreme Court and Article 32 (4) lays down that this right cannot be suspended except as otherwise provided by the Constitution itself.

Thus the right granted under Article 32 is a fundamental right and, therefore , the existence of an alternative remedy is no bar to the Supreme Court entertaining a petition under Article 32 for the enforcement of a fundamental right. An aggrieved person may directly approach the Supreme Court through a proper petition.

### **Power of High Court to issue certain writs : -**

Article 226 of the Constitution confers a new but similar power on all the High Courts of India. It enables them to issue to any person or authority including ,in appropriate cases , any Government , orders or writs , including writs in the nature of habeas corpus ,mandamus ,prohibition quo- warrantor and certiorari, for the enforcement any of the rights conferred by part III and for any other purpose ,i.e., for the enforcement of any other legal and constitutional rights. This power of the High Court is in addition to the power conferred on the Supreme Court under Article 32 (2) and much wider too.

The reason which led the framers of the Constitution to confer the power on the High Court to issue prerogative writs was that the makers of the constitution



through it necessary to provide also a quick and inexpensive remedy for the enforcement of the fundamental and other legal and constitutional rights.

However, the directive principle of State Policy, detailed in Article 37 to 51 of the Constitution are not enforceable in any Court as Article 37 provides and , therefore, if a directive is infringed , no remedy is available to the aggrieved party. But they are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws . For this reason in case of conflict between the fundamental rights and directive principles, the former prevails.

However , in course of time , the directive principles became important from legal point of view. The Courts while interpreting a statute could look for light to the "lode star" of the directive principles. Where two judicial choices are available , the construction in conformity with the social philosophy of the directive principles has preference and thus , implements directive principles.

The exact position with regard to enforceability of directive principles is that although the directive principles are not enforceable as such , the court should make a real attempt at harmonizing and reconciling the directive principles and fundamental rights and any collision between the two should be avoided as far as possible . (Supreme Court of India in Tamil Nadu V.L. Abu Kavur Bair .A.I.R. 1984 SC 326). Secondly ,directive principle now can be enforced as reasonable restrictions on the rights , for example , as a public purpose ,if a law is enacted to implement the socio economic policy laid down in directive principles. Then it must be regarded as one for public purpose. The Courts have a responsibility in so interpreting the Constitution as to ensure implement action of the directive principles and to harmonize the social objectives underlying them with individual rights.

### **Special Leave to Appeal by the Supreme Court :-**

An alternate course for the aggrieved person is to invoke the Supreme court ;s discretionary jurisdiction under Article 136 is designed to authorize the Supreme Court intervenes in its discretion , in any case where the requirements of justice warrant .Article 136 (I) provides:

Notwithstanding anything in this chapter , the Supreme Court may, in its discretion , grant special leave to appeal from any judgment ,decree, determination ,sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

It vests in the Supreme court plenary but discretionary jurisdiction in the matter of entertaining and hearing appeals by granting special leave against- any judgment, decree, determines or order , in any cause or matter , passed or made by any Court or tribunal ,except any court or tribunal constituted by or under may law relation to the Armed Forces.

### **Power of Superintendence over all Courts by the high Court :-**

Another remedy provided by the Constitution is contained in Article 227 (I) Every High Court under Article 227 (I) have the power of superintendence aver all courts and tribunals throughout the territories in relation to which is exercises jurisdiction ,except any court or tribunal constituted by or under any law relating to the armed forces. The power of Superintendence conferred by Article 227 is in addition to the power conferred upon the High Courts to control inferior courts or tribunal through writs under Article 226 .This jurisdiction extends to keeping the subordinate tribunals within the limits administrative and judicial control of the High Court is not only over courts strictly so called but also over tribunals which are not courts in the strict sense of the term, e.g., Industrial Tribunal etc.

### **Public Interest litigation (PIL) :-**

Public Interest litigation system of seeking redress against violation of statutory rights is a new one as against the traditional adversary system . The Supreme Court has entertained a number of petitions under Article 32 complaining of infraction of fundamentals rights of individual or of weak or oppressed group who are unable themselves to take the initiative to vindicate their own rights .Hussainara Khatoon , Bihar under trial prisoners ,Asiad , Judge 'sand Bounded Labour cases are most important examples.

PIL means that any person can invoke the jurisdiction of the Supreme Court under Article 32 and the High Court under Article 226 in a matter concerning public interest.

**The philosophy underlying the PIL is as follows:-**

“Where a person or class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court for judicial redress on account of poverty or disability or socially or economically disadvantaged position ,any member of the public acting bonafide can move the court for relief under Article 226, so that the fundamental rights may be become meaningful not only for the rich and the well to do ,who have the means to approach the court, but also for the large masses of people who are by reason of luck of awareness, assertiveness and resources unable to seek judicial redress.( Supreme Court of India in Bandhu Mukti Morcha union of India , AIR 1984 SC 802 ).the Supreme Court has even taken cognizance of letters from individual complaining of the infraction of fundamental rights and has treated such letters as writ petitions, in the interest of workers also ,e.g., the Asiad Worker’s case Bandhu Mukti Morcha case etc. Volunteer social activities are allowed standing .A simple letter can be accepted as a writ petition. The Court itself will shoulder much of the burden of establishing the fact through commissions , because it would not be just and fair to expect a person acting pro-bono- public to incur expenses out of his own pocket.

It is now accepted that under Article 226, a High Court may entertain grievances received through letters and treat the same as writ petitions ( see PUDR Ministry of Home Affairs ,AIR 1985 Delhi 286).

Thus, the, Constitutions of India provides effective remedy within it for the enforcement of the provisions thereof.

---

#### **4.4 CONSTITUTIONAL VALIDITY OF LABOUR LEGISLATION :-**

---

Power corrupt and absolute power corrupts absolutely, unlimited powers jeopardizes freedom of the people . Constitution spring from a belief in limited government .on the other hand , a written constitution is the formal source of all constitutional Law in the country .It is regarded as the Supreme or fundamental Law of the land and, therefore, it controls and permeates each institution in the country .Every organ of the government in the country must act in accordance with the Constitution . Hence , any law made by the legislature any action taken by the executive , if inconsistence with the Constitution, can be declared unconstitutional and invalid.

Accordingly, law making power of the parliament as well as state legislatures are not unlimited .Parliament and legislatures function under a written constitution.

**Such restrictions are :-**

- (1) Restraining the state to make law in contravention of fundamental rights Article
- (2) Provides: The State shall not make any law which taken away or abridges the rights conferred by this part and any law made in contravention of this cause shall, to the extent of the contravention , be void.
- (3) Division of legislative powers by Article 245 between the unions Legislature (Parliament) and State Legislature restrains them to transgress the sphere allotted each other.

Therefore ,the constitutionality or validity or a law made by Parliament or state legislature can be tested in accordance with these two restrictions. When the constitutional goals of 'Social Justice ' and Welfare State sought to be achieved through executive and legislative processes, almost all the important labour statutes have been challenged before the Supreme Court on the ground that they are violative of fundamental rights guaranteed the Constitution .The minimum wages Act, (Be joy Cotton Mills Case, AIR 1955 SC 33) ,the Industrial Disputes Act (Albee NIT, AIR 1962 SC 171) ,the Trade Unions Act, (Raja Kulkarni State of

Bombay ,AIR 1954 SC73),the Journalists (Condition of service) Act, 1955 (Express News Papers Ltd. Union of India, AIR 1958 SC578), the E.S.I Act, the E.P. Funds Act, the payment of Bonus Act, (JalanTrading Co. Pvt.Ltd Mill Mazdoor Union ,AIR 1967 SC 691), the Contract Labour( regulation and Abolition Act, (Ramesh Metal Works State (1962) ILLJ 169), etc. have been held by the Supreme Court and various High Courts as constitutional and valid , not violative of any fundamental right.

The courts in India have been shown pragmatism and realism while interpreting the legislation dealing with labour having in view the constitutional goals of social and economic justice and social welfare .In the opinion of the Allahabad High Court law is not an exercise in linguistic discipline. It is emerging as an important therapy in disorder of social metabolism. It is a complex process and can be fully understood only by an attentive regard to its therapeutic function and its synthesis .(J.G. vakharia Regional Provident Fund Commissioner (1957) ILLj448.

Bombay High Court took the view that in construing social legislation the court must if necessary, strain the language of the act to achieve the purpose which the legislature had in placing this legislation on the statute book. No labour or social legislation can be considered by the court without applying the principles of social justice in interpreting its provisions. No labour legislation, no social legislation, no economic legislation can be considered by a court without applying the principles of social justice as enshrined and embodied in Indian Constitution (Prakash Cotton mills Ltd. State of Bombay,(1957) 2 L.L.J. 490) the Supreme Court usually upholds the validity of labour law on the ground that since the advent of the constitution .The State action must be directed towards attaining the goals set out in part IV of the Constitution .While interpreting of examining the constitutional validity of legislative /administrative action, the touch stone of Directive principles of State policy in the light of the Preamble will provide a reliable yard stick.(D.S.Nakara Union of India,1983) SCC 305).

Thus, the genesis and the justification of industrial or labour legislation in modern democratic state lies in the anxiety of the state to establish social and economic equality amongst all its citizens. If economic inequalities have to be removed, it would be necessary to realize that the freedoms and rights must adjust

themselves to the requirements of welfare State. Labour legislation may be held valid on the basis of promoting public purpose i.e., social justice and social welfare.

---

## **4.5 SUMMARY :**

---

In this Unit we have discussed the underlying object of the Indian Constitution with labour point of view, the provisions of the Constitution, various remedies available to the aggrieved person and the validity of the labour legislation. It is clear that the objective and goal of the Constitution of India is to seek social and economic justice along with the dignity of individual as a human being and welfare of all. These aims can be fulfilled by guaranteeing certain fundamental rights to every individual and by conferring positive obligations on the state to perform some acts which are essential in view of the objects. These provisions are contained in part III and IV of the Constitution. Any right remedy is only a pious declaration .Therefore, the Constitution provides remedy in Article 32,226, 136 and 227 to make the rights really enforceable .Public interest litigation is a new kind of remedy to enforce the rights.

Any law made or action taken can be nullified by courts in exercise of powers conferred on them under .Article 32, 226, 136, and 227 except for the purposes of implementing the objective of social justice and welfare, if the law or action is in contravention of the constitutional restrictions. Thus, the validity of a law can be tested viz-a viz the constitution. All labour laws are valid, since they are in consonance with the objectives enshrined in the Directive Principles of State Policy ,i.e. , social justice and welfare.

---

## **4.6 SELF ASSEMENT TEST:**

---

Answer the following questions in not more than 300 words each, so that you may know how much you have understood the subjects discussed in this unit.

1. Discuss that objective of the Constitution of India is to seek social justice and welfare.
2. Explain the provisions of Indian constitution for the protection of workers.

Or

3. Discuss the provisions contained in the chapter of the Constitution of India dealing with Fundamental rights and Directive Principles of State Policy.
4. Discuss the remedies available in the Constitution of India for the enforcement of fundamental rights and directive principles.
5. Discuss the validity and grounds of validity of labour legislation in India.

---

#### 4.7 KEY WORDS:

---

**Social Justice:** The principle of social Justice consists simply in the claims of all men to all advantages and to an equal share in all advantages which are commonly regarded as desirable and which are in fact conducive to human well being .The principle means that all men shall have equal claims to all advantages which are generally desired and which are in fact conducive to human perfection and human happiness.

**Welfare State :** A welfare state is devoted to the well being of the whole society .it is as much concerned with maintaining or improving conditions for those who enjoy a good life style as with raising the standard of living of those who fall below an acceptable national minimum .It recognizes no vested interests.

---

#### 4.8 FURTHER READING :

---

- Dhyani Dr. S.N. (1977) International Labour Organization And India, National Publishing House, 23 Daryanganj New Delhi-110002.
- Jain , Dr. M.P. (1987 ) Indian constitutional Law, N.M. Tripathi Pvt. Ltd. Bombay.
- Kumawat, Balkrishna ,(1990) Bharat Main Shram Vidhan Avam Samajik suraksha, (Hindi ), Sahitya Bhawan , Agra.
- Kurushetra law Journal, vol.13-15, 1987-89

---

# UNIT- 5

## Public Interest Litigation

---

### Objectives :-

This unit has been prepared to acquaint you with the :

- Method used to redress public grievances.
- Widening concept of 'Locus Standi' and Person Aggrieved.
- Principal features of Public Interest Litigation.
- Growing rate of P.I.L. for the vindication of the rights of poor and helpless.

---

### Structure :

---

- 5.1 Introduction
- 5.2 Meaning, conventional litigation and Principal Features of PIL.
- 5.3 Development ,Need and Importance
- 5.4 Case law Analysis.
- 5.5 Demerits and Limitations of PIL.
- 5.6 Self –assessment Test
- 5.7 Important Words
- 5.8 Further Readings

---

### 5.1 INTRODUCTION

---

In India the poor, ignorant, illiterate and weak people had been the sufferer in the temple of justice. Their rights had been violated and a life of basic human dignity was denied to them. Because traditionally , only a person whose own right was in Jeopardy was entitled to seek a remedy except in case of minor, insane and prisoner. They were unable to approach the court by the reason of their poverty and social and economical disability .To remedied such peoples, Supreme court in post 1978 era laid down in number of cases that the 'law is meant to serve the living



,thus for the purpose of providing access to justice to large masses of people who are denied of their basic human rights and to whom freedom and liberty has no meaning: we have to innovate new methods and devices new strategies: Thus, accordingly the role of the higher judiciary in India underwent a transformation. A new and radically different kind of case altered the litigation landscape .Instead of being asked to resolve private disputes, supreme Court and High Court judge were asked to deal with public grievances over flagrant human right violations by the state or to vindicate the Public Policies embodied in statutes or Constitutional provisions .This new type of judicial business is collectively called “Public Interest Litigation” or PIL .Most of the labour and human right violation and environmental actions in India fall within this class.

Under the method used to redress public grievances Supreme Court relaxed the traditional rules governing the ‘Locus Standi’ or Standing . ‘Locus Standi’ signifies a right to be heard. Which include the (i) ‘petition’ under prescribed manner (ii) ‘definite Court’ for prescribe territorial and economic jurisdiction (iii) ‘the person Aggrieved ’ having sufficient own cause.

Supreme Court under ‘Public Interest Litigation’ has lowered the standing barriers by widening the concept of ‘petition under prescribed manner’ and ‘the person aggrieved’. Supreme Court also confirmed the liberty on ‘we the people of Indi’ to choose the court.

This whole innovation developed recently fall under the area of P.I.L. This Unit -5 deals with the details of P.I.L., Including evolution , techniques and other relevant aspects. These will help you to understand the case law and enforcement of welfare provisions through P.I.L. and also make up your mind to be a good scholar and social worker.

---

## **5.2 MEANING CONVENTIONAL, LITIGATION AND PRINCIPAL FEATURES OF ‘PIL’.**

---

'Public Interest Litigation' a means a litigation or judicial action in a court by the member of the public by an institution or a society individually or jointly in 'public interest' provided he or they was or have a sufficient interest in the proceedings and is or are not **wayfarer interloper** , officious intervener or busy body.(based on unanimous judgment of the Supreme Court in "Transfer of Judges case")

In a public interest case, the subject matter of litigation is typically a grievance against the violation of basic human rights of the poor and helpless or about the content or conduct of government policy .The petitioner seeks to champion a public cause for the benefit of all society. In such type of litigation Supreme Court and High Courts accepting petition under Article 32 and 226 may waive the formalities of procedural law. Under such conditions in PIL, even a post card or cutting of newspaper may be treated as petition by our Apex Court and High Courts for the sake of Welfare of 'we the People of India'.

Now difference between conventional and public interest litigation is being submitted Conventional dispute litigation involve the following characteristics : (i) it is bipolar and adversarial (ii) the case has a retrospective orientation (iii) right and remedy are closely inter-related. (iv) the lawsuit is bounded in time and effect (v) judicial involvement ends with the determination of the disputed issues (vi) the impact of judgment or interim is limited to the parties before the court.(vii) the whole process is driven and controlled by the actions of the parties (viii) in such litigation the judge is a neutral umpire on order hand the principal features of public interest litigation are:

- (1) Since the litigation is not strictly adversarial, the scope of the controversy is flexible, parties and official agencies may be joined (and even substituted) as the litigation unfolds and new and unexpected issues may emerge to dominate the law suit.
- (2) The orientation of the case is prospective .The petitioner seeks to prevent an egregious state of affairs or an illegitimate policy from continuing into the future.

- (3) Because the relief sought is corrective rather than compensatory , it does not derive logically from the right asserted. Instead, it is fashioned for the special purpose of the case, sometimes by a quasi-negotiating process between the court and the responsible agencies.
- (4) It is difficult to delimit the duration and affect of this new kind of litigation. Prospective judicial relief implies continuing judicial involvement .The parties often return to the court for fresh directions and orders.
- (5) Because the relief is sometimes directed against government policies, it may have impacts that extend far beyond the parties in the case.
- (6) Judges pay a large role a organizing and shaping the litigation and in supervising the implementation of relief.

---

### **5.3 DEVELOPMENT , NEED AND IMPORTANCE**

---

From the international perspective , the evolution of 'public interest law' is a uniquely American contribution. Many trace its beginnings to the landmark desegregation decisions of the 1950's when the United States Supreme Court required schools in southern American states to end racial segregation and thereby committed the judiciary to a task of profound social reconstruction .In 1960s, major PIL centers in the U.S. handled issues relating to civil rights and the problems of the poor . By the mid 1970s, PIL embraced issues like consumer protection , environmental protection, land use , occupational health and safety, health care, media access and employment benefits. The need of PIL in India was initiated and fostered by a few judges of the Supreme Court .These arose in the 1970s' with the Spreading concern for social justice and the emergence of the legal aid movement .They realized that some appropriated remedy must be afforded to poor oppressed and underprivileged peoples to seek justice against their exploitation. V.R. Krishna

Iyer and P.N. Bhagwati were deeply involved in fostering legal service institutions for the weak and the poor . In 1977 both judges served extra judicially in the National committee on Judi care, which in its final report in August , 1977 expressly recommended the broadening of the rule of 'Locus standi' as a means of encouraging PIL. The report envisioned PIL as channel by which the poor and oppressed could gain access to the courts and the judge fashioned remedies. These judges in I phase then proceeded to implement the recommendations of their own report. Supreme Courts in this way began to override the procedural obstacles and technicalities of the traditional rule of standing and helped the poor , oppressed and under privileged to seek justice through volunteers describe in law as representative standing .Representative standing cases in the Supreme Court have helped to secure the release of bounded laborers ,(Bhandhua Mukti Morcha v/s Union of India A.I.R 1984 S.C. 802) , obtained pension for retired government employees (D.S. Nakara v/s Union of India AIR 1983 SC 130 ), improved the living Conditions of inmates at a protective home for women ( Dr. Upendra Baxi v/s state of UP 1983 SCC 308 ) released prisoners awaiting trials for periods longer that they would have served , if convicted , ( Hussainara Khatoon v/s Home Secretary ,State of Bihar AIR 1979 SC 1360) ordered to pay minimum wages to exploited government construction workers who were being paid less (people's Union for Democratic Rights v/s Union of India Air 1982 SC 1473)

In II phase Supreme Court expended the doctrine of standing to enable a citizen to challenge the instances of government official lawlessness in the public interest, though the citizen had not suffered any individualized harm. Supreme Court under this trend allowed individuals :to check the abuse public office by high functionaries (P.B. Samanta v/s State of Maharashtra cement case 1982 (I) BOM.CASES REP. 367 ).to challenge government inaction . (S.C. of India ) , to check the environmental pollution through limestone quarries in the Dehradun region ( Rural Litigation and Entitlement Kendra v/s State of U.P. AIR 1985 SC 652 ).

In 1981,a seven judge bench in the 'Judge, Transfer case upheld the standing of the practicing lawyers to challenge a government policy to transfer High Court judges, thereby undermining judicial independence . this case

comprehensively enlarged the scope of 'representative standing, and 'citizen standing, The procedure requirement of litigation that ensure fairness and uniformity at the trial of conventional, adversarial law suits, may not be necessary in PIL cases. Judges like to view PIL as a collaborative effort between the Court , the citizen and the public officials, where procedural safeguard have a diminished utility and may be relaxed to enable relief. Public interest litigation in its present form constitute a new chapter in our judicial system. It has acquired a signified degree of importance in the jurisprudence practiced by our courts and has evoked a lively response in legal circle, in media and among the general public . In our country this new class of litigation is justified by its protagonists on the basis generally of vast areas in our population of illiteracy and poverty, of social and economic backwardness , and of an insufficient awareness and appreciation of individual and collective rights. These handicaps have denied millions of our countrymen access which promises legal relief without cumbersome formality and heavy expenditure.

---

## 5.4 CASE LAW ANALYSIS

---

In India as the consciousness of social justice spread through our multi-layered social order, the courts began to come under increasing pressure from social action groups petitioning on behalf of the underprivileged sections of society for the fulfillment of their aspiration . It is not necessary to detail the number of cases of public interest litigation which have entered our courts. It is sufficient to point out that, despite the varying fortune of these cases , public interest litigation constitute today a signified segment of the court's docket.

As PIL cases began crowding the court's docket, frequently in the form of letters or skimpy petitions based on news papers reports, The judges hearing these cases were passed to evolve new procedures and techniques to facilitate this new type of litigation. Under PIL the Supreme Court and the High Court's frequently treated the letters written to individual judges or the courts as writ petitions . **In 'Rural Litigation and Entitlement Kendra ,Dehradun v/s State of U.P. ,, (AIR 1987SC 2187 ,2195)** Supreme Court received a letter from R.L.E. Kendra

,Dehradun ,alleging that the illegal limestone quarrying was divesting the fragile environment in the Himalayan foothills around Monsoorie . Supreme court treating letter as a writ petitions under Article '32, directed the inquiry and ordered the closure of limestone quarries causing a lance to ecology and hazard to public health.

Similarly in ' **Mukesh Advani v/s State of M.P. ( MIR 1985 SC 1363)** the petitioner addressed a letter to one of the judges of the Supreme Court along with the cutting of the newspaper 'Indian express, dated Sept. 14,1982. News contained the facts about the bounded laborers working in flagstone quarries at Raisen in Madhya Pradesh letter was treated as a writ petition under Article 32 by the Supreme Court and an inquiry was directed against Govt. of M.P. Govt. of Tamil Nadu and Govt. of India , regarding bounded laborers who were the interstate migrant laborers from Tamil Nadu . Supreme Court ordered to liberate and rehabilitate. The bounded labours and to implement the labour laws. Similarly in " Labourers ,, working on Salal Hydro project v/s State of J.& K .and others , (AIR 1984 SC177 ) Supreme Court ,treating a letter addressed to Mr. Justice D.A. Desia along with a news cutting from Indian Express newspaper as write petition , ordered the Central Government of India to compliment various labour laws applicable to the workers employed in Salal Hydro project . Some times to construct of complete framework of the facts, a judge require the concerned public official to finish detailed comprehensive affidavits. In some cases the courts appoint special commissions to gather facts and data under own inherent power confirmed by the Articles 32 and 226 of the constitution.

In a petition for directions to the municipal authority of Jaipur so solve the city ,s acute sanitation problems ,the Rajasthan High Court appointed a commissioner to report on the insanitary conditions in various parts of the city .( L.K. Koolwal v/s State of Rajasthan ,AIR 1988 RAJ 2 ).In this case court issued the directions to municipal authority to remove the insanitary conditions.

In M.C. Mehta v.s Union of India (Shri Ram Gas Leak case AIR 1987 SC 965) the Supreme Court enlisted an expert committee to evaluate the environmental

impact of limestone quarrying operations and ordered according to its recommendations.

The modification of traditional rule of 'locus standi, or standing which permitted the poor and oppressed to be represented by volunteers was described as 'representative standing ,and 'citizen standing' . Under 'representative standing, case in **Bandhua Mukti Morcha v/s Union of India "** (AIR 1984 SC 802 ) on a petition filed by an organization 'Bandhua Mukti Morcha' Supreme Court ordered the release of bounded labourers . Likewise in people's **Union for Democratic Rights v/s Union of India ,( AIR 1982 SC 1473 )** the court allowed a group of social activities to petition on behalf of exploited government constructions workers , who were being paid less than the statutory minimum wage. Under 'citizen standing; case in '**Fertilizer corporation Kamgar Union v/s Union of India , (AIR 1981 SC 344 )** Supreme Court enter tainted the petition but rejected the claim .In this case a trade Union challenged the sale of old machinery and plant belonging to a state –owned corporation on the ground that the sale was arbitrary and workers right to occupation under Article 19 (I) (g) of the constitution . Citizen standing has also enabled individual to check the abuse of public office by high government functionaries ,in **P.B. Samant v/s State of Maharashtra , ( Cement case 1982 (I) BOM CASES REP 367 )** and in **Raju v/s State of Karnataka , (Arrak Liquor Bottling case 1986 , KARAN ,LAW REP 164) IN Ganga pollution case ' M.C. Mehta v/s Union of India, (AIR 1988 SC 1115 ,1037 )** , Supreme Court upheld the standing of a Delhi resident to sue the government agencies whose prolonged neglect had resulted in severe pollution of the river . Court ordered the closure of polluting tanneries on the Ganga. **In Judges 'Transfer case (AIR 1982 SC 149,194 )** a seven judge bench delivered a definitive Judgment on standing and enlarged its scope . Court laid down that it is well settled that any member of the public has a right to bring before the court a 'public interest ' case , provided he has a 'sufficient interest, court admitted that lawyers do have 'sufficient interest , in judicial appointments . PIL matters involving executive action by the court judges , therefore they are usually careful to pass orders only after negotiating the reliefs with counsel for government agencies. In this collaborative fashion, the court is able to venture beyond its traditional domain without clashing with the other wing of government. Today the writ under PIL is preferred over the conventional suit

because it is speedy, relatively inexpensive and offers direct access to the highest courts of the land. It possesses the potential of providing justice to millions of poor, illiterate, socially and economically backward, oppressed and underprivileged persons.

---

## 5.5 DEMERITS AND LIMITATIONS OF PIL

---

Despite of all merits, public interest litigations have certain limitations. At the lowest, there is an uneasy doubt about where are we going. The optimistic sense danger to the credibility and legitimacy of the existing judicial system. The region into which the judiciary has ventured appears barren, unchartered and unpredictable, with few guiding posts and directive principles. This situation fears that a traditional legal structure may yield to the anarchy of emotional jural postulates. But the history of human experience shows that when a revolution in ideas and in action enters the life of a nation, the nascent power so released possesses the potential of throwing the prevailing social order into disarray. Some of limitations on PIL are discussed here under referring relevant case law.

- (I) Relief in PIL is prospective and affirmative rather than compensatory.
- (II) It is impossible to identify a single clear cut solution in PIL, because the outcome of the case is influenced by the discretion, there and temperament of the judges their compassion for the grievance and the nature of the grievance itself.
- (III) Remedial orders in PIL are fashioned adhoc, to accommodate a range of public interest and do not determine the individual's rights and duties. The parties often return to the court for fresh directions and orders. Relief in most of the PIL cases is obtained through interim orders in Supreme Court and High Court. For example in the first public interest case '**Hussainara Khaton v/s Home Secretary, State of Bihar** ,(AIR 1979 SC 1369 ,1360 ) the Apex Court accepted the petition behalf of 18 prisoners and led to discovery of 80,000prisoners. Some of whom had



been languishing in prisons for periods longer than they would have served, if convicted . The court issued four interim orders within the first four months following the filing of the write petition, under these orders under trial pensioners were released on personal bonds and other directions of the court were implemented . But after this initial surge of activity.' Hussainara case 'has remained pending before the court for the last many years without further decision or final judgment.

(IV) Many PIL cases is the court's ingress into field's traditionally reserved for the executive .Occasionally , the courts have even created their own crude administrative machinery to remove a public hardship.

(V) Judicial efforts in PIL requires to :

- a) secure detailed facts, since the petitioners information is usually sketchy, as in the case's Mukesh Advani v/s State of M.P. 'Laborers working; on Salal Hydro project v/s State of J&K., and others.
- b) receive expert testimony in cases involving complex social or scientific issues, as in the Shriram Gas Leak case; The Supreme Court solicited the help of several expert committees, in the 'Dehradun Quarrying case'. The Supreme Court enlisted an expert committee to evaluate the environment impact of limestone operations ; and
- c) ensure the continuous supervision of prospective judicial orders. In the 'Dehradun Quarrying case,' Mukesh Advani 's case court used the committee and the directions to government officials mechanism used to supervise the implementation of judicial order

(VI) Petition under PIL may only be filed under Article 32 and 226 of the Indian constitution either in the Supreme Court or in the High Courts.

Besides all above, the Indian judiciary has not been a silent spectator or a natural force in vital matters affecting the life and honor of common masses. The

resort to public interest litigation , relaxation of the doctrine of locus standi and contributed in accelerating the pace of social change through judicial process.

---

## 5.6 SELF ASSESSMENT

---

Answer the following questions in brief and judge, what you have understood through this unit.

1. What is public Interest Litigation? How it differs from conventional litigation?
2. Described development of PIL concept in India.
3. Discuss need and importance of PIL in India.
4. Described limitations and demerits of PIL.
5. Discuss role of Indian judiciary and PIL, with the help of case law.
6. Future of PIL –What you predict?
7. Describes few PIL relating labour.
8. State the constitutional provisions relating PIL.
9. Where the PIL petition may be filed?

---

## 5.7 IMPORTANT WORDS :

---

- Litigation** : The action of carrying on a suit in law.
- Locus standi** : Signifies a right to be heard.
- Petition judicial writ** : A formal application in writing made to court for Action for something that lies in its jurisdiction.
- writ** : A written command, precept, or formal order issued by a court, directing or enjoining the person or persons to whom it is addressed to do or refrain from doing some act specified therein.
- Article** : division of a document or statute.

**Article 32** : This Article of our Constitution guaranteed the enforcement of fundamental rights, and well known as right to constitutional Remedies.]

Article 226 : Under this Article of the constitution every High Court has the power to issue writ for the enforcement of Fundamental Rights

---

## **5.8 FURTHER READINGS**

---

1. Unit 15 of paper III , Labour Welfare Legislation and Industrial Sociology for case law and other prescribed case law.
2. Chayes , the Role of the Judge in Public Law Litigation ,89 Harvard Law Review 1281 (1976)
3. Cunningham , Public Interest litigation in Indian Supreme Court :study in the light of American Experience,29 J.I.L.I 494 (1987)
4. U Baxi , taking suffering Seriously: social action litigation in the Supreme Court ,of India 29 the Review (International Commission of justice )37 ,42 ( December 1982)
5. S. Agrawala, public Interest litigation in India, 29(1985 )
6. PIL case law as published in A.I.R s and in other journal.
7. J.N. Pandey Indian Constitution.

---

# UNIT - 6

## International Labour Organization (Genesis, Aims and Objectives)

---

### **Objectives:**

After growing through this Unit , you should be able to :

- Appreciated the underlying conceptual analysis of I.L.O, its pertinent role relationship with U.N.O.
- evaluate the functions performed by I.L.O. to the member status through its agencies :
- Acknowledge the role played by I.L.O. in fulfilling of its relative functionality in the field of industrial and labour world.

---

### **Structure :**

---

- 6.1 Introduction
- 6.2 Genesis
- 6.3 Aims and Objectives
- 6.4 Philadelphia Charter 1944
- 6.5 Structure and Constituent of I.L.O.
- 6.6 Membership of I.L.O.
- 6.7 Relationship with U.N.O.
- 6.8 India and the I.L.O.
- 6.9 Evaluation and Conclusion.
- 6.10 Self Assessment Test.

---

## **6.1 INTRODUCTION**

---

The non co-operation in the sphere of industry and labour , economic competition between the status ,no uniformity in labour standard through –out the

world social and economic exploitation as a stigma in achieving social justice had been avowed problems in the Industrial world which have attracted worldwide attention. The I.L.O. had since its inception a continuously endeavored with scrupulous zeal and tried to solve the aforesaid cumbersome problems.

Out of the shed of the First World War, emerged the League of Nations, a forum for International understanding. The I.L.O. was formed as a part of scheme of the League of Nations which was formed under the treaty of Versailles. From the outset, the main object of the Organization has been to promote international co-optation in the sphere of industry and labour so that economic competition between states or other like conditions shall not militate against the realization of minimum as well as uniform labour standards throughout the world. The Organization's efforts are principally directed in bringing the legislation and practice of each state into which the most, enlightened modern conceptions as to the treatment of labour, and with changing economic and social conditions in each such country. The idea of social justice underlying its work has been made more manifest in the amendments to the constitutions of this organized body.

---

## **6.2 GENESIS**

---

After World War I, the I.L.O. was originally created under Par 'XIII of the Treaty of Versailles 1919, but subsequently, to dissociated the Organization as far as possible from the League of Nation and from the Treaty itself, this section of the Treaty was detached, and its clauses renumbered, and it emerged with the new title of the "Constitution of the International Labour Organization ". When the League of Nation became defunct, the I.L.O. continued to function as an independent body. It was only the International Organization that survived the Second World War. When the United Nation Organization was establish after Second World War, the I.L.O. entered into a agreement with the U.N.O. in May 1946 under which it acquired the status of a specialized agency of the U.N.O. International Labour Organization, which was created as an important organ of the League of Nations, maintained its status quo through its subsequent amendments even the parent body

became defunct. It became the first specialized agency of the United Nations in 1946 in accordance with an agreement entered into between the two organizations.

Some burning problems, as hours of work on the working days in a week, the regulation of the labour supply, unemployment, inadequate living wages, non-protection of the worker against sickness, disease and injury arising out of the employment, non-protection of children, young persons and woman during the employment, establishment in old age and injury and the like, were prevailing almost in all the countries in the industrial and labour affairs. To solve these problems the "High Contracting Parties agreed to establish International Labour Organization .Since its inception the Organization

It has tried to solve the aforesaid worldwide problems. It has proved to be stable machinery for international co- operation in raising the standard of life and promoting social justice in the field of industrial relations. It has withstood the onslaught of the Second World War and has achieved remarkable results. The head quarters of the Organization are at Geneva.

Today, the I.L.O. stands as one of the specialized agencies of the United Nation with a longer history than any of its sister organizations. This is evident because of the good work done by the organization in the field of promoting the dignity and welfare of man through international co- operation. This was made possible by the keen interest evinced by member arms.

---

## **6.3 AIMS AND OBJECTIVES**

---

The International Labour Organization was the outcome of the realization on the part of the statement in the world that no lasting peace was possible unless an end could be put to social and economic inequalities.<sup>18</sup> Thus the main purpose of I.L.O. was to remove injustice, hardship and privation of large masses of toiling

---

1 <sup>18</sup> Bhagoliwal T.N. Economic of Labour ,Industrial Relation , page 721.

people all over the world and to improve their living and working conditions and thus to establish universal and lasting peace based upon social justice and ultimately to establish and maintain fair and humane conditions of labour in all the industrial countries of the world.

With these aforesaid avowed aims the following fundamental principles from the basis of International Labour Organization :

1. The labour should not be regarded merely as commodity or an article of commerce.
2. The right of association for all lawful purposes by the employees as well as the employed must be recognized.
3. The payment to the employees should be a wage adequate to maintain a reasonable standards of life as understood in there and countries.
4. The adoption of weekly rest of at least 24 hours a week as the standard to be aimed at where it has not already been achieved.
5. The adoption of weekly rest of at least 24 hours which should include Sunday wherever practicable.  
The adoption of child labour and the composition of such limitation on the labour of the young person as shall permit the continuation of their
6. The principle that men and women should receive equal remuneration for work of equal value.
7. The standard set-up by law in each country , with respect to the conditions of labour , should have due regard to the equitable economic treatment of all workers both national and foreigners.
8. Each state should make provisions for a system of inspection in which women should also take part in order to ensure the enforcement of laws and regulation for the protection of the employed.

All the aforesaid provisions and many more , have been adopted by the I.L.O. , since 1920 , by means of various conventions. The fundamental principles upon

which the Organization is based were reaffirmed on the declaration of Philadelphia.

---

## **6.4 PHILADELPHIA CHARTER 1944**

---

The idea of social justice underlying in the objectives of the International Labour Organization has been made more manifest in the amendments to the Constitution of 1945 and 1946 , was given particular Solomon expression in the declaration of Philadelphia adopted by the international Labour Conference in 1944 and annexed to the Constitution and in particular, that :

- (a) Labour is not a commodity
- (b) Freedom of expression and of association are essential to sustained progress;
- (c) Poverty anywhere constitutes a danger to prosperity everywhere ;

War against want requires to be carried on with unrelenting vigor within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

It was also asserted in this Declaration that all human beings , irrespective of race , creed or sex, have the right to pursue their material well- being and their spiritual development in conditions of freedom and dignity , of economic security and equal opportunity and that national and international policies and measures should be accepted only in so far as these promote the achievement of the fundamental objective that lasting peace can be established only on the basis of social justice. In order to achieve these aims the I.L.O. would examine and consider all international economic policies and measures.

Along with the aims and objective as aforesaid , the I.L.O. was also entrusted with some more programs among the nations which are as follows :



To achieve full employment and to raise the standard of living;

1. To provide facilities for training and the transfer of labour , including migration for employment and settlement;
2. To frame policies in regard to wages and earnings , hours and other conditions of work calculated to ensure a just share of the fruits of progress to all , and a minimum living wage to all employed and in need of such protection ;
3. To give effective recognition to the right of collective bargaining , the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in social and economic measures .
4. In furtherance of extension of social security measures to provide a basic income to all who are in need of such protection and comprehensive medical care ;
5. To provide adequate protection for the life and health of workers in all occupations;
6. To make the provision for child welfare and maternity protection;
7. To make provision of adequate nutrition , housing and facilities for recreation and culture ; and
8. To assure equal educational and vocational opportunity.

While reaffirming these principles the Declaration gave due stress and emphasized mainly on the post –war period developments, industrial progress and social – economic conditions prevailing in various. State to ameliorate the conditions of labour and their welfare. In the Declaration it was also affirmed to pledge the full cooperation of the I.L.O. with other related international –agencies which may be entrusted to it for and responsibility for the achievement of these objectives.

---

## **6.5 STRUCTURE AND CONSTITUNETS OF I.L.O**

---

The outstanding feature of the International Labour Organization is its tripartite character, as it is representative of Government, employers and employees.

The three main organs of the Organization are :

- (a) The International Labour Conference
- (b) The Governing Body
- (c) The International Labour Office.

The work of the Conference and the Governing Body is supplemented by that of regional conference, Regional Advisory Committee, Industrial Committees and Analogous Bodies, Committee of Experts, Panels of Consultants and Special Ad-hoc Conferences and Meetings. The General Conference, the Regional Conference, the Governing Body, the Industrial Committee and other Bodies are attended by representatives of Governments, Employers and Workers. The strength of the three wings on each body may vary but parity between the three groups is maintained through the adoption of a suitable system of voting.

The structure and constitution of three constituents may be enumerated as follow.

#### **(a) INTERNATIONAL LABOUR ORGANIZATION**

The International Labour conference is a policy making and legislative body, being in effect a " World Industrial parliament" It consists of four representatives in respect of each member state ,two representing the Government and one each labour and management respectively in that country. In addition, each delegate and bring two advisors for each technical item on the agenda. The delegates and advisors are appointed by the Governments of member countries. In accordance with the I.L.O Constitution, non Government delegates and Adviser are to be chosen in agreement with the industrial organizations. If such organization exists, which are most representative of employers or work people as the case may be, in their respective countries? In addition to these representatives (delegates and advisors ) the other representatives from non-metropolitan territories, officials, international organizations and non-governmental international organizations with which I.L.O. is having consultative relationship also attend the Conference .meetings of the Conference are held normally once every year. Special sessions may also be convened to deal with questions relating to maritime labour etc. Till

the end of 1984, seventy sessions were held out of which nine were maritime session.<sup>19</sup>

The representatives of the Government, Employers and labour speak and vote independently, so that all points of view find full expression. All delegates have been given equal status in the conference i.e. each delegate is entitled to vote individually on any question. Voting is by a two-thirds majority. By the same majority it can adopt amendments to the constitution and such amendments would take effect only when ratified by 2/3 of the members of I.L.O .The Conference also elects a President and three Vice-Employers and workers Groups.

The Conference is the policy making body and it acts as the legislative wing of the Organization. The Conference promote labour legislation in each state by adopting Recommendations and Conventions .Recommendations enunciates principles to guide a state in drafting labour legislations or labour regulations, and for this reasons has been termed a “Standard defining instrument” . States, however, are under no binding obligation to give effect to a Recommendation, although they are duty bound to bring it before the appropriate national legislative authority. A Convention it is the nature of a treaty , although it is adopted by the Conference and not signed by delegated of the member-states. Members –states are under an obligation to bring the convention before the competent authorities for the enactment of legislation or other action.<sup>20</sup> If a member state obtains approval for a convention, it is bound to ratify it , and there upon assumes the obligation of applying its provisions. Member-State is also bound to report annually on the measures it has taken to bring its legislation into accord with the Convention. Therefore, it is the obligation of the member-state to implement through their state legislatures the Conventions and Recommendations continued together are called International Labour Code which indicates the international standards of policy.<sup>21</sup>

---

<sup>19</sup> Indian labour Year Book,1986,Page 338

<sup>20</sup> Article 19 of the constitution of ILO

<sup>21</sup> Godspeed Note 1 Page 442. For details see also ILO code 1951 {1952} adopted for C.w. Jenks , Social Justice in the law of nation (1970)P.9.

in the course of its seventy session held up to June 1984, 159, Conventions and 169 Recommendation. These pertain to matters like: Hours of work, weekly rest, annual holidays with pay, minimum age for admission to employment, protection of young persons and women, social security, wage fixing machinery, protection of wages, employment policy, vocational training, labour inspection, industrial relations, conditions of migrant workers and of seafarers etc.

## **(b) THE GOVERNMENT BODY**

The Governing Body is more or less the executive organ of the Organization. It has a similar tripartite character as that of the Conference. The Governing Body plays a key role in the organization. The Governing Body appoints the Director General, considers programme and budget proposals submitted by Director General and recommends the programme and budget to be approved by Conference and decides the specific action to be taken on the resolutions adopted, settles the dates, duration, agenda and composition of all subsidiary meetings and follow-up as appropriate, their proposals or conclusions, examines the application by member states of the Convention and recommendations adopted by the Conference and coordinates the activities of ILO, with those of other members of the United Nations family and of other organizations-regional and international.

The Governing Body consists of 56 members, 28 representing Governments, 14 Employers and 14 Workers. Out of 28 Government seats, 10 are non-elective and are held by States of Chief Industrial Importance. These are China, France, Brazil, Italy, Federal Republic of Germany, India, Japan, U.K. U.S.A. and U.S.S.R. The remaining 18 Government members are appointed by Governments of the member-States elected for the purpose once in three years, by an election college consisting of Government delegates from the member-states other than the States of Chief Industrial importance, attending the International Labour Conference in the election years. The Employer and worker-member are also elected for a three-year period by the employers and workers delegation respectively attending the Conference in the same year. One of the employer members and one of the Governing Body are Indian nationals.

The Governing Body is assisted in its work by standing tripartite committees namely Programs, Financial and Administrative Committees. Allocations Committee, Committee on Standing Orders and the application of Convention and recommendations , Industrial Activities Committee on operational Programs, Committee on Freedom of Association , Committee on Discrimination and Committee on multinational Enterprises.<sup>22</sup>

The Governing Body normally meets thrice a year .It meets four times during the year when triennial elections are held. It elects one of its Government members as its Chairman every year immediately after the General Conference is over. Two Vice-chairman each representing the employers and the workers groups are also elected.

### **(c) THE INTERNATIONAL LABOUR OFFICE**

The International Labour Office acts as a Secretariat and is responsible for organizational work and to implement the decisions of the Conference .It is engaged in studying problems connected with labour. It makes arrangements for conducting research and serves as a research center. The headquarters of International labour office is at Geneva. The Office provides technical assistance to member-states. It also serves as a clearing house of information on all problems relating to labour. The International Labour Office is assisted by Branch Officers, Regional Officers, Area Offices, Country representatives and National Correspondents in different parts of the world. The Chief Executive Officer is the Director-General. he responsible for the efficient working of the office and for such other duties as may be assigned to him by the Governing Body from time to time. The main functions of the International Labour Office may be enumerated as follows:

1. To provide secretarial assistance to Conference and Governing Body for various sessions. The office also prepares the documents for such meetings it also provides other relevant information.

---

<sup>22</sup> Indian Labour Year Book,1986P338

2. To follow up the implementation of international Labour regulations and to the decisions of the Conference by the member-States.
3. To carry-out enquiries, to edit and publish studies and reports pertaining to labour problem on socio-economic question.<sup>23</sup>
- 2 To carry-out, in collaboration with the relevant national authorities and other International agencies, the technical assistance programme of the Organization. Thus the function of the Labour Office are to collect and distribute information on all subjects industrial life and labour, to examine subjects which it is proposed to bring the Conference , and to conduct such special investigations as the conference may order.

---

## 6.6 MEMBERSHIP OF THE I.L.O

---

The original members of the League of Nations and countries joining the league automatically become members of the I.L.O. certain countries which were not members of the League were also admitted as members of I.L.O by decisions of the International Labour Conference. After the United nation Organization came into being, any original member of the United Nation and any State admitted to membership of the United Nations by a decision of the General Assembly can become a member of the I.L.O. by communicating to the Director General of the International Labour Office ,its formal acceptance of the obligation under the ILO Constitution .Besides , the General Conference may also admit Status a members by a vote concurred in by two-thirds of the delegates attending the session including two-thirds of the Government delegates present and voting.

The total number of member –statues of the International Labour Organizational as on 31<sup>st</sup> Dec.1984 was150.India has been a number of the I.L.O. since its inception and other 1919<sup>24</sup> Initially European and American countries and other developed countries were the members of I.L.O African and Asian Countries

---

<sup>23</sup> Presently the office is publishing International Labour review ,Legislative Series official Bulletin of labour statistics and year book of Labour statistics.

<sup>24</sup> Indian Labour Year Book 1987.P 337

have also become members as and when they achieved Independence during the fifties and sixties. Presently most of the countries developed, developing or under – developed are members of I.L.O In this sense, we can say that the organization has achieved a universal character.

---

## **6.7 RELATIONSHIP WITH U.N.O.**

---

International labour Organization was established in 1919 as an autonomous partner of the League of Nations. When the League of Nations of became defunct the I.L.O. continued to function as an independence body and survived even in the Second World War as a living organ .Later, when the United Nations Organizations was established after Second World War, the I.L.O. entered in to a special agreement with U.N.O. in may , 1946 under which it acquired the status of a Specialized Agency of U.N.O. The United Nations General Assembly granted its approval on December 14, 1946 for the same.

After the formations of U.N.O., arrangements for regular contact and cooperative between the U.N.O. and I.L.O. were made. This arrangement was made after its ratification by the Montreal Conference of the I.L.O. Instruments for the amendment of the Constitution of I.L.O. were adopted by the Paris Conference in 1945 and the Montreal Conference in 1946.Presently there are several Committees , linking the work of the I.L.O. with other branches of the U.N.O. Thus the ILO has integrated itself, with the U.N.O. system and participated in common and concerted action towards the solution of major world problems.

During the span of 43 years the panoramic history of I.L.O. and U.N.O. reveals that principle activities towards the promotion of economic development and to ameliorate the conditions of labour have been insured and increased. As specialized agency of the U.N.O. the I.L.O. has cooperated with U.N.O. significantly. I.L.O. has been entrusted with great duties to strengthen a sound economic and social environment among the member –status.

---

## **6.8 INDIA AND I.L.O.**

---

India has been a member of the I.L.O. since its inception in 1919 even before it achieved Independence. Prominent Indian has occupied the honorable seats of I.L.O. from time to time. Indian representative which have also been elected to various committees of the I.L.O. India has actively contributed finance to the funds of I.L.O. upon which the whole programme of the I.L.O is based . India is also a permanent member of its Governing body one of the employer – member and one of the worker- members of the Governing body are Indian nationals.

Under the I.L.O. Constitutions, member –States are required to bring the Conventions and Recommendation before the competent national, state or provincial authorities within a maximum period of 18 months of their adoption by the Conference for such action as might be considered practicable. Information regarding the action proposed to be taken on then has to be communicated to the I.L.O. If the competent authority approves the ratification it is to be formally communicated to the Director-General for registration .On ratification, convention became binding international instrument .By the end of 1984, India had ratified 34 Conventions. Out of this Convention No.2 concerning Unemployment which was ratified in 1921 was subsequently denounced. Government of India has been keeping under constant review the feasibility of ratifying or further implementing as many of the Conventions as possible and in this task, the Government relies on the advice of a Tripartite Committee on Conventions which was set-up in 1954. India has also been taking an active part in the Conference and meetings convened by the Organization.

The Indian Branch of the I.L.O. has its office in New Delhi since the year 1928 to serve as link between the Head Quarters at Geneva on the one hand , and the Government and Employer’s and Worker’s Organizations on the other. In pursuance of the policy of decentralization of the I.L.O. activities, the New Delhi Branch Office was converted into an Area Office from April 1, 1970. The Area office is Uncharged of all I.L.O. activities in India, Srilanka, Nepal, Bhutan and the Maldives Islands. It keeps the I.L.O. Headquarters at Geneva informed periodically



of the social and economic development in the area and acts as a clearing house of information on subjects falling within the scope of the Organization.

The I.L.O. has exercised a great influence on the course of events in the industrial and labour field of India .The I.L.O. Conventions had played an important role in the enactment, amendment and alteration of related laws. It may be noted that there is similarity between the goals and the principles cherished by the I.L.O. and in the Preamble to the Indian Constitutions. Like the tripartite representative of Government, workers and Employers in the I.L.O. the Government of India have set-up tripartite bodies like the Indian Labour Conference, the Standing labour Committee and the Industrial Committees. The labour policy in India is largely based on the policy work of the I.L.O. Further to note , India has also made due efforts in constituting many Regional Conference and advisory Committee .Many Labour legislation have incorporated the provisions based upon the Conference and Recommendations of I.L.O. whether ratified or not by the Government of India .

---

## **6.9 EVALUATION AND CONCLUSION**

---

The I.L.O. standards are Conventions and Recommendations designed to improve working and living conditions, to safeguard human rights such as freedom of association and to encourage job creation<sup>25</sup> 8. International Labour Organization is a very successful inters governmental institution and specialized agency. It has done a commendable work to achieve social justice for the workers. In the field of industrial world and in enacting Labour Legislation throughout the member states, International Labour Code is a significant achievement and a corner stone of every nation's labour policy who have adopted it.

In the words of C.W. Jenks "The International labour Code has become for labour lawyers throughout the word that "Corpus juries Civilest "is for the civilians or works of authority of the Common Law for the common lawyers<sup>26</sup>. The most

---

<sup>25</sup> U.N. monthly Cronical Volume 13 No. 7 [ July 1976 Page 41.

<sup>26</sup> C.W. Jenks Social Justice in the Law of nation-The I.L.O impact after 50 years [1970], P 80

significant thing in the constitution of the international Labour Organization is that this Organization has the representation of not only of the states, but also of the workers and employers. This tripartite partnership has made the organization the most representative and democratic in the real sense of the term. Besides this, as pointed out by Jenks "No less radical and unprecedented an innovation was the obligation to submit Conventions adopted by International labour Conference by a two-thirds majority for parliamentary consideration, irrespective of the attitude towards the Conventions of the representatives of the Government concerned"<sup>27</sup>

Taking a broad view of the extent of progress which the International labour Organization has made we can conclude that the achievement is no less significant than it has avowedly accepted in its constitutional frame –work for social justice and also is no less promising than it has promised within the frame work of its objectives and the rule of law as accepted though out the industrial world.

---

## **6.10 SELF -ASSESSMENT TEST**

---

Answer the following Questions in not more than 500 words.

1. Describe the constitution and organization of the I.L.O.
2. Write a note on the fundamental principles, aims and objective of I.L.O.
3. Estimate the influence of I.L.O. on labour legislation and evaluate the role of I.L.O
4. Discuss the various organs through which the I.L.O. functions.  
Point-out the relationship between U.N.O. and I.L.O.

---

## **6.11 FURTHER READINGS**

---

Bhagoliwal ,T.N.	:	Economics of Labour and Industrial Relations
Mongia , J.N.	:	Readings in Indian Labour and Social Welfare.
Saxena Bureau	:	Ministry of Labour, Government of India .Indian Labour book
Jenks , C.W.	:	Social Justice in the Law of Nations.

---

<sup>27</sup> 10. Iiid.Page25

---

## UNIT- 7

# International Labour Organization (I. L.O.)

( Structure , International Labour Conference ,  
Governing Body and International Labour Office )

---

### Objectives :

Whenever people are at work, their problems are in some way the concern of the ILO. For more than 85 years the ILO. Has been bringing workers,' employers ' and government representatives together to devise measure which will improve the conditions of work and the general welfare of working people all over the world in the above context , after going through this unit , you should be able to :

- Know the aims and objectives of the ILO.
- Know the structure of the ILO, consists of an International Labour Conference, a Governing body and International Labour Office.
- Know the particular composition of the organs of the ILO, and their powers and functions.

---

### Structure :

---

- 7.1 Aims and Objectives
- 7.2 Membership
- 7.3 Structure
- 7.4 System of Voting body
- 7.5 Function of General Conference
- 7.6 Power to appoint committee
- 7.7 Governing Body
- 7.8 Power and function of Governing Body
- 7.9 The international labour Officer
- 7.10 Functions of the office
- 7.11 Self Assessment Test

## 7.12 Further Readings

---

### **7.1 Aims and Objectives :**

---

The International Labour Organization was established in 1919 by the Peace Conference as an autonomous body associated with the League of Nations. For the first time it was realized the universal and lasting peace could be promoted only through promotion of social justice within the nations .it was this realization that led to the setting up of the ILO by part XIII commonly called the Labour Section , of the Treaty of Versailles.

The aims and objectives of the ILO are set out in the preamble of its Constitutions and in the Declaration of Philadelphia (1944) which was formally annexed to the Constitution in 1946 .The preamble affirms that universal peace can be established only if it is based upon social justice, draws attention to the existing conditions of labour involving injustice., hardship and privation to a large number of people and declares that improvement of those conditions is urgently called for by the adoption of such means as the regulation of hours of workers against sickness , disease , protection of children , young persons and women , protection of the interest of migrant workers , recognition of the principle of freedoms of association , and organization of vocational and technical education.

There are three main functions of ILO. First, is to establish international labour standards, second is to collect and disseminate information on labour and industrial conditions. And, third function is to provide technical assistance.

The most significant thing in the constitution of the ILO. Is that this Organization as the representative of not only the states but also of an equal number of representatives of workers and employers? This tripartite partnership has made this Organization the most representative and democratic in the real sense of the term.

---

### **7.2 Membership :**

---

The membership of ILO. Consists of the states which were members on Nov.1.1945, and such other states as have or may become members by either of two alternative procedures provided for in the Constitution (Article 1(2) ) . Any member of the United Nations may become a member of the ILO. By communicating to the Director General its formal acceptance of the obligations of the Constitution of Organization. other states may be admitted to the Organization by the conference by a vote concurred in by two- third of the delegates attending the session including two-third of the government delegate attending present and voting (Article 1 (2) ).

Member may withdraw from the Organization on giving two years ' notice .However , when as member has ratified any international labour convention such withdrawal does not affect the continued validity for the period provided for in the convention of all obligation arising there under or relating thereto ( Article 1(5) ).

---

### **7.3 Structure :**

---

In structure the ILO is extremely simple. It consists of an International Labour Conference, Governing Body and International Labour Office. The Conference is the supreme policy – making and legislative organ , the Governing Body the executive council ; and the International labour Office the secretariat , operation head quarters and information centre.

#### **The International Labour Conference :**

##### **Composition :**

The Conference is composed of four representative of each member, of whom two are government delegates and two are delegates' representative respectively the employers and the workers of the members concerned. All delegates may be accompanied by advisers, not exceeding two for each item on the agenda.

The 2+1+1 basis of representation at the Conference has been subject for acute difference of opinion. In particular, it was fully discussed in 1919 in the Commission on International Labour Legislation of the Peace Conference and in 1946 as in the Committee on Constitutional Questions of the International Labour Conference. In 1946 as in 1919 the underlying argument in favor of the 2+1+1 system was essential that the government should have a voice at least equal to that of the employers and workers combined, since otherwise it would often happen that conventions adopted by a two-thirds majority of the Conference would be rejected by the legislatures of the various states, and the influence and prestige of the Conference would be quickly destroyed.

Another difficult constitutional question having political overtones, due to the cold war, erupted when the employers' delegates from non-communist countries, particularly from the United States, challenged the formal credentials of employers' delegates from socialist states, particularly of the Soviet Union, on the constitutional ground that they did not represent free associations of free employers and workers. This challenge was referred to a three-men Credentials Committee, which decided in favor of the Soviet bloc employers' credentials. A similar decision was taken by the Conference in favor of workers' delegates from socialist states like USSR, Poland, Yugoslavia, Bulgaria, etc. This issue had become crucial when Russia rejoined the ILO in 1954 and the McNair Committee was established to consider the above-stated constitutional problem. The committee noted that representatives of private industries no longer enjoyed an exclusive title as defenders of the employers' point of view due to the wide spread development of state enterprise.

However, after 1969 the traditional employers' groups have changed their attitude and have accepted the reality of "free enterprise" and "socialist economy" existing side by side and accordingly, the nature and function of management representing the socialist section in the various forms of the ILO.

**Advisers:** Each delegate may be accompanied by technical advisers who shall not exceed two in number for each item on the agenda of the meeting. When questions affecting women are to be considered by the Conference, at least one of the

advisers should be a woman. As regards their status advisers shall not speak except on request made by the delegate whom they accompany and with special permission of the President of the Conference and may not vote.

If the delegate deputies in writing and by notice his adviser in his place then the delegate shall be allowed to speak and vote. However, the names of delegates and advisers have to be communicated in advance by the member states to the international Labour Office.

In Addition to regular delegates and advisers the Conference may be attended by representative drawn, from representative of Official international organizations, non-governmental organizations such as International Confederation of Free-Trade Unions, the world Federation of Trade –Unions and International Federation of Christian Trade Unions.

---

## **7.4 System of Voting :**

---

In the Conference voting is based on democratic principles of one man and one vote. At the plenary meetings of the Conference it means that Government have twice as many votes as either of employers of workers because of the ILO Constitution ( Article 3(1) ).If a governments sends only one government delegate, he has only one vote. If a government sends an employers, delegate and no workers 'delegate that delegate has no vote. A member in arrears with its contribution may lose the right to vote.

In the Conference voting is by a show of hands where a simple majority is required on most matters , but a record vote is asked for by not less than 50 delegates present at a sitting or by the chairman of a group record voting are taken in the following cases in which a majority of two-third is requires by the ILO constitution. These are, namely, amendments to the Constitutions, adoption of convention and recommendations arrangements for the approval, allocation and collection of the annual budget denial of admission to delegates from member

states who are in arrears in the payment of contribution, inclusion of the new item in the agenda of the Conference and admission of new members.

The unique feature of voting system in the Conference is that each delegates votes independently in their capacity as the representative of workers or employers and not as the spokesman of their state.

---

## **7.5 Function of the General Conference :**

---

The International labour Conference is the supreme organ of the ILO and acts as the legislative wing of the organization. While the General Conference usually meets once year, special session of the Conference may be convened to deal with questions relating to labour.

The main function of the International Labour conference is to provide a forum and platform for discussion and deliberation of international labour problems and thereby formulate international labour problems standards in the shape of Conventions and recommendations which collectively known as International Labour Code. A labour convention is not signed on behalf of prospective contracting parties, but simply authenticated by the president of the Conference and the Director General of the ILO. A convention or recommendation thus adopted is communicated to all members for ratification , in the case of a recommendation for consideration with a view to effect being given to it by national legislation or otherwise.

The Conference has also the power to discuss and examine closely the report of the Director General which focuses the attention on problems of topical interest and indicates the manner in which the ILO could assist in its solution from time to time. It provides an opportunity for delegates to give expression to their own views on the work of the ILO to draw attention to the difficulties faced by member country in tacking labour problems, and to offer suggestion for improving the work of the Organization. Thus, the theme of discussion is set each year by the Director General in his report to the Conference. The subjects chosen generally are



those of pressing international importance. The Director General has devoted some of his recent reports to older people in work and Retirement; labour relations, youth and work; current problems and trends in employment and unemployment, social problems of economic development and institutions in social policy, automation and other technological developments, labour and social implications, Rural and Urban Employment Relationship etc.

---

## **7.6 Power to Appoint committees :**

---

The standing order of the Conference authorizes it to appoint committees to deal with different matters during each session. All these committees are tripartite in nature except the Finance Committee which consists of Government delegates only. These committees are:

### **a. Finance committee :**

This committee deals with financial and budgetary questions and consists of Government representative only – one Government delegate from each member state represented at the Conference.

### **b. Selection Committee :**

It consists of 24 Government members nominated by the Government group, 12 employers and the workers, groups respectively. Its main functions are to fix the time and make proposals for the plenary sitting of the Conference, make proposals for the sitting up and composition of the technical committee and deal with other procedural matters.

### **c. Credential Committee :**

It consists of one representative from each of the three groups nominated by the selection committee. It examines the credentials of the delegates and their advisers and objections, If any, relating thereto if the Credential committee or any member there of submits a report that the Conference should refuse to admit any delegates or adviser, the conference has to take a decision in the matter by two third of the votes cast by the delegates present.

**d. Resolution Committee :**

While its size is not fixed, it is also tripartite in character. This committee deals with Resolutions tabled by the delegates to the conference relating to matters other than those included.

**e. Committee on the Application of Conventions and Recommendations**

This committee is also tripartite in character. Its main function is to examine closely the various current labour problems which need immediate action on the part of the Conference in the form of a convention or recommendation for adoption by the Conference and their ratification by member states.

**f. Drafting Committee :**

It is responsible for giving legal shape to the texts of the conventions or recommendations, amendments to the Constitution, etc.

**g. Committee on Standing Orders :**

The Conference sets up, if necessary, a tripartite committee in standing orders to examine proposals brought forward by the Governing Body. For the amendment of the standing orders of the Conference.

---

## **7.7 The Governing Body :**

---

The Governing Body is the executive wing of the organization with limited composition proposals and tripartite in character. It is one of the principle organs of the ILO. It is a non-political, a non legislative organ charged with the duty of carrying out faithfully the decisions of the General Conference through the instrumentally of the International Labour Organization.

**Composition :**

Like the General Conference the governments, employers and workers are represented in it. The 2:1:1 system in the Conference has been adopted in the Governing Body. The constitution of the ILO has been amendment several times in

order to make the Governing Body more fully representative. At present Governing body consists of 56 persons, whom 28 represent government .14 employers and 14 workers .The government member in the Governing body are governments and not persons. Of the 28 representing governments '10 shall be appointed by the members of chief industrial importance and 18 governments, delegates are elected by an electoral college of the Conference including all governments except those of chief industrial importance. The criteria for determining the status of chief industrial Importance are not early and states have always been eager to qualify for becoming the states of chief –industrial importance and those which enjoyed this states were more reluctant to be removed from it. However, the general criteria laid down for this selection are the strength of total industrial population including miners , transport workers , agriculture workers ,etc.

As regard India, Originally in 1919, she was not declared as a state of chief industrial importance and a permanent member of the governing body .Since June 1922, India, has been holding a non-elective seat as one of the countries of chief industrial importance, The Employers 'and workers members of the Governing body are regarded and being representative of the whole body of employers 'and workers delegates to the Conference.

#### **Term of Office :**

The period of the office of the Governing Body is three years and voting is by majority. It meets several times a year to take decisions on questions or policy and programmers of the ILO. AT the end of every three years the General Conference holds fresh elections and the Governing Body is reconstituted.

---

### **7.8 Powers and Functions Of the Governing Body :**

---

In the attempt to synthesis the function of one Governing Body in a single term, It has been called the Executive committee, of the ILO, or the Board of directors, or the Control Tower, or the power house. Its main functions can be encumbered below :

**(i). Drawing Agenda :** The Governing Body draws up the agenda of each session of the conference and subject to the overriding decisions of the Conference decides what specific subjects should be included in the agenda of the conference .

**(ii) Appointment of director –General:** The Governing body appoints the Director –General of the Office .it scrutinizes the budget submitted by and financial estimates and accounts presented to the conference for adoption. It follows up the implementation by member states of the conventions and recommendations adopted by the Conference.

**(iii) Control over Regional Conference and Committees:** The Governing body fixes the dates, duration and agenda for all regional and technical conference and committees, receives their reports and decides on the action to be taken.

**(iv) Power to seek Advisory opinion:** Under Article IX of the Agreement of 1946 between the UN and the ILO, the ILO may through Governing Body also seek Advisory opinion from the International court of Justice with the consent of the International Labour conference.

**(v)Miscellaneous Powers:** It regulates its own procedure and elects every year one of its Government members as Chairman and two-vice Chairman –one each from employers and workers group represented in the Governing body for each year. It is assisted in its work by a number of standing tripartite Committees e.g. Financial and Administrative Committee; committee on operational Programs; committee on Freedom of association, committee on discrimination .There are three Regional Advisory committees at present also-Asian , African and Inter-American.

In short, the Governing Body gives direction and purpose to the ILO and its working. Its utility, justification and purposefulness depend on the personality, quality and foresightedness of the members of the governing Body. In other words, the ILO without Governing Body would be liked the UN without Security Council or a state without a Government.

---

## **7.9 The International Labour Office:**

---

The third permanent organ of the ILO is the International labour office which functions as the secretariat of the Organization.

### **The Seat of the Office:**

Initially, in early 1920n, the office was first established in London but, in June 1920 the Governing Body decided to shift the ILO to Geneva which is now its permanent headquarter .The ILO was the first specialized agency to set up a Liaison office with the United Nations. The establishment of this Liaison office constituted the best possible proof that if the seat of the ILO was not to be in New York, none the less the ILO would remain in day to day relation in New York with the United Nations.

### **Regional and Other officers:**

In addition to seat of the ILO in Geneva and Liaison office in New York, the ILO has a wide net work of staff spread all over the globe.

### **Regional and other officers:**

In addition to seat of the ILO in Geneva and Liaison office in New York , the ILO has a wide net work of staff speared all over the globe. From 1920 onwards Branch officers and National correspondents were established in important industrial states and after the second World War Series of felid and regional offices have began set up to maintain close links and day to day contacts with member governments and representative of employer and work people.

Regional officers have been set up for the ILO's operational activities. Each office is headed by a regional coordinator who controls the area officers. In India branch of the ILO established in 1928 to maintain liaison between International Labour Office and Government of India and employers and workers organization has been converted into an area office from April, 1970 to operate the ILO activities in India, Ceylon, Nepal and the Maldives Islands. The field officers for

different continents and areas are supervising the technical assistance programs in different countries.

### **Director-General:**

The Director –General of the ILO is at the same time the chief Administrative and Chief Executive of the International Labour office. The ILO Constitution provides that there shall be a Director –General of the International Labour Office , who shall be responsible for the efficient conduct of the International Labour Office and for such duties as may be assigned t him (Article 8(1)). Unlike the Secretary –General of the United Nations who is appointed by the general Assembly on the recommendations of the Security Council , the Director-General of the International Labour Office is appointed by the Governing Body and he is responsible to it alone. He also acts as the Secretary –General or his Deputy shall attend all the meetings of the Governing Body.

The ILO Constitution is silent about the duration of the term of the Director-General .under the Rules framed by the Governing Body, he is appointed for a period of ten years. His appointment may be renewed for such period as may be decided by the Governing Body but no single extension can exceed five years. The former Director –General David A Morse has been in office from 1948 when the Governing Body elected as his successor C. Wilfred Jenks. The Principal Deputy Director –General, David A. Morse has been the Director –General of the ILO for more than 21 years.

### **Staff:**

The staff of the International Labour Office is appointed by the Director-General in accordance with the rules and regulations approved by the Governing Body. So far as possible with due regard to the efficiency of the work of the Office, the Director-General shall select persons of different nationalities.

The Director-General is assisted by the Deputy Director-General, six Assistant Director-Generals, one Director of the International Institute for Labour Studies, one Director of the International centre for Advanced Technical and Vocational Training, Advisors Chief of Divisions and other staff which member

more than 1800 and is drawn from more than 100 nationals. This Number does not include those over 1000 experts, in the field engaged in ILO's technical co-operation projects working on short term contracts. The headquarters office is further assisted by twelve branch officers, seven field Area officers and forty Nationals correspondents in different parts of the world.'

The ILO's staff from, like the Officials of the U.N. and its specialized agencies, an international civil service. The ILO's constitution stipulates that the responsibilities of such staff shall be exclusively international in character. As to the international position of the members of the Office, a serious problem did arise in 1952 and in subsequent years with regard to the question of loyalty of the officials to the Government of the country of which they were nationals. In particular case, some of the members of the staff of U.S. nationality of UNESCO refused to testify before the US loyalty Board on grounds of privilege to answer questions by commission of inquiry regarding loyalty to their alleged involvement in subversive activities previously , or while engaged upon their international responsibilities .On this basis, the UNESCO declined to review their contracts .In an appeal the Administrative Tribunal of the ILO held that a refusal to answer loyalty interrogatories was not sufficient ground for the declining to review the appointment of an Official of the UNESCO.

---

## **7.10 FUNCTIONS OF THE OFFICE :**

---

The ILO Constitution (Article 10(20)) describe the functions of the International Office in particular such as to prepare the documents on the various items of the agenda of the meetings of the Conference to accord to governments their request all appropriate assistance within its power connection with the framing of laws and regulation on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspections, to carry out the duties required of it by the provisions of this Constitution in connection with the effective observance of convention and edit and issue in such languages as the Governing Body may think describe , publications dealing with the problems of industry and employment of international interest:

Besides above specified functions, the Constitution assigns (Article 10(3)) the office such powers and duties as may be assigned to it by the Conference or by the Governing Body.

However, the general functions of the international Office includes the collection and distribution of information on all subjects relation to the international adjustment of conditions of industrial life and labour, and particularly, the examination of subjects which it is proposed to bring before the conference with a view to the conclusion of international conventions and the conduct of such special investigations 'as may be ordered by the conference or by the Governing Body'.

Thus, the responsibilities of the Office are wide and complex and the success of the ILO depends upon the efficiency and devotion with which the Office discharges the aforesaid obligations. In the words of Albert Thomas, the first Director of the Office, 'My staff in the International Labour office and I, myself, cope to make of this institution which has been entrusted to us by the Peace Treaty, not a bureaucratic organization, not a research department holding itself aloof on the outskirts of Geneva in splendid scientific isolation, but an adaptable and living organization which will be in constant touch with the workers 'organization'.

It can be safely said what the I.L. Office and the ILO is today is due to the missionary zeal and programmatic of Albert Thomas. he had to struggle against the hostile employers in different states and impulsive workers to create their innate faith in the competence and ability of the ILO for bringing about a peaceful change and unity of approach within the limits of special and diverse situations to rescue labour from its social and legal handicaps. The responsibility of translating the basic philosophy and idealism, embodied in the ILO charter, rests on the International Labour Officering the words of E.J. Phelan who has been the Director of the ILO, 'the office is in fact clearing house for information on all subjects connected with conditions of labour, and its functions in this respect are especially valuable because it is equipped to deal with the technical problems, but also with the problems which arise when replies to its requests for information



arrive in the form of laws, decrees and memoranda in ten of twenty different languages.

Other functions which the Office has at various times discharged have included the following giving assistance in connection with international and national inquiries into matters of a social and economic character, the conduct of negotiations concerning such matters between Governments and between International organizations of employers and international organizations of workers, arrangement for the determination of disputes concerning social or economic matters which are international in character, the development of mutual aid between Government in the improvement and standardization of administrative practice, and practical assistance to Governments in regard to questions such as vocational training occupational classification and migration.

---

## **7.11 SELF -ASSESSMENT TEST:**

---

Answer the following question in not more than one page each, so that you may know how much you have understood the subjects discussed in this unit.

1. Discuss the Tripartite Principle of the International Labour Organization.
2. Discuss the objection to the credentials of workers' delegates from socialist states that they are not true representatives of the workers of their particular countries.
3. The Governing Body is called the Control Tower of the Power House or the Board of Directors. Whether it is true?
4. Discuss the important functions of the international Labour office.

---

## **7.12 FURTHER READINGS:**

---

1. Johnston, G.A., the International Labour Organization (Europe Pub., London, 1970).
2. Dhyani, S.N. International Labour Organization and India, (National Pub., Jaipur, 1977).

3. The ILO and the World of work , (ILO Pub. Geneva, 1984).
4. Kaul, N.N., International Labour Organization
5. The Constitution of International Labour Organization.

---

# UNIT - 8

## International Labour Code

### (NATURE, SCOPE, IMPORTANCE AND DEVELOPMENT)

---

#### **Objectives :-**

After going through this unit , should be able to :-

- Know the meaning of International Labour Code.
- Know the nature and the scope of International Labour Code.
- Know the Development of International Labour Code and its importance.

---

#### **Structure :**

---

- 8.1 Nature and Scope.
- 8.2 Development :-
  - a. 1919 to 1929
  - b. 1930 to 1939
  - c. 1940 to 1949
  - d. 1950 to 1959
  - e. 1960 to 1969
  - f. 1970 to 1979
  - g. 1980 to onward
- 8.3 International labour Code & India.
- 8.4 Importance.
- 8.5 Summary.
- 8.6 Self Assessment test.
- 8.7 Key words.
- 8.8 Further Reading.

---

#### **8.1 NATURE & SCOPE :-**

---

The International labour conference is the supreme law making body. It can also be designed as the Parliamentary organ of ILO. The conference provides minimum international labour standards in the form of conventions and

recommendations to form a common universal policy regarding labour. The International labour conference is not legislative in its strict sense. A legislature means a rule making body of binding character, whose rules are legally recognized by law courts and enforced by the state. The term "International labour legislation" is not legislation in its strict sense it is not a legislation like national legislation. It is only by way of analogy the term international labour legislation is used collectively for conventions and recommendations. The term International labor Code" is synonym to the term International labour legislation;, international Code includes the conventions and recommendations adopted by the international labour conference. A member state of ILO can shape their national labour legislation as per the material available in the code. The International Labour Office published "International Labour code , 1939 in 1941. This publication was followed by "The International labour code, 1951 '.In its wider sense , the international labour code includes all the instruments adopted by the ILO relating labour conditions of the working class and other weaker sections. These Instruments are used to stimulate social justice and to achieve all other objectives on which the ILO in based.

Labour Code consists of about 170 conventions which have been gradually adopted during the last 70 years by the ILO. This code today constitutes a complete set of standards covering almost all relevant labour problems and questions. This code is a living document, it is developing constantly. The code is very much receptive to new ideas & techniques in the interest of labour. It is always open to new additions whenever the need becomes apparent. The code is not only an academic exercise, it is based on scientific , economic & humanitarian considerations. It is the outcome of long experienced and analytical process, during the synthesis of this code the real picture of the world labour is being seen. It mainly deals with questions such as hours of work, social security, freedom of association , minimum wages, employment problems, women labour, child and young labour management relations etc .The main purpose of the code is to promote social progress and its success can be measured by the extent to which states have accepted its norms for their national laws.

---

## **8.2 Development :**

---

The Development of international labour code means the Development of international labour legislation or the development of conventions and recommendations adopted by the ILO.

Till 1989 ILO has adopted about `168 conventions. These adoption represent world's view on labour problems. ILO has done much in its 70 years life and still heading further with the same velocity. For analyzing the progress and the development of International labour code we can see the history of conventions and recommendations. For convenience we can see the development as per the following table-

S. No	Years From to	Number of convention adopted.
1	1919 to 1929	28
2	1930 to 1939	39
3	1940 to 1949	31
4	1950 to 1959	16
5	1960 to 1969	16
6	1970 to 1979	23
7	1980 to 1989	15

**1. 1919 to 1929 :-**

During the period ILO adopted 28 conventions and 34 recommendations. The concern during this period was the conditions of employment. The first convention and recommendation adopted during this period were related to unemployment , maternity protection, minimum age, right of Association, workmen's compensation ( Agriculture ) , weekly rest ,& seamen;

**2. 1930 to 1939 :-**

During this decade about 39 convention and 32 recommendations were adopted. The main emphasis again was on the conditions of employment. The main conventions were related to hours of work, protecting against accident ( Dockers ) , minimum age , old age insurance, invalidity Insurance, safety provisions ( Building ) etc.

### **3. 1940 to 1949 :-**

During this era the world was negatively influenced by the efforts of II world war. The war also influenced the activities of ILO. From 1940 to 1944 there was no meeting of the ILO. Thus actually from 1944 to 1950, the ILO adopted about 31 conventions and 21 recommendations. In this era the ILO showed its inclination towards freedom of association and collective bargaining. 84<sup>th</sup> & 87<sup>th</sup> were right Of association (Non-Metropolitan territories) convention, 1947, and freedom of Association & protection of the Right to organize convention, 1948 respectively. 98<sup>th</sup> convention was related to right to organize and collective bargaining. Other important conventions were related to the working conditions and social security of working class.

### **4. 1950 to 1959 :**

Total 16 conventions were adopted during this period. During this era few most important standards were fixed. Minimum wage fixing machinery (Agriculture ) Convention, 1951 was adopted in 1951. Equal Remuneration, holidays with pay, Social security, Maternity protection, weekly rest etc. were the main subjects which were adopted in various conventions during this era.

### **5. 1960 to 1969 :**

During this period 16 conventions and 32 recommendations were adopted. In 1960, ILO adopted an important convention relating to the radiation dangers. Other important conventions were related to equality of treatment ( Social Security ) , Hygiene , Employment injury Benefits , Employment policy , maximum weight , invalidity, old age & survivors benefits , Medical care and sickness Benefits etc. In this way this decade showed its main concern with the social security.

### **6. 1970 to 1979 :**

About 23 convention and recommendation 27 were adopted by the ILO, during the period of 1970 to 1979. Minimum wage fixing convention was adopted in 1970 . Other important conventions were related to the prevention of Accidents , Benzene dangers , Duck work , Paid Educational leave , Annual leave with pay ,

protection of workers against occupational Hazards , and Labour Administration, etc.

### **7. 1980 to onward :**

Up to 1989, the ILO has adopted about 15 conventions. Most of them relates to Social security. In 1981 Collective Bargaining convention was adopted. In the above lines we can expressly observe that during last 70 years the ILO has continuously worked hard to provide a good, secured, dignified & happy life to the world's working class. It has provided security and dignity as a matter right to the working class of the globe.

---

## **8.3 INTERNATIONAL LABOUR CODE AND INDIA**

---

The International labour Code or the conventions and recommendations adopted by the ILO has greatly influenced the Indian labour scene also. India has adopted about 35 conventions. These conventions are related to basic human rights, Employment of women, Employment of Children and young persons and social security. The International labour code has provided major guideline to our country while legislating labour laws like Maternity Benefits act, 1961 , Bidi & cigars workers act , 1966, Factories Act, 1948, Equal Remuneration Act , 1976, workmen's compensation Act,1923, the ESI Act , 1948, The Employees Provident Fund Act, 1952, and the Payment of Gratuity Act, 1972. The code is also enshrined in our constitution .In the Directive principles of state Policy, Articles 39,41,42,and 43, lays down the policy in the field of labour which a shows a close impression of International labour code on these legislations.

---

## **8.4 IMPORTANCE :**

---

The International labour code comprises of the standards to set goals for all member states to adopt as far as possible a common policy regarding labour. Although the term 'International labour legislation' is not legislation like national legislation but definitely it is expressed that the conventions and recommendation provided by the ILO has shaped the national legislations of the world. The

International labour code has provided a logical raw material to the member states for shaping their labour legislation. The code has definitely provided a common stage or front to the working class of the world. The international labour code has provided provision for better working conditions, social security, social justice, better living and better labour organization. It embodies the Instruments dealing with questions such as hours of work, minimum wages, equal pay for equal work, abolition of forced labour, labour management relation, and so many other important problems, the bulk of these instruments has proved to be a guide and model for stimulating social and industrial reforms for the upliftment of working conditions of the laborers.

---

## **8.5 SUMMARY :**

---

In this unit we have discussed the meaning, nature, scope, importance and the development of the International labour code. The term International labour code is used collectively for conventions and recommendations adopted by the ILO. The development of these conventions & recommendation has also been discussed systematically. We have observed that during its last seventy years life the ILO has provided and dignity as a matter of right to the working class of the world.

We have also discussed the impact of the international labour code on Indian Labour Laws. In the last we have discussed the importance of the code. We have discussed that how and up to what extent the International labour code has provided shape to the national labour legislations. We can conclude that this code has provided a set of uniform standards to the world's working class. The code's main purpose is to promote social progress and to establish democratic and dynamic social order necessary for ever lasting peace. To conclude we can safely say that the International labour code represent world's view on labour problems and social justice in consolidated form to make the life of the laborers class on this earth happy . It has provided them social justice, security, prosperity, democratic values and good working conditions as a matter of legal right.



---

## 8.6 SELF ASSESSMENT TEST

---

Answer the following questions in brief so that you may know how much you have understood the subjects discussed in this unit :

1. Discuss the meaning of the term "International labour code."
2. Describe the nature and the scope of the International labour code.
3. Give a brief comment over the development of the International labour code.
4. Write a note on the importance of international labour code.

---

## 8.7 KEY -WORDS :

---

**INTERNATIONAL LABOUR CODE:** it includes the convention and recommendations adopted by the International labour conference.

**INTERNATIONAL LABOUR CONFERENCE:** It is the supreme body of ILO. In this conference the representatives of government, employees and workers of the world meet for considering, discussing and recommending new international legislative programs on labour matters.

**CONVENTION:** It is an obligation by ILO – creating instrument.

**RECOMMENDATION:** It is guidance by ILO-providing instrument.

---

## 8.8 FURTHER READING :

---

- |               |   |
|---------------|---|
| S.N. Dhyani - | International Labour Organization and India in pursuit of Social justice. |
| R.C. SAXENA   | Labour problem and Social Welfare.  |
| B.D. RAWAT -  | India in ILO.DECLARATION OF PHILADELPHIA 1944.<br>INDIAN LABOUR JOURNAL   |

---

# UNIT- 9

## International Labour Organization - (SANDARD SETTING)

---

### **Objectives :**

After having studied this unit you should be able to

- Identify the origin and aims of I.L.O.
- Understand the formation and structure of I.L.O.
- Identify the I.L.O. Conventions, Recommendations.
- Understand the procedure for ratification of conventions and difficulties in ratification.

---

### **Structure :**

---

- 8.1 Introduction
  - 8.2 Aims and Objects of I.L.O.
  - 8.3 Formation of I.L.O.
  - 8.4 Standard Setting.
  - 8.5 Conventions and Recommendations.
  - 8.6 Procedure for Ratification of Conventions.
  - 8.7 System of Enforcement and Difficulties in Ratification of Conventions.
  - 8.8 Summary
  - 8.9 Self- Assessment Test.
  - 8.10 Key Words
- Further Readings

---

## **9.1 INTRODUCTION**

---

The International Labour Organization, popularly known as I.L.O. was set up in 1919 as a part of League of Nations for the promotion of universal peace through social justice. The I.L.O. was the only international organization that survived the Second World War even after the dissolution of its parent body The

League of Nations. It became the first specialized agency of the United Nations in 1946 in accordance with an entered into between the two Organizations.

---

## **9.2 AIMS AND OBJECTS**

---

The basic aim of the I.L.O. is to advance the cause of social justice through the abolition of Condition of labour involving injustice, hardship and privation .It is through this basic aim that the I.L.O was expected to supplement the efforts of the League of Nations in the establishment of universal and lasting peace.

The Preamble of the Constitution of the I.L.O affirms that universal and lasting peace can be established only if it is based upon social justice, refers to existing conditions of labour involving, injustice, hardship and privation on large numbers of people producing unrest so great that peace and harmony of the world are imperiled and declared that improvement of these conditions is urgently required by means such as:

The regulation of the hours of work including the establishment of a maximum working days, and weeks.

- The prevention of unemployment.
- The provision of an adequate living wage.
- The protection of the worker against sickness, disease and injury arising out of his employment.
- The protection of children, young persons and women.
- Provision for old age and injury.
- Recognition of the principle of equal remuneration for work of equal value.
- Recognition of the principle of freedom of association.
- The organization of vocational and technical education.

The preamble further states that the failure of any nations 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.

The Objectives of the I.L.O received set –back with the outbreak of the Second World War. Its activities remaining almost suspended the social for about five years .There was however a deep conviction the social justice was the only enduring foundation for peace, therefore, even when War had not come to a close, a special and a significant session of the I.L.O General Conference was held at Philadelphia (U.S.A) in June 1944 to consider the programs and policies of the Organization to the perused by it when peace came .The aims and objectives of the I.L.O were redefined at this Session and made the part of the I.L.O Constitution.

The Declaration reaffirmed the fundamental principles on which the organization was based, and declared that:

- (a) Labour is not a commodity,
- (b) Freedom of expression and of association is essential to sustained progress.
- (c) Poverty anywhere constitutes a danger to prosperity everywhere.
- (d) The war against want requires to be carried on with unrelenting vigor within each nation and by continuous and concerted international efforts in which the representatives of workers and employers enjoying equal status with those of Governments join with them in free discussion and democratic decision for the promotion of common welfare .It also asserts the primacy of the social objective in international policy i.e. the attainment of condition in which all human beings irrespective both their material well being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

It recognizes its role to further, among the nations of the World, programs which will achieve:

- (a) Full employment and the raising of standards of living
- (b) The employment o workers in the occupations in which they can have the Satisfaction of giving the fullest measure of their skill and

- attainment and make their greatest contribution to the common well-being.
- (c) Provision of facilities for training and the transfer of labour, including migration for employment and settlement.
  - (d) Policies with wages and earnings, hours and other conditions of work calculated a just share of the fruit of progress to all, and a minimum living wages to all employed and in need of such protection.
  - (e) The effective recognition of the right of collective bargaining the co-operation of management and labour in the continuous improvement of productive efficiency and the collaboration of workers and employers in the preparation and application of social and economic measures .
  - (f) Extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.
  - (g) Adequate protection for the life and health of workers in all occupation.
  - (h) Provision for child welfare and maternity protection ,
  - (i) Provision of adequate nutrition, housing facilities for recreation and culture.
  - (j) The assurance of equality of educational and vocational opportunity.

---

### **9.3 FORMATION OF I.L.O**

---

The I.L.O is a non-political and economically non-partisan agency. Only a state can be its member and under its Constitution, the representatives of the State can be its member Representatives of the State includes employers' and employee's delegates too. If any new State wants admission as member of the I.L.O .It is necessary to set " a vote concurred in by two third of the delegates attending the session, including two-third of the government delegates present and voting.

The I.L.O considers of three principle organs, viz .the International Labour Conference, the Governing Body, and the International Labour Office. The distinctive feature of the I.L.O as compared with other international agencies is its tripartite nature.

The General Conference, the Regional Conference, the Governing Body, the Industrial Committees and other bodies are attended by representatives of governments, employers and workers.

### **THE INTERNATIONAL LABOUR CONFERENCE:**

The International Labour Conference is the Supreme deliberative body of the I.L.O and acts as the legislative wing of the Organization. The International Labour Conference elect the Governing Body and adopts international labour standards in the form of Conventions and Recommendations collectively known as the International Labour Code and provides a forum for discussion on social and labour question.

### **THE GOVERNING BODY:**

The Governing Body functions as the executive wing of the Organization .The governing Body appoints Director General and prepares the agenda for the conference .It consists of 56 members 28 representing Governments , 14 employers and 14 workers.

### **THE INTERNATIONAL LABOUR OFFICE:**

The International Labour Office, whose headquarters are located in Geneva, provides the Secretariat for all conferences and other meetings and is responsible for the day-to-day implementation of the administrative and other decisions of the Conference the Governing Body etc. It is a research body, a publishing house and a clearing house office is assisted by branch offices, regional offices, area offices, country representatives and national correspondent's parts of the world.

The Chief executive officer of the Organization is the Director –General, who is appointed by the Governing Body and is subject to its control.

---

## **9.4 STANDING SETTING**

---

International labour legislation is one of the major weapons available to the I.L.O in the performance of its duties. It consists of vest body of minimum standards to be observed in all manifold domains within the I.L.O range of action. It is popularly known as “standard Setting” body.

The formation and adoption of labour standards is one of the major activities of the International Labour Conference. These Standards are designed in the form of Conventions and Recommendations and are also known as the “International Labour Code”. The standards formed by the Conference set goals for all member countries to adopt, as far as possible a common policy regarding labour.

The International Labour Conference is not a legislative body; hence the standards set by this from are not binding on members States. In this sense the Standards are not legislation like national legislation enacted by the Parliament of any Country.

### **ASSEMBLE OF STANDARDS**

As mentioned earlier the assemble age of standards on various subjects is collectively known as ‘International Labour Code’. UP to June 1983 the code comprised of 159 Conventions and 168 Recommendations. These standards cover almost all important labour questions and problem.

The total number of ratifications registered since the creation of the I.L.O has now passed the 4000 mark. The I.L.O. drafts these international standards in such a way as to make them sufficiently flexible so that the needs of countries widely divergent in their social structure and degree of industrial development could be met. The IL Conference while framing these standards keep in mind such factors as climatic conditions, imperfect development of industrial organizations and other special circumstances .A degree of flexibility in the International Labour Standards is necessary to meet these requirements .In some of the Conventions , lower standards have been prescribed for certain less developed countries.

The Standards cover a wide variety of subjects such as hour of work, rest and holidays with pay, minimum age for admission in employment, safety and hygiene, labour inspection, vocational guidance and training, social security and protection, protection of wages and such basic human rights as freedom of association, abolition of forced labour and the elimination of discrimination in employment and occupation. The standards also provides for special categories of workers such as women and young persons, agriculture workers, migrant workers, seafarers and fishermen and indigenous and tribal populations.

The development of the I.L.O Standard starts from the year 1919. It would be therefore, worthwhile to make an appraisal of the progress and growth of ILO standard setting .Here this activity is divided in two periods.

#### **(I) STANDARDS ADOPTED UPTO SECOND WORLD WAR :-**

During this period, ILO adopted 67 Conventions and 67 Recommendations .Most of the Standards took place in this period were related to the working conditions. In its first Session in 1919 at Washington, the first Conventions adopted in the same year dealt with unemployment, women working in night shift, young person's working in night shift, minimum age for employment and the employment of women before and after confinement in working places. In its second Session ILO adopted three Conventions dealing with maritime employment minimum age for employment in ships , unemployment indemnity in the event of ship-wreck and of placing of seamen. In 1921 the General Conference adopted seven Conventions which dealt with weekly rest in industry, medical checkup of youngsters, minimum age of employment workmen's compensation , right of association , employment of youth at sea and the use of white lead in painting. After 1925 the pace of adopting new Conventions accelerated .During this very year four important Conventions were adopted by the conference viz. workmen's compensation for accidents, social insurance for occupational diseases and Conventions concerning industrial safety .One other important Convection related with minimum wage fixing machinery was adopted in 1930.

During the period of 1930 to 1935 the Conference adopted the Conventions concerning forced labour, old age invalidity and survivors' insurance in agriculture



and industry. One other outstanding and progressive convention came into force was paid holidays in the year 1936. Other than the above important Conventions some other Conventions adopted by the Conference were concerned with employment at sea, recruitment, employment contracts etc.

The Conference also adopted various important Recommendations, a few of them were concerning inspection of health Services, inland navigation, workmen's compensation, night work of women and children in agriculture, prevention of industrial accidents, unemployment etc.

### **(ii) STANDARDS ADOPTED AFTER SECOND WORLD WAR:-**

1944 Philadelphia Conference Declaration, the ILO standards adopted were very much concerned with the improvement in working conditions, safety and health of the workers. The standards were also concerned with freedom of association of workers and right to collective bargaining.

Up to 1950, the Conference adopted and revised more than 30 Conventions on important Subjects like working hours, holidays with pay, wages, rest social security, safety, right and freedom of association, employment service, right to Collective bargaining, labour inspection etc. During the period from 1950 to 1960 the conference adopted some important Standards like equal pay for equal work, maternity protection, weekly rest for commerce and offices, abolition of forced labour, hours of work, medical check-up, protection from rendition etc.

After 1960's the ILO adopted Several other important Standard concerning Social policy, equality of treatment, guarding of machinery, hygiene in commerce and offices, employment injury benefits, medical care and sickness benefits, protection against hazards of poisoning arising from benzene, protection and facilities to workers representatives in the undertakings, protection of freedom of association at shop floor level. Thus, the Standards of ILO that took place in the shape of Conventions and Recommendations show an international view of giving better living and human dignity to the unprivileged class.

---

## **9.5 CONVENTIONS AND RECOMMENDATIONS**

---

The IL Conference is the law making body of the ILO. The proposals of the IL Conference may take the form either of a Convention or of a Recommendation.

A Convention is a treaty or agreement which is ratified and Creates binding international obligations to the country concerned. Conventions are agreements designed for ratification which are binding on the States that have ratified them. When a State ratified the convention, it undertakes that its legislation and national practice will be brought into line with the Standards laid down in the Conventions concerned.

A Recommendation is not binding in the same sense as Conventions. Its clauses merely give guidance for action in some particular field. It frequently expands or complements a Convention.

An unratified Convention is rather similar, in effect, to a Recommendation without being binding, its clauses serve as a guide for action. When all these clauses have progressively been put into effect, the Conventions can be ratified.

Apart from the Standards laid down in Conventions and Recommendations, there are a series of resolutions, conclusions or model codes adopted either by the Conference or by technical meetings , such as meetings of Industrial and analogous Committees or experts. These Standards are more technical in nature and more elastic .Nevertheless. They are of the greatest value to specialists in social legislation and practice.

---

## **9.6 PROCEDURE FOR RATIFICATION OF CONVENTIONS**

---

One of the primary functions of the IL Conference is to formulate international standard in the Conventions and Recommendations .The Conclusions of the Conference reached by the delegates do not automatically bind the States

.Under the ILO Constitution, member States are required to bring the Conventions before the competent national, state or provincial authorities within a maximum period of 13 months of their adoption by the Conference for such action as might be considered practicable. Information regarding the action proposed to be taken on them has to be communicated to the ILO. On ratification, Convention becomes binding international instruments. Member States ratifying a convention have to give effect to its individual provisions through legislation or otherwise. A Convention has to be ratified in to or not at all.

If a Convention is not ratified, each government has to give reasons for non-ratification.

Compliance with ratified Conventions is supervised by a Committee of independent experts drawn from all parts of the world and by a tripartite Committee of the IL Conference.

In addition, the Governing Body annually requests member Starts to report on the state of their law and practice in the field dealt with certain non-ratified Conventions and by certain Recommendations specially chosen for consideration.

Copies of reports sent to the ILO must be transmitted to the representative occupational organizations in the country concerned. These organizational can thus submit their comments or take action to promote a fuller application of the standards in their countries.

---

## **9.7 SYSTEM OF ENFORCEMENT AND DIFFICULTIES IN RATIFICATION**

---

The Government in various courtiers bears the whole responsibility of enforcing the provision of Conventions. For this purpose governments make adequate arrangements in national legislation particular in labour legislation .Some of the Conventions are to be enforced by a tripartite body that involves the government, the employers and the employees. A few matters are to be settled

through collective agreements. Following are the main mechanisms of enforcement of Conventions.

**(i) SUBMISSION OF ANNUAL REPORTS :**

According to Article 212 of the ILO Constitution, "Each of the Members agrees to make an annual report to the IL office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party". The same Article further provisions provide "that annual reports shall be made in such form and shall contain such particulars as the Governing Body may request". The system of submission of annual reports gives the Organization an effective method of enforcement of Convention.

**(ii) PROVISION OF ESTABLISHMENT OF COMMISSION OF INQUIRY:**

Any member State of the ILO has a right to file complaint against other member State not enforcing provisions of any Convention effectively. The Governing body of the ILO may communicate the complaint to the government in question .The Body then refers the complaint to a Commission of Inquiry. The Commission prepares its report on all Questions referred to it and also gives recommendations to meet the Complaint property. The report of the Commission is then communicated to the Governing Body and the Concerned State. It also published for general information.

**(iii) INTERNATIONAL COURT OF JUSTICE :**

It the government concerned with complaint does not accept the recommendations of the Commission of Inquiry , is may refer the matter to the International Court of Justice .The Judgment ILO Constitution gives authority to the International Court of Justice to affirm, vary or reverse any of the recommendations of the Commission of Inquiry . The IL Conference has adequate powers to take action for compliance of the recommendations of the Court.

**(iv) MACHINERY FOR FREEDOM OF ASSOCIATION :**

To protect the right of freedom of association, separate machinery was set up by ILO in 1950. The machinery comprises of two separate bodies.

1. The Committee on Freedom of Association and
2. The Fact finding and (Conciliation) Commission on Freedom of Association.

The above Committee and Commission examine Complaints which may be lodged either by governments or by workers or employers' organization.

The above mentioned procedure helped the ILO in effective enforcement of its standards and in influencing the behavior of member governments.

**DIFFICULTIES IN RATIFICATION:** The ILO Conventions may not be ratified by its member States for various reasons which are as follow:

**(i) LACK OF FLEXIBILITY IN COMPLIANCE:** According to the ILO Constitution a ratification of a Convention requires total compliance with all its provisions. Therefore a Convention can be formally ratified only if the law and practice in a Country Conform cent per cent to the requirements of its provisions .This may not always be possible and the inability to ratify a Convention in all its details may often be due to difficulties of a technical or administrative nature.

**(ii) LACK OF DIRECT CONCERN:** The subjects covered through Conventions by the ILO are as varied as the problems with which they are designed to deal. These standards include matters which are of no direct concern to a country, for example, Maritime Conventions, over 2 dozen in number, interest only nations possessing a merchant navy or similarly Conventions for the protection of indigenous and tribal populations, concern only such States who's such population exists.

**(iii) DUPLICACY OF CONVENTIONS :** In some cases more than one instrument exists on a specific subject which means following the revision of a conventions either to raise its standard, such as the minimum age for entry to employment, or to adopt its terms to the more recent techniques of arranging industrial shifts which have a bearing on night work of women or young persons .So far 29 IL Conventions have been revised.

(iv) **CONVENTIONS NOT MATCHING WITH ECONOMIC REALITIES:** Some of Conventions adopted by the ILO do not suit the economy and the prevailing conditions existing in various member countries. For example, a set of 10 conventions (Nos 10,12,25,36,38,40, 101,112,113,and 114) relates to minimum age paid holidays , workmen's compensation and social security all relating to agriculture and minimum age and medical examination of fisherman .The provisions of these conventions are generally far remote from the realities of the economic situation in India.

In the light of above difficulties the Government of India have attached more importance to implementation of the basic provisions of a Conventions rather than its formal ratification .One can very well assess the impact of ILO standards on our labour legislations but sometimes formal acceptance of Conventions creates Constitutional difficulties.

So far as India is concerned only 61 conventions out of 128 are related to our situations .Out of them 51 Conventions are not practically applicable in present circumstances. Labour is a Concurrent Subject in our Country and approval of State Governments is a must to accept a Convention in a formal way. It is for this reason that some important conventions are being implemented in spirit only and formal ratification has not been made.

---

## **9.8 SUMMARY**

---

The ILO did a lot to improve working and living conditions of people throughout the world .It has shown itself to be an efficient tool in the service of social justice in all parts of the World.

The foregoing description of various facets of ILO clears aims and Objects, formation, and Conventions and Recommendations adopted by this world body. In this Unit we have discussed procedure for ratification of Conventions .The System of enforcement of Conventions has also been discussed under four heads. Lastly, It express that absence of flexible approach , lack of direct concern of conventions to

certain member Countries, duplicity of Conventions and unmatched economic conditions with standard adopted are the main difficulties in ratification of several ILO Conventions.

---

## 9.10 SELF -ASSESSMENT TEST

---

1. What are the aims and objects of ILO?
2. Why do labour standards need international support? Do you consider that these standards infringe the sovereignty of a State?
3. Discuss the general application procedure of an ILO Convention. What do you think of the supervisory machinery?
4. Do you think that Conventions specially adapted to regional conditions would be more effective than instruments of World-Wide application? What would you consider to be the advantages and disadvantages of such a system?
5. How many International Labour Conventions have been ratified by India? Mention some which are the most important.

---

## 9.11 KEY WORDS

---

**COLLECTIVE BARGAINING:** A procedure by which the terms and condition of employment of workers are regulated by agreements between their bargaining agents and employers.

**COMPLIANCE:** The willing acceptance of the rules and norms of the Organizations by the members.

**CONVENTION:** Obligation creating instrument of ILO, if ratified by the government, becomes binding.

**RECOMMENDATION:** Guidance providing instrument may be implemented in parts and to the extent possible.

---

## 8.11 FURTHER READINGS

---

- Dhyani, S.N. 1977, International Labour Organization and India, National Publishing House, New Delhi.
- I.L.O., 1970. Constitution of the I.L.O.: Geneva.
- I.L.O ., 1968 .International Labour Standards : Geneva.
- Lowe, B.E. 1935 .International Protection of Labour: New York.
- Vaidyanathan , N. 1975 . I.L.O Conventions and India, Minerva Associates: Calcutta.



---

# UNIT- 10

## ILO-Regional Conference (MEANING, NATURE AND ASIAN REGIONAL CONFERENCE)

---

### Objectives :-

After having studied this unit you should be able to.

- Know the basic objectives and the principles of ILO and their nexus with the establishment of Regional Conference.
- Understand the involvement of Regional Conference in achieving the Objectives of the ILO.
- Know India's association with the Regional Conference and the resultant effects.

---

### Structure :

---

10.1	Introduction
10.2	Aims, Objectives and the Principles of ILO and their nexus with the Regional Conference.
10.3.	Meaning, Nature and Scope of Regional Conferences.
10.4.	Regional Conferences-American, European and African – A brief discussion.
10.5	India and Regional Conferences- an objectives perspective
10.6	Summary
10.7.	Self- Assessment Test.

---

### 10.1 INTRODUCTION

---

This unit has been prepared to acquaint you with multi-farious dimensions of the Regional Conference of ILO .Before we take up the study of Regional

Conference, It imperative to know the very aims and the Principles of the ILO because the purpose of establishing organizing Regional Conference is to achieve these objectives.

Holding of Regional conference is the important activity of the ILO .The Constitution of the ILO employers it to convene such regional conference and establish such regional agencies /offices as may be desirable to promote the aims and purposes of the ILO .The ILO has, therefore , set up regional conference and committee which greatly differ in their composition and functioning .The main objective of establishing regional conference is to induce and expand the ILO's operational work at the base level so that ILO could help the member countries to come to grip with labour and social problems in their respective regions. Another purpose of Regional conference is to enable the ILO to find out more about the preoccupations and problems of the people of different regions of the world and to enhance its capacity to deal with them directly and in practical form. The regional conferences further widen the contacts of the ILO with the countries it is serving and thus bring it closer to the realities of the present day social life.

As the structure of this unit indicates it is intended here to briefly discuss the aims, Objectives and the principles of the ILO particularly in reference to the nature, scope and significance of the Regional Conferences. Besides a brief study of the functioning of the American, European and African Regional Conferences has also been put forward so as to enable the students of labour law to have the universal overview of the Regional Conferences. A detailed study of the Asian Regional Conferences is given here under with wider perspective .Similarly a critical assessment encompassing the problems and prospects of the Regional Conference finds its due place in this unit. The study also covers Indian aspects of the Regional Conference and finally the unit ends with the concluding remarks.

---

## **10.2 AIMS, OBJECTIVES AND THE PRINCIPLES OF ILO AND THEIR NEXUS WITH THE REGIONAL CONFERENCES**

---

The Philadelphia Conference convened by the ILO on April 20, 1944 was an indication of a new era in the history of the ILO. The Philadelphia Declaration of 1944 was accepted and incorporated in the ILO's Constitution. As per Article –I of ILO Constitution the four principles were reaffirmed, they are as follows:

- a. Labour is not a commodity.
- b. Freedoms of expression and of association are essential to sustained progress.
- c. Poverty anywhere constitutes a danger to prosperity everywhere.
- d. The War against want requires to be carried in with unrelenting vigor within each nation and by continuous international efforts.

An per Article –II of Philadelphia Declaration, the main aim of the ILO was the attainment of social justice .In accordance with the declaration, social justice, means that All human beings, irrespective of race, creed of sex, have the right to purpose both their material well being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity.

Besides the aforesaid principles and the main aims of the ILO, Article IV of the Declaration provides for 10 specific objectives which the ILO, with all its constituent bodies including Regional Conferences, should further and promote in every part of the world community .The specific objectives are:

1. Full employment and raising of standards of living ;
2. Employment of workers in the occupations of their choice and satisfaction.
3. Facilities for training and transfer of labour including migration for employment and settlement.
4. To ensure just share of the fruits of progress to all workers and a minimum living wage.
5. The effective recognition of the right to collective bargaining.
6. Adequate protection for the life and health of workers.
7. Provision for child welfare and maternity protection.

8. The provision for adequate nutrition , housing and facilities for recreation and culture
9. Provide Equality in educational and vocational opportunity.

The ILO pledges full co- operation and assistance –financial and otherwise to other international bodies and regional conferences which share the responsibility of pursuing the above goals. The Regional conferences should , therefore , follow the main guidelines as enshrined in the principles , aims and objectives of the ILO while discharging their functions, translating the basic ILO policies in action and transmitting the fruits of the ILO to the world community.

---

### **10.3 MEANING, NATURE AND SCOPE OF REGIONAL CONFERENCE.**

---

The ILO constitution provides for convening such regional conferences and establish such regional agencies as may be desirable to translate into action the aims and objectives of the ILO. The ILO has , therefore , established various regional conferences. They, however, differ in their composition and functioning .The purpose of establishing regional conferences is to expand the ILO functioning at the base level so as to help the member countries. The regional conferences recently have taken the following forms. General conferences of regional composition, regional technical meetings and seminars, technical assistance and advisory mission within the countries of each of the regions and co- operation with other international organizations active in the region and field office operation .The activities of regional conferences help ILO to investigate and assess the problems of the people of different regions. They also help ILO in enhancing its capacity to solve the problems of the world community directly in more practical terms. The Regional Conferences also widen the horizons and a relation of the ILO with countries it is serving .The ILO therefore, comes closer with the realities of human life.

The first Regional conference as assembled in Santiago, Chile , for American continent .The Conference was attended by 19 member countries of the

Western Hemisphere .It was successfully convened as the foundation for future regional conferences both for American and other parts of the world laid in this regional conference. We find to-day that Regional Conferences have become a regular feature of ILO activities.

To-day, Regional Conference has been set up for America, Europe, Asia, Africa and the Middle-East. As regards composition of the Regional Conferences, it is the same as that of the international Labour Conference i.e. each country sends four delegated two governments, one employer and on workers' delegates. At the close of the Conference, conclusions are drawn out and they form part of the resolutions. In fact, the resolutions are the outcome of the agreements between the governments, employers and the workers of the countries concerned .These also serve the purpose of the future ILO policy formulations in the form of conventions and Recommendations.

---

#### **10.4 REGIONAL CONFERENCES: AMERICAN, EUROPEAN AND AFRICAN - A BRIEF DISCUSSION.**

---

As have been indicated above, Regional Conferences have been set up for American, European, Asian, African and the Middle –East Countries. These Regional Conferences have discussed at length the issue pertaining to vocational training, labour working conditions, standards, wage policy, labour welfare, social security measures, handicraft, co- operation, industrial relations etc. European and American Regional conferences have gone a step forward in dealing with the questions of productivity manpower planning and migration of workers and the role of employers and workers on all these vital issues .The problem of economic co- agriculture in Latin in American countries have also been discussed and dealt with. The first ILO European Regional Conference was held in Geneva in 1955 and the second one in 1970.

In 1960, the first Regional Conference for African countries was convened in Lagos in Nigeria and the Second African Regional Conference was held in Addis Ababa in December, 1964. Approximately, 35 African countries participated

in these conferences. Besides, observers appointed by the ILO from India, U.S.A. and European countries also witness the deliberations of African Regional Conferences. Problems concerning employment and working conditions of working women in African countries were discussed and several resolutions were adopted. The resolutions, inter alia recommended for immediate actions to ameliorate and advanced the social and economic conditions of women in African countries. Emphasis was laid on the training and employment of women in African countries. Resolutions also recommended for effective measures to protect the health and welfare of working women particularly during maternity period and to grant equality of opportunity in employment. Similar resolutions were passed on to the ILO declaring that the purpose of the wage policy should be to raise wage levels providing for decent standard of living. According, wage policy should provide closer links with wage structure and productivity, promotion and development of free collective bargaining.

---

## **10.5 ASIAN REGIONAL CONFERENCE-A DETAILED STUDY.**

---

Although efforts were made to induce the ILO to convene Asian Regional Conference as early as 1927-28 by Japan and in 1930 by India, but it was only in 1944 that in the 26th Session of the International Labour Conference at Philadelphia, a Resolution was passed recommending that an Asian Regional Conference should be convened as early as possible. An invitation was offered by the Government of India to ILO to convene the first session of the Asian Regional Conference in India. Invitation was gladly accepted by the ILO and a Preparatory Asian Regional Conference was held at New Delhi from 27<sup>th</sup> October to 8<sup>th</sup> November, 1947. A detailed account of this Conference has been given in the Section 'India and Regional Conference'.

Since its first session, the Asian Regional conference has become a countries feature and ILO started concentrating on Asian problems. The Governing Body of the ILO also established an Asian Advisory Committee, having its tripartite character to advise the ILO on Asian labour problems. The first meeting

of the Asian Advisory Committee was held on 24<sup>th</sup> June, 1950 in Geneva .Since then about 18 sessions of the Asian Advisory Committee have taken place.

The Second Regional Conference was convened at Nuwara Eliya in Ceylon in January, 1950 .India actively participated in this Conference. The Conference adopted 16 Resolutions on various aspects of the labour, all relating to intensification of Asian work of the ILO i.e. .Asian representation on the Governing Body , technical assistance , co- operative movement, labour welfare, vocational and technical training , agricultural workers and their wages, manpower planning and organization Asian Seafarers etc.

The Third Asian Regional Conference was convened in Tokyo, Japan in September, 1953 .The Conference was attended by more than 60 Government, employers' and employees' delegates. Having considered the report of the Director General of the ILO the Conference adopted resolutions mainly on the following items:

- i. Wage policy in Asian countries.
- ii. Workers housing problems and
- iii. The protection of youth workers in Asian countries.
- iv. Review of maritime laws from the point of view of the ILO conventions and recommendations to recognize the representative organizations of ship-owners etc.

The ILO convened the Fourth Session of the Asian Regional Conference in New Delhi in November, 1957. Pandit Jawahar Lal Nehru inaugurated the session and it was preside red over by Shri G.L. Nanda, the then Union Labour and Planning Minister Pt. Nehru emphasized on the workers co- operation with management.

The Fifth Asian Regional Conference of the ILO was convened at Melbourne from 26<sup>th</sup> November, 1962 to 7<sup>th</sup> December, 1962. This Session of the Asian Regional Conference adopted the following Resolutions:

- i. Employment promotion to avoid waste of manpower resources and to bring about full utilization of human resources for economic development.
- ii. Vocational training and management development and

- iii. Government services for the improvement of labour management relations and settlement of disputes.

The Resolutions were popularly known as Melbourne Resolutions. Approximately about 19 Member states attended the Conference. India withdrew its delegated due to the proclamation of National Emergency on account of Chinese aggression over India in 1962. The Conference was, however attended by an observer.

The Sixth Asian Regional Conference of the ILO was convened in Tokyo (Japan) from September 2, to 13, 1968. The conference was attended by the Indian Delegated of tripartite character headed by the Union Labour Minister. The deliberations of the Sixth Conference mainly relates with the formulation and adoption of an Asian Manpower Plan for concerned and effectives action by countries of the Asian region to attain the highest possible level of productive employment. The Conference also resolved that the financial support could be taken from the United Nations Development Programme for the said purpose besides this Conference also adopted Resolutions relating to Social Security Development in Asia, Management Development with reference to Personal policies and practices, and Freedom of Association in Asia.

The Seventh Asian Regional Conference was convened in Tehran (Iran) from December 4 to 15, 1971 in which some 26 countries participated. Due to Indo-Pakistan War in 1971, full delegation could not be sent to Tehran. The Conference adopted the following Resolutions:

- i. The Asian Manpower Plan put emphasis on regional co- operation among the countries of Asia. The Development countries were argued upon to orient their policies of economic aid and trade so as to promote the expansion of employment in the countries of Asia. It was also required that the ILO technical co- operation should be re-oriented towards employment – oriented development strategy.



- ii. The Governments, of Asian countries should remove restrictions on the free exercise of the freedom of association and collective bargaining where it did not already exist.
- iii. The position of Asian Countries with regard to the ratification and application of Conventions is capable of substantial improvement and, therefore, frequent periodic reviews of the possibilities of further ratification and implementation of Conventions should be made.
- iv. The Conference also adopted two resolutions concerning promotion of rural workers and peasants' organizations and concerning the tripartite character of the ILO.

The Seventh Asian Regional Conference envisaged the urgency of greater participation by workers and employers in development programs. The Conference was very much concerned about the need of full observance of the Convention No. 87 on 'Freedom of Association' and Convention No.98 on Collective Bargaining to ensure stronger organizations of workers and employers to implement development programs. The Conference considered it essential that emphasis should be laid on workers education and training programs on workers participation schemes and on strengthening of Labour Ministries for realizing the objectives of social justice and equitable distribution of income.

The Eighth Asian Regional Conference of the ILO was convened in Colombo from 30<sup>th</sup> September to 9 the October, 1975. The Government of India sent a tripartite delegation led by Shri K.V. Raghunatha Reddy, the Union Minister of labour . The resolutions adopted were concerned with. (i) Human resources development in rural areas in Asia and the role of rural institutions, and (ii) Strengthening of labour administration in Asia and its role in national development with active participation of employers' and workers organizations.

### **Regional Committee:**

Besides Regional Conference, Meetings of experts at regional levels were also organized. Meeting of experts of labour inspection was organized in Ceylon in 1948. Similarly, a meeting on manpower problems at Bangkok, Thailand in 1951 and another meeting on problems of young workers in Ceylon in 1952 were also

organized under the auspices of the ILO. Besides; the following meetings have also been organized in different countries of Asian region:

- i. Meetings of experts on training within industry in India.
- ii. Vocational training in 1955 in Burma.
- iii. Supervisory training in 1957 in Singapore.
- iv. Vocational guidance in 1958 in New Delhi.
- v. Training courses on co- operation for Asian Nationals have been held in Copenhagen in 1952 labour in 1953 and 1954. In Bandung in 1955 Mysore in 1957.

The ILO is engaged presently in concentrating on specific problems of Asian countries e.g. manpower assessment-Especially rural manpower employment policies, manpower organization services including special youth programs etc. Similarly, improvement of living and working conditions of rural workers is engaging the concentration of ILO in Asian regional countries. Likewise ILO is assuming greater responsibility for the management of field operation in Asian countries through the ILO Regional Office in Bangkok, Thus all the aforesaid activities of the ILO are being launched through Asian Regional Conference Advisory Committees and Branch offices of the ILO.

### **Significance of Regional Conference**

The significance of the regional Conference lies in the very fact that holding of such conference is very essential if regional requirements and necessities are not to be neglected .Take for example Asian Regional Conference. The Labour force in Asian countries has obtained some characteristic features which can never be traced in industrially advanced countries of the West. There was a general feeling among Asian countries that their social and economic problems do not receive adequate attention at the sessions of the General Conference of the ILO , as it was influenced by the Western background .The Asian regional Conference would remove this discrimination . Some Asian countries including India are marching forward on the path of progress and feel that they should take greater active part in such conferences and should not be more passive onlooker. As Pandit Nehru pointed out in the Asian Regional Conference held in New Delhi in 1957 basic

problem of Asian countries involves transformation of medieval feudal-agricultural economy into a modern scientific agricultural and industrial economy". These problems were not taken up by the ILO. Therefore, a new chapter was introduced for holding Regional Conferences will remove these defects in times to come. Similarly, greater attention is being given by the ILO towards labour problems in African and Latin American countries.

In any eventuality, the Regional Labour Conferences should be activated by a desire to overcome the problem of economic backwardness of Asian countries so that rural and urban workers can enjoy the some standard of life and have the same Security social evils as workers in the most advanced countries of the West.

---

## **10.6 INDIA AND REGIONAL CONFERENCES- AN OBJECTIVES PERSPECTIVE**

---

India has had a close and active relationship with ILO and the Regional Conferences, especially Asian Regional Conference, from its inception in 1919 , The Government of India had been a member of the ILO Governing Body since 1929 by virtue of its being one of the ten countries of chief industrial importance. India contributes substantially to ILO in terms of both funds and substance including 20% of the personnel.

The ILO has a distinct effect on Indian Labour Legislation. Many important conventions have been ratified by India and have been incorporated in Indian Labour Legislation. The provisions in various acts regarding hours of work, holidays with pay, social security measures, occupational safety, labour Welfare measures, wage structure, employment of women and children have all been the outcome of ILO conventions. ILO conventions have also influenced the labour movement in the country. Moreover, the ILO has created a sense of solidarity among the workers. ILO has awakened the consciousness among the workers of their rights and privileges. India has availed of the services of the ILO experts in

the field of trade union services and has sent trainees in trade unionism to other countries under ILO programme.

As regards holding of Regional Conference for Asian Countries, efforts were made to induce ILO to convene Asian Labour Conference in 1930 by Mr. S.L. Joshi of India. Mr. Joshi placed a draft resolution for it's this purpose, but it was not adopted in 1931, the same proposal was accepted without any opposition. However, the Regional Conference was not held for various 1936.

In 1944, a Resolution was passed at the 26<sup>th</sup> Session at Philadelphia recommending that an Asian Regional Conference should be held as soon as possible. The Government of India invited the ILO to hold the Conference in India and the invitation was accepted , Subsequently , a preparatory Asian Regional Labour Conferences was held in New Delhi from 27<sup>th</sup> October to 8<sup>th</sup> November ,1947 .The Conference was attended by delegated from Afghanistan , Australia , Burma, Ceylon, China, France, U.K. Malaya, Indo-china, Netherlands, New Zealand , Singapore, India and Pakistan .There were observes from U.S.A. , Nepal and from the governing Body of ILO itself . The conference was presided over by Mr. G.M. Evans , Chairman of the Governing Body and addressed by Pt. J.L. Nehru the then Prime Minister of India .23 Resolutions were adopted by the Conference on issues related to social security measures , labour policy , employment services agriculture production and co- operative system , productive efficiently , intensification of the Asian Work of the ILO.

Again the forth Asian conference was convened at New Delhi in November, 1957.The Conference was inaugurated by the then prime Minister of India Pt. J.L. Nehru and was presided over by shri G.L. Nanda the then Union Labour Minister. The agenda of the fourth Asian Regional conference included the following Items:

- i. Labour problems of small scale and handicraft industries in countries of Asian Region.
- ii. Condition of life and work of share croppers, tenant, farmers and workers engaged in semi-independent nature in agriculture and

### iii. System of industrial Relations.

Apart from the aforesaid items, report of the Director General of the ILO was also discussed at length and approval of the conference was accorded.

Government of India actively participated in the Regional Conferences except on two occasions in 1962 and 1971 when Government has to withdraw its delegations from the Asian regional Conference due to National Emergency created by the Chinese aggression in 1962 and Indo-Pak War in 1971.

Apart from India's active participation in Asian Regional Conference held in various countries of Asia, the Government of India organized the second conference of Asian Labour Ministers in New Delhi in January, 1969. The Union Labour Minister of India attended all the Conference of Labour Ministers of Asian countries.

Under the Technical Assistance Activities, an agreement was signed by India with ILO in April, 1951. Regional Seminars were organized on Labour Statistics in New Delhi in December 1951, on Factory Inspection in Calcutta in February 1952, on supervisory Training in 1957, Vocational Guidance and Employment counseling at New Delhi in November 1957, on Labour Management relations in August 1979, on International Labour Standard in November 1979 etc. India has secured services of the ILO experts from time to time e.g. in 1943 on E.S.I. Scheme, productively, vocational training, industrial relations in 1958, mines, safety and productively in 1960.

Besides, Indian personnel have been sent to other countries for training under ILO fellowship and many foreigners too have visited India for training Under ILO fellowship. It is worth mentioning that ILO organized a high-level meeting on development of labour administration in Asia and the Pacific in January 1980. Which was inaugurated by Shri Narayan Dutt Tiwari the Union labour minister?

India is now fully convinced that its association with ILO and active participation in the Asian Regional Conference is not only in its own interest but

also in the interest of the world peace and a 'Just social order' .Influenced by this positive role of the ILO , Indian Government took initiative in the establishment and continuance , the Asian Maritime Conference and the Asian Advisory Committee to focus on labour problems peculiar to Asian Countries .It is perhaps India's significant role in the ILO Regional Conference the Problems of Asian , African and Latin-American countries.

In short, as Dr. S. N. Dhyani in his International Treatise: "ILO and India-In Pursuit of Social Justice" has described the ILO and India has common aims, common goals and common destiny for both of them are committed to world peace, freedom and social justice. Both are striving for the socio-economic betterment of the long sufferings of the people who are under privileged and under-nourished with the fullest realization that any further delay would be fatal to themselves and to the whole world'.

---

## **10.7 SUMMARY**

---

In this Unit we have discussed the aims, objectives and principles of ILO and have made an effort to establish their nexus with the Regional Conference including Asian Regional Conference. It was emphasized more than once that the Resolutions of the Regional Conference help ILO in shaping its International Labour Policy in the form of ILO Conventions and Recommendations .Regional Conferences have also discussed specific and particular problems of Regional nature and have provided solutions accordingly. The American, European and African Regional Conferences have dealt with question like vocational training .social Security, Inspection, productivity, manpower planning, migration of inter-state workers etc.

As regards Asian Regional Conference, we have discussed at length the deliberations and Resolutions finally arrived at in various sessions of the Regional Conferences, Regional Committees, Regional Advisory Committees and the Committees and the committees of the Labour Ministers of Asian countries. Through Commutative efforts of these international institutions, ILO has achieved

tangible success in dealing with specific problems of Asian countries e.g. rural manpower employment, manpower organization , special youth programs , living and working conditions of rural workers in Asian countries , management of field operation in Asian countries etc.

India has had a close and active relationship with ILO and its Asian Regional Conference. India 's participation in the ILO and Regional Conference as member and observer has been substantial and meaning feature .Our country , while receiving technical assistance from other countries through ILO , has also offered assistance to the international community, there is still greater scope for improving various activities in this process of two –way traffic.

The National Commission on Labour (1969) has observed that international obligations, which develop on India as a result of our long association with the ILO shall have to be discharged as per the directive given below:

- i. By adopting the aims and objectives of the ILO for national action.
- ii. By co-operating at the regional and international level in multifarious programs of the ILO.
- iii. By progressive implementation of the standard in the form of conventions and recommendations evolved by the ILO.

India has made adequate efforts in these directions and has achieved considered progress. The process of progressive implementation of the ILO conventions and recommendations should implementation of the ILO conventions and recommendations should continue in times to come.

---

## **10.8 SELF -ASSEMENT TEST:**

---

1. Briefly discuss the aims, objectives and the principles of ILO establishing their relationship with the Regional Conferences.

2. Explain the nature, scope and composition of Regional Conferences – pointing out a brief reference of the contributions of American, European and African Regional Conferences.
3. Mention briefly the functioning of Asian Regional Conferences and their contribution on the countries of Asia.
4. Write a brief essay on “India and Asian Regional Conferences of ILO”.

---

## 10.9 KEY WORDS

---

**ILO:** International Labour Organization was born in 1919 and has been quietly carrying on for more than 70 years – first as an associate of League of Nations and since 1946 as a specialized agency of the United Nations Organization. It is a tripartite organization democratically controlled by representative of governments, employers and employees. Its purpose is to promote social justice in all countries of the world and for this purpose formulates minimum international standard for labour.

**Regional Conference:** One of the important activities of the ILO is the holding of Regional conference s. Which are held to deal with the specific and peculiar problems of regional nature? Today Regional Conferences have become normal and regular feature of the ILO’s activities.

**Social Justice:** In terms of ILO and the Regional Conferences, social justice means all human beings, irrespective of race, creed or sex, have the right to purpose both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

**ILO Convention:** ILO convention is a kind of treaty or agreement among member –countries which if ratified in legislature and creates binding international obligations for the country concerned. Conventions are submitted to the member – States for ratification by their respective legislations and the ratification of a convention requires total compliance by the member-States.



**ILO Recommendation:** ILO Recommendation is essentially a guide to national action and may be implemented in parts and to the extent possible, Thus, a recommendations is submitted to member-States only for consideration.

---

## **10.10 FURTHER READING**

---

- Dr. S.N. Dhyani (1977) : International Labour Organization and India . In Pursuit of Social Justice. National Publishing House.
- Johnson , G.A. : The International Labour Organization (London 1970)
- R.C. Saxena : Labour Problems And Social Welfare (1986)
- ILO : Constitution of ILO (Geneva -1970)India and ILO – Fifty years in Retrospect. (New Delhi -1969)
- Government of India Report of the National Commission on Labour(1969)
- Indian Worker and International Labour Review .(Journals )

---

# UNIT -11

## I.L.O and India

---

### **Objectives :**

After going through this Unit, you should be able to:

- Appreciate the underlying concept of International Labour Organization.
- Handle the processes of technical Cooperation.
- Avoid policies for impact on Indian Labour Legislation.

---

### **Structure :**

---

- 11.1 Introduction
- 11.2 Emphasis on Technical Cooperation.
- 11.3 United Nations Development Programs.
- 11.4 India's Membership of I.L.O.
- 11.5. I.L.O. and Labour Movement in India.
- 11.6. I.L.O. and Indian Labour Legislation.
- 11.7. Summary.
- 11.8. Self Assessment Test.
- 11.9. Further Readings.

---

## **11.1 INTRODUCTION**

---

The ILO is the first international body which is not expressly concerned with political questions but its role is limited to the problems of industry and with the conditions under which ordinary men throughout the world work and live. It is an illuminating enterprise of constructive international cooperation and understanding dedicated to the elimination of poverty and injustice. It provides a positive and dynamic leadership to the humanity for nobler actions, and is continuously exploring the new horizons of Universal peace, cooperation and unity. The cardinal principle of its Constitution is that 'Poverty anywhere constitutes a

danger to prosperity everywhere'. That universal and lasting peace can be established only if it is based upon social justice. Therefore, the ILO's meaning, nature and activities centre on words Peace, Social Justice and Labour. What the ILO is then? In the words of the ILO itself, most simply , of nations... created to improve working and living conditions all over the world . But beyond this immediate purpose is the Longer range objective of helping to establish an international community if nations in which all people may live in peace and steadily increasing prosperity.

The ILO deals with international labour and social problems much in the same way as the UN Food and Agriculture Organization handles questions relating to the Earth food supply and the World Health Organization works to improve the health of the people living on the planet, While it is an international agency, it differs from other diplomatic bodies in one important way, namely the representation in is given to workers and employers beside government al representatives .The three group the ILO's tripartite structures. Share in its control, evolution and supervision of the execution of its policies and programs. These groups are the governments which finance it, the workers , for whose benefit it is created and employers who share the responsibility for the welfare of the workers .Keeping in view its overall objectives and structure the ILO appears like the Ministry of Labour of the UN having the responsibility in the fields of labour conditions , industrial relations, social security and all other aspects of social and economic policies having direct bearing on the workers .

A broad area of the aims and purpose of the ILO can be understood from the next of the Peace Treaty of 1919 . It provided that ILO is being established for 'the well -being, physical and intellectual of industrial wage-earners . This was being done not as a matter of charity to labour but as a matter of 'Supreme international importance'.

---

## **11.2. EMPHASIS ON TECHNICAL ASSISTANCE:**

---

Before the World War II, the major functions of the ILO were the adoption of minimum labour standards in the form of Recommendations, the collection and dissemination of information regarding labour and the provisions of technical assistance on labour problems to member Governments. However, after the World War II the social and economic policies and programs had undergone a fundamental change. There was a dire need of economic development particularly in countries which had achieved independence and were in the process of industrialization. Hence the ILO placed increasing emphasis on 'operational projects' to pass the on skills and experience of industrial countries to those regions which are less developed or underdeveloped. In the immediate post-War period the ILO Office sent technical missions on a small scale to Czechoslovakia, Egypt and India for organizing social insurance schemes in these countries and to Greece for assisting the revision of labour legislation. The ILO's technical Programs got momentum in comparison with its standard setting and information activities during the World War II.

### ***Expanded Programme of Technical Assistance***

The United Nations proposed on May 18, 1949 the development of an Expanded Programme of Technical Assistance to provide increased technical assistance to less developed countries. This was not a new institution with international personality but rather a cooperative Endeavour on the part of the United Nations Community, already existing for specialized purposes of economic and social advancement, could move adequately direct knowledge and skills within those specializations to the countries in need of them. Its very name implies merely an extension or enlargement of assistance programs already in being. The Expanded Programme of Technical Assistance was formally established by the Economic and Social Council and approved by the Assembly in 1947.

The Expanded Programme of Technical Assistance was primarily a cooperative venture for economic development of the underdeveloped countries which provided the framework and the financial resources for the bulk of the technical assistance activities not only of the ILO but of other international organizations associated with the United Nations. The Expanded Programme, as already observed, was based on a resolution of the 'Economic and Social Council

for the guidance of the participating organizations provided , inter alia, that these organizations should regard it as a primary objective to help countries strengthen their national economic through the development of their industries and agriculture with a view to ensure the attainment of higher levels of economics and social welfare .The technical assistance programme was taken over in 1965 by a new organization called the United Nations Development Programme (UNDP) which has become the driving force of the joint under takings the United Nations technical are channeled.

***Expanded Technical Assistance Programme and the Special Fund-Trend towards Social Justice:***

The Programme and the Fund provided new opportunity for the ILO to enlarge and extend the work of its technical divisions and services .They have indeed given a new meaning and special emphasis to the goals enunciated in the Philadelphia Declaration of 1944.The Technical Assistance Programme, the Special Fund and ILO's Regular Budget have enabled the ILO to take up the problems of full employment of workers , their vocational training and imparting of education in order to enable workers to realized their economic and social needs. Under the ETAP , experts were sent by the ILO to countries in need of professional skill. The ETAP had been consistently educating people how to get more and better work with less waste of human and material resources. Its vocational training and productivity projects had an all round impact. In a number of countries permanent national productivity centers had been established. The ILO's Training within Industry Institutes work something like a chain reaction. One ILO specialist shows a handful of selected readers how to train supervisors to train others. Similarly, the ILO's specialists in handicrafts and cottage industries demonstrate in one village how methods can be improved throughout the entire region. It has helped in conducting manpower surveys, in vocational rehabilitation of the handicapped and in selection, training and protection of migrant workers.

The Special Fund had given a great impetus to the ILO's programme of technical and vocational guidance and training .At the end of 1964 a total of 49 Special Fund projects had been assigned to the ILO of these , 40 were already in

Operation .The total allocation for the 49 projects was about \$ 41,000,000. With government's counterpart contributions, the total of the sum invoiced was expected to be in excess of \$100,000,000. The annual expenditure for the ILO Special Fund projects was \$ 3,891,399 in 1962 \$ 6,163,812 and was expected to be about \$ 5,150,000 in 1964 .Under the UN Special Fund a number of technical institutes had been established .One of the significant new link in international technical cooperation was the establishment of an International Center for Advanced Technical and Vocational Training in Turin in 1963.

### ***Advanced Training Centre:***

The Statute of the International Centre for Advanced Technical and Vocational Training at Turin in Italy was unanimously adopted by the ILO Governing Body at a meeting held in Geneva on May 31, 1963. The Statute States, the object of the Centre shall be to provide technical and vocational training primarily for the benefit of the developing countries, for persons who are considered suitable for more advanced training than any they could obtain in their own countries or regions .The Centre also provides advanced training for persons connected with the development of small scale industry and production , cooperatives as well as instructions in teaching methods for technical cooperation experts.

### ***Manpower Organization and Vocational Training***

Manpower organization programs involve an assessment of the available supply of manpower considered in relation to the needs of industry, agriculture and the objectives of expanding employment and investment opportunities. Such a programme includes provision for employment services, employment information and the establishment of job analysis and occupational classification systems. The manpower planning was launched by the ILO in view of the Philadelphia Declaration of 1944 which proclaimed that 'The Conference recognizes the solemn obligation of the International Labour Organization to further, among the nations of the world, programs which will achieve full employment and the raising of the standards of living.

While training and technical cooperation remain the principal planks of the ILO policy, it has to be geared increasingly to drive against unemployment in the developing countries. During 1961 the ILO broadened its efforts under the World Employment Programme which is one of its main contributions to the current United Nations Second Development Decade (1970-80) and which is intended to promote national and international efforts to create productive employment. Columbia received the ILO's first employment strategy mission in 1970. Similar missions have visited the Malagasy Republic and Liberia during 1972. In Sri Lanka, the Five Year Plan (1972-76) reports unemployed persons to number approximately 5,50,000 about 12 per cent of the total labour force in 1972. In Malaysia, the second plan 1971-75, estimated the number of unemployed to be around 2,75,000 that is about 7.3 percent of the labour force. In India the total number of unemployed persons was estimated at 5 million in 1961 and 9-10 million in 1966 and stood at 15-20 million in 1971 and that of underemployed around 30-45 million.

Vocational training, productivity and management developments are all partial answers to the same problems how to make the most effective use to human resources. These schemes and projects introduce modern techniques that result in increased productivity without much heavy capital outlays. Therefore the objectives of the projects of training for productivity and management development are to further, especially in developing countries, a broader conception of their responsibilities in regard to training of personnel and other labour aspects of higher productivity, as well as a knowledge of the techniques of modern management, a better understanding of personnel administration needs and methods and a progressive outlook towards labour-management relations.

Seminars and courses in productivity training and management development have proved highly successful. The ILO is continuing this type of activity while constantly seeking to improve the teaching techniques used, and avoiding too great an emphasis on text book knowledge and theory. The ILO programme according covers the technical planning; execution and control of management development activities, involving training for managerial posts in all economic sectors except public administration. It includes the execution and

technical supervision of projects relating to small scale industries and handicrafts. Further, it includes research on management techniques and the organization of production and on the adaptation of these techniques to the needs and the conditions of developing countries activities, involving: training for managerial posts in all economic sectors except public administration. It includes the execution and technical supervision of projects relating to small scale industries and handicrafts. Further, it includes research on management techniques and the organization of production and on the adaptation of these techniques to the needs and the conditions of developing countries.

---

### **11.3. THE I.L.O. AND INDIA**

---

Since the inception of the ILO in 1919, India has been its original member. While India was not fully independent yet it was admitted within the fold of the organization. However, its membership of the League of Nations and the ILO had not gone unchallenged for it had been argued that it would give an additional vote to the United Kingdom. The British Government gave an assurance that British India was democratically administered and upon this India, China, Iran, Japan and Thailand were the few Asian countries to be admitted to the ILO membership. Of the 24 States out of 40 states represented, India was one which sent a full delegation to the first session of the International Labour conference held at Washington in 1919. The Indian delegation comprised of Government representatives, Sir Atul Chatterjee and Sir Louis Kershaw; Employers' delegate 'Sir Alexander Murray and worker's delegate start N.M. Joshi. Thus India's membership of the League Nations and the International Labour organization was indeed a first step in elevating her status in the assemblies and the States in spite of her being a British colony. Britain being a major power responsible for the establishment of the ILO also helped India in becoming its member. It is said that, British Government was motivated by her selfish interest when she struggled for India's membership of the ILO her nomination as one of the eight countries of industrial importance, for this would secure the collate support of India for Britain in her struggle for leadership Geneva. It is also argued that India's admission to League and to the ILO was in the nature of a reward for help she gave in the First



World War to the Allies. It can be said that irrespective of the motives of Britain, Indian membership of the ILO proved of a very great advantage to her in establishing a liaison and a forum for Indian governmental delegates from India with their European counterparts for exchanging information on socio-economic conditions.

As already observed, India was not made a State of Chief industrial importance but this status was conceded her in 1922 when India became a permanent member of the Governing Body. The Government of India challenged the then list of non-elective seats. The League Council, thereupon, after verification of Indian working class population by including also agricultural work adopted a resolution on September 30, 1922 revising this to include India at the expense of Switzerland. Since then India continues to enjoy this position. This status conferred upon Indians, representing workers and employers in ILO, a position of prestige and influence and got opportunity to expose the anti-labour and anti-economic British policies in India. The behavior of Indian governmental delegates from India to the International Labour Conference and other bodies reflected the situation prevailing in India.

---

## **11.4 I.L.O. AND LABOUR MOVEMENT IN INDIA**

---

During the period corresponding to ILO's establishment, nationalist force under the leadership of the Indian National Congress was struggling against the British rule for the right of self-determination and national independence. The Indian National Congress also devoted itself to the cause of the labour and in turn made labour movement a part of the national freedom movement. Leaders like Tilak, B.P. Wadia, Mahatma Gandhi and Lal Lajpat Rai were also labour leaders who founded, guided and popularized the labour movement by organizing labour unions and strikes on a large scale in India. The name of Gandhiji, owing to his launching of successful textile strike in Ahmadabad in 1918, became popular among the workers. This period also witnessed the founding of a national federation of all India character, namely, the All India Trade Union Congress on October 31, 1920. The AITUC owes its immediate origin to the ILO. There was dissatisfaction among the trade union leaders over the nomination of workers

delegate to the International Labour Conference and the said nomination was alleged to be unconstitutional. This was countered by the Government that in the absence of a truly representative workers organization in the country the Government of India was justified in nominating workers' delegate without consulting trade union leaders. In these circumstances the AITUC came into existence with Lala Lajpat Rai as its First President. The AITUC served as a link between labour movement in India and Europe and had close contacts with British Labour Party and British Trade Union Congress

But during Second World War the AITUC adopted an attitude of neutrality towards war efforts. Therefore, the British Indian Government founded the Indian Federation of Labour with its full support and backing but without the support or sympathy of Indian working class. The Indian Federation of Labour was formed by M.N. Roy, (an ex-congressman) and an ex-communist J.M. Mehta in 1941. The Indian Federation of Labour was recognized by the British Indian Government as the most representative organization of Indian workers for the ILO and it represented the Indian workers at the Philadelphia conference in 1944. Thus, the trade union movement in India was directly influenced by the ILO which imparted solidarity and cohesion, and the participation of trade union leaders in International Labour conference gave the movement greater unity and prestige. The Indian trade union leaders further sought the moral support of world trade union leaders at the ILO forum for securing proper nomination to the International Labour conference. The insistence of labour delegates to the International Labour conference on getting ratification of ILO Recommendations and conventions by the Government of India has been attributed to the desire of labour leaders to policies the plight of the workers and thereby strengthen their own position. The Royal commission on Labour in this connection remarked that some of the labour delegates and advisers sent to the International Labour conference at Geneva, by extending their stay in Europe, have been able to, secure some training in Western trade union methods.

In the post world war period the communists within the AITUC did not agree with those trade union workers who advocated active and full support to the labour policies of the Congress Governments at the Centre and the provinces; The Congress-supportive trade, unionists seceded from the AITUC to form the Indian

National Trade Union Congress in 1947. It was in 1948 that Government of India, despite protest of the AITUC, nominated the INTUC representatives as the most representative organization of Indian work-people for the purpose of the representation at the International Labor Conference. The INTUC continues to enjoy this status even today sometimes non-INTUC men are also appointed as advisers.

### ***Government of India's Nominees***

Before 1947, the Government of India's own delegates to the International Labour Conference were nominated by the British Government or with the approval of the British Government, the Secretary of State's holding the whip hand by the British Viceroy in India by means of an executive fiat without reference to the Central Legislature. Consequently the delegates were senior and loyal members of the Indian Civil Service and included persons like, Sir Atul, C. Chatterjee who was a delegate for the Conference between 1919-1946 and was also elected the Chairman of, the ILO's, tenth session held in 1927. The delegation during this period was generally led by the High Commissioner for India in London who had no sympathy for India and, for the cause of India's toiling masses. After 1947, with the dawn of Independence, the basic policy and objectives of India changed on social, political and economic issue, accordingly, the nominees of the Government of India acquired a new status and prestige in the International Labour Conference. Mr. Jagiivan Ram, the Central Labour Minister and Mr. Gurlzari Lal Nanda, the Bombay labour Minister Represented India at 30<sup>th</sup> session of the International Labour Conference. While participating in the debate on the Director-General's Report Mr. Jagiivan Ram remarked 'what brings us closer together is the striking affinity between the ideals of the ILO and those of the political party, the Indian National Congress, to which I have the privilege to belong. The re-statement of those ideals in the clear and un-equivocal language of the Philadelphia Charter was the vindication of the cause we have espoused for many years .... Asian countries are now passing through an intensive phase of popular awakening'.

India's attitude towards the ILO can be a subject of interesting future research. Initially India was made the member of the ILO at a time when the shadow of constant British pressure and influence was becoming lengthier. The

massive British influence to product British interest and prestige paved way for India's membership of the ILO obviously, at that period the ILO was predominantly Europeanized and European dominated for the U.S.A. the U.S.S.R and several other countries of the world were either out or had not attained national freedom. The Worldwide economic depression also diminished the hopes of labour in the efficacy of the ILO as an instrument for social justice. The ILO could not be effective in its sweeping goals. It becomes a slow, conservative and tardy organization contented only with regulation of hours of work and condition of work without a progressive and revolutionary stance. Accordingly, the Indian Workers and employers delegate voiced their political and national frustration against British colonialism and British exploitation of India. Under the aegis of the AITUC in particular, the labour movement combined with freedom the movement, spread the climate of social unrest, non-cooperation, boycott of foreign- goods as basic means of political emancipation. This attitude of Indians participating in the various ILO Conferences is clearly discernible. On the other hand the ILO also did not make efforts to influence the social and economic policies of colonial Britain to benefit the Indian working class.

The year 1947, in particular, was a turning point of Indian relationship with the ILO, for in that year India became a free and independent country. India started taking active and increased interest in ILO and its activities'. This association became of special importance with the assumption of leadership by Jawaharlal Nehru. It was' therefore, clear that certain assurances and hopes given to Labour in recognition of its sacrifices and rights in pre-independence era found concrete shape. The labour policy of the Government of India in the years give Labour a fair deal consistent with the requirements of other sectors of the economy. The Philadelphia Charter also greatly influenced the social policies of Indian for shaping its future policies. There was increasing emphasis on economic growth, fuller employment, and equal distribution of profits, regulation and control of industries for social good. The Government of India was now firmly convinced that its association and commitment to the ILO is not only in its own national interest but also in the interest of the world peace and a just social order. Besides being a founder member of the ILO, India is also a permanent member of the Governing Body. Indeed, after 1947, completely reoriented its attitude towards the ILO,

'Indeed, the ILO ideals and objectives closely resemble to basic objectives enshrined in the India Constitution. Both are committed to freedom, social justice and peace. It was a matter of special significance both for India and the ILO that Mr. V.V. Giri, the former President of India, addressed the 54th Session of the International Labour Conference at Geneva on June 10, 1970. He outlined the main takes which the Organization should address itself to for promoting economic development and social justice. He remarked, 'Millions of people throughout the world are nursing a grievance against the social order which denies them bare necessities of existence. The democratic way of living would be in peril if effective action is not taken forthwith to remedy the situation.'

In short, the ILO and Indian have common aims; common goals and common destiny, for both of them are committed to world peace, freedom and social justice. Both are striving for the socio-economic betterment of the long suffering, long forgotten people- the people who are underprivileged and undernourished -with the fullest realization that any further delay would be fatal to them and to the whole world. In essence, there is a close resemblance between the ILO Philadelphia Charter of 1944 and the Fundamental Rights and the Directive Principles of State Policy under the Indian Constitution.

---

## **11.5 THE I.L.O. AND INDIAN LABOUR LEGISLATION**

---

If the ILO Conventions are seen in the general spectrum of labour conditions, one can imagine the great value and influence they have in molding the course of social and economic philosophy of the world. The world without their influence and continuance may be a world of perpetual competition, exploitation, inequality and injustice resulting in wars and confrontations. Judged in this perspective, it would be highly relevant to assess the impact of the ILO standards on Indian Labour legislation. This impact can be seen in three phase, namely, labour, legislation in India before the ILO. Labour legislation in India from 1919 to 1947 and labour legislation in India after 1947.

### ***Labor Legislation in India:***

Labour legislation is that body of legal enactments which is concerned with: non-employment, wages, working conditions, labour-management relations, social security and labour welfare of persons employed in industry. It is that part of state action by which the state, through parliamentary enactments, has intervened in the conduct of industry, and imposed statutory obligations, for the most part, on the employers and, to a subsidiary degree, on the workmen. In other words, labour legislation is a result of the evolution of the concept of social justice. Its nature reflects the social, economic and political philosophy of a particular given time. The changing nature of Indian economy has been one of the most important factors that have shaped the character of labour legislation. Labour legislation came to occupy a significant place with the introduction of industrialism which created two classes- the entrepreneurs and the working class. The control of the economy by the alien rulers –the Emergence of welfare philosophy to ameliorate the hardships of child labour by disciplining the factory owner. The growth of trade union movement with political overtones to combat the hire and fire attitude of the employers. The shifting of the balance of power from the alien rulers to national government in 1947. the impact of constitution and of the political and social philosophy of the parties in power, and the quality and character of their leaders, including their ideologies, have resulted in social tensions and new hopes which have contributed to the development of labour legislation in India.

The state of society in India during the period was generally feudal, colonial and individualistic, ruled by an economic doctrine of laissez faire which had its impact on all legal relations between man and man, and man and society. The theory of 'hire and fire' and 'supply and demand' was allowed to have their full sway in the market. Accordingly, any intervention by the state in India for regulating the condition of labour in respect of wages, hours of work' employment of women and children etc., was considered a serious deviation from these ideal principles. Obviously the Government of India during this period was more concerned with the maintenance of this status quo by protecting the interest of British industrialists, Indian capitalists and other feudal elements in the name of so-called freedom and justice. The result was that employers and British entrepreneurs became so influential that all their attempts were designed to protect and promote their interest without any legal or political hindrance. Thus early labour legislation

in India was more an instrument of aggression, for the working class rather than its savior. 'Far from protecting the interests of Labour", - says the ILO, the first attempts to 'regulate' labour consisted of enactments, such as the earlier Assam Labour Act' the Workmen's Breach of Contract Act of 1859 and Employers' and Workmen's (Disputes) Act of 1860 which rendered workmen liable criminal penalties for breach of contract .The Indian Penal code of 1860 also contained provisions of this character. It would be, therefore, interesting to dilate upon such labour enactment which was rather entrepreneur- oriented.

### ***ILO and the Labour Legislation in India***

At the end of the First world war, after the Treaty of Versailles, the International Labour organization came into existence on April 11, 1919 with an avowed goal to improve the working and living conditions of the workers all over the world. India was admitted to the ILO membership and was recognized as one of the eight nations of chief industrial importance, and this gave further fillip to the growth of labour legislation in India. The other important factors were the establishment of a workers' state in the Soviet Union, the founding of the AITUC in 1920, the launching of the non-cooperation movement and the emergence of powerful leadership under Gandhiji, Lala Lajpatrai, Jawaharlal Nehru, Subhash Chandra Bose, V.V. Giri etc. Among other socio-political and industrial causes, the ILO was the principal fountain and source for labour legislation in India. The main principles embodying the conventions ratified by India have been incorporated in the existing Labour legislation. Thus the influence of the ILO standards on Indian Labour Legislation is direct as well as indirect. The progressive amendments and changes in factory Legislation, and ushering in of a new protective labour Legislation in India before 1931, is mainly due to the efforts and work of the ILO. It provided a platform to representatives from India and an opportunity to carry and spared the message of the ILO to India, which in turn created a powerful public opinion and new social consciousness for the establishment of new social values. Over and above these factors, the ILO adopted series of conventions and Recommendations covering hours of work, employment of women, children and young persons, weekly rest, holidays, leave with wages, night work, industrial safety health, m hygiene, labour inspection, social security, labour management

relations' freedom of association, wages and wage fixation' productivity' employment. These are considered by the working class in India a magna carta of their freedom and security and an inescapable necessity, obligation and duty of the Government to reform the labour legislation. The inevitable result was the ratification of the ILO standards and the formulation of new labour legislation in India thereto.

### ***ILO Conventions vis-a-vis Factory Legislation in India:-***

The ILO Conventions and Recommendations had a decisive impact on the factory legislation in India. As a result of the Hours of Work (Industry) Convention 1919, the hours of work in industrial undertakings namely mines, quarries and other works were fixed at eight hours a day and forty eight hours a week. Factory Act 1911 was suitably amended in 1922. The convention, however, contained an exception or special provision according to which, in British India, the principle of 'sixty hour week'- was adopted for all workers in the industries. The Factories Act, 1948 has fixed 48 hours per week and 9 hours per day as the limit of working hours for adult workers. The ILO has recently adopted a new Convention concerning hours of work which provides 40 hours per week and 6 hours per day as the limit of work for adult labour.

Night Work (Women) Convention 1919 was ratified by India in 1921. The convention prohibits the employment of women during night' the term night was defined to signify a period of at least eleven consecutive hours including the interval between 10 p.m. to 5 p.m., in the morning. The Factories Act 1948 provides that No women shall be employed in any factory except between hours of 6 a.m. and 7 p.m. The Mines Act, 1935 contained similar provisions. Like-wise the high work of young persons (Industry) Conventions 1919 was ratified by India in 1921. According to the Convention no young person or child under the age of 18 years shall be employed for work at night in any public or private undertaking. The Factories Act, 1948 deals with the employment of young persons and provides that no child who has not completed his 14th year of age and an adolescent who has completed his 15th year of age but not completed 18 years shall only be allowed to work if a certificate of fitness is granted. Similar provisions exist in the Mines Act, 1952.



Similarly the weakly Rest (Industry) Convention 1921 was ratified by India in 1933. It provides that all staff employed in any industrial undertaking shall enjoy in every period of 7 days a period of rest comprising of at least 24 consecutive hours. The Factories Act, 1948, the Indian Mines Act, 1952, the Plantation Labour Act 1951, The Motor Transport Workers Act, 1961 provide for 24 hours weekly rest. The Weekly Holidays Act, 1942 applicable to shops, theatres and restaurants, provides weekly holidays to persons employed therein. The labour Inspection Convention 1947 is concerning labour inspection in industry and commerce, and was ratified by India in 1949. It is to secure the enforcement of the legal provisions relating to conditions of work and the protection of the workers while engaged in their work. The system of labour inspection was provided in the Factories Act, 1922 and 1934 but the Factories Act, 1948 contains elaborate provisions in this regard.

### ***ILO Conventions Vs. Social Legislation:***

As already stated, out of 20 ILO Conventions on social Security, If India has ratified only 4 Conventions. These are women's compensation (occupational Diseases) Convention 1925 (No. 18), Equality of Treatment Accident's compensation) convention, 1925 (No. 19), Workmen's Compensation (occupational' Diseases) convention (Revised) 1934 (No.42) and Equality of Treatment (Social security) convention 1962 (No. 119). The General Conference of the ILO adopted Convention No. 18 in 1925. According to it; each member state is to provide compensation to workman incapacitated by occupational diseases or in case of death from such diseases, to their dependants, which shall not be less than the rate prescribed by the national legislation for injury resulting from industrial accidents. India ratified this Convention in 1927. The workmen's compensation Act, 1923 was amended in 1926 to provide compensation for occupational diseases' Schedule III of the Act deals with rates of compensation payable to workers or their dependents, in case of occupational diseases. The convention No. 42, on occupational diseases, was revised in 1934 and ratified by India in 1964. The workmen's compensation Act was amended in 1937, in accordance with the said Convention. Equality of Treatment (Accident compensation) Convention 1925

(No. 19) provides for equality of treatment for nationals and foreign workers in respect of accident compensation. India ratified this convention in 1927. The workman's compensation Act, 1923 makes no difference or distinction as to the compensation for accidents between its own nationals and aliens. Section 3 of the Act is silent on this point which means all persons are to be treated on equal basis. The Constitution of India, 1950 makes no such difference between its citizens and foreigners in regard to compensation for accidents. The ILO's Conventions No. 118 concerning equality of treatment has been ratified by India in 1964. No further legislation was needed for this purpose for obvious reasons. While the ILO Conventions have provided a model and support to existing social security Legislation in India yet several important standards could not be adopted due to administrative and financial reasons, and also due to under-developed growth of the economy.

### ***ILO Influence on Wage Legislation:***

Problems of wages are both of national and international concern. The emergence of the ILO was one of the outcomes to improve the plight of the working class. In its standard setting function, the ILO adopted various Conventions and Recommendations laying down the principle and method of wage quantum and the mode of wage payment. The General Conference adopted Minimum Wage Fixing Machinery Convention 1928 for the creation of minimum wage fixing machinery in certain trades. The Convention envisages the creation of machinery, whereby minimum rates can be fixed for workers employed in certain trades, in particular in home working trades, in which no arrangement exists for the affective regulation of wages by collective agreements or otherwise, wages are exceptionally low. India ratified the Convention in 1955. However the Government of India had passed the Minimum Wages Act, 1948 which applies to all employments that are listed in the Schedule appended to the Act. Minimum wages are not to be fixed in any industry employing less than 1000 employees in the whole State; wages can be fixed on time or piece rate basis. The Act is applicable to all employments like woolen, carpet making or shawl weaving, employment in rice, flour or dal mills, employments in tobacco, bidi making employment under local authority, employment on construction, maintenance of roads or building

operations, stone breaking or stone crushing etc. The Act is also applicable to forest, farm and agriculture labour.

Thus, the ILO standards have directly and indirectly influenced Indian Labour Legislation. Before 1919, the labour legislation in India on employment conditions in factories, mines, ports, docks, shops etc, was almost either non-existent or primitive. The idea of social justice through law was a misnomer in India, and whatever the laws or rules on payment of compensation for accident or on social security or payment of adequate wage etc. existed, were half-hearted, inadequate and paper work only. With the ILO in India, there began a wind of change in the social field. In India, the labour legislation found expression of the voices and spirit of the ILO for promoting social justice and for creating new values and philosophy as well as to continually adapt State policy towards weaker sections of society in keeping with the contemporary social climate. The ILO Conventions have, thus, formed the sheet anchor of Indian labour legislation especially after 1946 when the Indian National Government assumed office at the Centre and drew up a blue print on labour policy which was essentially based on the ILO standards. The Directive Principles of State Policy in general and articles 39, 41, 42 and 43 of the Constitution in particular lay down the basic policy objectives in the field of labour having close resemblance and influence of the ILO Constitution and of the Philadelphia Charter of 1944. The reaffirmation of India's ideals and policy on social, industrial and questions finds concrete expression of the ideals enshrined in the ILO programs and practices. Bereft of the ILO, the Indian workers would have been like an orphan without parents, a wife without husband and a man without friend.

---

## **11.6 SUMMARY**

---

In this unit, we have discussed the concept, basis and role of the International Labour Organization, which is not at all concerned with political questions but is limited to the problems of industry. The second potential role is the technical assistance given by the ILO. It includes labour administration, labour inspection, labour legislation, the organization of labour departments, industrial

relations, employment problems of women and young workers, labour and social problems of specific industries, the compilation of labour statistics on employment, wages, hours and cost of living. The ILO has also contributed to the lasting improvement of the living and working conditions of agricultural workers, tribal and indigenous population.

The ILO's standard setting and technical cooperation have been complementary to each other. They, in fact, are different sides of the same coin. The unit is concerned with the impact of labour legislation in India in the light of general spectrum, value and philosophy prepared through various ILO conventions.

---

## 11.7 SELF-ASSESSMENT TEST

---

Answer the following questions in not more than 35 lines each, so that you may know how much you have understood the matter discussed in this Unit :

1. The ILO carries further the mission of the great and seers of the earth who stood for the weak .The meek and the poor against tyranny whether social or economic-." Comment' 2.
2. Mention briefly the laws passed by the Parliament of –India, in the light of the ILO Conventions.
3. Discuss the expression 'technical cooperation' as used for the first time in the ILO Report of 1920.

---

## 11.8 FURTHER READINGS

---

- |                |   |  |
|----------------|---|--|
| Follows, John  | : | Antecedents of the International Labour Organization                   |
| Puri,M.M.      | : | India in the International' Labour Organization.                       |
| Thomas, Albert | : | International social Policy (I.L.O. Geneva 1948)Indian Labour Journal' |

---

# UNIT- 12

## Human Rights, ILO & Indian Perspectives

---

### Objectives :

Every human being is born free and is equal in dignity and has a right to recognition everywhere as a person before law. Apart from these, right to life, liberty, and security are also part of basic human rights.

Through this Unit, you will be able to appreciate

- The meaning of human rights as put forth by the International Labour Organization through its Conventions and Recommendation.
- The various human Rights Program.
- Human rights as highlighted and recognized and adoption by India has been examined.

---

### Structure :

---

12.1	Introduction
12.2	Human Rights
12.3	The Human Rights Programme
12.4	The Universal Declaration of Human Rights
12.5	Human Rights and Indian Perspective
12.6	Human Rights during emergency
12.7	Constitution of India and U.N. Declaration
12.8	The International Labour Organization
12.9	ILO and the Declaration of Human Rights.
12.10	Human Rights Conventions and Indian Situation
12.11	ILO Conventions and Recommendations
12.12	Labour Legislation and the Indian Constitution
12:13	Summary
12.14	Key words
12.15	Self Assessment

---

## 12.1 INTRODUCTION

---

In a world of terror and horror and of hunger and handicaps, conflicts, are bound to arise, there are challenges of various kinds to jurists, humanists and statesmen. The task is to strive for a social order through the machinery of law, materializing the aspiration of mankind for the full and free, development of every individual. Human rights and fundamental freedoms are indivisible. The full realization of civil and political rights is impossible without the enjoyment of economic, social and cultural rights. Hence the fundamental freedoms of individuals become important. This brings us to the question, what are Human Rights?

---

## 12.2 HUMAN RIGHTS

---

"Going to its spiritual roots, we discover that the Religion of Man — be it located in the Vedas, Buddhist texts, the Bible, the Quran or the Holy literature of other authentic teachers, upholds human divinity. Every human being is a divine being and has title to dignity, liberty, equality and other basic rights"<sup>28</sup>.

The instruments, institutions and operations of the international organizations of the present day have roots in the philosophical, constitutional and legal developments of many nations spread over many centuries. The idea of defining and protecting the legal rights of men is very old, but, the expression 'Human Rights' as a term of art is of recent origin. There are evidences in the ancient Roman Law, English Law and French Law, wherein, we find traces of rights of this nature, like rights of citizens to take part in the Government, right to appeal against an unfavorable decision, specific relief in appropriate cases etc. The protection of oppressed or endangered groups was practiced by many countries which gave birth to the Human Rights concept.

---

<sup>28</sup> V. R. Krishna Iyer, *Human Rights and the Law* (1 986) p4.

After the World War II, the United Nations charged with some responsibilities in the matter, of human rights pledged itself for the achievement of universal respect for and observance of human rights and fundamental freedoms for all. In 1945, the attempt took a step further and the San Francisco Charter of the U:N. reaffirmed its faith in Fundamental Human Rights, though it did not define these rights. The Charter, however, made it clear that one particular activity, that the at least, is repugnant to it is discrimination on the grounds of sex race, language or religion.

Since the UN Charter of 1945 had not defined Human Rights, it was widely assumed that this would soon be done in an 'International Bill of Rights'. In 1947-1948, it was decided that this Bill would consist of two or more documents, a Declaration, a Covenant and measurements of implementation. The next step in this regard was the adoption of a human rights programme.

---

## **12.3 THE HUMAN RIGHTS PROGRAMME**

---

The Human Rights Programme of the United Nations is enshrined in three documents

- (a) Charter of the United Nations,
- (b) the Universal Declaration of Human Rights, and
- (c) the Draft Covenants on Human Rights.

The Universal Declaration of Human rights adopted, by the General Assembly on December 10, 1948, represents the best efforts to synthesis and compromise the naturally divergent view on what constitutes the basic rights of man which originate from the intensely varied cultural, social, economic and political backgrounds of the various states by whom it was drafted.

The whole programme on Human Rights is an effort to recognize the right of individuals to human values. It recognizes the inherent dignity and the equal and inalienable rights of all members of the human family, these are based on the

foundation of freedom, justice and peace in the world, it also proclaims that the freedom of speech and belief, and freedom from fear and want are the highest aspirations of the common people: It holds that if a man is not to be compelled to have recourse to recourse to rebellion against tyranny and oppression, human rights should be protected by the rule of law.

Measures for implementation of the programme on Human Rights, posed a major problem. Does a Charter create rights and duties of a binding nature ? As there is no world State, there cannot be any rights and duties as we use the terms in the legalistic sense, The Member States of the UN recognize that they are all committed to promote respect for and observance of human rights and fundamental freedoms. article 1 (3) of the Charter holds that all members are expected to encourage respect for Human Rights. Further Article 55 (c) provides that the members shall promote universal respect for and observance of human rights and fundamental freedoms. Hence it can be seen that the implementation of the programme is voluntary. The concluding part of the Preamble to the Universal Declaration reads :

"The General Assembly proclaims This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights, and freedoms, and by progressive measures, national and international, to secure their universal and effective-recognition and observance both among the peoples of member states themselves, and among the peoples of territories under their jurisdiction".

---

## **12.4 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS:**

---

The Declaration is spread over 30 Articles. It is reproduced hereunder :—



ARTICLE 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brother — hood.

ARTICLE 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, with—out distinction of any kind, such as race, color, sex language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the" basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, no self—governing or under any other limitation of sovereignty.

ARTICLE 3 : Everyone has the right to life, liberty and security of person.

ARTICLE 4 : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

ARTICLE 5 :No one shall be subjected to torture or to cruel, in--human or degrading treatment or punishment.

ARTICLE 6 : Everyone has the right to recognition everywhere as a person before the law.

ARTICLE 7 : All re. equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.

ARTICLE 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts, violating the fundamental rights granted by the constitution or by law.

ARTICLE 9 : No one shall be subjected to arbitrary arrest, detention or exile.

ARTICLE 10. : Everyone is entitled in full equality to a fair and' public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE' 11: (1) Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty Of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it committed. Nor shall heavier penalty be imposed than the on a that was applicable at the time the penal- offence was committed.

ARTICLE 12 :No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor :o attacks upon his honor and reputation. Everyone has the right 70 the protection of the law against such interference or attacks.

ARTICLE 13 :(1) Everyone has the- right to freedom movement and residence within the borders of each State.

(2)Every one bas the right to leave any country, including s own, and to return to his country.

ARTICLE 14 : (1) Everyone has the right to seek and enjoy in other countries asylum-from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from none—political crimes or from acts contrary to the purposes and principles of the United Nations.

ARTICLE 15 :(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor : denied the right to change his nationality.

ARTICLE 16 : (1) Men and women of full age, with \_It any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as 73 marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The. family is the natural and fundamental group unit of the society and is entitled to protection by society and the State.

ARTICLE 17 : (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

ARTICLE .18 : Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

ARTICLE 19 : Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE 20 : (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

ARTICLE 21: (1) Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of Government; this will / shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ARTICLE 22 :Every—one as a member of society, has the right to social security and is entitled to realization, through national effort and international co—operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights, indispensable for his dignity and the free development of his personality.

ARTICLE 23 : (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Every—one, who works, has the right 1(5 -just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented if necessary by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

ARTICLE 24 :Everyone has the right to rest, and leisure, including reasonable limitation of working hours and periodic holidays with pay.

ARTICLE 25 : (1) Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

ARTICLE 26 : (1) Everyone has the right to education. Education shall be free, at least in elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance; and friendship among all nations, racial or religious groups and shall further /the activities of the United Nations for the maintenance of peace.

(5) Parents have a prior right to choose the of education that shall be given to their children.

ARTICLE 27 : (1) Every one. has the right to participate freely in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits.

- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

ARTICLE 28: Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

ARTICLE 29: (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

- (2) In the exercise of his rights and freedom every one shall be subject only to such limitations, as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

- (3) These rights and freedoms may in no case be exercised contrary to the purposes of principle of the United Nations.

ARTICLE 30: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in an activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".

The Declaration of 1948 is the only worldwide official document where the human rights of which the Charter speaks are set forth. It proclaims not only the traditional political and civil rights and freedoms of its national predecessors but also economic, social and cultural rights: The Declaration has to some extent filled the gap created by the delay in completing the Covenants<sup>2</sup> and acquired a status different from and more important than the one which was originally intended for it. It has been used by the UN, other international organizations and governments as a yardstick to measure the compliance by governments with the obligations

deriving from the charter in matters of -human rights. It has penetrated into international conventions, national constitutions and legislation and even in isolated cases into court proceedings.

After 1948, a number of Declarations, Covenants, and Conventions came with a view to supplement the 1948 Declaration. Some of them are:

3. The Declaration of the Elimination of all forms of Racial Discrimination (20.11.1963),
4. The Declaration on the Promotion among Youth of the Ideals of Peace, Mutual respect, and Understanding between Peoples (7, 12.1963)
5. The Declaration on the Elimination of Discrimination against Women (7.11.1967).

After a long time Since the adoption of the human rights programme, in 1968 the International Human Rights Conference in Tehran called by the General Assembly of the UN to mark the International Year of Human Rights came out, with a proclamation vi, 'Proclamation of Tehran on Human Rights'. The realization that human rights and fundamental freedoms are indivisible called for legal action. The creative commitment of democratic jurists.

---

## **12.5 HUMAN RIGHTS AND INDIAN PERSPECTIVE**

---

India is a sovereign, socialist, secular democratic republic. Every attribute of the Republic is bed rocked in human rights - the sovereignty of the people over the entire resources of the nation, the secular liberation the socialize harvest of economic, cultural. and other rights and democratic participation in the administration of the country. These are implicit in the Constitution of India, especially in the Preamble, Part III and Part IV which according to some jurists is the conscience of the Constitution.

Gandhi said: "There is on the face of the earth no other country that has the problem that India has of chronic starvation and slow death - a process of dehumanization. The solution must, there-fore be original".

Jawaharlal Nehru told the Constituent Assembly that the service of India means the service of the millions who suffer. This simply means the ending of poverty, ignorance, disease and inequality of opportunity. It was Gandhiji's desire to wipe out tears from every eye. The first task of the Assembly was, therefore, to feed the starving, to clothe the naked and to give the Indians opportunity to develop according to each one's capacity.

All these aspirations found a place in the Constitution of India. The Constitution of India, describes, in Parts III and IV that the human rights relating to (a) civil and political and (b) economic, Cultural and social rights as fundamental. The Amendments to the constitution during 1976, 1979 and 1980 etc. project the fact that so far as the Indian people are concerned, there is distinction between political, civil, economic and cultural rights. Similar Approach has been made by the judiciary also. The Supreme Court has often adopted a harmonious approach and has read political, economic and social justice into the living law of the land. Several constitutional provisions have activated the rule of law rise to the international level of human rights, this was seen in the fields of prison justice, right to be defended by a lawyer, access justice, unorganized labour, natural justice, immunity from imprisonment for civil debts, death penalty, status of women, worker's rights and so on.

Side by side, the legislature was also giving effect to the International Conventions and the Declarations. The legislation and the judicial decisions in India guaranteed every—one the right in all circumstances to be treated with humanity and respect for the inherent dignity of the human person.

---

## **12.6 HUMAN RIGHTS DURING EMERGENCY**

---

Human Rights uphold the individual liberty and freedom Any limitations upon this right must not only be prescribed by law but must be shown to be



necessary to protect public by safety order, health or morals of fundamental rights and freedoms others<sup>29</sup>.

It may be noted that limitations on the enjoyment of the right may be imposed during emergencies. In times of a public emergency, which threatens the life of nation, the States may take measures derogating from some of their obligations under the Covenant of Civil and Political Rights to the extent required by the exigency. In order to prevent abusive derogation, the State concerned is required to notify immediately the other signatory states of the measures taker and the reasons there by . Moreover, certain rights are declared immune from any derogation. A public emergency, however grave, cannot deprive the individual of his protection against arbitrary deprivation of life, torture, cruel and inhuman punishment o treatment. Among the rights open to derogation are freedom of association and right to peaceful assembly and expression.

Under the provisions of the Constitution of India, the Fundamental Rights conferred by Part 111 may be suspended during emergencies<sup>30</sup>. Where an emergency is declared, the President, by an order can declare that the right to move any court for the enforcement of the rights conferred by Part III (except

Articles 20 and 21) shall remain suspended for the period during which the Proclamation is in force. This is due to the fact that the normal freedoms of citizens must yield to measures directed to meet the national danger. In such an instance normal restrictions on State action consequent to the Declaration has to be loosened. However, the suspension of fundamental rights cannot be arbitrary.

---

## **12.7 CONSITUTION OF INDIA & U.N. DECLARATION**

---

---

<sup>29</sup> The Covenant on civil and Political Rights, Article 22

<sup>30</sup> The Constitution of India, Articles 358 & 359

The fundamental rights under the Constitution of India have a close similarity with the U.N. Declaration of Human Rights of 1948 in form and content. This can be seen from the following comparative table.

Fundamental Rights under the Constitution of India	U.N. Declaration of Human Rights
Article 14: The State shall not deny to any person equality before the law and of equal protection of the law.	Article-7
Article 15 (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (2)	Article -7
Article 16 (1) There shall be equality of opportunity for all citizens in matters relating to employment	Article21(2)
Article 19 (a) All citizens shall have the right to freedom of speech and expression	Article 19
Article 19 (1) (b) Right to assemble peace (1) Fully without arms	Article 20

Article 19 (1) (c) Right to form Unions and  
Article 23(4)  
Associations.

Article 19 (1) Right to reside and settle  
(d) in any part of the Territory of India

Article 13 (1)

Article 19 (1) Right to acquire, hold and  
dispose of the property

Article 17 (1)

Article 20 (1) No person shall be convicted  
Article 11 (2)

of any offence except for violation  
of a law in force at the time of the  
commission of the Act charged as an  
Offence not be subjected to a penalty  
greater than that which might have  
been inflicted under the law in force at the time of the  
commission of the offence.

I.e. no subjection to ex--post facto laws.

Article-21 No person shall be deprived  
Article 9 and of his life and personal  
Article 13(2) the procedure established by law.

Article-21 Traffic in human beings  
and beggary and other  
similar forms of forced Labour are prohibited.

Article 4

Article 25 (1) All persons are equally  
entitled to freedom of  
conscience and the right

Article 18

freely to profess, practice and propagate religion

Article 29 (1) Citizens residing in the territory of India having distinct language script of culture of its own shall have the right to conserve the same Article 22

Article 30 (1) All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their own choice. Article 26(3)

Article 31 (1) No one shall be deprived of his property save by authority of law. (In the category of a constitutional right.) Article 17(2)

Article 32 The right to move Supreme Court by appropriate proceedings for the enforcement of the right conferred by this part is guaranteed Article 8

---

From the above discussion it becomes clear that several of the basic human rights contemplated by the Universal Declaration have been in one form or the other reflected in the Constitution of India. However, it is not disputed that according to our Constitution some of these rights fall into the category of nonjusticiable rights and others into justiciable rights.

Another important point to be remembered in this area is the fact that in the Constitution we do not find a fundamental right called the 'Right to Work' without the right to work for an unemployed person, there is no escape from misery and destitution. Similarly along with other freedoms there must be a statutory obligation to provide freedom from want and fear. Both these must be given

statutory sanction so as to make them enforceable to make the packet of basic human rights worthwhile and substantial.

---

## **12.8 THE INTERNATIONAL LABOUR ORGANISATION:**

---

In the early days of industrialization some philanthropic employers proposed international regulation for labour. Such movements continued for some time without making any progress. A few resolutions were passed in Berlin Labour Conference of 1889. another step was foundation of the International Association for Labour Legislation in Paris in the year 1900. Under the auspices of this Association, the Berne Conferences (1905-1906) formulated the first Multilateral Labour Convention which prohibited night work for women. In the years preceding the world War I, the Association gained further momentum, expanding its programme of standardization and reform of labour legislation. The First World War frustrated the Berne Conference of 1913. After the War the first Peace Conference in 1919 in Paris, appointed the Commission on International Labour Legislation. A draftee was prepared and in view of the labour unrest, the first conference was held in Washington D.C. in October, 1919. Next year the conference was held in Geneva. It maintained its independent status apart from the League of Nations.

The fundamental principles on which the I.L.O. is based can be found in Philadelphia Declaration. They are :-

1. Labour is not a commodity.
2. Freedom of expression and association are essential to sustained progress.
3. Poverty anywhere constitutes a danger to prosperity everywhere:
4. The war against want requires to be carried on with unrelenting vigor within each nation and by continuous concerted international effort in which the representatives of the workers and employers enjoying equal status with those

of the Governments, join with them in free discussion and democratic decision with a view to the promotion of common welfare.

---

## **12.9 ILO AND DECLARATION OF HUMAN RIGHT:-**

---

After the World War II there was a growing awareness of the plight of labourers among the working class. The International Labour Organization, took up the cause of the working class all over the world and through its machinery prescribed standards for uniformity.

The various Conventions and Recommendations adopted by the International Labour Organization represent a definite trend towards the International codification of the Labour laws, covering wide variety of subjects the freedom of association, hours of work, regulation of conditions of Labour, welfare provisions for women and children, forced labour, provisions for social insurance, hygiene, security, etc.

Nations after nations have gradually ratified these Conventions and in varying degrees the national Labour laws have been influenced by them according to the Stage of Development and enlightenment achieved. Gradually the ILO has attained influence to a greater extent than was contemplated by its enemies and critics. While the ILO, thus was gaining hold over national legislation, the UN adopted the Universal Declaration of Human Rights.

Declaration of Human Rights helped a lot in bringing birth the concept that working class is not a lifeless combination of tolls, a living and suffering section of humanity, struggling for its emancipation.

---

## **12.10 HUMAN RIGHTS CONVENTIONS AND INDIAN SITUATION**

---

In the Indian context, it may be stated that parts III and IV of Indian constitution along with preamble to the constitution already embody the concept of human

rights. Further, India is now a party to sixteen International treaties relating to Human rights including the International Covenant on Economic and Social and Cultural Rights and civil and political rights. It includes International Convention on Racial Discrimination, Covenant on Right of child and the political rights of women; slaves convention, etc.

With the emerging concept of welfare state, in democracy in India, state led to the trend of guaranteeing basic human rights in constitutional law. It presupposes that everyone has a right to life, liberty and security of person, freedom from slavery or servitude, etc. and ensuring equality before law and equal protection of law.

It is, therefore, evident that the Indian system from the very inception of the constitution has responded well to the Human Rights activism.

The Conventions on Human Rights adopted by the ILO are: Right of Association (Agriculture) Convention 1921, Forced Labour convention 1930, Freedom of Association, and Protection of to Right to Organize Convention 1948; right to Organize and collective Bargaining Convention 1949, equal Remuneration Convention 1951; Abolition of Forced Labour Convention 1957 and Discrimination (Employ men & Occupation) Convention 1958. Among this Conventions India has ratified only four Conventions (1921, 1930, 1951 and 1958). Some of these Conventions may be described as the fore-runners of the U.N. Declaration of Human Rights.

Though India has ratified the Convention on Equal Remuneration and Discrimination (of 1951 and 1958) unequal wages exist in the fields of agriculture, plantation and construction industry. However, the Equal Remuneration act of 1976 tries to protect the principle for equal pay for equal work, which is provided under Article 39(d) of the Indian Constitution. The Convention on Freedom of Association (1948) has not been ratified by India. However freedom of Association is guaranteed as a fundamental right under article 19(1) (c) of the Constitution of India. The Trade Unions Act, 1926 regulates, the right of workers to form trade Unions.

There are a number of other conventions when ratified by member states, would enjoin them to provide for minimum wage, human

condition of service, education, leisure, social security, old age, pension etc. These are the basis: human rights in relation to the workers both in organized and unorganized sector. In India such protections are afforded to the workers through number of statutes. Some of such statutes are the Employees' provident fund and Miscellaneous provisions Act 1952, Factories Act 1948 Minimum wage Act. 1948,, Payment of Gratuity Act 1972 and payment of Wages Act. 1936, Workmen's Compensation Act, 1923 etc.

---

## **12.11 ILO CONVENTIONS AND RECOMMENDATIONS:**

---

The ILO during the past so many years of working and adopted a number of Conventions and Recommendation. The first Conventions was adopted In its Washington Session in 1919. It was convention Limiting the hours of work in industrial undertakings to eight in a day and forty-eight in the week. After that ILO had adopted hundreds of conventions and recommendations for regulating the working conditions. Maternity protection, insurance, health, wages etc

Each of the member states agrees to make an annual report to the ILO office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party.

---

## **12.12 LABOUR LEGISLATION AND THE INDIA CONSTITUTION**

---

Labour Legislation in India during the post independence period has been promoted by the Constitutional provisions, which in fact reflects to a certain extent the International principles. Labour is included in the Concurrent list in the VII schedule to the constitution under article 245(2). The Preamble and some of the Articles of the constitution from Part III and IV have a close bearing on Labour laws.



Legislation regulating the relations between capital and labour has two objects in view:

1. It seeks to ensure to the, workmen, who have not the capacity to bargain with capital on equal terms, 'air return on their labour.
2. To prevent disputes between employer and employees, so that the production might not be adversely affected and the larger interest of the society might not suffer.

Legislation pertaining to welfare and social security has a clear objective of uplifting the workmen and providing them wholesome and congenial life, Protective legislation aims at ensuring congenial working conditions and economic security to the work force. Even though our labour legislation aims at all good things for the upliftment of the working class, the necessary executive attention to implement these noble goals is lacking. We have been pursuing labour policy which has resulted in so much legislation that it was neither warranted nor it could be implemented with any degree of success. However , the legislative attempts are to be recognized as a noble step to bring into practice the Universal Declaration and standards for the betterment of the working class.

The constitution also provides reproach to these fundamental human rights by making them enforceable by direct access to the Supreme Court or the High Court. The S.C. and H.C. has opened new dimension to the concept of Human Right movement by liberally interpreting and expanding the meaning of Basic Human Right. There are number of cases where the concept of human rights has been given a new dimension through judicial activism.

India established National Human Right Commission to redress human right grievances or violation and according to Article 51 of the Indian constitution state should strive to (a) Promote international peace and security.

(b) Maintain just and honorable relations between nation, etc. pursuant to the direction enshrined in Article 51 of the constitution and International

Commitments, Parliament has passed the protection of Human Rights Act, 1993 and then set up a National Human Rights Commission from 1993.

### **Future of ILO:**

The social and economic conditions of the world have changed, and many of the original assumptions upon which the guiding philosophy of the ILO was based are no longer valid. Its structure and functions, therefore, seem almost sure to be different in the future from what they were in the period between the two great wars. Its primary mission emphatically will not be to establish new international standards of labor legislation. The concerted international action which will be necessary to improve the economic and social conditions of the working class in countries which have suffered heavily from the war will be in the field of administration rather than legislation. Large-scale public works programs and resettlement and colonization schemes are examples. Such projects might be initiated by the General Conferences of the ILO; but the tasks of planning them in detail and supervising them in operation would fall upon the administrative agency of the Organization, the International Labor Office. The necessary changes in the structure of the Office and its methods of work might well receive preparatory study now.

---

## **12.13 SUMMARY**

---

In the foregoing pages we came across a very important issue and its significance in the present day human life. Human life is mixed with a lot of insecurities, conflicts, imbalances, etc. In order to see that such handicaps do not spoil the life, as such certain rules and regulations have been adopted and enforced by the state. The United Nations realized this need and in 1948 adopted the Universal Declaration of Human Rights.

In order to implement its vision, the UN has adopted the Human Rights Programme which is contained in three documents viz. the U.N charter, the Universal Declaration and the Conventions on Human Rights. The whole programme is an effort to recognize the rights of individuals to human values. It is to be noted that the foundation of the

programme is on the freedom of the justice, peace in the, world which are the basic aspirations or rights of any human being.

These rights in one way or the other have been incorporated into its conventions, and recommendations by the International Labour Organization. Most of these rights have been adopted in our Constitution even though India did not ratify many of these Conventions.

Apart from these rights, in the 'Indian Context, we can see the other areas where human rights as declared by the UN are recognized. An example is the jail reforms and ' the judicial activism towards providing human conditions in the jails in India. Most of the jails in India are crowded and difficult for the authorities to provide the basic necessity for the prisoners. However, social activists brought out these inadequacies before the courts and the courts in its turn have acted upon and tried to solve the menace to a great extent.

Another example is that of the releasing of bonded Labour, working in stone quarries, in different parts of the country. That, here, again, the victims could not bring their grievances before the notice of courts a partial from ordering the release of these bonded labours, the courts went step further and directed the state Governments to frame programs for the rehabilitation of these poor people.

Hence we see that in India, the Constitution, other statutes, and the courts are trying to provide the rights which are universally accepted as basic human rights.

---

## **12.14 KEY WORDS**

---

**Human Rights:** Rights declared to be so by the Universal Declaration of human Rights, it declares among other things that all human beings are born free and equal in dignity and rights.

**Conventions and Recommendations :** The text of the decisions of the International Labour Organization adopted in the General Assembly and circulated among the member nations for ratification and adoption in the respective countries. On the basis of the conventions, the member States

are bound to take steps to incorporate the principle provided by the Convention into the local legislation, and they are expected to inform the ILO :periodically the steps by them in this regard.

Human rights Programme : An effort to recognize the right of individuals to human values.

---

## 12.15 SELF -ASSESSMENT

---

1. What according to you are the Basic Human Rights?
2. How the various human rights declared by the Universal Declaration are made by a reality in India?
3. Do you think that the Human rights as declared by the Universal Declaration are guaranteed in India?
4. Write brief note on ;
  - a) Human Rights Programme of the U.N.
  - b) Suspension of Human Rights
  - c) Labour Legislation in India - Role of Human rights.

---

## 12.16 FURTHER READINGS:

---

- Constitution of India : S, N. Johri, **Industrial Jurisprudence (1984)**  
Metropolitan Book Co, P, Ltd. New Delhi,
- M.L. Monga : **Industrial Relations and Labour Laws in India (1984)**  
Deepa and Deep Publication, New Delhi,
- Jagadish Swarup : **Human Rights and Fundamental Freedom ,**  
(1975) N.M. Tripathi (LP) Ltd. Bombay,
- S.N.Dhyani : **International Labour Organization and India(1977),**  
National Publishing H

---

# UNIT-13

## INTERNATIONAL LABOUR ORGANIZATION-

### (ACHIEVEMENT PROBLEMS AND PROSPECTS)

---

#### **Objectives:**

After going through this unit, you should be able to:-

- Know the achievements of international Labour Organization in general.
- Know the impact of international Labour Organization on Indian labour.
- Know the problems which I.L.O. is facing and its prospects.

---

#### **STRUCTURE:**

---

- 13.1 International Labour standards
- 13.2 International technical co-operation
- 13.3 World employment programme
- 13.4 Women workers
- 13.5 ILO and International Peace.
- 13.6 Tripartitism a means to achieve Social justice
- 13.7 ILO and India
  - (a) Indian Legislation
  - (b) Labour movement
  - (c) Basic Human rights
  - (d) Employment of Women
  - (e) Employment of children & young person
  - (f) Social Security
- 13.8 Problems and prospects
- 13.9 Summary
- 13.10 Self assessment test

- 13.11. Key words
- 13.12. Further Readings

---

## **13.1. International Labour Standards.**

---

One of the ILO's oldest and most important function is the adoption by the tripartite (Governments employers-workers) International labour Conference of conventions and Recommendation which set international labour standards. Through rectification by member states, conventions are intended to create binding obligations to put their provisions into effect. Recommendations have provided guidance and policy, legislation & practice. Between 1919 & 1989 more than 168 conventions and 172 Recommendations were adopted by the ILO out of which 34 labour convention has been ratified by India. They cover many areas including certain basic human rights. Labour administration, employment policy, working conditions industrial relations Social Security, employment of woman employment of children etc. The ILO has established a supervisory procedure to ensure the application which is the most advanced of such international procedures.

---

## **13.2 International Technical-co-operation**

---

To help and promote national economic and social development, some 700 ILO experts are at work on about 500 technical co-operation programs in more than 100 countries. They assists ILO member countries in such projects as:

- 1- Labour-intensive public works missions.
2. - Regional Vocational skills development programs.
- 3.- Building social security schemes in different countries of the world.
- 4.- Improving working conditions of labour in many countries'
5. - Assisting workers education.'

---

## **13.3. World Employment Programme**

---

The ILO is conducting a world Employment Programme to help national & international efforts to provide productive employment for the world's growing population. During 1961 the ILO extended its efforts under the world Employment programme. Columbia received the ILO's first employment strategy mission in 1970. Under the World Employment Programme, the ILO gives practical assistance to countries in selecting employment policies designed to lead to more work in industry, rural development., public works and other scheme. To give world Employment Programme an continuing frame work, True, Regional Scheme the Asian Manpower Plan, the Employment Programme for Latin America and the Caribbean, and the Jobs and skills Programme for Africa have been established. By placing problems of employment strategy squarely in context of overall development planning the mission have been able to contributes significantly to the evolution of new Policy prospective of development'

---

### **13.4 Women Workers.**

---

The ILO has shown a serious concern with the working women. The ILO constitution provides for the protection of women. In Washington in 1919 the international of Labour Conference adopted international standards protecting expectant mothers. In 1937 the International Labour Conference set down few aims to protect. Women labour There are, Equal pay for Equal work. 2. The guarantee of all Civil & political rights. 3. Legal maternity protection. 4. Better conditions for finding employment.

ILO in Philadelphia charter in 1944 s gone deep into women's economic rights & removal of discrimination against women in employment in 1951 International Labour conference as adopted a convention on equal pay for equal work for women.

---

### **13.5. The ILO & International Peace.**

---

True and lasting peace also depends upon social and economic well being of the world's people's decent living standard, satisfactory conditions of work and pay adequate employment opportunities. these are the main concerns of ILO. From the beginning ILO has tried its best to create better understanding, encourage International co-operation, improve the working and living conditions of the working class, In this way ILO has strengthen International peace and brotherhood. ILO's efforts for International peace and brotherhood were. recognized by the award of Nobel Peace Prize in 1969.

---

### **13.6 Tripartism a means to achieve social justice.**

---

The ILO has succeeded in establishing partnership between employers and workers' employers the workers and, the Governments have established a collective community building procedure. All the three wings has worked together and forced the people to improve conditions of workers and other weaker Sections of community. The active participation of the elected representatives from different countries has helped a lot to achieve social justice. The ILO is unique among world organizations in that workers' & employers representatives have an equal voice with those of Governments in formulating its policies. In 1964 the 48th session the International Labour Conference unanimously approved condemnation of apartheid. ILO approved programme for the elimination of apartheid in Labour matters. The conference was adorned with the power to suspend from participation of any member country which follows a policy of racial discrimination South Africa had to leave the organization.

### **13.7. ILO & India**

---

The ILO has influenced the course of Indian labour to great extent. Indian Labour legislation is greatly affected by the ILO. Many important conventions have been ratified by India and have been incorporated in the labour Laws of the country. The Provision of employees State Insurance Scheme, Hours of work, Occupational safety, Holidays with pay, Labour Welfare measures, Employment of women and children etc, have been the result of ILO.



### **(a) ILO and Indian Labour Legislation.**

ILO has greatly influenced the course of social and economic philosophy of the world. ILO has injected the concept of social justice and has effected world wide labour legislation. ILO has successfully encountered. Against exploitation, inequality and, injustice. The ILO's has also directly or indirectly influenced the Indian Labour legislation up to a great extent.

Prior to 1919 the state of Indian society was feudal and individualistic. Labour legislation in India were more or less non-existent. The rules on Payment of compensation, concept of Social Security, Social justice and payment of adequate wages etc. existed in its primitive and ambiguous on stage, the emergence of ILO, made a great change in the social field in India. A movement was started for creating new social values for a state policy towards weaker sections of society. .ILO conventions have greatly influenced the labour Legislation in India. Main impressions of ILO can be seen as under.

- Workmen's Breach of contract Act 1859 was amended in 1920
- The Indian Penal code made Penal offence for the breach of contract to service.
- ILO convention and Recommendations had a wide impact on the factory legislation in India.
- Hours of work were controlled
- Factories Act 1948, controlled the hours of work.
- Night work (Women) convention 1919 was ratified by India in 1921. The convention prohibit the employment of women during night.
- Weekly Rest (Industry) convention 1921 was ratified in 1933.
- Weekly holidays. Act 1942, Motor Transport Workers Act 1961 etc. Provides 24 hour's weekly rest.

Equal Remuneration conventional 1951 was ratified by India in 1958 Minimum Wage Act 1948, Workmen compensation Act 1923.E, S.I. Act and Act 1947 are also influenced by the ILO convention.

Our constitution has also expressed its vote in favor of ILO, enshrining Directive Principles of state Policy, articles 39,41,42& 43 lay down the policy in the field of Labour have close impression of ILO Constitution and of the Philadelphia charter of 1944.

Up to 1988 the International Labour Conference had adopted 159 conventions and 169 Recommendations, These conventions and Recommendations guarantees basic human rights, employment policy, Industrial relations, general conditions of employment, the employment of women and children and social security. These instruments have definitely harmonized the national measures. These conventions have served as a basic for the important regulations in a large number of countries. This influence has been mentioned in relation to India also. A brief description is a under.

**Basic Human rights in India:** ILO has made a substantial contribution to law and practice in the field of basic human rights. Out of 12 conventions elation to basic human rights adopted by the ILO India has ratified four conventions. This area-

S.No	Con. No.	Title
1	11	Rights of Association (Agriculture) convention 1921.
2	29	Forced Labour Convention 1930
3	100	Equal Remuneration Convention 1951
4	141	Rural Worker's Organization Convention 1975

Employment of Women, Out of Seven convention adopted by the ILO relating working women, our country has ratified five conventions.

S.No	Con. No.	Title
1	4	Night work (women) convention 1919
2	41	Night women) Convention Revised 1934
3	45	Underground work (Women) Convention,1935

4	89	Rural Worker's Organization Convention 1975
5	100	Equal Remuneration Convention 1951

As regard working women a number of legislative measure have been enacted for their favor. The Maternity Benefit Act, 1961, Beedi & Cigar workers Act, 1966. These Factories Act, 1948 and The Equal Remuneration Act, 1976, all these legislation have no doubt taken inspiration from ILO.

Employment of Children & Young persons. In this filed India ratified three conventions:-

S.No	Con. No.	Title
1	5	Minimum Age(Industry) Convention 1919
2	6	Night work of young persons (Industry) Convention 1919
3	123	Minimum age (underground work) convention 1965

Our statutes like Factories Act, 1948. Plantation Labour Act, 1951 & Mines Act, 1952 are in conformity with the ILO standards. The Factories (Amendment) Act, 1987 has special provision for hazardous process and employment for young person.

Social Security: On Social Security India has ratified 4 conventions;

S.No	Con. No.	Title
1	16	Workmen's compensation occupational diseases, 1925
2	19	Equality of treatment (Accident Compensation), 1924
3	42	Workmen's compensation (occupational diseases (Revised) 1934.
4	118	Equality of Treatment (social Security), 1962.

India has done a lot in the field of Social security legislation some important piece of legislation are:-

The workmen's compensation Act, 1923, The E.S.I. Act, 1948, The Maternity Benefit Act, 1961, The employers' Provident Funds and Miscellaneous Provision Act, 1952 and The Payment of Gratuity Act, 1972. Going through the above we can rightly say that the ILO is peacefully engaged in Building a world through a peaceful change without harming human dignity. ILO has a very deep social significance and relevance for the world especially to the developing Societies. The impact of ILO activities in the world at large is very clear. The last we can safely conclude that the ILO has greatly influenced on the course of events in the labour field in India.

**(b) ILO and the Labour Movement in India.**

The ILO has given a boost to the Labour movement in India. The ILO has created sense of solidarity among the workers. It has connected Indian Labour with other Countries. The ILO has supplied information to them by means of periodicals, labour reports etc. The ILO has removed the feeling of isolation among the Indian Labour. The organization has inspired Indian Labour for class struggle through trade unions. The Indian labour movement was benefited by International experiences through ILO. It is True to say that without ILO. The Indian Labour Movement, perhaps, would have not progressed so rapidly.

---

## **13.8 Problems & Prospects.**

---

Because of the continuing new problems and challenges of each time and generation the objectives of any organization cannot remain static. ILO also faces the same problem. Although the organization is encountering the problem satisfactorily. Some more problems which I.L.O. is facing can be enlisted as:-

1. The advancement of technology and its implication.
2. The growth of Trade unions in developing countries and its implication upon the labour relations.
3. The various issues affecting the conditions of labour.

#### 4. Better utilization of labour force for economic development.

The ILO has two goals the maintenance of the world peace and the establishment of social justice. For carrying its work for pace through social justice ILO should give special attention on some of the following problems which are as under:-

##### **1. Need to change the structural frame work of ILO:-**

The workers should get real participation in the organization; their representation should be one third. Further the private and public sector workers representation should also be proportional.

**Financial Improvement:** - The ILO finances should be enhanced. The shares of the. Member countries should be increased private sector organizations can also be included for raising the funds.

**Revision of standard.** New needs, imbalances and social change with the passing time make the convention old and useless. International labour standard and other deeds I.L.O. should be regularly updated. The ILO agencies should work to get revision audit of the implementation of its instruments. In each member country there should be committee to see and judge the implementation, of I.L.O. standards.

**Regional Approach:** - ILO should work on regional approach. Policies should farm and reviewed on the regional basis. Organization standard setting methods should be flexible Many of the existing convention arc not of much use to the developing countries and that in the reason why India has ratified only 35 conventions.

**Flexibility needed:** - It is said that the number of convention ratified by India is small. Non ratification has not been due to the unwillingness of the Government but rules of ILO are responsible for it. The rule requires that convention must be ratifying without any change, it should be accepted as it is. This rigid rule should

be changed that convention may be adopted as per the requirements and means of the member country.

To conclude we can say that, the ILO must search for more examine problems and their solution. It must define more accurately and must develop more effective procedure for anointing such benefits.

### **Role of ILO:**

The International Labour Organization (ILO) deals with the whole range of labour issues. It attaches particular importance to basic economic and social as well as civil and political rights, as an essential element to improve the conditions of workers. It endeavors to implement these principles by adopting standards on subjects of concern. These ILO standards take the form of international labour conventions and recommendations.

ILO's Conventions are international treaties, subject to ratification by ILO Member States, whereas recommendations are non-binding. Until January 2010, 188 conventions have been adopted by the ILO. The application of international labour standards is subject to constant supervision by the ILO. Due to its long-standing experience but also because of its unique tripartite structure (bodies are composed according to the 2+1+1 formula: two government representatives and one representative each of employers' and of workers' associations), the procedures of adopting and implementing ILO conventions form part of a most effective mechanism for the protection of human rights within the UN system.

According to the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, all ILO Member States have an obligation to respect, to promote and to realize, in good faith and in accordance with the Constitution, four categories of principles and rights at work, even if they have not ratified the ILO Conventions to which they refer:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and

- the elimination of discrimination in respect of employment and occupation.

These fundamental principles and rights at work are universal and applicable to all human beings in all States, regardless of the level of economic development. They are the essence of the eight „core“ ILO Conventions, which express in more detail and in a formal legal structure the scope and content of these fundamental principles and rights:

- Convention No.87: Freedom of Association and Protection of the Right to Organize, 1948;
- Convention No.98: Right to Organize and Collective Bargaining, 1949;
- Convention No.29: Forced Labour, 1930;
- Convention No.105: Abolition of Forced Labour, 1957;
- Convention No.138: Minimum Age Convention, 1973;
- Convention No.182: Worst Forms of Child Labour, 1999;
- Convention No.111: Discrimination (Employment and Occupation), 1958;
- Convention No.100: Equal Remuneration, 1951.

All ILO Member States which have not yet ratified those eight core conventions, must report annually about the progress being made.

The regular supervision of ILO conventions encompasses measures such as required reporting activities of each Member State of the ILO at regular intervals. These reports are first examined in closed meetings by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) composed of 20 independent legal experts which meet every November. The Committee of Experts comments are made in the form either of observations, which are published in the Committee's report on the Application of Conventions and Recommendations, or of requests dealing with more technical questions, addressed directly to the Governments, which remain unpublished. The Committee's report is then considered at the annual session of the International Labour Conference by a tripartite Conference Committee on the Application of Conventions and Recommendations ("Committee on Application of Standards").

In addition, Member States have the obligation to submit reports on conventions they have not yet ratified showing the position of the law and practice in regards to the matters dealt with in the conventions and indicating the difficulties having prevented or delayed ratification (each year a limited number of conventions are selected for this procedure). The information supplied provides the basis for a separate report of the Committee of Experts - a general survey of the subject in question. In parallel with these regular supervisory mechanisms, there is a complaint procedure for governments and ILO delegates to examine allegations that the provisions of a ratified convention are not effectively being observed in one country.<sup>31</sup>

---

## 13.9 Summary

---

In this unit we have discussed the main achievements of I.L.O., problems and prospects. First of all we have discussed the ILO's achievements in general. we have discussed about the international technical co-operation, world Employment Program as given by the ILO. We have also discussed ILO and its International peace concern about Workmen workers, Social Justice is the main concern of ILO. How ILO is heady towards its main goal it has also been discussed thoroughly. The unit specifically deals with the impact of ILO on India. Influence of the ILO on Indian Labour, Labour Movement, Labour Legislation have also been discussed, The unit also shows that how ILO affected basic human rights, Employment of women, Employment of children, and Social security specially in India. We have also discussed and shown the ratified conventions our country in the above fields. Further we have discussed the problems which ILO is facing while doing its good deed. In the last we have discussed few suggestions and future prospects of ILO.

### **Achievements of ILO:**

True and lasting peace depends upon the social and economic well being of the world's people-decent living standards, satisfactory condition of work and pay, adequate employment opportunities are the main concern of the ILO which has worked hard since its origin to promote social justice for working people

---

<sup>31</sup> [http://www.claiminghumanrights.org/\\_ilo.html](http://www.claiminghumanrights.org/_ilo.html)



everywhere. Yet the ILO has done much but much more is to be done. The ILO has engaged itself in such activities as:-

1. The framing of International policies and programs to help, improve working & living conditions enhance employment opportunities and promote basic human right among working class.
2. The formulation of Internal labour standards to serve as guide-lines for national authorities in putting these policies into action.
3. Extensive programs of international technical co-operation to help government in making these policies effective in practice
4. Training, education, research and publishing activities to help advance all these efforts.

---

### **13.10 Self-assessment test.**

---

1. Write a note on the achievements of the ILO.
2. Discuss how ILO is heading towards the attainment of Social Justice.
3. Write a note on ILO and India.
4. Write a note on the achievements Problems and prospects of ILO.

---

### **13.11 Key words.**

---

**Tripartitism:** - The Participation of the employer, the workers and the Government.

**Declaration of Philadelphia:** - The aims and objectives of the ILO were refined the International labour Conference in the declaration of Philadelphia in may 194

---

### **13.12 Further Readings**

---

- S.N. Dyani, International Labour Organization and India -In pursuit of social justice.
- R.C. Saxena. Labour problems and social welfare. Indian Labour Journal.

---

# UNIT-14

## Tripartism -Part I

---

### **Objectives :**

After going through this study, you will be able to:

- Appreciate the origin, concept and forms-of Tripartism in industrial relations;
- Understand the areas of operation and the conditions for the successful functioning of the Tripartism;
- Examine the role played by the Tripartite machinery in India and necessary suggestions to make the effective functioning of the non-statutory bodies for maintaining good industrial relations

---

### **Structure :**

---

- 14.1 Introduction
- 14.2 Tripartism and Its Forms
- 14.3 Areas of operation of Tripartism
- 14.4 Preconditions of Successful Tripartism
- 14.5 Tripartite Machinery in India
  - (a) Origin and Objects
  - (b) Indian Labour Conference and Standing Labour Committee
  - (c) Industrial Committees
  - (d) Wage Boards
  - (e) State Labour Advisory Boards
- 14.6 Other Tripartite Bodies
- 14.7 Concluding Remarks
- 14.8 Self-Assessment Test
- 14.9 Suggested Readings

---

### **14.1 INTRODUCTION**

---

Besides what the statute, i.e., the Industrial Disputes Act, 1947, provides, the parties to the industrial disputes can adopt certain norms for the prevention and settlement of various labour issues. This is the basic reason that industrial relations in our country have been shaped largely by principles and policies evolved by and through tripartite consultative machinery (non-statutory bodies) at the industry and national levels. The process of consultation was itself the outcome of a realization of the futility of directing the relations between employers and workers without their participation. The Tripartite machinery or the non-statutory bodies exist at different levels, such as, the Indian Labour conference and the standing Labour committee at the national levels. Wage Boards and Industrial committees at the industry level and state Labour Advisory Boards at the State level. The Primary purpose of work these bodies are to out the guiding principles of the relations between employers and employees in order to maintain peace and harmony in the industry. The role of these tripartite bodies has been outlined in the Third Five-year plan as follows:

"The labour policy in India has been evolving in response to the specific needs of the situation in relation to industry and the working class and has to suit the requirements of a planned economy. A body of principles and practices has grown up as a product of joint consultation in which representatives of Government, the working class and employers have been participating at various levels. The legislative and other measures adopted by Government in this field represent the consensus or opinion of the parties vitally concerned and thus acquire the strength and character of a national policy, operating, on a voluntary basis. Joint committees have been set up to assist in the formulation of policies as well as their formulation." (See Third Five-year plan, p. 250)

The non-statutory bodies do not deal with any specific dispute between employers and employees in a particular industry and, therefore, they cannot be said to constitute dispute-settling machinery. Many important issues likely to cause tensions in industrial relations or result in specific-industrial disputes are brought for discussions before them. Such discussions and conclusions if any, not only help the public authorities in the formulation of their labour policy, but also clarify and modify the thinking and attitude of the employers, the workers and their

organizations. Thus, the contribution of these bodies to the maintenance of industrial peace, though imperceptible and general, is no less significant. That is why a discussion of the working of these bodies and the operation of tripartite system is thought relevant in this study.

---

## **14.2 Tripartism and its Forms**

---

- (a) **Tripartism-** Inspired by the traditions of the International Labour organization (I.L.O.). which emphasized consultation and co-operation between employers and employees with the good office of the Government; the Tripartism has now come to be accepted as the best system with the principle to meet the challenges posed by the growing complexities of labour, problem in India. It is based on voluntary co-operation in which representatives of employers and the Government participate at different levels to sort out the various labour issues. Tripartite consultation and co-operation are, therefore, considered as the core of our industrial relations system. In this regard, the Third Five-Year Plan has made the following significant observation. "our Labour Policy and legislation represent the consensus of opinion of parties directly concerned and acquire the strength and character of national policy operated on a voluntary basis". Accordingly, a number of tripartite bodies have been set up as forums for discussions and consultations.

The need for Tripartism on Labour matters on the pattern set by the I.L.O. was recommended by the Royal Commission on Labour in its report submitted in 1931. It envisaged a statutory organization which should be large enough to ensure the adequate representation of the various interests involved but at the same time the organization should not be too large to prevent member's front making individual contributions to the discussions. This recommendation did not come up for implementation during the first ten years after it was made. It was, however, for the first time in 1936 that the first Conference of American States members of the I.L.O. thought of direct representation of the workers and employees organizations in various industries in matters of conditions of employment, economic and financial administration. Then again, in 1946 and 1952, Tripartism

was favored in matters of conciliation and arbitration and collaboration was sought of public authorities with the workers and employers bodies. In subsequent years emphasis was laid on the potential role of participation for development planning.

The special role of employers and workers in the system of production, the link of common interest that inevitably exists both between the two sides of industry and between them and governments and the interest of the later in promoting industrial peace are the three factors that together provide a firm and natural basis for the creation of an extensive system of tripartite co-operation. Tripartite co-operation is generally resorted to when difficulties are encountered in the application of some aspects of social policy or when a crisis crops up. It is a basic form of consultative and social participation machinery that can be adapted to the specific conditions of a country and is equally applicable to state enterprises, co-operatives and enterprises with self-management as well as to all categories of workers. The concept of Tripartism can, thus, be applied to different types of subjects and with widely varying powers.

### **(B) Forms of Tripartite Co-operation**

- (1) An informal consultative machinery is generally set up by the government in a period of crisis or when a change in social policy is contemplated. This is an institutionalized form of participation.
- (2) There are permanent bodies to associate the forces of production on a broad continuing basis in administration and development. There is a deliberate search for agreement, regular formation and sustained consultation between the parties. The government between the two basic forces exercises its moderating and unifying functions. All the three groups deal with problems as they arise out of their interaction. When informal contracts between a government and the workers and employees organizations are frequent and have gradually promoted a climate of mutual recognition, formal system of co-operation can be introduced without great difficulty and with definite prospects of effectiveness and durability.

---

### **14.3 Areas of Operation of Tripartism :**

---

1. In matters of wage fixation and revision, those responsible for making a decision should know and weigh the views of those in industry. There is more likelihood of minimum being acceptable if it is the result of a democratic process of consultation and discussion where the parties know that their views have been solicited.
2. Fixing conditions of employment and allocation of profit sharing and to control productivity, prices and incomes.
3. Settlement of labour disputes through conciliation and arbitration. Tripartism co-operation is mainly used to deal with problems before they develop into formal disputes. National Commission for industrial Peace in the United States, the Recognition and Certification Board in Trinidad and Joint Industrial Council in Jamaica are such examples.
4. Participation is also needed in the field of social insurance covering its management, supervision and control. A tripartite system enables the social groups sharing in the reaction of the basic assets of the insurance system to see that a service in which all have a direct interest is run properly.
5. In the field of human resources, planning and development tripartite bodies are created like the Manpower Boards, Employment Commissions, Human Resources Councils to co-ordinate and advise the executive and research bodies in the public administration'
6. Its Many countries tripartite commissions have been appointed for codifying labour laws or consultations have been organized with the two sides of industry in connection with the drafting or revision of labour legislations.

7. The participation of employees' and workers' organizations in planning bodies is more recent and acceptable. Since planning is indicative as regards the private sector, it is necessary to be able to rely on this sectors' co-operation for full implementation of the plan. Moreover private sector Co-operation helps to give greater emphasis to innovation, commitment and drive in planning and this is conducive to proper orientation and greater impetus in economic growth. Inclusion of the organizations in the planning system avoids the risk of over centralized planning.

---

## **14.4 Preconditions of Successful Tripartism**

---

Though Tripartism is said to be good but the principle involved is all too frequently misapplied, or difficulty is encountered in putting it into practice. No proper tripartite co-operation can exist unless the certain requirements and conditions mentioned below are fulfilled.

- a) The trade unionist, on the one hand, and employers on the other should be reasonably well organized.
- b) They should be able to operate in full freedom, with due recognition for the responsibilities they have to shoulder.
- c) Their proper representation presupposes capable leadership in guiding sufficient numbers.
- d) Freedom of association is vitally important if the occupational organizations are to be able to negotiate validly with government.
- e) Tripartite co-operation presupposes continuous two-way communication between the Government and the workers, between it and employers, and between the latter and the workers
- f) The participants must be well qualified and trained because the efficiency of co-operation depends on what grasp the individuals concerned have of problems affecting their organizations.
- g) It should be ensured that the people holding seats on tripartite co-operation bodies really represent their organizations.

The labour activities particularly in regard to minimum wages social security, the solution of labour disputes, vocational and other forms of training, occupational

safety and health, employment planning and management development, as well as regulations concerning the work of women and young persons, are all subjects which are especially suitable for tripartite co-operation. It is hardly necessary to add that particular importance should be attached to the creation of national labour councils of examining the proposed laws and statutory instruments on labour matters prepared by public authorities and giving an opinion either prepared by public authorities and of giving an opinion either at the request of the government or on their own initiative.

Employers' organizations can discharge their roles and participate effectively in Tripartism only if certain pre-conditions are fulfilled. First, employers need to unite and make their organization representative of employer interests. It is less effective where individual employers seek to influence policy and legislation. If the organization is not adequately representative, its views will tend to be ignored since they would not be considered as reflecting the views and concerns of employers as a whole. Second, the organization should be highly 'professional' - it should have the means (staff, knowledge, skills) to prepare, support and debate positions. In order to be 'professional', a high level of staff skills and capacities is necessary. These requirements are also relevant in making the organization representative through increased membership. In a democracy, employers' organizations, unlike workers' organizations, will not be listened to or taken cognizance of especially by politicians, on the basis of votes which the organization could influence. Therefore employers' organizations in such countries have to depend on their representativeness and professionalism, though no doubt their political connections (like those of unions) also count. Third, labour and social policy, like economic policy, has to be formulated on relevant facts and data. Consequently, employers' organizations must possess the ability to support their positions with relevant data and information which is possible where such organizations have the capacity for research and information collection, and for analysis of that information. This is important not only to influence the other two constituents in a particular policy direction, but also to win public support for their position on any given issue. Fourth, sound bipartite relations with representatives of employees enhance the possibility of achieving a consensus on national development goals, the means to achieve them, and on labour relations issues which are addressed through tripartite



processes. Fifth, governments should be willing to consult with employers and take into account their concerns.<sup>32</sup>

---

## 14.5 Tripartite Machinery in India

---

(a) **Origin and Objects-** The idea of instituting tripartite machinery (non-statutory body) in India is not new. The Royal Commission on Labour (popularly known as Whitley Commission) recommended "the constitution by statute of organization by which representatives of employers, of labour and of Government would meet regularly in conference". However, nothing was done until the Second World War. During the second world war, the urgent necessity of maximizing industrial production brought about a sense of urgency in evolving measures conducive to industrial peace. The first step in this direction was the convening of an All-India Conference in January, 1940. Such a Conference was again held in 1941 and 1942 but till then only Government representatives were invited to the Conference. The Fourth Labour Conference was held in August, 1942 when representatives of employers and workers were also invited to take part in the conference. That gave birth to the 'tripartite machinery created due to the exigencies of war with certain objects. The prime aim of this machinery was to bring the parties to industrial disputes "together for mutual settlement of differences in a spirit of co-operation and good will". The other objectives set at the time of inception of the Tripartite Machinery in 1942 were: (1) promotion of uniformity in labour legislation (2) laying down of a procedure for the settlement of industrial disputes and (3) discussion of all matters of all-India importance as between employers and employees.

The system of Tripartism (joint consultation) in India could not develop adequately before Independence mainly because of the illiteracy, migratory character and lack of proper organization of the workers. After 1947 and with the initiation of Five Year Plans greater emphasis was laid on higher production and workers interests began to attract greater attention. The Industrial Disputes Act, 1947 provided for the establishment of works committees at the level. The First

---

<sup>32</sup> <http://www.ilo.org/public/english/dialogue/actemp/downloads/publications/srstripa.pdf>

Plan emphasized the need for joint consultation (Tripartite Machinery) in industry but no significant effort was undertaken in this Correction. The origin of the tripartite or consultative machinery at various levels may be said to have commenced from the initiation of the Second and Third Plans, particularly 1957.

The tripartite or consultative machinery in India now exists at every level, i.e. undertaking, industry, state and national. At the undertaking level, there are the joint committees, joint management councils. At the industry level, there are wage boards and industrial committees to deal with specific problems of Labour that arise from time to time in particular industries. The Labour Advisory Boards function at the State level and at the National level there are the Indian Labour conference and tire standing Labour Committee etc.

**(b) Indian Labour conference and standing Labour committee-**The Indian Labour conference (I.L.C.) and the Standing Labour committee (S.L.C.), patterned after the I.L.O., are tripartite in character consisting of representatives of the Centre and State Governments, employers and workers. Both of them were set up in 1942 with the initial membership of 44 of the Indian Labour Conference and 20 of the Standing Labour Committee. The composition of the I.L.C. and S.L.C. was originally based on the model of the International Labour Conference and the Governing Body of the International Labour organization, respectively, i.e., both bodies were expected to ensure equal representation of the employers and workers, and the ,representatives of the government being equal to those bf the employers and workers taken together As a result of the reorganization of states in 1956 the demand for representation by employing ministries and public-sector corporation and the emergence of new national centers of trade unions, the composition of both the bodies has undergone a series of changes in the course of time and there is no precise fixity in their strength and composition today.

A delegate to the Indian Labour Conference is authorized to bring two advisors (one official and the other non-official) with him, but the advisers are not allowed to participate in the discussions, unless authorized by the member concerned and permitted by the Chairman. Decisions in these national bodies are arrived at on the basis of a consensus arising out of the discussions rather than on

formal voting, although a provision exists in the rules of both the Indian Labour Conference and the Standing Labour Committee for taking decisions by a two-third majority.

The Indian Labour Conference was instituted to advise the Government of India on matters brought to it by the Government. In the early stages, the Standing Labour Committee made deliberations on its Own or on matters sent to it for consideration by the Indian Labour Conference, which in turn made the final recommendations. In the course of time, both became deliberative bodies. the difference remained only in the degree of representation. The scope of the deliberation of both the bodies is confined mainly to Labour matters in the country. The agenda for the discussions is prepared by the Ministry of Labour, Govt. of India, after taking into account the suggestions made by the member organizations. The I.L.C. meets annually, but the S.L.C. meets as and when necessary.

The Indian Labour conference and the standing Labour committee have facilitated enactment of central legislations on various subjects to be made applicable to all the states of Indian union in order to promote uniformity of labour legislation which was an important objective to be served by these tripartite bodies. The tripartite deliberations have helped to reach a consensus on statutory minimum wage fixation (1944), introduction a health insurance scheme (1945) and provident fund scheme (1950) leading to the passing of the three important central labour laws, viz. the Minimum Wages Act, 1948, the Employees State Insurance Act, 1948, and the Employees, Provident Fund (and Miscellaneous Provisions) Act, 1952

The I.L.C. and S.L.C. have also Contributed much to the formulation of the procedure for the settlement of industrial disputes. The procedure of setting industrial disputes as envisaged in the Industrial Disputes Act, 1947 is a direct outcome of the deliberation of these bodies. The Code of Discipline in Industry, 1958 and the Code of Conduct evolved at the 16th session of the I.L.C. have also played an important role in influencing the pattern of Industrial relations. Besides, there is a wide range of subjects discussed at these forums and various social, economic and administrative matters concerning labour policy are brought before the tripartite. Apart from these achievements, their contribution to some labour

matters has suffered because certain far-reaching decisions were taken by them apparently without adequate internal consultation within the groups forming the tripartite. Tire popular criticism against third party intervention came up for pointed discussion more than once in the tripartite deliberation, but the consensus continued to be in favor of adjudication. In recent years, increasing absence of unanimity in tripartite conclusions has been a cause for great concern.

(c) **Industrial Committees** -The decision to constitute Industrial Committees to discuss "various specific problems special to industries covered by them and submit their report to the conference, which will co-ordinate their activities,' was the outcome of tire tripartite deliberations the ILC in 1944. Although no rigid constitution was laid down in respect of these committees, the policy of their remaining tripartite in character and equal representation of employers and workers was accepted. Within the framework of this broad policy, the actual composition is decided afresh each time a meeting is convened. The first such committee was set up in 1947 for plantations. At present industrial committees are in operation-for plantations, coal mining, cotton textiles, cement, tanneries and leather goods manufacturers, mines other than coal, jute, building and construction, chemical industries, metal and steel, road transport, engineering industries, metal trades, electricity, gas and power, and banking. Meetings of Industrial committees are, however, not held regularly; these are convened as and when required. The Industrial committees, particularly those for plantations, coal mining and jute tektites cement and iron and steel have played a notable role by way of proposing agreed solutions to many pertinent issues concerning the respective industries. All the Industrial Committees are non-statutory bodies.

(d) **Wage Boards** -Another major development in the field of industrial relations in recent years is the constitution of Wage Boards in some industries. Wage Boards are not statutory bodies. The constitution of these Boards is the extension of the tripartite principle to which the government, employers and workers are committed and is in keeping with the policy laid down by the Planning commission. commenting on the Wage Policy in the second Five-Year Plan, the Commission had observed "Existing machinery for the settlement of, disputes relating to wage and allied matters, namely, the Industrial Tribunals, has not given

full satisfaction to the parties concerned. A more acceptable machinery for settling wage disputes will be one which gives the parties themselves a more responsible role in reaching decision.

In view of the growing importance of the wage board system in preference to tribunals. The Third Five-Year Plan also recommended giving it a further encouragement. The first non-statutory Wage-Board was set up for the cotton textile industry in 1957. By now, Wage Boards have come to be set up for a number of industries including cotton, textile, sugar, cement, jute, tea plantation, coffee plantation, rubber plantation, iron and steel, coal mining, iron ore mining, limestone and dolomite mining, engineering ports and docks, on-journalist employees, leather and leather goods, electricity undertakings and road transport.

A Wage Board consists of an impartial chairman, two other independent members, and two or three representatives of employers and workers each. The Boards are purely recommendatory bodies and are dissolved after they have submitted their recommendations. The most important function performed by a Wage Board is to determine & categories of employees who should be brought within the ambit of the proposed wage fixation, to work out a wage structure based on the principles of fair wages as set forth in the Report of the Committees on Fair Wage, and bearing in mind the desirability of extending the system of Payment by results.

In some cases, Wage Boards have also been asked to deal with such questions as gratuity, hours of work and bonus. Numerous wage disputes, which were hitherto resolved in a scattered way, have come to be resolved uniformly at the industry level as to suit the operation of Wage Boards. A study of working of Wage Boards indicates that these Boards work mainly as forums of collective bargaining at the industry level. It is also observed that the working of the Wage Boards have not always been expeditious, implementation of their awards have been found inadequate, the pressure exercised by price rise during the last few years tended to create a sense of impatience and this impatience was compounded by the competitions among the rival unions to capture the minds of the workers by raising wage disputes.

(e) **State Labour Advisory Boards-** The state Labour Advisory Boards on the pattern of the Indian Labour Conference have been set up in almost all the States in the country, In these Boards also, parity in representation of employers and workers has been maintained. "These Boards provide a forum for the representatives of Government, employers and employees to discuss problems so as to maintain and promote harmonious industrial relations and to increase production. These Boards advise the state Governments on all matters relating to labour". The experience has shown that these Boards have contributed much in resolving many labour issues, particularly in the fields of industrial relations and labour welfare.

#### **Indian Tripartite Committees:**

The decision to constitute Industrial Tripartite Committees (ITCs) was the outcome of tripartite deliberation at the Indian Labour Conference in 1944 over demarcation of general subjects discussed at the ILC and their relevance to different industries. Following the procedure adopted by the ILO, the Government of India set up Industrial Tripartite Committees for different industries. The functions of the Industrial Tripartite Committees in general are to study and discuss problems in the labour field specific to the industry concerned with a view to bring about better understanding between the parties and to advising the Government in solving these problems and reach a workable formula agreeable to the parties concerned. The meetings of the Industrial Tripartite Committees are convened as and when necessary. At present the following ITCs have been constituted:

1. Industrial Tripartite Committee on Plantation Industry 
2. Industrial Tripartite Committee on Road Transport Industry 
3. Industrial Tripartite Committee on Cotton Textile Industry 
4. Industrial Tripartite Committee on Jute Industry 
5. Industrial Tripartite Committee on Electricity Generation & Distribution Industry 
6. Industrial Tripartite Committee on Engineering Industry 

## 7. Industrial Tripartite Committee for sales promotion employ<sup>33</sup>

---

### 14.6 Other tripartite Bodies

---

In addition to the ILC(Indian Labour Conference), SLC(Standing Labour Committees), Wage Boards, Industrial Committees and Advisory Boards, other-tripartite bodies have also been functioning I at the Central and State level to deal with specific subjects like the National Council for training which is concerned with training and the central Committee on Employment with the employment matters. There is a committee on Conventions to review periodically the position with regard to the ratification of ILO Conventions and the application of International Labour Standards. This Committee is a three-men tripartite committee set up in 1954 to review various ILO conventions and to explore the possibility of ratifying them. There is a steering committee on Wages appointed in 1956 to help in matters of framing a wage policy. Then, there is a Central Board of Workers' Education to encourage the growth of strong and well informed Trade Union Movement conducted by workers themselves on responsible and constructive lines. This consists of representatives of employees and workers, Central and State Governments.

There is a Central Advisory committee on Employment to advise the Ministry of Labour on problems relating to employment opportunities and the working of the National Employment Services. Then, there is a National Productivity council for initiating a productivity movement in the country consisting of representatives of the Government, employers' associations, labour organizations and certain independent experts. This was established recognizing the role that a productivity drive can lead to an increasing national wealth per capita income and production per unit of the capital invested. However, wide variations exist in the nature or type of these bodies.

---

<sup>33</sup> [labour.gov.in/content/division/committees-ir.php](http://labour.gov.in/content/division/committees-ir.php)

Amongst the important tripartite committees functioning in the States are Implementation and Evaluation Committees, Committees for particular industries (on the pattern of Industrial Committees at the Central level) and Labour Welfare Boards or committees. Some of these are permanent, while others are constituted as and when necessary. The Code of Discipline, the workers education scheme workers participation in management policy etc. have all been the result of tripartite deliberations.

All important legislative proposals and the suggestions to amend the existing law on labour matters are discussed in the above tripartite bodies. The above said voluntary arrangements evolved largely by way of filling the gaps in the law have worked well only during the period of economic dependency but as the economy itself developed strains and passed through a phase of slow down the voluntary measures failed increasingly and resulted in industrial unrest. Efforts are, therefore, being made that most of these voluntary measures be statutorily recognized and strengthened if some fruitful result is to be achieved.

---

## **14.7. Concluding Remarks**

---

It can be concluded that the tripartite consultation has its value for setting uniform 'norms' to guide industrial relations. The ILC, SLC and Industrial Committee must remain advisory in character. The conclusions or recommendations reached by them should be treated as deserving every consideration. Further; to make the process of reaching consensus more consultative, the Government should restrict its influence on tripartite deliberations. The National Commission on Labour (1959) has recommended that tripartite discussions should be taken in two stages on the lines of the procedure followed by the ILO. There should be a preliminary but detailed discussion on the subject in the first stage. The conclusions recorded at this preliminary discussion should be widely publicized and comments on them encouraged. On the basis of these comments the tripartite should frame its recommendations in the second round of discussions. Industrial Committees should meet more often to examine specific issues connected with the concerned industry. Such general decisions, as are taken



in the ILC or SLC, should be tested for their applicability in industrial committees and difficulties in implementation should take back to general forum.

Inspire, of the important role played by the tripartite bodies in the formulation and administration of labour policies, the implementation of their decisions has remained a vexing problem. It has not been an easy task to secure the implementation of their decisions. Being non-statutory, their decisions are not legally binding on the parties. They exercise only a moral influence and depend for their implementation on the sincerity and sense of responsibility of the parties concerned. Complaints regarding the violation of tripartite agreements continue to pile up in the Implementation and Evaluation Divisions Of the Central and state Governments. Even the Government does not consider itself bound by these decisions. The Government's indifference weakens the force of tripartite decisions and agreements and therefore, it is indeed very difficult to persuade employers and employees to abide by them, thus, the tripartite machinery is not free from shortcomings. The Sixth Five-Year Plan has emphasized the need to strengthen the tripartite consultative machinery so that it may be possible to evolve a broad frame work of labour policies and programs. This, according to the Plan, should be done in consultation with Trade Unions management and government. 'In order to make the process more effective, it suggested that "the communications and information sharing system should be enlarged and decisions arrived at after proper consultation should be implemented with the utmost expedition". It is hoped that proper and effective measures would go a long way to minimize friction and maintain industrial Peace.

---

## **14.8 Self-Assessment Test**

---

On the basis of above discussion of the various aspects in this study, you will be able to answer the following questions:

1. Explain the concept, evolution and forms of Tripartism in India.

2. Indicate the areas of operation of Tripartism. Explain briefly there requirements/ conditions necessary for the successful operation of this system.
3. State briefly the origin and objects of the Tripartite Machinery in India.
4. Describe the function and the role of the Indian Labour Conference and Standing Labour Committee. What suggestions have been made by the National Commission on Labour to strengthen these bodies for their role to be more effective in maintaining and industrial relations?
5. Write a detailed note of the following:
  - 1) Industrial Committees;
  - 2) Wage Boards;
  - 3) State Labour Advisory Boards and
  - 4) Other Tripartite Bodies at Central and State level.

---

## 14.9 Suggested Readings

---

### A. Book

- |    |                       |          |  |
|----|-----------------------|----------|--|
| 1. | Dr.Bhagoliwal<br>T.N. | 19821982 | Economics of Labour and Industrial Relations (Sahitya Bhawan,. Agra)                     |
| 2. | Dr. Srivastava S.C.   | 19831983 | Industrial Relations Machinery (Structure, working and the law), Deep & Deep, New Delhi. |
| 3. | Dr. Agrawal S.L.      | 19801980 | Labour Relations Law in India, (The Macmillan Company of India Ltd. New Delhi).          |
| 4. | Dr. Kapoor T.N.       | 19681968 | Personal Management and Industrial   |

- Relations in India (M/s N.M. Tripathi Pvt. Ltd., Bombay)
5. Sinha P.R.N. 19801980 Wage Determination (Oxford & I B H Publishing Co., New Delhi)
  6. Sinha & Sinha 19771977 Industrial Relations and Labour Legislation (Oxford & I B H Publishing Co., New Delhi)

### **B. Reports**

1. Govt. of India, Report of National Commission on Labour (1969), New Delhi.
2. Govt. of India, Five-Year Plans, New Delhi.
3. Govt. of India, Annual Report of the Ministry of Labour, New Delhi.
4. Govt. of India, Consultative Machinery in Labour Field, New Delhi.
5. Govt. of India, Tripartite Conclusions (1962-67), New Delhi.

---

# UNIT-15

## Tripartism - Part II

---

### Objectives :

After going through this study, you should be able to:

- Appreciate the concept of voluntary arbitration, its importance and Labour Policy under the Five-Year Plans.
- Examine the processes involved under the scheme of Industrial Disputes Act and the relevant judicial decisions.
- Discuss the origin, nature and the scope of the Code of Discipline in Industry.
- Evolve the procedure for reporting breach of the Code to Discipline by the employers and worker.

---

### Structure :

---

- 15:1 Introduction
- 15.2 Voluntary Arbitration and Labour Policy
- 15.3 Voluntary Arbitration and National Commission on Labour
- 15.4 Voluntary Arbitration and National Arbitration Promotion Board.
- 15.5 Scope of Section 10-A of the Industrial Disputes Act, 1947
- 15.6 Duties, Functions and Powers of Arbitration
- 15.7 Code of Discipline in Industry
  - (i) Origin
  - (ii) Applicability
  - (iii) Nature
  - (iv) Objectives
  - (v) Scope
- 15.8 Concluding Remarks
- 15.9 Self-Assessment Test
- 15.10 Suggested Readings

---

## 15.1 INTRODUCTION

---

When certain demands are made by the workers but the employers resist them, an industrial dispute arises. Different methods have been evolved over the course of time for settling such disputes and different countries have used them in varying methods.

The methods or modes of settling industrial disputes are not very much different from the methods of settling any other disputes. Basically, the parties to a dispute can settle it by mutual discussions and negotiations (bargaining). If at any time in the discussion a hitch occurs, the parties can decide to enlist the support of a third person to help them in their negotiations (bargaining with conciliation). If mutual negotiations still fail, the parties can either resort to coercive methods, if the law so permits, or can decide to refer the matter to a third party in whom both have confidence, for arbitration. Voluntary arbitration is important because it is "(i) expected to take into consideration the realities of the situation, (ii) expected to meet the aspiration of the parties; (iii) based on voluntarism, (iv) without compromising the fundamental position of the parties, and finally (v) it promote mutual trust."

Despite Governmental Policy to encourage collective bargaining and voluntary arbitration, India adopted only compulsory adjudication system after Independence and did not give legal sanctity to voluntary arbitration till 1956. The criticism of conciliation and adjudication led the government to introduce Section 10-A relating to voluntary arbitration by the Industrial Dispute (Amendment) Act, 1956. This Amendment tried to give legal force to voluntary arbitration but still it stands on a lower footing than the settlement arrived at in conciliation and adjudication. The 1956-Amendment also tried to place arbitrator on the same footing as that of adjudicator and the Industrial Disputes (Amendment) Act, 1964 also did try to bridge the gap but still the disparity lies in several respects. The judiciary has also made an attempt to give momentum by meeting some of the objections of the parties to arbitration by holding that "Once the parties enter into a

valid arbitration agreement and put their signature on it non-compliance of several processes and formalities involved in the arbitration award would not make the award invalid and unenforceable." (See R.K. Steels (Pvt.) Ltd. v. Their Workmen, 1977 382)

Thus, apart from the legislative prescriptions and judicial attempts, non-statutory measures like Code of Discipline adopted in the Sixteenth Labour Conference in May, 1958 and Industrial Truce Resolution adopted on November 3, 1962 have been instrumental in imposing moral obligation on the parties to resort to voluntary arbitration on failure of negotiation or conciliation. Further, to promote voluntary arbitration, National Arbitration Promotion Board has been set up by the Central Government and Arbitration Promotion Board by almost every State Governments and Union Territories. In spite of these steps no significant progress has been made.

---

## **15.2 Voluntary Arbitration and Labour Policy**

---

Voluntary arbitration is a method through which the parties to the labour disputes can settle their disputes without State intervention. Voluntary arbitration is better than compulsory adjudication in the long run. It is on account of this reason that a resort to voluntary arbitration is common occurrence in everyday.

The parties, finding that mutual negotiations will not succeed and realizing the futility and wastefulness of strikes and lock-outs, may decide to submit the dispute to a neutral person or a group of persons for arbitration. The neutral person hears the parties and gives his award. At the time of submitting a dispute to arbitration, the parties may agree in advance to abide by the award of the arbitrator and thus industrial peace is maintained and the dispute is resolved. Sometimes, however, the parties may agree to submit the dispute to arbitration but at the same time reserve their right to accept or reject the award when it comes. Under such a condition, voluntary arbitration loses its binding force. However, even this limited form of voluntary arbitration is not without its utility.

The constitution of the Textile Labour Association, Ahmadabad, provides for voluntary arbitration. At Dalmianagar, the Rohtas Industries Workers' Union and the Management of the Rohtas Industries Ltd. have on a number of occasions, submitted their disputes to voluntary arbitration. Many disputes are, thus, settled today through voluntary arbitration. The Industrial Disputes Act and the Bombay Industrial Relations Act, 1946 have recognized voluntary arbitration as a method along with others for the settlement of industrial disputes. The Five-Year Plans have laid down the broad principles governing industrial relations including voluntary labour arbitration.

The First Five-Year Plan (1951-52 to 1955-56) approached the labour policy from two angles, viz. (i) welfare of the working class, and (ii) the country's economic stability and progress. This plan laid emphasis on voluntary arbitration but no step, legislative or otherwise, was taken by the Government in this direction. Greater emphasis was placed on recourse to voluntary arbitration as a mode of settling industrial disputes on failure of negotiation in the Second Five-Year Plan (1956-57 to 1960-61). Legislation on voluntary arbitration was suggested in the Plan. Accordingly, the Industrial Disputes Act was amended through the Industrial (Amendment and Miscellaneous Provisions) Act, 1956 and Section 10-A was inserted providing for voluntary arbitration.

The Third Five-Year Plan (1961-62 to 1965-66) not only emphasized and strengthened the voluntary arbitration as agreed to in the Second Plan by adopting the Industrial Truce Resolution, 1962 but saw the voluntary arbitration as mode of settlement of industrial disputes at its peak. The Fourth Five-Year Plan (1969-74) reiterated the labour policy laid down in the Third Five-Year Plan. Emphasizing the significance of voluntary arbitrations in the settlement of industrial disputes, the draft outline of the Plan provided.

"While the provisions of .....(the Industrial Disputes Act).... are available as a last resort, it is recognized that greater emphasis should be placed on collective bargaining and on strengthening the Trade Union Movement for securing better labour-management relations, supported by recourse in the large measure to voluntary arbitration.' The other Five-Year Plans also laid greater stress on voluntary arbitration. An important development in the field of labour policy and

administration in general and voluntary arbitration in particular was the recommendations of the National Commission on Labour in 1969 and setting up of the National Arbitration Promotion Board.

---

### **15.3 Voluntary Arbitration and N.C.L. (National Commission on Labour)**

---

The National Commission on Labour (N.C.L.) was set up in December, 1966 by the Government of India to undertake a study and report, inter alia, on the industrial relations machinery including arbitration. The Commission made comprehensive investigations in almost all the problems relating to labour. It made a series of recommendations in 1969 for reshaping labour policy for the future.

Some of the factors which have hampered the adoption of voluntary arbitration as a method of settling industrial disputes in India were highlighted in the wake of evidence before the National Commission on Labour. These included:

- (i) easy availability of adjudication in case of failure of negotiations.
- (ii) Dearth of suitable arbitrators who command the confidence of both parties.
- (iii) Absence of recognized unions which could bind the workers to common agreements.
- (iv) The fact that in law no appeal was competent against an arbitrator's award.
- (v) Legal obstacles.
- (vi) Absence of a simplified procedure to be followed in voluntary arbitration and
- (vii) cost to the parties, particularly workers.

---

### **15.4 Voluntary Arbitration and N.A.P.B. (National Arbitration Promotion Board)**

---



To promote voluntary arbitration a National Arbitration Promotion Board was set up by the Government of India in July, 1967 comprising of the representatives of the Government, public sector undertakings, employers and workers under the chairmanship of the Additional Secretary in the Ministry of Labour, Government of India, and New Delhi. The main functions of this Board include, among others, envisaged the drawing up of a panel of arbitrators, evolving norms and procedures for the guidance of arbitrators.

As a result of the persuasive efforts made by the Ministry of Labour, Government of India, all the State Governments and Union Territories except Assam, Himachal Pradesh, Orissa, Nagaland, Tripura, Uttar Pradesh and West Bengal have set up Arbitration Promotion Boards, The Governments of Assam and H.P. have made some other institutional arrangements, such as, state level implementation and Evolution Committee and Labour Advisory Committee to propagate voluntary arbitration'. The Governments of Nagaland and Tripura have not considered it necessary to set up Arbitration Promotion Boards. The question of setting up of such Boards by the Governments of Orissa, West Bengal and U.P. is still Boards by the Governments of Orissa, West Bengal and U.P. is still under consideration.

---

## **15.5 Scope of Section 10-A of the Industrial Disputes Act, 1947**

---

Section 10-A of the Industrial Disputes Act deals with the process involved in reference of dispute to voluntary labour arbitration and enables the parties to make reference of an industrial dispute to voluntary arbitrator. Before a reference may be made to arbitrator, four conditions must be satisfied:

1. The industrial dispute must exist or apprehended.
2. The agreement must be in writing.
3. The reference must be made before a dispute has been referred to Labour Court, Tribunal or National Tribunal and
4. The name of arbitrator/arbitrators must be specified.

A reference to voluntary arbitrator under section 10-A can be made only between "employers and employers or between employers and workmen or between workmen and workmen". The Supreme Court in *D.C. Works Ltd. v. State of Saurashtra*, 1957 I-L.1.1. 447 (S.C.), held that to determine the employer-employee relations the prima facie test was the existence of right to control in respect of the manner in which the work was to be done that a person is not "workman". But in later decisions the courts have tried to mitigate the hardship caused by the aforesaid decision in two ways, viz. by emphasizing that an employer does not cease to be an "employer" merely because he employs workmen through intermediaries and relaxing the qualitative and quantitative contents of the "direction and control" test. {See *Bridhichand Sharma v. First Civil Judge*, (1961) 2 L.L.J. B6 (S.C.)}

The parties can only make a reference of an "industrial dispute to an arbitrator. If, for instance, parties refer a dispute which is not an "industrial dispute" the arbitrator will have no jurisdiction to make a valid award. This was ruled by the Patna High Court in *Rohtas Industries Staff Union v. State of Bihar*, 1962-2 L.L.J. 420(Wat.). The reference of the dispute to an arbitrator should- be made at any time before the 'industrial dispute has been referred to Labour Court, Tribunal or National tribunal. Thus, the Legislature has placed the arbitration on a lower footing than that of compulsory adjudication. The parties acting under Section 10-A are required to select any' person or persons including presiding officer of a Labour Court, Tribunal or National Tribunal to arbitrate in a dispute. Further, the parties may select or appoint as many arbitrators as they wish. However, where a reference has been made to an even number of arbitrators the parties by agreement should provide for appointment of an umpire who shall enter upon the reference if the arbitrators are equally divided in their opinion, and the award of umpire shall prevail and be deemed to be the "award".

Once the parties agree to refer the dispute to arbitration it is required to make such arbitration agreement in writing. The arbitration agreement, as required by Section 10-A (2), should be in the prescribed form.

The arbitration agreement shall be signed by the parties thereto in such manner as may be prescribed in the Rules framed by appropriate Government. The decided cases reveal that the validity of the arbitration agreement has often been questioned on the basis of non-compliance of signature of all parties on the arbitration agreement. This has been a ground for not issuing the notification by the appropriate Government and enabling Government to refer such dispute to industrial tribunals and labour courts.

This tendency of the appropriate government has, however, been scrutinized by the Courts. Section 10-A (3) lays down that a copy of the arbitration agreement shall be forwarded to the appropriate government and the conciliation officer and the appropriate government shall, within one month from the date of the receipt of such copy publish the same in the Official Gazette. Further, when an industrial dispute has been referred to arbitration and the appropriate government is satisfied that the persons making the reference represent the majority of such party, the appropriate government may within the period of one month, issue a notification in such manner as may be prescribed and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of Presenting their case before the arbitrator or arbitrators. It is also laid down in Section 10-A (4A) that where an industrial dispute has been referred to arbitration and a notification has been issued in terms of sub-section (3-A) the appropriate government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference. Nothing in the Arbitration Act, 1940 shall apply to arbitration under this Section.

The legality or illegality of strike/lock-out under section 24 of Industrial Disputes Act, 1947 is dependent upon the issuance of notification under section 10-A (4A).

---

## **15.6 Duties, Functions and Powers of Arbitrator**

---

The arbitrator under Section 10-A comes into existence when appointed by the parties to the industrial dispute and he derives his jurisdiction from the agreement of the parties. The Industrial Disputes Act, 1947 does not prescribe how the conduct of a voluntary arbitrator be regulated. The decided cases of the Supreme Court and the High Court's reveal that arbitrator should be impartial and he must build up a relationship of confidence with both the parties. Thus, he or any of his near relatives should not accept any hospitality or favor from one or the other parties to the dispute before him. Similarly, if he does not bear the party or exceeds his jurisdiction or fails to determine an important question referred to him his decision is liable to be interfered. [See *Air Corporation Employees Union v. D.V. Vyas*, 1962-1-L.L.J.31; *Sindhu Hochief v. Pratap Dialdas*, 1968-2-L.L.J.515; *National Project Construction Corporation Ltd. v. Dheir Workmen*, 1970-Lab. I.C.907; and *Gujarat Steel Tubes Ltd. v. Their Workmen*, 1980-1-L.L.J.137 (S.C.)].

The arbitrator is required to investigate the dispute referred to him. and can follow such procedure as he may think fit. Certain principles are followed by an arbitrator while dealing with a particular disputes. They are (a) fair hearing, (b) principles of natural justice and (c) impartiality. Fair hearing demands that the opportunity should be given to both the parties to be heard and cross examined. The principle of natural justice requires that a party should have due notice of proceedings, and it must know the issues involved and part it has to play. The party should be free to give any evidence it likes relevant to the inquiry and on which it relies for its arguments. The evidence given by one party should be taken in the presence of the other party, so that the other party may rebut and place counter evidence.' The arbitrator should not rely on any such document which is not shown and explained to the other party and unless his reply has been received. He has to be completely impartial without any bias or prejudice against anybody.

While writing his award the arbitrator has to see that:-

- a. the award should be in line with the terms of the reference and it should not go beyond its jurisdiction.
- b. it must be precise and definite, i.e., it must speak clearly without any ambiguity or vagueness and should not give any idea to anybody of any misunderstanding or misinterpretation.

- c. it should be capable of being enforced or implemented, in other words, it should not contain directives or provisions which apparently seem impossible to be enforced.
- d. the award should contain a date or a specific period for its implementation;
- e. the award should not violate any provision or any existing law or settlement legally in existence and. Binding.
- f. the award should contain sufficient justification or reasons for the Settlement arrived at by the arbitrator.

The voluntary arbitrator has a wider power to decide upon all "industrial disputes" referred to him under the arbitration agreement irrespective of the fact whether it falls under Schedule H or HI to the Industrial Dispute Act, 1947. The only restriction is that the subject matter of reference must be an "industrial dispute" as defined under section 2 (K) of the Act. The parties cannot even by consent. refer under section 10-A a dispute to arbitrators which • is not an industrial dispute. Further, unlike the jurisdiction of adjudicatory bodies the arbitrator cannot arbitrate upon matters "incidental to" or "any matter appearing to be connected or relevant" to the dispute.

---

## **15.7 Code of Discipline in Industry**

---

### **(i) Origin -**

Reluctant to give up compulsory adjudication and unable to take any positive steps to .develop collective bargaining, the Government launched on a new experiment in labour-management relations and its instance certain 'Codes' were evolved to regulate the conduct of the employers and the workers towards each other. The most important among these codes is the 'Code of Discipline' which was approved by the Standing Labour Committee at the 16th Session of the Indian Labour Conference in October, 1957 and after ratification by the Central employers' and workers' organizations came into force from June 1, 1958. The Code has been accepted by majority of private and public sectors.

### **(ii) The Code -**

Applies to all public sector undertakings run as companies and corporations except those in defense, railways and ports and docks. Among those where the code of discipline applies with certain modification include. Reserve Bank of India and State Bank of India. t The Department of Defense Production has also agreed to apply. The Indian Banks Association, the All India Bank Employees' Federation has also agreed to abide by the Code. Efforts to persuade others, which have not yet accepted the Code, are being continued by the other Government.

**(iii) Nature -**

The Code of Discipline is a set of self-imposed and mutually-agreed n- its voluntary principles of discipline and relations between the management and workers in industry. It is a code of conduct both for worker and management and provides for the voluntary and mutual settlement of disputes through mutual negotiations, voluntary arbitration and conciliations without the interference of an outside agency. While it refrains both the parties from unilateral action, it induces them to make the best use of the existing machinery for the settlement of disputes. Thus the Code compels both the parties not to indulge in any strike or lock-out .without exploring the avenues for the voluntary, mutual settlement of any possible misunderstanding or disputes. In nutshell, it lays down stress on the atmosphere of mutual regard and respect, • and hence the code is voluntary, spontaneous and moral in nature.

**(iv) Objectives -**

The Code is aimed at establishing cordial relations between managements and workers on voluntary basis. It puts an end to industrial unrest. The objectives of the Code are:

- a. to emphasis upon the employers and employees to recognize each other's rights and obligations.
- b. to promote constructive criticism between the parties concerned at all levels.
- c. to maintain discipline in the industry.
- d. to avoid work stoppages and litigation.
- e. to eliminate all forms of coercion, intimidation and violence in , industrial relations.

- f. to facilitate the free growth of trade unions.
- g. to secure settlement of disputes and grievances by mutual negotiation, conciliation and voluntary arbitration.

**(vi) Scope -**

The Code of Discipline prepares a ground for employees to meet their employers and discuss their problems. It enables the workers and trade unions to be nominated to the grievance committee, creates effective liaison between the workers and the management and enables the recognized Unions to get certain rights.

The first set of the Code, which imposes obligation both on management and union(s) reads:

- i) that no unilateral action should be taken in connection with any industrial matter and that disputes should be settled at appropriate level.
- ii) that the existing machinery for settlement of disputes should be utilized with the utmost expedition.
- iii) that there should be no strike or lock-out without notice.
- iv) that affirming their faith in democratic principles, they bind themselves to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration.
- v) that they will avoid (a) litigation, (b) sit-down and stay-in strikes; and (c) lock-outs.
- vi) that neither party will have recourse to (a) coercion, (b) intimidations, (c) victimization, or (d) go-slow.
- vii) that they will promote constructive co-operation between their representatives at all levels and as between workers themselves and abide by the spirit of agreements mutually entered into.
- viii) that they will establish upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement.
- ix) that they will abide by various stages in the grievance procedure and take no arbitrary action which -would by-pass this procedure.
- x) that they will educate the management personnel and workers regarding their obligations to each other.

In the second set management, inter-alia, agree.

- i) not to increase Work-loads unless agreed upon or settled otherwise.
- ii) to take prompt action for (a) settlement of grievances, and (b) implementation of settlements, awards, decisions and others.
- iii) to display in conspicuous places in the undertaking the provisions of this Code in local language(s).
- iv) to distinguish between actions justifying immediate discharge-and those where discharge must be preceded by a warning, reprimand, suspension or some other form of disciplinary action and to arrange that all such disciplinary action should be subject to an appeal through normal grievance procedure
- v) to take appropriate disciplinary action against its officers and members in cases where enquiries reveal that they were responsible for precipitate action by workers leading to indiscipline; and vii to recognize the union in accordance. the prescribed criteria,

The third set of the Code imposes an obligation upon the Unions:

- i) not to engage in any form of physical duress;.
- ii) not to permit demonstrations which are not peaceful and not permit rowdiesm in demonstration.
- iii) that their members will not engage or cause other employees to engage in any union activity during working hours, unless as provided for by any law, agreement or practice.
- iv) to discourage unfair labour practice, such as, (a) negligence of duty, (b) careless operation (c) damage to property, (d) interference with or disturbances to normal work, . and (e) insubordination.
- v) to take prompt action to implement awards, agreements, settlements and decisions; vi) to display in conspicuous places in the union offices, the provisions of this Code in the local language(s)and
- vi) to express disapproval and to take appropriate action against office-bearers and members for indulging in action against the spirit of this Code.
- vii) [A copy of the prescribed Performa for reporting breach of the Code of Discipline by employers and workers is enclosed for reference and necessary



guidance.] In spite of all this, the Code of Discipline has not been effectively implemented. Several reasons may be accounted for the same, which are (i) the absence of a genuine desire for and limited support to self imposed voluntary restraints on the part of employers' and workers' organizations; (ii) the worsening economic situation which eroded the real wage of workers; (iii) the inability of some employers to implement their obligations; (iv) a disarray among labour representatives due to rivalries; (v) conflict between the Code and the law; and above all (vi) the state of discipline in the body politic.

In view of the above, the National Commission on Labour recommended that part of Code which enjoins stricter observance of obligations and responsibilities under the various labour laws may be left to the normal process of implementation and enforcement of labour administration machinery. Some others need to be formalized under law. these are : (1) Recognition of a Union as bargaining agents; (2) setting up of a grievance machinery in an undertaking; (3) Prohibition of strike/lock-out without notice; (4) Penalties for unfair labour practices; and (5) Provision of Voluntary Arbitration. Provisions exist in the industrial Disputes Act, 1947 in respect of item (3) relating to public utility service and item (5) above-intentioned. The Industrial Disputes (Amendment) Act, '1982 has incorporated provisions respect of items (2) & (4).

---

## **15.8 Concluding Remarks**

---

It can be concluded from the above discussion that when negotiation fails arbitration proves to be a satisfactory and most enlightened method of resolving labour management conflicts. The legal sanctity to voluntary arbitration till 1956 was not given by the Government even though the labour policy as laid down under the Five-Year Plans was towards propagating collective bargaining and voluntary arbitration. The response to voluntary arbitration as provided under section 10-A of the Industrial Disputes Act, 1947 is not encouraging. Some of the factors for this trend have already been referred to. Others which are responsible for this trend are: (i) lack of proper atmosphere, (ii) the reluctance of the parties to resort to arbitration machinery, (iii) lack of persons who enjoy the confidence of

both the parties; and (iv) the question of bearing the cost of arbitration. For this purpose it is essential that collective bargaining should be encouraged: The collective bargaining presupposes strong trade unionism. This again links up with the question of recognition of representative union. It is, therefore, essential to amend the Trade Unions Act, 1926 to provide for recognition of Trade Unions.

The Governmental policy of adopting legislative measure to promote voluntary arbitration is desirable. But mere legislation would not deliver the goods. Unless there is a proper appreciation of the system from all concerned, voluntary arbitration cannot succeed. The Courts in India have given several decisions since the functioning of voluntary arbitration over two decades as one of the dispute settlement machineries under the Industrial Disputes Act. The Courts have not succeeded in evolving an acceptable norm for determination of various issues and in turn has made the arbitration machinery ineffective.

There are three inconsistent approaches on the requirement of signature of parties on the arbitration agreement. The Patna High Court held that the failure of one of the relevant persons to sign on arbitration agreement would render the agreement invalid. The Punjab High Court held that the defect could be removed by getting it signed by the person concerned. The Delhi High Court laid emphasis on substantial compliance of signature of relevant parties.

It has now been settled through the Supreme Court decisions that the nature of arbitrator under Section 10-A of Industrial Disputes Act, 1947 is statutory and quasi-judicial. The Supreme Court, in the absence of inclusion of arbitrator under Section 11-A of Industrial Disputes Act, conferred upon the arbitrator the power to interfere with the punishment awarded by the management under Section 11-A.

Conflicting opinions have been expressed by various High Courts on the duty of the arbitrator to give reasons. Majority of the High Courts are opposed to this. This latter view would not only betray the confidence of the parties in arbitration but would make the task of High Courts and the Supreme Court difficult. Further, it is not desirable in the present era of administration.

The Industrial Disputes Act does not provide for any formula to share the cost of arbitration. It is suggested that Government should pay the fees of such arbitrators who are chosen from—the panel of National Arbitration Promotion Board. The need for voluntary Code of Discipline was felt in 1957 to lay emphasis on the method of settlement of industrial disputes to voluntary arrangement. This

was done to create awareness among the parties to industrial relations about their obligation in regard to implementation of labour laws.

As already mentioned, the Code of Discipline does not have legal sanction. It solely depends on the voluntary approach of both the managements and workers. In case any of the parties fails to have a proper approach, the Code ceases to work. As there is no compulsion or legal binding on the part of the individual units and the individual workers' organizations, they have, interpreted the Code according to their Whims and fancies. The Code proves to be useful only when a legal sanction to the important provisions of the Code like recognition of trade unions grievance procedure, unfair labour practices. Etc is accorded.

---

## **15.9 Self-Assessment Test**

---

Answer the following questions on the basis of the various aspects discussed in this unit/study

1. State briefly the concept and importance of voluntary arbitration as a mode of settlement of labour disputes in India.
2. Examine the Labour Policy envisaged under the Five-Year Plans in relation to voluntary labour arbitration. What recommendations have been made by the National Commission on Labour in this regard?
3. Critically examine the processes involved in reference of disputes to voluntary arbitration under the Industrial Disputes Act, 1947.
4. Describe briefly the functions, duties and powers of arbitrator under the scheme of Industrial Disputes Act, 1947.
5. Explain the origin, applicability and nature of the Code of Discipline in Industry.

6. What are the important objectives of the Code of Discipline in Industry? Explain its scope on the basis of its relevant statutory provisions.
7. Is there any procedure for reporting breach of provisions of the Code of Discipline by employers and workers? Give a format providing the particulars listed for the same.
8. why has the code of Discipline not been effectively implemented maintaining labour management relations? What reasons can be accounted for this? Explain with necessary suggestions.

---

## 15.10 Suggested Readings

---

### (i) Books

1. Agrawal S.L., 1980- Labour Relation's Law in India. (The Macmillan Company of India Ltd., Delhi)
2. Bagri P.R., 1984 -The Law of Industrial Disputes, Vol. I (Asia Publishing House, New Delhi).
3. Chakravarti K.P, 1983 -Law of Industrial Employment and Management Relations in India (Deep & Deep, New Delhi)
4. Dr. Srivastava S.C., 1983 -Industrial Relations Machinery (structure, working and the Law), Deep &, Deep, New Delhi.
5. Dr. Srivastava S.C., 1984 -Industrial Disputes and Labour Management Relations in India (Deep & Deep, New Delhi).
6. Sinha & Sinha, 1977 -Industrial Relations and Labour Legislation (Oxford and I.B.H. publishing Co., New Delhi)

### (ii) Reports

1. Govt. of India, the Report of the National commission on Labour, 1969, New Delhi.
2. The Ministry of Labour, Tripartite conclusions (1942-67), New Delhi

3. The Planning commission, Five-year plans, New Delhi.
4. Govt. of India, Annual Report of the Ministry of Labour, New Delhi.
5. The Ministry of Labour, Indian Labour year Book, New Delhi.

**(ii) Journals/Articles**

1. Dr. Dhingra L.C., 1986, "The Code of Discipline in Industry,"- Indian-socio-legal Journal, Bikaner (Rajasthan).
2. I.L.I., Quarterly Journal of the Indian Law Institute, New Delhi.
3. Julius German, 1967 -"Grievance Arbitration : Law and Policy in India' American Labour Supplement, (New Delhi, Dec. 15, 1967).
4. Manohar Lal, 1966 'Problems of Arbitration from Management Point of view", I American News 32(1966).

## **Performa for reporting a breach of the Code of Discipline by Employers and Workers**

NB (1) In cases falling in the Central sphere, major breaches, of the provisions of the Code of Discipline, e.g. Strikes or Lock-outs, Go slow, Violence, Victimization, Sabotage, etc. may be reported to the Implementation and Evaluation Division of the Ministry of Labour and Employment, without prejudice to the usual course of action under the existing statutory provisions. Minor breaches may be reported to this Division only after the existing machinery provided for the settlement of disputes has been exhausted.

(a) Cases falling in the State sphere should invariably be reported to the State 'Implementation Machinery. Copies of such reports, particularly when they refer to major breaches, may be sent to the Implementation and Evaluation Division of the Ministry of Labour and Employment,

### **PART I**

1. Name of the establishment with complete address.

2. Name of the Central Employers' Organization (i.e. AIOIE, EFI & AIMO) to which the establishment is affiliated
3. Date on which the breach took place.
4. Specific nature of the breach (e.g., go-slow, intimidation, coercion, victimization, violence or threat of violence, non-peaceful demonstrations, sabotage, unfair labour practice, non-implementation of awards, agreements, etc. Please state also the specific clause(s) of the Code breached) Party or parties responsible for the breach:
5. (A) In the case of a Union please state;
  - (a) Name and address.
  - (b) Affiliation to Central Workers' Organization, (i.e. AITUC, F1MS and UTUC).
  - (c) Registered or unregistered
  - (d) Recognized or unrecognized
 (B) Please state if the employer mentioned in item 1 is responsible.
6. Was the responsibility for the breach wholly on the employer / workers  
If not how should the responsibility be apportioned between both the parties?
7. Details of the background to the breach, e.g., any known disputes, grievances, awards, decisions or orders pending settlement, etc. Please state specifically :
  - (a) pre-disposing causes, and
  - (b) immediate causes.
8. Has a mutually agreed grievance procedure been set up in the establishment?
9. What attempts were made to settle the points in dispute at the appropriate level through:
  - (a) Grievance procedure
  - (b) Mutual negotiations
  - (c) Conciliation machinery
  - (d) Voluntary arbitration

- (e) Implementation machinery;
  - (f) Adjudication.
10. Has the breach been brought to the notice of the Central Organization to which the party responsible for it is affiliated? If so, when and with what results?
  11. What action in your opinion should be taken to remedy the situation and settle the dispute?
  12. Was the party responsible in the past also for a breach of the Code? If so, please mention its nature and date of occurrence.
  13. Any other remarks.

## PART II

### Strikes and Lock-outs

**14. In the case of strike/lock-out please give the following additional details:**

- (i) Was the strike/lock-out launched after giving notice? If so, what was the period of the notice?
- (ii) Was the strike/lock-out launched during the pendency of
  - (a) Mutual negotiations;
  - (b) Conciliation proceedings;
  - (c) Arbitration proceedings;
  - (d) Investigation by Implementation Machinery;
  - (e) Adjudication?
- (iii) Was the strike/lock-out declared illegal before it was actually launched?
- (iv) If it was a lightning strike, was it launched only to enforce settlement of a dispute or for any other reason?

15. Did the employer/workers give any provocation for the strike/lock-out?

16. Was the provocation such as to warrant a strike/lock-out?

17. Any other remarks.

Place .....

State .....

Date .....

1. Signature .....

2. Name & address of the

reporting party

.....



---

# UNIT- 16

## Case Laws

---

### Objectives :

After going through this unit you would be able to acquaint with

- how cases are dealt with the courts.
- how commission or fault causes violation of various provisions of the law.
- how provisions of various Acts are practically applied and legal
- principles are worked out through cases.

---

### Structure :

---

16. A (1) Introduction  
(2) Facts and Contentions  
(3) Judgment  
(4) Conclusion  
(5) Self-assessment Test

- 16.B (1) Introduction  
(2) Facts and Contentions  
(3) Judgment  
(4) Conclusion  
(5) Self-assessment Test

16. C (1) Introduction  
(2) Facts & Contentions  
(3) Judgment  
(4) Conclusion  
(5) Self-assessment Test

# **16. A Bandhua Mukti Morcha Versus Union of India and Others AIR 1984 SC 802 (Judges P.N. Bhagwati, R.S. Pathak and A.N. Sen)**

---

## **1. Introduction**

---

This case is related to

- (i) Mines Act, 1952 Sections 2(J), (JJ), (KK) – (3) (I) (B) provision 18 Chapters V, VI and VII,
- (ii) Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979-Sections 2(I) (e), (b) (g), 4, 8,12 and Chapter V,
- (iii) Contract I-about (Regulation and Abolition) Act,1970, Sections 2(I), (a), (b),(c),(g),16 to 21
- (iv) Minimum wages Act, 1948, Sections 3, 12 and 22A and d) Bonded Labour System (Abolition) Act, 1976, Sections 2(f), (g), 4, 5, 10 and

---

## **2.Facts and Contentions**

---

The Petitioner, an organization motivated to release bonded laborers in the country, addressed a letter to a judge of the Supreme Court complaining that in two named stone quarries in Faridabad district there were a large number of labourers from different States working under inhuman conditions and many of whom were bonded labourers and prayed for issuing a writ for proper implementation of the Constitutional and statutory provisions. In support of his complaint the petitioner also annexed to his letter statements in original bearing the thumb marks or signatures as the case may be of the bonded labourers referred to in the letter. The Supreme Court treated the letter as a writ petition and issued notice and appointed two advocates as commissioners to visit the stone quarries and to interview each of

the persons whose names were , mentioned in the letter of the-petitioner as also a cross section of the other workers with a view to finding out whether they were willingly working in these stone quarries and also to enquire about the conditions in which they were working. The commissioners carried out the assignment and submitted their report confirming the allegations made in the petitioner's letter. The court directed that the copies of the report may be supplied to all the mine-lessees and stone crushers who were respondents and that they may have an opportunity to file their reply to the facts found in the report.

The court also appointed Dr. Patwardhan of I.I.T. to carry out a social-legal investigation in the matter on terms indicated by it. The court also directed that the workmen whose names were set out in the writ petition and in report of the advocates - commissioners would be free to go wherever they liked.

The Bonded Labour System (Abolition) Act, 1976 was enacted with a view to giving effect to Article 23 of the Constitution which prohibits traffic in human beings and beggar and other similar forms of forced labour. The expression 'bonded labour' is defined in clause (f) of Section 2 to mean 'a labourer who incurs, or has, or is presumed to have incurred a bonded debt'. Bonded debt means an advance obtained or presumed to have been obtained' by a bonded labourer, under or in pursuance of, the bonded labour system' (clause d) . Clause (g) defines bonded labour system to mean :

the system of forced, or partly forced, labour under which a debtor enters, or has, or is pressured to have, entered, into an agreement with the creditor to the effect that,

- (i) In consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or
- (ii) In pursuance of any customary or social obligation, or
- (iii) For any economic consideration received by him or by any or his lineal ascendants or descendants, or

he would-

1. render, by himself or through any member of his family, or any 'person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
2. forfeit the freedom of employment or other means of livelihood for specified period or for an unspecified period, or
3. forfeit the right to move freely throughout the territory "of India, or
4. forfeit the right to appropriate or sell at market value any or his property or product of his labour or the labour of a member of his family or any person dependent on him.

The expression "nominal wages" is defined in clause (i) of Section 2 to mean, in relation to labour, a wage which is less than-

- (a) the minimum wages fixed by the Government in relation to the same or similar labour, under any law for the time being in force, and
- (b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour, to the labourers working in the same locality.

Section 5 invalidates any custom or tradition or any contract agreement or other instrument by virtue of which any person or any member of the family or dependent of such person is required to do any work or render any service as a bonded labourer " Section 6 provides, inter-alia, that on the commencement of the Act, every obligation of a bonded labourer to repay any bonded debtor, such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished. Sections 10 to 12 impose a duty on every District Magistrate and every officer to whom power may be delegated by him, to enquire whether, after the commencement of the Act, any bonded labour system or any other form of forced labour is being enforced by or on behalf of, any person resident within the local limits of his jurisdiction and if, as a result of such enquiry, any person is found to be enforcing the bonded labour system or any other

system of forced labour, he is required forthwith to take the necessary action to eradicate the enforcement of such forced labour. Section 13 provides for constitution of a Vigilance Committee in each district and each sub-division of district and sets out what shall be the composition of each Vigilance Committee. The functions of the Vigilance Committee are set out in Section 14 and among other things, that section provides that the Vigilance Committee shall be responsible inter alia to advise the District Magistrate as to the efforts made and action taken, to ensure that the provisions of the Act or any rule made there under are properly implemented, to provide for the economic and social rehabilitation of the freed bonded labourers and to keep an eye on the number of offences of which cognizance has been taken under the Act. Then comes Section 15 which lays down that whenever any debt is claimed by any labourer or a Vigilance Committee to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor. These are some of the material provisions of the Bonded Labour System (Abolition) Act, 1976 which need to be considered.

---

### **3. Judgment**

---

The Hon'ble Court allowed the Writ petition and issued directions to the Central Government and the State of Haryana and the various other authorities.

The directions may be summarized as follows :

- (1) The Government of Haryana will, without any delay and at any rate within six weeks from today, constitute Vigilance Committee in each sub-division of a district in compliance with the requirements of Section 13 of the Bonded Labour System (Abolition) Act, 1976 keeping in view the guidelines given in this judgment.
- (2) The Government of Haryana will instruct the district magistrates to take up the work of identification of bonded labour as one of their top priority tasks and to map out areas of concentration of bonded labour which are 'mostly to be found in stone quarries and brick kilns and assign task forces for

identification and release of bonded labour and periodically hold labour camps in these areas with a view to educating the labourers inter alia with the assistance of the National Labour Institute.

- (3) The State Government as also the Vigilance Committee and the district magistrates will take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of the Bonded Labour System (Abolition) Act, 1976.
- (4) The Government of Haryana will draw up within a period of three months from the date of judgment a scheme or programme for rehabilitation of the freed bonded labourers in the light of the guidelines set out by the secretary to the Government of India, Ministry of Labour in his letter dated September 2, 1982 and implement such schemes or programme to the extent found necessary.
- (5) The central Government and the Government of Haryana will take all necessary steps for the purpose of ensuring that the minimum wages are paid to the workmen employed in the stone quarries and stone crushers in accordance with the principles laid down in this judgment and this direction shall be carried out within the shortest possible time so that within six weeks from the date of judgment, the workmen start actually receiving in their hands a wage not less than the minimum wages.
- (6) If payment of wages is made on truck basis, the central Government will direct the appropriate officer of the central Enforcement Machinery or any other appropriate authority or officer to determine the measurement of each truck as to how many cubic ft. of stone it can contain and print or inscribe such measurement on the truck so that appropriate and adequate wage is received by the workmen for the work done by them and they are not cheated out of their legitimate wage.
- (7) The central Government will direct the Inspecting officers of the central Enforcement Machinery or any other appropriate Inspecting officers to

carry out surprise checks at least once in a week for the purpose of ensuring that the trucks are not loaded beyond their true measurement capacity, the Inspecting Officers carrying out such checks will immediately bring this fact to the notice of the appropriate authorities and necessary action shall be initiated against the defaulting mine owners and/or thekedars or jamadars.

- (8) The Central Government and the Government of Haryana will ensure that payment of wages is made directly to the workmen by the mine lessees and stone crusher owners or at any rate in the presence of a representative of the mine lessee.' or stone crusher owners and the inspecting officers of the Central Government as also of the Government of Haryana shall carry out periodic checks in order to ensure that the payment of the stipulated wage is made to the workmen.
- (9) The central Board of workers' Education will organize periodic camps near the sites of stone quarries and stone crushers in Faridabad district for the purpose of educating the workmen in the rights and benefits conferred upon them by social welfare and labour laws and the progress made shall be reported to the Supreme Court by the Central Board of Workers' Education at least once in three months.
- (10) The Central Government and the Government of Haryana will immediately "take steps for the purpose of ensuring that the stone crusher owners do not continue to foul the air and they adopt either of two devices, namely, keeping a drum of water above the stone crushing machine with arrangement for continuous spraying of water upon it or installation of dust sucking machine and a compliance report in regard to this direction shall be made to the Supreme Court on or before February 28,1984.
- (11) The Central Government and the Government of Haryana will immediately ensure that the mine lessees and stone crusher owners start supplying p/re drinking water to the workmen on a scale of at least 2 liters for every workman by keeping suitable vessels in a shaped place at conveniently accessible points and such vessels shall be kept in clean and hygienic

conditions and shall be emptied, cleaned and refilled every day and the appropriate authorities of the Central Government and the Government of Haryana will supervise strictly the enforcement of this direction and initiate necessary action if there is any default

- (12) The Central Government and the Government of Haryana will ensure. that minimum wage is paid to the women and/or children who look after the vessels in which pure drinking water is kept for the workmen.
- (13) The Central Government and the Government of Haryana will immediately direct the mine lessees and stone crusher owners to start obtaining drinking water from any unpolluted source or sources of supply and to transport it by tankers to the work site with sufficient frequency so as to be able to keep the vessels filled up for supply of clean drinking water to the workmen and the Chief Administrator, Faridabad Complex will set up the points from where the mine lessees and stone crusher owners can, if necessary, obtain supply of potable water for being carried by tankers.
- (14) The Central Government and the State Government will ensure that conservancy facilities in the shape of latrines and urinals in accordance with the provisions contained in Section 2{ of the Mines Act, 1950 and Rule 33 to 36 of the Mines Rules, 1955 are provided at the latest by February, 15, 1984.
- (15) The Central Government and the State Government will take steps to immediately ensure that appropriate and adequate medical and first aid facilities as required by Section 21 of the Mines Act, 1952 and Rules 40 to 45-A of the Mines Rules, 1955 are provided to workmen not later than January, 31, 1984.
- (16) The central Government and the Government of Haryana will ensure that every workmen who is required to carry out blasting with explosives is not only trained under the Mines vocational Training Rules, 1966 but also



holds first aid qualification and carries a first aid outfit while on duty as required by Rule 45 of the Mines Rules, 1955.

- (17) The central Government and the state Government will immediately take steps to ensure that proper and adequate medical treatment is provided by the mine lessees and owners of stone crushers to the workmen employed by them as also to the members of their families free of cost and such medical assistance shall be made available to them without any cost of transportation or otherwise and the doctor fees as also the cost of medicines prescribed by the doctors including hospitalization charges, if any, shall also be reimbursed to them.
- (18) The central Government and the state Government will ensure that the provisions of the Maternity Benefit Act, 1961, the Maternity benefit (Mines and circus) Rules, 1963 and the Mines crèche Rules, 1966 where applicable in any particular stone quarry or stone crusher are given effect to by the mine lessees and stone crusher owners.
- (19) As soon as any workman employed in a stone quarry or stone crusher receives injury or contracts disease in the course of his employment, the concerned mine lessee or stone crusher owner shall immediately report this fact to the chief Inspector or Inspecting Officers of the Central Government and/or the State Government and such Inspecting officers shall immediately provide legal assistance to workman with a view to enabling him to file a claim for compensation before the appropriate court or authority and they shall also ensure that such claim is pursued vigorously and the amount of compensation awarded to the workman is secured to him.
- (20) The Inspecting officers of the central Government as also of the state Government will visit each stone quarry or stone crusher at least once in a fortnight and ascertain whether there is any workman who is injured or who is suffering from any disease or illness, and if so, they will immediately take the necessary steps for the purpose of providing medical and legal assistance.

The supreme court also laid down that if the central Government and the Government of Haryana fail to ensure performance of any of the obligations set out in clauses 11, 13, 14 and 15 above by the mine lessees and stone crusher owners within the specified period, such obligation, or obligations to the extent to which they are not performed shall be carried out by the Central Government and the Government of Haryana'

The Hon'ble Court appointed Shri Laxmi ( Dhar Misra, Joint Secretary in the Ministry of-Labour, Government of India as a commissioner for the purpose of carrying out the following assignment :

- (a) He will visit the stone quarries and stone crushed in Faridabad district and as certain by enquiring from the labourers in each stone quarry or stone crusher in the manner set out by the Court whether any of them are being forced to provide labour and are bonded laborers and he will prepare in respect to each stone quarry or stone. Crusher a statement showing the names and particulars of those who, According to the enquiry made by him, are bonded labourers and he will also ascertain from them whether they want to continue to work in the stone quarry or stone crusher or they want to go away and if he finds that they want to go away, he will furnish particulars in regard to them to the District Magistrate, Faridabad who will make necessary arrangements for releasing them and provide for their transportation back to their homes.
- (b) He will also enquire from the mine lessees and owners of stone crushers as also from the thekedars and jamadars whether there are any advances made by them to the labourers working in the stone quarries or stone crushers and if so , whether there is any documentary evidence in support of the same and he will also ascertain the amounts of loans still remaining outstanding against such labourers.
- (c) He will also ascertain by carrying out sample check whether the workmen employed in any particular stone quarry or stone crusher are actually in

receipt of wage not less than the minimum wage and whether the directions given by the Supreme Court in regard to computation and payment of minimum wage are being implemented by the authorities.

- (d) He will conduct an enquiry in each of the stone quarries and stone crushers in Faridabad district for the purpose of ascertaining whether there are any contract labourers or inter-state migrant workmen in any of these stone quarries or stone crushers and if he finds as a result of his enquiry that the Contract Labour Act, and/or the Inter-State Migrant Workmen Act is applicable, he will make a report to the effected to the Court.
- (e) He will ascertain whether the directions given by the Supreme Court regarding effective arrangement for supply of pure drinking water have been carried out.
- (f) He will also ascertain whether the mine lessees and owners of stone crushers in each of the stone quarries and stone crusher visited by him have complied with the directions given by the Court regarding provision of conservancy facilities'
- (g) He will also ascertain whether the directions given by the Court in regard to provision of first aid facilities and proper and adequate medical treatment including hospitalization to the workmen and the members of their families are being carried out by the mine lessees and stone crusher owners and the necessary first aid facilities and proper and adequate medical services including hospitalization are provided to the workmen and the members of their families'
- (h) He will also enquire whether the various other directions given by the Supreme Court have been and are being carried out by the mine lessees and stone crusher owners'

---

## 4. Conclusion

---

A bonded labourer truly becomes a slave and his freedom in the matter of his employment and movement is more or less completely taken away and forced labour is thrust upon him. Whenever any person is wrongfully and illegally deprived of his liberty, it is open to anybody who is interested in such a person move the Supreme Court under Article 32 of the Constitution for his release. It may not be very often possible for the person who is deprived of his liberty of approach the-Supreme court, as by virtue of such illegal and wrong full detention, he may not be free and in a position to Move the Supreme Court-. The petitioner in the instant case was an association interested in the welfare of society and particularly of the weaker section' The petitioner were interested to promote the welfare of the labourers and for promoting the welfare of labour, the petitioner sought to move the Supreme Court for releasing the bonded labourers from their bondage and for restoring to them their freedom and other legitimate rights. The bonded labourers working in the far-away places are greatly poor and belong to the very weak section of the people' They are also not very literate and they may not be conscious of their own rights. Further, as they are kept in bondage their freedom is also restricted and they may not be in a position to approach the Supreme Court. Though no fundamental right of the association that is the petitioner may be said to be infringed, yet the petitioner who complains of violation of the fundamental right of the workmen who have been wrongfully and illegally denied their freedom and deprived of their constitutional right must be held to be entitled to approach -"the Supreme Court on behalf of the bonded labourers for removing them from illegal bondage and deprivation of liberty'

---

## 5. Self-Assessment Test

---

1. Discuss the concept of bonded labour
2. Describe briefly the directions given by the Supreme Court
3. Describe the assignments made to the commissioner by the Supreme Court.

# **16. B People's Union for Democratic Rights and Others Versus Union of India and Others 1982 Labour And industrial Cases 1646 (Judges P.N. Bhagwati and Baharul Islam)**

---

## **1. Introduction**

---

This case relates to non-observance and infringement of labour laws by contractors employing workmen for Asiad Projects. The Union of India, the Delhi Administration and the Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of labour laws by the contractors and if these labour laws are not complied with by the contractors, the workmen would clearly have a cause of action against the Union of India, the Delhi Administration and the Delhi Development Authority.

---

## **2. Facts and Contentions**

---

The Asian Games take place periodically in different parts of Asia. In 1982, India hosted the Asian Games. It was a highly prestigious undertaking and in order to accomplish it successfully according to international standards, the Government of India had to embark upon various construction projects which included building of flyovers, stadia, and swimming pool, hotels and Asian Games Village complex. This construction work was distributed by the Government of India amongst various authorities such as the Delhi Administration, the Delhi Development Authority and the New Delhi Municipal Committee. The various authorities to whom the execution of the different projects was entrusted engaged contractors for the purpose of carrying out the construction work of the projects and they were registered as principal employers under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. The contractors started the construction work of the projects and for the purpose of carrying out the construction

work they engaged workers through jamadars. The jamadars brought the workers from different parts of India and particularly the States of Rajasthan, Uttar Pradesh and Orissa and got them employed by the contractors. The workers were entitled to a minimum wage of Rs. 9.25 per day that being the minimum wage fixed for workers employed on the contractors of roads and in building operations but the case of the petitioners was that the workers were not paid this minimum wage and they were exploited by the contractors and the jamadars. The Union of India in the affidavit reply filed on its behalf by Madan Mohan, Under Secretary, Ministry of Labour, asserted that the contractors did pay the minimum wage of Rs. 9.25 per day but frankly admitted that this minimum wage was paid to the jamadars through whom the workers were recruited and the jamadars deducted rupee one per day per worker as their commission and paid only Rs. 8.25 by way of wage to the workers. The result was that in fact the workers did not get the minimum wage of Rs. 9.25 per day. The petitioners also alleged in the writ petition that the provisions of the Equal Remuneration Act, 1976 were violated and women workers were being paid only Rs.7 per day and the balance of the amount of the wage was being misappropriated by the jamadars. It was also pointed out by the petitioners that there was violation of Article 14 of the Constitution and of the provisions of the Employment of Children Act, 1938 in as much as children below the age of 14 years were employing led by the contractors in the construction work of the various projects. The petitioners also alleged violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and pointed out various breaches of those provisions by the contractors which resulted in deprivation and exploitation of the workers employed in the construction work of most of the projects. It was also the case of the petitioners that the workers were denied proper living conditions and medical and other facilities to which they were entitled under the provisions of the Contract Labour (Regulation and Abolition) Act 1970. The petitioners also complained that the contractors were not implementing the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 through that the Act was brought in force in the Union Territory of Delhi as far back as 2nd October, 1980. The report of the team of three social scientists on which the writ petition was based set out various instances of violations of the provisions of the Minimum Wages Act, 1948, the Equal Remuneration Act, In6, Article 14 of the Constitution. The Employment of

Children Act, 1938 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

These averments made on behalf of the petitioners were denied in the affidavits in reply filed on behalf of the Union. of India, the Delhi Administration and the Delhi Development Authority, and two preliminary objections were raised on behalf of the respondents; first preliminary objection was that the petitioners has no locus standi to maintain the writ petition since, even on the averments made in the writ petition, the rights saved to have been violated were those of the workers employed in the construction work of the various Asiad Projects and not of the petitioners and the petitioners could not there force have any cause of action.

The second preliminary objections urged on behalf of the respondents was that in any event no writ petition could lie against the respondents, because the workmen whose rights were said to have been violated were employees of the contractors and not of the respondents and the cause of action of the workmen, if any, was therefore against the contractors and not against the respondents. The Count rejected the two preliminary objections.

---

### **3. Judgment**

---

The first preliminary objection raises the question of locus standi of the petitioners to maintain the writ petition. Here the workmen whose rights are said to have been violated-and to whom a life of basic human dignity has been denied are poor, ignorant, illiterate humans who by reason of their poverty and social and economic disability, are unable to approach the Courts for judicial redress, and hence the petitioners have under the liberalized rule of standing, locus standing to maintain the present writ petition espousing the cause or the workmen. It is not the case of the respondents that the petitioners are acting mala fide or out of extraneous motives and in fact the respondents cannot so allege since the first petitioner is admittedly an, organization dedicated to the protection and enforcement of Fundamental Rights and making Directive Principles of State Policy enforceable and justifiable . There can be no doubt that it is-out of a sense of

public service that the present litigation has been brought by the petitioners and it is clearly maintainable

We must then proceed to consider the first limb of the second preliminary objection. It is true that the workmen whose cause has been championed by the petitioners are employees of the cofactors but the Union of India, the Delhi Administration and the Delhi Development authority which have entrusted the contraction work of Asia Projects to the contractors cannot escape their obligation for observance of various labour laws by the contracts. so far as the contract Labour (Regulation and Abolition) Act, 1970 is concerned it is clear that under section 20, if any amenity required to be provided under sections 16,17,18 or 19 for the benefit of the workmen employed in an establishment is not provided by the contractor, the obligation to provide such amenity rests on the principal employer and therefore if in the construction work of the Asiad projects, the contractors do not carry out the obligations imposed upon them by any of these sections, the union of India, The Delhi Administration and the Delhi Development Authority as Principal employers would be liable and these obligations would be enforceable against them' The same position obtains in regard to the Inter-State Migrant Workman (Regulation of Employment and conditions of service) Act, 1979. In the case of this Act also, sections 17 and 18 make the principal employer liable to make payment of the wages to the migrant workmen employed by the contactor as also to pay the allowances provided under sections 14 and 15 and to provide the facilities specified in section 16 to such migrant workman. In case the contractor fails to do so and these obligations are also therefore clearly enforceable against the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers. so far as Article 24 of the constitution is concerned, it embodies a fundamental right which is plainly and indubitably enforceable against every one and by reason of its mandate, no one can employ a child below the age of 14 years in a hazardous employment and since as pointed out above , construction work is a hazardous employment no child below the age of 14 years can be employed in construction work and therefore, not only are the contractors under a constitutional mandate not to employ any child below the age of 14 years, but it is also the duty of the Union of India, the Delhi Administration and the Delhi Development Authority to ensure that this constitutional obligation is obeyed by



the contractors to whom they have entrusted the construction work by the various Asiad projects. the Union of India, the Delhi Administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of constitutional prohibition being committed by their own contractors. So also with regard to the observance of the provisions of the Equal Remuneration Act, 1976, the Union of India, the Delhi Administration and the Delhi Development Authority cannot avoid their obligation to insure that these provisions are complied with by the contractors. It is the principle of equality embodied in Article 14 of the Constitution which finds expression in the provisions of the Equal Remuneration Act, 1976 and if the Union of India, the Delhi Administration or the Delhi Development Authority at any time finds that the provisions of the Equal Remuneration Act, 1976 are not observed and the principle of equality before the law enshrined in Article 14 is violated by its own contractor, it cannot ignore such violation and sit quiet by adopting a non-interfering attitude and taking shelter under the excuse that the violation is being committed by the contractors and not by it. If any particular contractor is committing a breach of the provisions of the Equal Remuneration Act, 1976 and thus denying equality before law to the workman the Union of India, the Delhi Administration or the Delhi Development Authority as the case may be, would be under an obligation to ensure that the Contractors observe the provisions of the Equal Remuneration Act 1976 and does not breach the equality clause, enacted in Article 14. The Union of India, the Delhi Administration and the Delhi Development Authority must also ensure that the minimum wage is paid to the workman as provide under the Minimum Wages Act, 1948. The contractors are, of course, liable to pay the minimum wage to the workman employed by them but the Union of India, the Delhi Administration and the Delhi Development Authority who have entrusted the construction work to the contractor both equally be responsibly to ensure the minimum wage is paid to the workmen by their contractors. This obligation which even otherwise rests on the Union of India, The Delhi Administration and the Delhi Development Authority is additionally reinforced by Section 17 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 in so far as migrant workmen are concerned. It is obvious, therefore; that the Union of India, the Delhi Administration and the Delhi Development Authority cannot escape their obligation to the workman to ensure dance of these labour

laws by the contractors and if these labour the laws are side with by the contractors, the workman would clearly have a cause of action against the, Union of India, the Delhi Administration and the Delhi Development Authority.

With regards to the lamb of the second preliminary objection the argument of their respondents was that a writ petition under Article 32 could not be maintained unless it complained of a breach of some fundamental right or the other and since what were alleged in the present writ petition were merely violations of the labour laws enacted for the benefit of the workmen and not breaches of any fundamental rights, the present writ petition was not maintainable and was liable to be dismissed.

The Court did accept the plea of the respondents that the present writ petition did not complain of any breach of a fundamental right. The complaint of violation of Article 24 based on the averment that children below the age of 14 years were employed in the construction work of the Asiad Projects was clearly a complaint of violation of a fundamental right. So also when the petitioners alleged non-observance of the provisions of the Equal Remuneration Act, 1976, it was in effect and substance a complaint of breach of the principle of equality before the law enshrined in Article 14 and it could hardly be disputed that such a complaint could legitimately form the subject matter of a writ petition under Article 32.

The rights and benefits conferred on the workmen employed by a contractor under the provisions of the contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity o the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly. Be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, as made statutorily responsible for securing such right and benefits to the workmen. With regard to non-payment of minimum wage to the workmen under the Minimum wages Act, 1948, it is the fundamental right enshrined in Article 23 which is violated by non-payment of minimum wage to the workmen.

The Court had directed by its order dated 11<sup>th</sup> May 1982 that whatever was the minimum wage for the time being or if the wage payable was higher than such wage, shall be paid by the contractors to the workmen directly without the intervention of the jamadars and that the jamadars shall not be entitled to deduct or recover any amount from the minimum wage payable to the workmen as and by way of commission or otherwise. The Court also directed in addition that if the Union of India or the Delhi Administration or the Delhi Development Authority found and for this purpose it could hold such enquiry as was possible in the circumstances that any of the workmen had not received the minimum wage payable to him, it shall take the necessary legal action against the contractor whether by way of prosecution or by way of recovery of the amount of the shortfall. The Court also suggested that hereafter whenever any contracts are given by the government or any other governmental authority including a public sector corporation, it should be ensured by introducing a suitable provision in the contracts that wage shall be paid by the contractors to the workmen directly without the intervention of any jamadars or thekadars and that the contractors shall ensure that no amount by way of commission or otherwise is deducted or recovered by the jamadars from the wage of the workmen. So far as observance of the other labour laws by the contractors was concerned, the Court by its order dated 11<sup>th</sup> May, 1982 appointed three Ombudsmen and requested them to make periodical inspections of the sites of the construction work for the purpose of ascertaining whether the provisions of these labour laws were being carried out and the workers were receiving the benefits and amenities provided for them under these beneficent statutes or whether there were any violations of these provisions – being committed by the contractors so that on the basis of the reports of the three Ombudsmen, the Court could give further direction in the matter if found necessary. The Court suggested that the authorities should institute an effective system of periodic inspections coupled with occasional surprise inspections by the higher officers in order to ensure that there are no violations of the provisions of labour laws and the workmen are not denied the rights and benefits to which they are entitled under such provisions and if any such violations are found, immediate action should be taken against defaulting officers or contractors. That is the least which a

government or a governmental authority or a public sector corporation is expected to do in a social welfare State.

---

## • Conclusion

---

In the instant case, an organization formed for protecting democratic rights addressed a letter to one of the Judges of the Supreme Court alleging violation of labour laws in respect of the workman engaged in the various Asiad projects.

The letter was treated as a unit petition and it was held that the workman whose rights are said to have been violated and to whom a life of basic human dignity has been denied are poor, ignorant, illiterate humans who, by reason of their poverty and social and economic disability, are unable to approach the courts for judicial redress and hence the organization had locus standi to maintain the writ petition espousing the cause of the workmen, as the petitioners Are not acting mala fide or out of extraneous motives. AIR 1982 SC 149. Followed.

Where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Article 23 is remedied.

---

## 4. Self assessment test

---

1. Describe in brief the facts of the case (Asiad Case).
2. Write in brief the judgment of the case?
3. Assess the responsibilities of principal employer?

**16 .C Delhi Cloth & General Mills Ltd  
Versus  
Shambhu Nath Mukherjee  
A.I.R. 1985 SC 141  
(Judges D.A. Desai and Rangnath Mishra)**

---

**1. Introduction**

---

This case is related to Industrial Disputes Act, 1947 Sections 2-A, 10, 10A and Sch.2, Items 3 and 6 dealing with (i) the termination of service of the workman by striking off his name from roll of the employer, (ii) the award of Labour Court holding termination as illegal and directing reinstatement of the workman, (iii) relief to be given to the workman where physical reinstatement becoming impossible by passing away of workman.

**2. Facts and Contention**

---

Deceased Shambhu Nath Mukherjee who was a workman, served with the Delhi Cloth & General Mills Ltd., who were the employers. By its letter dated January 19, 1966 the employer informed the workmen that his name has been struck off the rolls with effect from August 24, 1965.

The workmen raised an industrial dispute questioning the termination of his services. The conciliation proceedings having failed, an industrial dispute was referred to the Labour Court for its resolution. The issue framed was "whether the dispute is an industrial dispute and whether the reference is bad". The Labour Court answered the preliminary issue in favor of the workman and against the employer, observing that in view of the provision contained in Section 2.A of the Industrial Disputes Act, 1947 any dispute regarding discharge, dismissal or retrenchment or termination of service of even an individual workman, even if not espoused by a

Union, amounts to an industrial dispute and therefore, the reference was valid. The Labour Court further held that the termination of service sought to be brought about by striking off Same of the workman from the roll of the employer is illegal and invalid. Consequently, the workman was required to be reinstated. Being aggrieved the employer filed a writ petition in the Delhi High. Court questioning the constitutional validity of Section 2-A. One of the contentions was that the respondent could not be physically reinstated in service as he would have retired on superannuation from the service of the employer on October 27,1972.

The Court framed the following two issues :

- (1) Whether the appellant proves to the satisfaction of the Labour Court that there is a valid rule of retirement on superannuation at the age of 58 years for fu employers of the category to which the respondent belonged;
- (2) If issue no. 1 is answered in the affirmative, what amount including wages and all other benefits such as bonus etc, as if he is in service' the appellant is liable to pay the respondent from the date of termination of service on August ,4,1965, titled the date of his superannuation

The reference was remind to the Labour court which was directed to permit both the parties m lead evidence and certify its findings to this Court.

The Labour court recorded its finding in the negative on the first issue against the employer holding that there was no valid rule of retirement on superannuation at the age of 58 years in respect of the category of employees to which the respondent belonged. consequently, no finding was necessary on the second issue.

---

### **3. Judgment**

---

As far as the deceased workman was concerned there was no rule under which he could have retired on superannuation at the age of 58 years. Accordingly, he must be paid his wage till the date of his death .The appellant shall pay an amount of Rs.1,10,100 including costs to the widow of the dressed workman within a period of four weeks from the date of judgment the amount shall be paid by a demand draft

in favour of Register , of the Supreme Court and on the receipt of amount, the Register shall Mrs. Durga Mukhejee, the widow of the deceased workman and dispatch the amount to her.

---

## **4. Conclusion**

---

The termination of service sought to be brought about by striking off the name of workman from the roll of the employer was held to be illegal and invalid by the Labour Court and the employer was directed to reinstate the workman. The writ petition filed by the employer questioning the finding of the Labour Court was dismissed by the Court of Delhi. After an unsuccessful appeal under the Letters patent, the matter was brought to the Supreme Court by its decision reported in A.I.R. 1978 SC 8: 1977 L.J. 1695 Rejected all the contentions on behalf

of the employer and confirmed the award of the Labour Court. In the implementation of the award the employer had to reinstate the workman in service. As the employer had to reinstate the workman in service. As the employer did not implement the award the civil miscellaneous petition was filed by the workman in the Supreme Court for appropriate orders. In the meantime the workman had taken out a petition for taking action in contempt against the employer. Unfortunately, the matter could not be listed for Sometimes and the workman died before the disposal of the petition. The physical reinstatement had thus become impossible by the passing away of the workman.

The employer was therefore directed to pay Rs. 1,10,000 including costs to the widow of the deceased workman within a period of four weeks from the date of order. The said amount was over and above the amount of Rs. 46, 151.60 already paid to the workman as an amount covering the dues payable to the workman with interest at 9% consequent upon the order of reinstatement made by the Supreme Court .

---

## **2. Self-Assessment Test**

---

1. Describe brief facts and contentions of the case.

2. Make an assessment of the judicial pronouncement in this case
3. Explain the two issues framed by the court and referred to the Labour Court
4. Discuss the answer of Labour Court regarding two preliminary issues.