

Labour Legislation Under the Colonial Period and Its Post-Colonial Transitional Developments - A Legal and Historical Perspective

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Abstract

India has rich natural resources and labour force. India utilises its natural resources with its labour force. However, this was not the case during the colonial period. British utilized the natural resources and labour force of India for their own benefit. To ensure effective utilization of the labour force of India, the British enacted various labour legislations for such purpose. Even though those enactments were the products of the imperial parliament of British, served labour welfare and established the foundation for labour welfare legislation in India. Various enactments of the British remained in force for a long period of time even after the independence. Now, India codified various labour legislations into labour codes. Such codes contain the essence of previous labour legislation which have British origin. In addition to this, the parliament of India has added many more legislative schemes that will be implemented when all the new four labour codes are enforced. So, the role of colonial labour legislation in the development of labour welfare in India is undeniable and unforgettable from a historical perspective. In this Article the authors narrate the evolution of labour laws from the perspective of colonial and post-colonial era.

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1. INTRODUCTION

The labour and capital forces are two pillars that contribute to the development of a country. Maintaining peace between the Labour force and the Capital force is inevitable. The Industrial Revolution significantly changed the economy and social structure of the world. New inventions, machinery, development of transportation, and shipping increased industrialization and urbanization. These changes led to those forces emerging into two classes. Such as the entrepreneur class and the wage-earning class. There are frequent clashes and conflicts between them. Referring to world history, countries are taking various steps to maintain peace between them. India is not an exceptional one from it. Labour legislation in India originated from the British colonial period. Labour legislations enacted by the British for India were mainly focused on protecting the

interests of the British employers. The British politics and economy were shaping the labour legislation of India. India had enormous raw materials and a huge labour force. The cost of labour in India was cheaper than the British labour. British workmen had sufficient wealth to run their lives. But, in India, people were suffering from poverty and indebtedness. So, their cost of labour is very low. They were easily exploited by the employers. The only way for the British was to secure the welfare of Indian labour, which would increase the revenue for Britain. So, they enacted and implemented labour legislation to secure welfare and productivity. Many legislations enacted by the British parliament for colonial India had positive impacts on Indian labour welfare. Particularly the Apprentice Act, of 1850 and the Factories Act, 1881.

1.1 *The Apprentice Act, 1850*

It was the first legislation that dealt with the children's conflict with the law. Under this Act, the parent or guardian of the children can send them to the master of apprentice for apprenticeship. The magistrate was empowered to send any children under the age of eighteen and above the age of ten who were orphans or poor children abandoned by their parents or children in conflict with the law to learn trades, crafts and employment from establishments for gaining their livelihood¹. This Act safeguarded the interest of children who were acting as apprentices under the control of the master of apprentice. Importantly, the apprentice can get maintenance for up to three months from the assets of the master of the apprentice after the death of the master of the apprentice².

1.2 *The Factories Act, 1881*

The state followed a Laissez-faire policy towards labour matters. The word Laissez-faire is defined as “the policy of allowing private businesses to develop without government control³”. Hours of work, holiday, resting time, and category of person employed were only laid in the hands of the employers. They employed women and children in the hazardous places of their industries. Even though employees are suffering from these conditions, the opinion of the public did not favour any legislation. However, the first Factories Act was passed in 1881 to regulate the conditions of the factories. The very first time this Act brought the Indian industrial workers and British industrial workers into the same plank. This Act protected the interest of children and provided health and safety measures. Factories Act was amended in 1891, through this amendment one day holiday in a week was given to the workers, employing women at night was restricted, lower age and upper age limitations for children were fixed as nine and fourteen years, employing children for work should only in daylight and other Health measures provided by it⁴.

2. INFLUENCE OF ILO IN COLONIAL LABOUR LEGISLATIONS OF INDIA

Before 1919, Labour legislation enacted by the British for colonial India only depended upon the economy and political stand of the British, no one was there to secure the interest of colonial industrial workers, especially Indian industrial workers. Many pieces of legislation were passed with that background. Some of them are The Apprentice Act, 1850, The Fatal Accidents Act, 1855, The Merchant Shipping Act, 1859, The Factories Act, 1881, The Employers and Workmen (Disputes) Act, 1860, The Workmen's Breach of Contract Act, 1859, The Indian Mines Act, 1901 and so on. But in 1919, the International Labour Organisation (ILO) emerged with the motive of promoting social justice and internationally recognized human and labour rights. Remarkably, Colonial India became the founding member of ILO on 28 June 1919. The influence of the International Labour Organisation in Indian Labour Welfare legislation is notable one.

India ratified various conventions of the International Labour Organisation (ILO). Through those conventions colonial labour legislation was shaped into labour welfare legislation. Notably, ILO provided five international labour conventions in its founding year 1919. Those are the Hours of Work (Industry) Convention, Unemployment Convention, Night Work (Women) Convention, Minimum Age (Industry) Convention and Night Work of Young Persons (Industry) Convention. Those five conventions were ratified by India. Two of them were denounced by ILO itself. One was denounced by India. Two conventions are still in force in India. Those two conventions are incorporated into statutes by India. Those are,

2.1 *Hours of Work (Industry) Convention, 1919*

The General Conference of the International Labour Organisation was held in Washington, USA on the 29th day of October 1919. The main motive of this conference was to apply “the principle of the 8 hours of work in a day or of the 48 hours of work in a week” in Labour legislation. Referring to Articles 1 and 2 of the said convention, the working hours of persons employed in any public or private industries shall not exceed eight hours in the day and forty-eight hours in the week. The term “industrial undertaking” is clearly defined in Article 1. Most of the Indian labour workers came under that definition. Article 8 of the said convention, imposed a duty to every employer to affix notice in conspicuous places in the place of work regarding the hours at which work begins and ends. It further imposed the duration of the time between the beginning and end of the work not exceeding the working hours fixed by this convention. Totally 52 countries ratified the said convention. Importantly, India ratified that on 14th July 1921 even before its independence. The Factories Act, 1948 is lined with the said convention. This Act provided every adult worker to work in a factory for not more than forty-eight hours a week⁵, and there was also a provision to affix a clear notice regarding the time of work when it begins, ends and the duration of work⁶. Therefore, the provisions of the said convention clearly enforced by India through its statute. Remarkably, ratification of the Hours of Work (Industry) Convention, 1919 is still in force in India.

2.2 *Night Work of Young Persons (Industry) Convention, 1919*

This convention mandates the member states to restrict employing young persons in Night work. Young persons under eighteen years of age shall not employed during the night in any public and private industrial undertakings under Article 2 of the convention. However, the condition for British India is different under article 6 of said convention. Any male young person over fourteen years of age can be employed in night work but any female young under eighteen years of age shall not employed during the night. India ratified the said convention on 14th July 1921. Those provisions were adopted by India with modifications in the Factories Act, 1948. In that Act, there is no difference

¹ *The Apprentice Act, 1850, Sec 1 and 3, No. 19, Acts of Parliament, 1850 (U.K.).*

² *Id. at Sec 21.*

³ *Laissez-faire, Oxford Advanced Learner's Dictionary (9th ed. 2015).*

⁴ *Avkash Daulatrao Jadhav, The Role of British Legislations and the Working Class Movement in Bombay: A Historical Study of the Factory Acts of 1881 and 1891 in India., 1 The International Social Sciences*

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⁵ *The Factories Act, 1948, Sec 51, No.63, Acts of Parliament, 1948 (India).*

⁶ *Id. at Sec 61.*

between male and female young person. The general term “children” is used and there is a prohibition of employment of children during night time⁷. The influence of ILO conventions in Indian labour legislation did not stop in the pre-independence period but it is still influencing. Besides the ILO conventions, British enactments laid a strong foundation for the Indian Labour Welfare Legislation. Some British labour enactments even operate after independence with amended provisions. Specifically, the Workmen's Compensation Act, 1923, The Trade Union Act, 1926, The Payment of Wages Act, 1936, The Employment of Children Act, 1938 and The Industrial Employment (Standing Orders) Act, 1946. Those enactments are played a significant role in the labour welfare of India.

2.3 *The Workmen's Compensation Act, 1923*

It is the first piece of important social security legislation. It attempts to effectuate the principle of social justice as declared by the ILO. The question of granting compensation to workmen for fatal accidents was first raised in India in 1884. However, a committee was formed in 1921 to investigate the need for the legislation. That committee had Legislative Assembly members, representatives of Employers, representatives of workers and experts in medical and insurance. Decisions of the committee were favoured for the framing of legislation⁸. The Workmen's Compensation Act was passed in 1923. This Act not only gave Compensation to the aggrieved workman but also forced the employer to keep the industrial place safe to work. This Act provides the right to get compensation by the workman or his dependents for any physical disability or death of the workman which is arising out of and during the course of employment of the workman. Besides this Act provides the right to get compensation for occupational diseases mentioned in Schedule 3. The Workmen's Compensation Act, 1923 was renamed the Employee's Compensation Act, 1923 and it is still in force with amended provisions of Indian parliament.

2.4 *The Trade Unions Act, 1926*

The right to form an association is the fundamental right given by the Constitution of India. Before the constitution, the right to form a labour union is given by the Trade Unions Act, 1926. Achieving this right was a very long and painful process throughout the Indian labour history. Before this Act, organising labourers was illegal. The organisers and members of such organisations were declared as illegal conspiracies and they were liable to compensate the management for the loss that occurred by their non-working. But all those situations have been completely changed by the said Act. This Act provides the right to form and join trade unions to collectively raise their voice for the betterment of the working conditions. This Act further empowers the trade union to Act as representatives of workmen for representing themselves in the decisions of the management. It can also manage the affairs of workers in management. Trade unions which are established under the Trade Union Act are well constructed. Because the trade union run by the funds which is

given by the members of the trade union⁹ and the trade union has immunity from civil cases¹⁰. Under the Trade Unions Act 1926, trade unions can represent and collectively exercise the bargaining power of the members. Importantly recognition of trade unions is not mandatory under the said Act. This Act will be replaced by the Industrial Relations Code, 2020 with a few other labour legislation.

2.5 *The Payment of Wages Act, 1936*

Before this Act, the wages of workmen are in the hands of employers. They do whatever they want to do. Most of the time, the employers did not make the payment of wages to workmen and even though they paid, they made several deductions in the wage amount without valid reasons. Workmen are not rich people or they do not have any financial support to run their life. They are the breadwinner of their family only by their wage which they are entitled to by their hard work in the employment. The Royal Commission on Labour stated the reason people joined to work in industries for wages was their indebtedness. Even though they started their work in industries, there was two-thirds of them were still in indebtedness¹¹. Therefore, giving wages late and making unnecessary deductions leads to poverty and indebtedness. The Payment of Wages Act was enacted by the recommendations of the Royal Commission on Labour in 1936 which came into force on 28th March, 1937. This Act granted vital rights to workmen to get wages at fixed times without any delays and any unnecessary deductions. Such payment of wage must be paid within the seventh day of the wage period and for larger establishments, within the tenth day of the wage period¹². Besides, the said Act defined what are the permissible deductions that can be deducted from wages, which include deductions for fines, house accommodations, damages or loss of goods, absence from duty and wage advances. Outside of permissible deductions, all deductions are illegal. This helped the workmen from arbitrary and unauthorized deductions by employers. Additionally, in case of any default of the employer regarding the payment of wages, the aggrieved workmen can approach the relevant authority. Inspectors who were the relevant authority. He can impose fines and take measures to save the interests of workmen. This statute played its role significantly. Later, the Payment of wages Act, 1936 will be replaced by the Code on Wages, 2019 with other legislation.

2.6 *The Employment of Children Act, 1938*

The Employment of Children Act, 1938 safeguarded the rights of children in the workforce. This Act lined with the Night Work of Young Persons (Industry) Convention (Revised), 1948 of ILO. This Act prohibited employing children below the age of fourteen years in hazardous occupations and processes in factories, mines and other dangerous environments. Any employer cannot force any young persons to work in any hazardous and unsafe working conditions¹³. Further, this Act regulated the working hours and conditions of young persons. There should be intervals of rest between the works. These

⁷ *Id.* at Sec 71.

⁸ Dr. V.G. Goswami, *Labour & Industrial Laws*, pp. 23, (Central Law Agency 2019).

⁹ *The Trade Unions Act, 1926, Sec 15, No.16, Acts of Parliament, 1926 (India).*

¹⁰ *Id.* at Sec 18.

¹¹ John Henry Whitley, *Report of the Royal Commission on Labour in India*, pp 224 (1931).

¹² *The Payment of Wages Act, 1936, Sec 5, No.4, Acts of Parliament, 1936 (India).*

¹³ *The Employment of Children Act, 1938, Sec 3, No.26, Acts of Parliament, 1938 (India).*

provisions aimed to prevent overwork and help children to have sufficient time for rest, education and growth. Additionally, this Act prohibited the night employment of the children. The said Act imposed a duty to maintain the register containing the details of the employed children including name, age, working works and nature of work¹⁴. Furthermore, there was appropriate authority to carry the provisions of the Act and he authorized to penalise and take necessary action in case of any violation of the provisions. This Act has been repealed by the Child Labour (Prohibition and Regulation) Act, 1986.

2.7 *The Industrial Employment (Standing Orders) Act, 1946*

Employment of workmen is based on the contract between the employer and workmen. Sometimes those were in oral format. Even those were in writing, the terms of the employment contracts were not clear. So, the workmen were exploited by employers in a legal manner with the help of unclear contracts. The Industrial Employment (Standing Orders) Act, 1946 came into force to eliminate the evil of unclear contracts. This Act provides rights to the workmen to clear and standardized terms of the contract of employment. The Act mandates that employers define and publish the terms and conditions of employment clearly if that industrial establishment contains 100 or more than 100 workmen who are employed or were employed on any day of the preceding 12 months¹⁵. That's known as "standing orders". These standing orders eliminate various irregularities in the terms regarding working hours, attendance, leave conditions, wage policy and disciplinary procedures. Importantly, any standing orders should be heard by workers and its open to given suggestions and objections. After the acceptance of standing orders by workers, the certifying officer should certify the standing orders¹⁶. Then only it comes into force. Further, certified standing orders should be placed in the working place. This Act also provides fines and penalties for the violation of the standing orders and there is a procedure that can be done by workmen against the arbitrary actions of employers. This Act will be replaced by the Industrial Relations Code, 2020.

3. NEW SPHERE OF LABOUR WELFARE LEGISLATIONS OF INDIA

It is very clear. Indian Labour legislations have its origin in the colonial period. But the development in those legislations happens after the independence. Currently, India codified 44 labour legislation most of its labour welfare and Social security legislation into 4 labour codes. These are the Code on Wages, 2019, Industrial Relations Code, 2020, The Code on Social Security, 2020 and Occupational Safety, Health and Working Conditions Code, 2020.

3.1 *The Code on Wages, 2019*

This code codified and repeals, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus

Act, 1965 and the Equal Remuneration Act, 1976 on its enforcement all over India. This code modernizes and simplifies the application of the above Acts. Further, this code contains new provisions regarding wage, Bonus and Remuneration. Notably, this code extends the operation of minimum wages to all workmen of organized and unorganized sectors. Further, it provides strict compliance with "floor wage". It should be fixed by the central government based on the living standards of a worker. Later, state governments should fix minimum wages not less than the floor wage¹⁷. This code clarifies the time limit of wages. The employer should pay the wage at the end of the shift if the employee engaged on a daily basis or on the last working day of the week if he engaged on a weekly basis or before the end of the second day after the end of the fortnight if he engaged on fortnightly basis or before the expiry of the seventh day of the succeeding month if he engaged on monthly basis¹⁸. Furthermore, this code disqualified an employee from a bonus if he was dismissed from service on the grounds of sexual harassment¹⁹. Importantly, this code is gender-neutral regarding remuneration.

3.2 *Industrial Relations Code, 2020*

Industrial Relations Code, 2020 repeals and codifies its enforcement, the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947. This code introduced the concept of a "sole negotiating union" for the betterment of the bargaining power of employees. A trade union which avails the support of fifty-one percent of workers become as sole negotiating union²⁰. If there is no sole negotiating union, the bargaining power can be exercised by the negotiating council. Such a council consist of representatives from the trade unions of industries²¹. This code mandates establishments to constitute Grievance Redressal committees if that establishment contains 20 or more workers²². Furthermore, this code establishes tribunals for resolving industrial disputes in the place of multiple adjudicating bodies. Which consists of a judicial member and an administrative member.

3.3 *The Code on Social Security, 2020*

This code contains the provision for "fixed-term employment" which allows employers through written contracts to hire workers for a particular period of time. During the course of fixed-term employment, the employers have the right to avail the same benefits which is given to permanent workers²³. This code extends the scheme of social security to gig workers who engaged in employment outside of traditional employer-employee relationships, platform workers and unorganized sector workers. This inclusion is the direct reflection of the international employment shift towards gig, platform and unorganized sector workers. The Social Security Fund is another groundbreaking provision which ensures financial benefits such as old-age pensions, medical insurance, maternity benefits and so on towards a variety of workers through the contribution of

¹⁴ *Id* at Sec 3D.

¹⁵ *The Industrial Employment (Standing Orders) Act, 1946, Sec 1 and 9, No.20, Acts of Parliament, 1946 (India).*

¹⁶ *Supra* note 15, at Sec 5.

¹⁷ *The Code on Wages, 2019, Sec 9, No.29, Acts of Parliament, 2019 (India).*

¹⁸ *Id.* at Sec 17.

¹⁹ *Id.* at Sec 29.

²⁰ *The Industrial Relations Code, 2020, Sec 14(3), No.35, Acts of Parliament, 2020 (India).*

²¹ *Supra* note 20. at Sec 14(4).

²² *Id.* at Sec 4.

²³ *The Code on Social Security, 2020, Sec 2(34), No. 36, Acts of Parliament, 2020 (India).*

employers, employees, appropriate government and aggregators²⁴. The inclusion of aggregators as contributors to social security funds helps the development of the gig and platform workers who serve as digital intermediaries to them²⁵. Importantly, career centres should be established by the code to provide opportunities to the person who seeks employment and who seeks to provide employment²⁶. Role of Overseeing and monitoring social security schemes given to National Social Security Board. This board ensure the benefits of social security are properly given to the intended beneficiaries. Further, this code extends the applicability of maternity benefits to women employed in gig, platform and unorganised sector workers if such women worked for at least eighty days in the 12 months preceding their delivery. Information on employment such as the process of registration and records of employees should be kept in digital format. It will reduce the burden on the employees to prove their employment in particular employment.

3.4 Occupational Safety, Health and Working Conditions Code, 2020

This code covers employees permanently engaged or engaged as contract labour in industry, trade, manufacturing process, factory, buildings and other construction works, business, plantation, mine, audio-video production and so on. This term factory denotes 20 or more workers engaged in a manufacturing process carried with the aid of power. If there is no aid of power, the worker's count should be 40 or above²⁷. This broad coverage ensures the benefits of standardized safety and health regulations to a larger number of workers. This code mandates that employers appoint safety officers if the factory contains 500 workers or if the factory engages in hazardous processes with 250 workers if the establishment where building or other construction with 250 workers or if the establishment is mine working with 100 workers²⁸. This provision provides dedicated personnel to watch over the safety measures of the industrial establishments. Further, this code provides the provision for medical examinations free of cost for finding occupational diseases²⁹. This aimed at early care and prevention of such diseases for the betterment of employees. Contract workers have the same level of safety and health protection as regular

employees and it should be provided by their principal employers³⁰. Importantly, this code provides special provisions regarding women's safety. Any woman can be employed in the work before 6 a.m. and beyond 7 p.m. with the consent of women employed under the safety and health measures³¹. It empowers the appropriate government to restrict the employment of pregnant women engaging in the manufacturing process³².

4. CONCLUSION

The period between the Factories Act, 1881 and the Occupational Safety, Health and Working Conditions Code, 2020 is 139 years. During this period, the welfare of workmen has evolved gradually. Colonial legislation is the starting point of the labour welfare and Social security legislation. One colonial law provided that the wages should be paid on time, and the other one provided safety measures to workers. Another legislation provided the right to form and join a trade union, and the further one regulated the contract of employment, and a few other laws provided the right to compensation for any physical loss. Now, India has four labour codes which codified 44 labour legislations. Labour legislations are simplified and modernized. Labour welfare is an evolving concept therefore the need for further development is still there. So, the four labour codes are not the end of the evolution. It's just a stone in the journey of evolution. It will evolve in future like how it evolved from the colonial period to now.

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7. CONFLICT OF INTEREST

Conflict of interest declared none.

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²⁴ *Id.* at Sec 141.

²⁵ *Id.* at Sec 114(4).

²⁶ *Id.* at Sec 2(9).

²⁷ *The Occupational Safety, Health and Working Conditions Code, 2020, Sec 2(w), No. 37, Acts of Parliament, 2020 (India)*.

²⁸ *Id.* at Sec 22.

²⁹ *Id.* at Sec 6(g).

³⁰ *Id.* at Sec 53.

³¹ *Id.* at Sec 43.

³² *Id.* at sec 82.