

A Critique on the ILO's Core Labor Standards

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This paper attempts to find how the existing labor law regime had reached present day stage of culmination. It extends a warning as to how this hard earned labor jurisprudence of the country would be torn into pieces in the near future with the upcoming pro laissez-faire attitude of the state. The article focuses mainly on the state of child labor, workers' right to organize and collective bargaining.

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Introduction

The reasons for migration to the cities from the villages predominantly were famines during the early 1872-81 and 1891-1901. India has been essentially a labor intensive economy. The beginning of industrialization in India was naturally due to the British in whose era the labor class revolved around the tea and coffee plantations, textile, coal, cotton and jute mills. Also, the labor population was absorbed in the construction of roads, railways and public buildings by the Government of India in the middle of the 19th century. These new classes of wage earners in India, a class though nominally free from the shackles of the tyranny of village customs and social disabilities, were looked down upon as "jail labor" in terms of politics [Sharma, 1982]. The labors were exploited through fewer wages; long working hours; exploitation of women and child labor and forced labor was rampant and unchecked. The need for changing the working and living conditions of labor was focused and answered. Change was of two types: continuous or evolutionary and discontinuous or revolutionary. The industrial revolution in India germinated very late. Some of the worst features of industrialism marked the history of the early factory

system of India. From 1852 to 1880, the working class in the factories set up by the British and their Indian agents have exploited these labor classes most inhumanly and without pity [Bardhan, 1986]. The British and others irrespective of their religion, nationality, language or country saw bleeding men, women and children in these slaughter houses of capital. The origin of the Indian labor movement lay in the deplorable working conditions and the association of children and women in the factories, coupled with the government attitude of complete indifference with regard to the protection of labor from such evils. The doctrine of *laissez-faire* at that time dominated the outlook of the government to such an extent that its main anxiety seemed 'to have been to protect the social system from the workmen, rather than to protect the workmen from the social system'.

The Pre –Independence Era

The Indian Factories Act of 1881 was a breakthrough in India and it became instrumental in bringing consciousness in the factory workers of Bombay. Later, the year 1890 saw the formation of the Bombay Mill Hand's Association, the first trade union in India. The World War I laid the foundations for a strong trade union movement in India. In the year 1920, for the first time the necessity to grant legal status to the trade unions and protection of their members and executives against criminal and civil suits in cases of strikes was realized. The event which focused attention on this problem was the *Buckingham and Carnatic Mills Case* in which the union

leader was prosecuted and put under injunction for conducting a strike, which allegedly induced the workers to break the contract with the employers. The decision of the Madras High Court was a rude shock and an eye opener for the people of India. After a few years the Trades Unions Act, 1926 was passed. The Act gave immunity to registered trade unions from civil and criminal liability and also granted legal recognition to the existence of the trade unions.

The formation of the International Labor Organization [ILO] in 1919 further strengthened the cause of labor in India. The period of early thirties till the day of Independence marked the enactment of crucial labor legislations in India dealing with social security, freedom of association of workers, regulation of payment of wages, child labor regulation and the laws relating to the regulation of employment and defining the service conditions. After the Independence the country witnessed the enactment of consolidated version of the Factories Act, 1948 and a reformative legislation in the field of social security for the industrial workers namely the Employees State Insurance Act, 1948 and also the Minimum Wages Act, 1948.

The Foundations of ILO - War & Work

The ILO was set up in the year 1919 to promote the cause of social justice. It is close to celebrate hundred years of existence. The need for international action in this field had been promoted, at the end of World War 1, with three main consid-

erations: the conviction that universal and lasting peace can be established only if it is based upon social justice; the demands of justice and humanity; and the desire to ensure that international competition did not prevent or hamper the promotion of social progress at the national level. The ILO's contribution to the rule of law and to the international protection of human rights may be considered in relation to: (i) the establishment of the ILO and the effect of introducing a quasi-legislative function into the international community, particularly in the field of human rights; (ii) through its work the ILO has shown both feasibility and the importance of laying down rights in binding international instruments based on constitutional principles and as amplified by case law and (iii) by means of its standard setting roles. The ILO had built up a form of international common law covering large sectors of human rights relevant to economic and social rights as well as to civil and political rights. Finally, the machinery that the ILO has developed for implementing these rights at the international level is still one of the most advanced of its kind. The main objectives of the ILO outlines the development and deployment of the human resources and skills necessary to match the need and rising expectations with production; the more equitable distribution of wealth and welfare by measures including 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; the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care; the provision of adequate nutrition, housing,

and facilities for recreation and culture; the assurance of equality of educational and vocational opportunity; the development of the social institutions necessary for the achievement of these purposes by measures including the effective recognition of the right of labor in the continuous improvement of productive efficiency; and the collaboration of workers and employers in the preparation and application of social and economic measures. The ILO was created in 1919 as a means to promote social progress and overcome social and economic conflicts of interest through dialogue and co-operation but the origins of the ILO lay further back, in the nineteenth century. As industrialization began to transform economies and societies, a central political issue was the so-called "social question" – how to deal with the social consequences of industrialization, and to redress the deep inequities and injustices of the Industrial Revolution. In contrast to the revolutionary movements of the time, it brought together workers, employers and governments at the international level – not in confrontation, but in a search for common rules, policies and behaviors from which all could benefit. It included a number of unique features. Above all, it gave these economic actors equal power of decision with states, and it introduced new forms of international treaties concerned with social aims, along with new ways to apply them.

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twentieth century, even more so than in earlier times, was a period in which human activity seemed to be largely structured around war and work. And this was partly because both war and work had become global. In the wake of the World War I, with its savagery, mass mobilization and widespread social repercussions, political leaders were open to fundamental change in politics, economy and society, and to the building of international institutions which could engage an international organization for social justice. War temporarily halted the growth of trade, but generated many other reasons to be concerned about labor matters. Labor unrest was widespread in the latter stages of the conflict and immediately afterwards, and this had a notable influence on the Peace Conference in 1919. Work was at the centre of most people's lives, as it always has been, but it increasingly became a concern beyond the sphere of the family or the firm. The character of work itself changed, as the flow of people from agriculture to industry accelerated. Workers organized and demanded dialogue, opportunity, decent incomes and dignity. There was growing awareness that labor markets were interconnected across borders and that public action was needed to achieve common standards. These two streams came together with the creation of ILO.

The Era of Constitutionalism

The proclamation of Independence and adoption of the Constitution of India further strengthened the labor jurisprudence in the country through the concept of welfare state and social justice. A posi-

tive social change which has taken place following Independence was in the field of industrialization and growth of the entrepreneurial classes which witnessed the emergence of a sizable middle class of small entrepreneurs, commercial classes, and professional groups in urban India. With the background of centuries of foreign domination and exploitation of labor class, our Constitution helped us evolve as a welfare state. Under the powerful impact of Indian Constitution, Indian Parliament and the state legislatures had introduced drastic reforms in the social and economic structure of our country. Article 43A—which emphasizes the workers' role in production as partners in the process—read in the light of the earlier accent on workers' rights and social justice, accords a new status and sensitivity to industrial jurisprudence in our 'socialist republic'. The constitutional mandate of Part IV, obligating the State to make 'provision for securing just and humane conditions of work' is a socially vital factor. The source and strength of the industrial branch of Third World jurisprudence is social justice, as proclaimed in the Preamble to the Constitution. A myriad device, half-hidden in fold after fold of legal forms, depending on the degree of concealment needed—the type of industry, the local conditions and the like—may be resorted to when labor legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43A of the Constitution. Appreciation of the constitutional consciousness with regard to labor laws shows us that the Constitution of India is not a non-aligned parchment but a partisan of social justice, with a direction and destination that it sets out in the Preamble

and Article 38. The Constitution has expressed a deep concern for the welfare of workers and has provided in Article 42 that the State shall make provision for securing just and humane conditions of work and in Article 43 it is provided that the State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers—agricultural, industrial or otherwise— a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure. These are among the Directive Principles of State Policy. The mandate of Article 37 of the Constitution is that while the Directive Principles of State Policy shall not be enforceable by any Court, the principles are ‘nevertheless fundamental in the governance of the country’ and ‘it shall be the duty of the State to apply these principles in making laws’.

The role of the norm setting process as initiated by ILO, made much impact on the Indian Government in further consolidation of labor legislations protecting the aspects of right to social security and the welfare of organized and unorganized workers in the country. Interestingly, the judiciary also strengthened the constitutional philosophy in the interpretation of labor legislations for the welfare of the labor class. The country witnessed plethora of labor judgments laying down important basic principles in the interpretation and application of labor legislations. Indeed, in the history of labor jurisprudence up to a certain point the judiciary and the executive have worked in tandem, however one can see a slight shift in this approach subsequently.

ILO's Core Labor Standards

With the fear that globalization could erode values of democracy and social justice it became important to ensure respect for workers' rights and labor standards in the global economy. Foreseeing that the ILO could play a leading role, working in greater cooperation with other international organizations, including the *international financial institutions* (IFIs) and the World Trade Organization (WTO), national governments and employers' and workers' organizations, in the year 1995 the International Labor Conference adopted by an overwhelming majority, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Declaration commits all ILO member states to respect the principles in four areas, whether or not they have ratified the specific conventions. These four areas are: freedom of association and collective bargaining; the elimination of forced labor; the elimination of child labor; and the elimination of discrimination in respect of employment and occupation. This was later again followed by the Trade Ministers at the WTO's Ministerial Conference in Singapore in 1996. This was to renew their states' commitment to observe internationally recognized Core Labor Standards and state that the ILO is the competent body to set and deal with these standards. The Ministers noted that economic growth and development can contribute to the promotion of those stan-

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dards, and reject their use for protectionist purposes. The statements came at a time when there was much debate over a proposal for a “social clause”. At Singapore in December 1996, WTO members renewed their commitment to the observance of internationally recognized Core Labor Standards and supported collaboration between the WTO and ILO. Also in 1996, a Trade and Labor Standards Study by the Organization for Economic Cooperation and Development (OECD) endorsed standards from an economic point of view, noting that the “Labor standards that embody basic human rights can stimulate economic development and are therefore in the interest of all workers (and countries) in the world.” Although it was not definitive, the OECD study suggested that higher labor standards were not a barrier to foreign investment.

The economic argument suggests that low wages and labor standards in developing countries threaten the living standards of workers in developed countries. The moral argument asserts that low wages and labor standards violate the human rights of workers in developing countries. Supporters of trade-labor linkage fear that competition from imports made in low-wage developing countries will lead to loss of jobs for workers in developed countries, and would drive the developed countries to lower their labor standards.

The trade and labor linkage is that in the absence of coercive international labor standards, all the nations of the world would deliberately lower their labor stan-

dards, so as to benefit from the resultant comparative advantage. Attaching labor standards to the WTO and trade agreements, it has been argued, will not achieve the goal of better wages or labor standards, nor will it have the desired effect of keeping more jobs in the industrialized countries.

Core Labor Standards in India

Having examined the norm setting agenda as initiated by the ILO in collaboration by the WTO in ensuring a better deal for the labor, it is proposed to assess the impact of ILO’s Core Labor Standards on the Indian labor scenario. These efforts include presentation of the statistics as made available by reliable sources.

Table 1 indicates a broad idea about the follow up action as initiated by the Indian Government pursuant to the Constitutional commitment read with ILO Conventions, covering broadly the area of Core Labor Standards concept. Though express ratification of the Convention is absent in respect of vital ILO Conventions covering the aspects of Core Labor Standards yet the existence of appropriate legislations is evident in India.

Child Labor

In 1979, Government formed the first Committee called *Gurupadswamy* Committee to study the issue of child labor and to suggest measures to tackle it. Based on the recommendations of this Committee, the Child Labor (Prohibition

Table 1 Core Labor Standards & the Relevant National and Constitutional Provisions in India

| Core Labor Standard | ILO Convention | Ratification by India | Appropriate National Legislation | Supporting Constitutional Provision |
|------------------------|---|-----------------------|--|---|
| Child Labor | Worst forms of Child Labor Convention (No.182) | No | The Child Labor (Prohibition and Regulation) Act of 1986 | Article 24 and Article 39 (e),(f),Article 41 and Article 47 |
| Freedom of Association | Freedom of Association and Protection of Right to Organize Convention(No.87) | No | The Trade Unions Act , 1926 | Article 19(1)(c) |
| Collective Bargaining | Right to Organize and Collective Bargaining Convention (No.98) | No | The Industrial Disputes Act, 1947 | Article 43A |
| Minimum Wages | Minimum Wage Convention 131 | No | The Minimum Wages Act 1948 | Article 43 |
| Equal Remuneration | Equal Remuneration Convention (No.100) | Yes | The Equal Remuneration Act, 1976 | Article 14, Article 39 (a) |
| Forced Labor | Abolition of Forced Labor Convention (No.105) and Forced Labor Convention (No.29) | Yes | Contract Labor (Regulation and Abolition) Act 1970 | Article 23 |

& Regulation) Act was enacted in 1986. The Act prohibits employment of children in certain specified hazardous occupations and processes and regulates the working conditions in others. A National Policy on Child Labor was formulated in 1987. The Policy seeks to adopt a gradual and sequential approach with a focus on rehabilitation of children working in hazardous occupations and processes in the first instance. The problem of child labor still continues to pose a challenge before the nation. Government has been taking various pro-active measures to tackle this problem. Though the right to free and compulsory education for the children of 6-14 years is a fundamental right, which in fact was immediately enforced with the enactment of Right to Education Act, 2012, still the extent of child labor is not mitigated; perhaps the priority of the Government in the context must be to raise the purchasing power of the bread winners of the family. For the purpose of a micro assessment the statistics relating to the extent of child labor prevailing in India on the whole and in particular in Karnataka during the period 2001-2011 is shown in Table 2.

Table 2 Number of Working Children in Age Group of 5-14 Years during 2001-2011

| Region | No. Of Working Children in the Age Group of 5-14 Years | | | |
|-----------|--|-----------|-----------|---------|
| | 2001 | 2004-2005 | 2009-2010 | 2011 |
| India | 12666377 | 9075000 | 4983871 | 4353247 |
| Karnataka | 822615 | 571000 | 226497 | 249432 |

Source: <http://labour.gov.in>

Statistics during the period 2001-2011 show a decreasing trend in child labor in India and Karnataka as well.

Interestingly, the statistics during the period 2001-2011 show a decreasing trend in child labor in India and Karnataka as well, even prior to the enactment of Right to Education Act, 2012. Perhaps the reasons are many for this declining trend. The role of NGO's in this regard cannot be ignored. The essence of the implementation of any welfare legislation would fundamentally lie in the exercise

of its effective enforcement. Fortunately, the Child Labor (Prohibition and Regulation) Act, 1986 is much reformatory in character as far as the enforcement mechanism is concerned. Apart from the traditional labor departments, there are hierarchies of state departments which are included as the enforcement authorities under the Act. Table 3 presents a picture of total number of inspections carried out under the Act, the violations found and the prosecutions initiated resulting in convictions. Again the scenario is satisfactory perhaps due to the reason of elaboration of enforcement mechanism under the Act.

Table 3 Enforcement Figures On Child Labor (Prohibition & Regulation) Act, 1986 for the Period 2009-2013

| Year | Inspections | Violations | Prosecutions | Convictions |
|-------|-------------|------------|--------------|-------------|
| 2009 | 328077 | 8709 | 5633 | 1489 |
| 2010 | 255176 | 11182 | 4570 | 1536 |
| 2011 | 150771 | 14411 | 6011 | 976 |
| 2012 | 164453 | 12019 | 5018 | 1144 |
| 2013 | 174994 | 8859 | 3486 | 1041 |
| Total | 1073471 | 55180 | 24718 | 6186 |

Source: Labor Bureau (<http://labour.gov.in>)

Right to Organize

Though India has not ratified the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize or Convention No. 98 on the Right to Organize and Collective Bargaining, yet

the country witnessed the enactment of key legislations namely, the Trades Unions Act, 1926, and the Industrial Disputes Act, 1947, which practically give effect to these two un-ratified Conventions. Further the right to organize and collective bargaining concept was reiterated by the higher judi-

ciary in India by holding that the bi-partite agreements should be given due recognition. The judicial policy is always to give paramount importance for the bi-partite settlement since it is arrived at by the employer and the workmen in the course of collective bargaining without the influence of any outside forces such as conciliation or adjudication.

Certainly in the history the of Indian labor movement, the central trade union organizations with a strong ideological background could be able to establish a strong hold on the workforce employed in large and medium scale industrial establishments in India particularly in the public sector. One can also notice the

contribution of the trade union movement for the consolidation of effective labor law regime in the country. However, the era of liberalization gave a major jolt for the trade union movement in India for various reasons such as closure of many public sector undertakings, cotton textile industries in traditional regions and also with the emergence of multinational companies and software industries. The survival, global competition and maximum profits movement attained the prominence and in the process the employees' security of tenure and better service conditions lost sight of. And the trade union movement certainly had fallen away far behind in this context. Table 4 further consolidates the reasoning.

Table 4 Growth of Registered Trade Unions & Their Working during 1996-2010

| Year | No. of Registered Trade Unions | No. of Unions Submitting Returns | Percentage of Unions Submitting Returns To Total No. of Registered Unions |
|------|--------------------------------|----------------------------------|---|
| 1996 | 58988 | 7242 | 12.3 |
| 1997 | 60660 | 8872 | 14.6 |
| 1998 | 61992 | 7403 | 11.9 |
| 1999 | 68817 | 8152 | 12.6 |
| 2000 | 66056 | 7253 | 11 |
| 2001 | 66624 | 6531 | 9.8 |
| 2002 | 68544 | 7812 | 11.4 |
| 2003 | 74649 | 7258 | 9.7 |
| 2004 | 74403 | 5252 | 7.1 |
| 2005 | 78465 | 8317 | 10.6 |
| 2006 | 88440 | 8471 | 9.6 |
| 2007 | 95783 | 7408 | 7.7 |
| 2008 | 84642 | 9709 | 11.5 |
| 2009 | 22284 | 3861 | 17.7 |
| 2010 | 18602 | 2937 | 15.5 |

Source: Labor Bureau (<http://labour.gov.in>)

The period commencing from 1996 is an era of the beginning of post reforms phase, which witnessed a steady growth in the formation of trade unions and their

registration in the country. However, the period from 2008 to 2010 shows totally a declining trend in this regard. The most disappointing aspect is the trend in 2009

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wherein the registered trade unions have even failed to submit the annual returns. One of the reasons for the declining trend of the formation of the trade unions may be that the multinational companies in India including the software companies have not encouraged the formation of trade unions in the establishments. Any initiations to form a union by the workers were met with victimization. Further, contractualization and the process of outsourcing have also had strong bearing on this negative trend.

Collective Bargaining

Collective Bargaining process is central to smooth industrial relations. The Industrial Disputes Act, 1947 recognizes the bi-partite and tri-partite types of settlements and also provide for

its binding nature and the period of operation. Effective bargaining process in matters relating to wages and other service conditions would lead to healthy industrial relations which ultimately avoid the industrial unrest. The tri-partite settlement is given its place of pride in the law since its binding nature is comparatively wider in scope than the bi-partite settlement. The role of conciliation is mandatory in tri-partite settlements. As indicated in Table 5, the settlement of disputes initiated by the Central Industrial Relations Machinery (CIRM) in the entire country during the rapid phase of liberalization is highly discouraging and concerning. The more agonizing issue is the number of disputes which lay pending in the conciliation. What reasons can be attributed for this stagnation?

Conclusion

The intricate and multifaceted nature of the issues surrounding Core Labor Standards has led to considerable de-

Table 5 Number of Disputes Admitted & Settled By CIRM during 2006-2013

| Year | No. of disputes received by the CIRM | Disputes settled without formal CP | No. of disputes in which formal CP were held | No. of disputes in which CP led to the settlement of disputes | No. of disputes in which CP ended in failure | No. of disputes pending |
|---------|--------------------------------------|------------------------------------|--|---|--|-------------------------|
| 2006-7 | 8332 | 1685 | 3047 | 989 | 2058 | 3600 |
| 2008-9 | 8586 | 1661 | 3175 | 1377 | 1808 | 3750 |
| 2009-10 | 8620 | 1807 | 3322 | 1429 | 1893 | 3491 |
| 2010-11 | 9773 | 1788 | 4459 | 2268 | 2191 | 3526 |
| 2011-12 | 7915 | 686 | 5593 | 1605 | 1361 | 4872 |
| 2012-13 | 10290 | 1988 | 4041 | 2178 | 1863 | 4261 |

Source: Labor Bureau (<http://labour.gov.in>) Annual Reports 2008-2013. CIRM- Central Industrial Relations Machinery; CP- Conciliation Proceedings

bate in the international community and has highlighted the significance of the various, potentially complementary, promotional mechanisms which aspire to address one or more of the reasons for non-compliance. Undoubtedly the ILO has made far reaching implications in the enactment of various welfare legislations by the countries across the world. Soon, ILO is *commemorating* its centenary of existence. In this eventful circumstance, it is mandatory upon the ILO to evolve concrete measures and means for effective implementation of labor legislations in the developed, developing and least developed countries. Comparatively, if one examines the rapid initiations made by the WTO on the international trade by encoding spate of agreements which practically demonstrates the anxious agenda of stakeholders and in the process comparatively less priority has been given to examine the impact of Core Labor Standards across the world. There is a need to shift from this paradigm by the WTO, and ILO also must emphatically make it a point to prevail upon the WTO as well as on its member countries to give priority for labor welfare in the agenda. Undoubtedly in India the concept of flexible labor gained momentum and the process was first exploited on the contract, migrant, casual and unskilled labor. At times the conditionalities as imposed by the WTO were invading into the basic human rights to livelihood which

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is quiet evident in Indian perspective from the manner in which the ordinance on land acquisition dealt with the land holding rights of poor and marginal farmers in India by the NDA Government. The history of conscious labor exploitation cannot be repeated nor revisited again.

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