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THE DOCUMENTED ROLE OF JUDICIARY IN SAFEGUARDING WORKMEN'S RIGHTS IN INDIA: A COMMENTATIVE LEGAL ANALYSIS

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"Without labor nothing prospers."

– Sophocles.[2]

ABSTRACT

The Constitution of India aims at establishing a Social Welfare state. Consequently, the provisions in Part III and Part IV of the Constitution protect, support, and act as a guideline for effective implementation and working of various Labour and Industrial Laws. But in the Modern age of Globalisation and Liberalisation, a balanced approach is required, which not only favour's Workmen rights but also ensures that these rights are not interpreted in a manner that would completely negate Investor security. In such a scenario the Judiciary in India, has played a key role in Protection of Workmen Rights, by Interpreting the Constitutional Provisions and relevant statues, in order to ensure that Justice prevails. All these instances demonstrate the ability and power the Judiciary possess to safeguard Workmen rights if they have the inclination and commitment to provide for Workers welfare. Thus, the Judiciary has performed a valuable role in assisting the State, the Workmen and Investors. While the Judicial process may not be completely flawless, yet it has shown its effectiveness in upholding Constitutional and Statutory Framework particularly in matters pertaining to workmen's rights.

KEYWORDS: Constitution, Social Welfare, Judiciary, Workmen, Rights, Labour and Industrial Laws.

Introduction

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[2] Thoughts on the Business of Life, Forbes Quotes, (Aug.8, 2020, 10:21 PM), https://www.forbes.com/quotes/8757/.

With adoption of the Constitution in 1950, the Republic of India became a Social Welfare state. The various principles regarding the same were enshrined in form of Individual Fundamental Rights provided in for by Articles 14, 19(1) (c), 21, 23, 24, etc. in Part III and the Collective Rights such as those provided by Articles 38, 39, 41, 42, 43, and 43A etc.in Part IV of the Constitution titled Directive Principles of State Policy.[3] Thus these Articles of the Constitution protect,support, and act as a guideline for effective implementation and working of various Labour and Industrial Laws such as the Factories Act 1948, the Industrial Disputes Act 1947 and the Trade Unions Act 1926 etc. But at the same time, in the Contemporary age of Globalisation and Liberalisation the need for Economic Growth and Industrial Development is paramount, as a result of which Domestic and International Investments is being increasingly sought by developing economies such as India. Thus, on one hand there is a demand by the Labour, to protect their rights and on the other hand the Investors and Management want easing of restrictions to drive up profits. In such a scenario it becomes difficult, to have legislations completely favouring either of the two sides. Prudence requires that in such cases a balanced approach is adopted, that favour's Workmen rights, but at the same time ensures that these rights are not interpreted in a manner that would completely negate Investor security. In such a scenario the Judiciary in India, has played a key role in Protection of Workmen Rights, by Interpreting the Constitutional Provisions and relevant statues, in order to ensure that Justice prevails. In the present Paper, the key Role played by Judiciary has been analysed, with reference to Case Laws, in which Statues, Rules and Regulations have been challenged on the ground of them being invalid of various Constitutional Rights.

Fundamental Rights and Workmen Rights

The Fundamental Rights contained in Part III of the Constitution comprise a Constitutional Bill of rights for government policy-making and the behaviour and conduct of citizens. They areapplied to Citizens irrespective of their race, place of birth, religion, caste, creed, or gender. They are enforceable by the courts, subject to specific restrictions.[4]

Article 14

Article 14 of the Indian Constitution is based on the concept of Equality before law. Equality here doesn't absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, the equal treatment of individuals of all classes to the ordinary law of the land. Prof. Jennings remarked

[3] Aarsha, Constitutional Protection On Labour Laws, Legal Services India, (Aug.8, 2020, 10:30 PM), http://www.legalservicesindia.com/article/181/Constitutional-Protection-on-Labour-Laws.html.
[4] Ibid.

that Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated like.Thus, individuals should be treated alike both in the privileges conferred and liabilities imposed. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. The principle of equality enshrined by Article 14, has been a guideline to various Labour and Industrial disputes. In***Randhir Singh v. Union of India***[5]the Supreme Court has held that although the principle of 'equal pay for equal work is not expressly declared by our Constitution to be a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39 (c) of the Constitution. This right can, therefore, be enforced in cases of unequal scales of pay based on irrational classification. In ***Dhirendra Chamoli v. State of U.P.***[6]it has been held that the principle of equal pay for equal work is also applicable to casual workers employed on daily wage basis. In ***Daily Rated Casual Labour v.Union of India***[7]it has been held that the daily rated casual labourers in P&T Department who were doing similar work as done by the regular workers of the department were entitled to minimum pay in the pay scale of the regular workers plus Dearness Allowance but without increments. Classification of employees into regular employees and casual employees for the purpose of payment of less than minimum pay is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant of Economic, Social and Cultural Rights 1966.In ***All India Federation of Central Excise v.Union of India***[8]the Supreme Court has held that

"Equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of the right". In ***Gopika Ranjan Chawdhary v.Union of India***[9] the pay scales of the staff at the Headquarters were higher than those of the staff attached to the Battalions/units in case of Armed Forces in North East Frontier Agency. It was held that this was discriminatory and violative of Article 14 as there was no difference in the nature of the work, the duties and responsibilities of the staff working in the Battalions/units and those working at the headquarters, as there were no differences in the qualifications required for appointment in the two establishments. Similarly, in the case of ***Mewa Ram v. All Medical Institute of Medical Sciences***[10] the Supreme Court has held that the doctrine of equal pay for equal work

[5]Randhir Singh v. Union of India, AIR 1982 SC 879.
[6] Dhirendra Chamoli v. State of U.P, AIR 1986 SC 172.
[7] Daily Rated Casual Labour v. Union of India, 1988 1 SCC 122.
[8] All India Federation of Central Excise v. Union of India, AIR 1998 SC 32.
[9]Gopika Ranjan Chawdharyv. Union of India, AIR 1990 SC 1212.
[10]Mewa Ram v. All Medical Institute of Medical Sciences, AIR 1991 SC 2342.

is not an abstract doctrine. In ***State of Orissa v. BalaramSahu***[11]the respondents, who were daily wagers or casual workers in RengaliPower Project in the State of Orissa claimed that they were entitled to equal pay on the same basis as paid to regular employees as they were discharging the same duties and functions. The Supreme Court held that they were not entitled for equal pay with regularly employed permanent staff because their duties and responsibilities were not similar to permanent employees. The Court held that although equal pay for equal work is a fundamental right under Article 14 of the Constitution but it does not depend only on the nature or the volume of work but also on the qualitative difference as regards reliability and responsibility.

Article 19

Article 19 has been titled as Protection of certain rights, and it contains 6 fundamental freedoms. Clause (c) provides a Fundamental right of citizen to form an associations and unions. Under clause (4) of Article 19, however, the State may by law Impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. Since the right of association pre supposes organisation, the Article impliedly includes the right to form companies, societies, partnership, trade union and political parties. The right guaranteed is not merely the right to form association but to continue with the association as well. The freedom to form association implies also the freedom to form or not to form, to join not to join, an association or union.In ***Damayanti Narangav Union of India***[12], The Supreme Court held that "The right to form an association, necessarily implies that the person forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association."In ***Balakotah v. Union of India***[13]the services of the appellant were terminated under Railway Service Rules for his being a member of the Communist Party and a Trade Unionist. The appellant contended that the termination from service amounted in substance to a denial to him the Right to Form Association. The Supreme Court ruled that the appellant had no fundamental right to be continued in the Government service. It was, therefore, held that the order terminating his services was not in contravention of Article 19(1)(c) because the order did not prevent the appellant from continuing to be in Communist Party or trade unionist.

Article 21

The ambit of the Right to Life and Personal Liberty, conferred by Article 21 is wide and far reaching. Life means something more than mere animal existence. It does not mean merely that life cannot be

[11]State of Orissa v. BalaramSahu, AIR 2003 SC 33.
[12] Damayanti Naranga v Union of India, 1971 AIR 966.
[13]Balakotah v. Union of India AIR, 1958 SC 232.

extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. In fact, there is a close Nexus between life and the means of livelihood and as such that, which alone makes it possible to live.In ***Maneka Gandhi v. Union of India***[14]the Supreme Court gave a new dimension to Article 21. It held that the Right to Life is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. In ***State of Maharashtra v. ChandrabhanTale***[15] the Supreme Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistence allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that was violative of Article 21 of the Constitution.In ***Olga Tellis v. Bombay Municipal Corporation***[16] popularly known as the 'Pavement Dwellers Case' a five judge bench of the Court has finally ruled that the word 'life in Article 21 includes the right to livelihood as well. The court said: "It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law but an equally important facet of that Right to Life is the Right to Livelihood because no person can live without the means livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood.Further in view of the fact that Articles 39(a) and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.In ***Delhi Development Horticulture Employees Union v. Delhi Administration***[17]**,** the Supreme Court has held that although broadly interpreted and as a necessary logical corollary, the Right to Life would include the Right to Livelihood and therefore Right to Work but this country has so far not found feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Therefore, it has been placed in the chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same, "within the limits of its economic development". In ***D.K. Yadav v. J.M.A. Industries***[18]**,** The Supreme Court has held that the right to life enshrined under Article 21 includes the right to livelihood and therefore the termination of the service of the appellant who was absent without prior leave without giving him reasonable opportunity hearing was unjust, arbitrary and illegal. The procedure prescribed for

[14]Maneka Gandhi v. Union of India, 1978 AIR 597.
[15] State of Maharashtra v. Chandrabhan Tale, 1983 AIR 803.
[16] Olga Tellis v. Bombay Municipal Corporation,1985 SCC (3) 545.
[17] Delhi Development Horticulture Employees Union v. Delhi Administration, AIR 1992 SC 789.
[18]D.K. Yadav v. J.M.A. Industries, 1993 3 SCC 258.

depriving person livelihood must meet the challenge of Article 21 and should be a procedure that is right, just and fair and not one that is arbitrary, fanciful or oppressive.

Article 23

Article 23 of the Constitution prohibits traffic in Human Beings and Beggar and other similar forms of forced labour. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral" or other purposes. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Though Slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human beings'. Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing acts which result in traffic in human beings. Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish the evils of "traffic in human beings" and beggar and other similar forms of forced labour wherever they are found. Article 23 prohibits the system of 'bonded labour' because it is a form of force labour within the meaning of this Article. "Beggar" means involuntary work without payment. This clause, therefore, does not prohibit forced labour as a punishment for a criminal offence. The protection is not confined to beggar only but also to "other forms of forced labour". In ***People's Union for Democratic Rights v. Union of India***[19]the Supreme Court considered the scope and ambit of Article 23 in detail. The Court held that the scope of Article 23 is wide and unlimited and strikes at "traffic in human beings" and "beggar and other forms of forced labour" wherever they are found. It is not merely "beggar" which is prohibited by Article 23 but also all other forms of forced labour, "Beggar is a form of forced labour under which a person is compelled to work without receiving any remuneration. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and contrary to basic human values. In ***Sanjit Roy v. State of Rajasthan***[20]has been held that the payment of wages lower than the minimum wages to the person employed on Famine Relief Work is violative of Article 23. Whenever any labour or service is taken by the State from any person who is affected by drought and scarcity condition the State cannot pay him less wage than the minimum

[19] Peoples Union for Democratic Rights v. Union of India, AIR 1982 SC 1943.
[20]Sanjit Roy v. State of Rajasthan, AIR 1983 SC 328.

wage on the ground that it is given them to help to meet famine situation. The State cannot take advantage of their helplessness.In ***Deena v. Union of India***[21]it was held that labour taken from prisoners without paying proper remuneration was "forced labour" and violative of Article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the Court is under duty to enforce their claim.

Article 24

Article 24 of the Constitution prohibits employment of children below 14 years of age in factories and hazardous employment. This provision is certainly in the interest of public health and safety of life of children. Further Article 39 of the Constitution imposes upon the State an obligation to ensure that tender age of the children is not abused and that citizens are not forced by economic necessary to enter avocations unsuited to their age or strength. On the basis of the same, Section 23 of the Factories Act 1948 provides that no young person is allowed to be employed on dangerous machines. Similarly, Section 71 provides that no child shall be employed or permitted to work in any factory for more than four and a half hours in any day and during the night.In ***People's Union for Democratic Rights v. Union of India***[22] it was contended that the Employment of Children Act, 1938 was not applicable in case of employment of children in the construction work of Asiad Projects in Delhi since construction industry was not a process specified in the schedule to the Children Act. The Court rejected this contention and held that the construction work is hazardous employment and therefore under Article 24 no child below the age of 14 years can be employed in the construction work even if construction industry is not specified in the schedule to the Employment of Children Act, 1938In ***M. C. Mehta v. State of Tamil Nadu***[23]the Supreme Court has held that children below the age of 14 years cannot be employed in any hazardous industry. Exhaustive guidelines were laid down as to how State Authorities should protect economic, social and humanitarian rights of millions of children, working illegally in public and private sections.

Article 32 and 226

A declaration of fundamental rights is meaningless unless there is the effective machinery for the enforcement of the rights. It is remedy which makes the right real, enforceable and practical. If there is no remedy, there is no right at all.It was, therefore, for this purpose of the things that Constitution having incorporated a long list of fundamental rights provided for an effective remedy for the enforcement of

[21] Deena v. Union of India,AIR 1983 SC 1155.
[22] People's Union for Democratic Rights v. Union of India, AIR 1983 SC 1473.
[23] M. C. Mehta v. State of Tamil Nadu,1991 2 SCC 193.

these rights under Article 32 of the Constitution as well. Article 32 is itself a fundamental right. Further Article 226 empowers all the High Courts to issue the writs for the enforcement of fundamental rights.

Directive Principles of State Policy and Workmen Rights

In the matters of Directive Principles,Article 37 in Part IV of the Constitution reads that the provisions contained in this part shall not be enforceable by any court, but the principles therein laid down 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 same highlights the importance of Directive Principles in general, and particularly issues relating to Labour.[24]

Article 39

Article 39 specifically requires the State to direct its policy towards securing the following principles:

(a) Equal right of men and women to adequate means of livelihood.

(b) Distribution of ownership and control of the material resources of the community to the common good,

(c) To ensure that the economic system should not result in concentration of wealth and means of production to the common detriment.

(d) Equal pay for equal work for both men and women.

(e) To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.Clause (f) of Article 39 was modified by the Constitution (42nd Amendment) Act, 1976 with a view to emphasize the constructive role of the State with regard to children.In ***M. C. Mehta v. State of Tamil Nadu,***[25] it has been held that in view of Art. 39 the employment of children within the match factories directly connected with the manufacturing process of Matchsticks and Fireworks cannot be allowed as it is hazardous. Children can, however, be employed in the process of packing but it should be done in area away from the place of manufacturing to avoid exposure to

[24]Aarsha, *supra* note 3.
[25] M. C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699.

accidents. In another landmark judgment in ***M. C. Mehta v. State of Tamil Nadu*** [26]known as (Child Labour Abolition case) a three Judges Bench of the Supreme Court held that children below the age of 14 years cannot be employed in any hazardous industry, or mines or other work. The matter was brought in the notice of the Court through Public Interest Litigation under Art. 32 which highlighted the plight of children engaged in Sivakasi Cracker Factories and violation of the constitutional right provided by Article 24 of these children. Accordingly, the Supreme Court issued directions to the Appropriate Governments to take steps to abolish child labour.

Article 41

The Directive Principles contained in Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.Thus there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work.Further Article 41 directs the State to ensure the people within the limit of its economic capacity and development: (a) employment, (b) education, and (c) public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. In ***Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.***[27] 'Right to work' was recognised in light of the supplementary and complementary characteristic of the Fundamental rights and DPSP's with respect to each other by the Supreme Court.

Article 42

It is one of the hall marks of the Indian Constitution that it takes into consideration the very specific context of pregnancy related discrimination in the context of employment and therefore directs the State to make provisions for securing not only just and humane conditions of work but also for Maternity Relief. It is in this context that the Government of India went on to enact the Maternity Benefit Act, 1961 which enables women in the labour force who have been employed for 160 days in a year to provide leave with pay and medical benefit. In 2017 Maternity Benefit (Amendment) Act 2017 increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks.In ***Ram Bahadur Thakur(P) Ltd. v. Chief Inspector of the Plantations***[28]a woman worker employed at the Pambanar Tea Estate and was denied maternity benefit the grounds that she had actually worked only 157 days instead of the required 160 days. The Court, however, interpreted the act to uphold

[26] Ibid.
[27] Olga Tellis & Ors. v Bombay Municipal Corporation & Ors, AIR 1986 SC 18.
[28] Ram Bahadur Thakur(P) Ltd. v. Chief Inspector of the Plantations,1989 IILLJ 20 Ker.

the women's claim by computing maternity benefit days including Sundays and rest days which maybe wageless holidays have to be taken.

Article 43

It refers to a "living wage" and not "minimum wage". The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing, provisions for education of children and insurance etc. In ***The Workmen of Reptakus Brett Co. v Reptakus Brett Co Ltd***[29]the Supreme Court held that the wage structure can be divided into three categories: the "basic minimum wage" which provides bare subsistence and is at poverty level a little above is the "fair wage" and finally the "living wage", which comes at comfort level.In ***Standard Vacuum Refining Co. of India Ltd. v. Its Workman***[30]the Supreme Court held that though the Financial Position of the Employer and the state of National Economy have their say in the matter of wage fixation, "the requirements of a workman living in a civilized and progressive society also come to be recognised.

Article 43A

It requires the State to take steps, by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry. This article was inserted by the Constitution (Forty-second Amendment) Act, 1976. In ***Gujarat KamdarSahakariMandalv. Ramkrishna Mills Ltd.***[31] it was held that the provisions of Article 43A are intended to herald Industrial Democracy. The Gujarat High Court ruled that the Constitutional mandate is clear that, the management of the enterprises should not be left entirely in the hands of suppliers of capital, but the workers should also be entitled to participate in it because in a socialist pattern of society the enterprise, which is the center of economic area, should be controlled not only by suppliers of capital but also by labour, as they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital. They supply Labour without which the Capital would be impeded and thus they are at the least equal partners with Capital in the Enterprise.

Judiciary &Labour- Industrial Legislations

Following the establishment of modern Industrial State in India, during the British Rule in the country a need was felt for Legislative Enactments to deal with various aspects of Labour and Industrial Law. Thus, a number of Legislations such as the Employers and Workmen Disputes Act 1860, Workmen

[29] The Workmen of Reptakus Brett Co. Ltd v Reptakus Brett Co Ltd, AIR 1992 SC 504.
[30]Standard Vacuum Refining Co. of India Ltd. v. Its Workman, 1961ILJJ S.C232.
[31] Gujarat KamdarSahakariMandal.v. Ramkrishna Mills,1995 2 GLR 1619.

Compensation Act 1923, Mines Act 1923, Trade Union Act 1926, Factories Act 1934 and the Payment of Wages Act 1936 etc. were enacted, however Generally the main objective of these Laws was to look after the interests of the Factory Occupiers and Management, and therefore, after the India attained independence in 1947, there was a need to reorient many of these legislations in the mould of aSocial Welfare State as envisaged by the Constitution. Subsequently, a number of new legislations were enacted, which for example included the Industrial Disputes Act 1947, Factories Act 1948, Employees State Insurance Act 1948, Minimum Wages Act 1948 and Maternity Benefit Act 1961 etc. However, some of the Pre-Independence Era legislations, such as the Trade Unions Act 1926 were continued as well. These were subsequently amended. As far as applicability of all these Labour and Industrial Legislations is concerned, the judiciary in catena of cases has played an important role in safeguarding the rights of workmen. The Judiciary has emphasised the fact that these legislations are essentially aimed at Social and Labor Welfare, and they must be interpreted in a manner that would ensure protectionof interests of the labor, while not hampering National Development. In the case of ***Works Manager, Central Railway Workshop, Jhansi v. Vishwanath***[32], the Supreme Court held that Factories Act 1948 is a Social Enactment, the aim of which is to achieve Social Reform and thus it must be construed liberally in order to achieve its legislative purpose without doing violence to language.In ***Uttaranchal Forest Development Corporation and Another v. Jabar Singh and Ors***[33]the Supreme Court held that clause (m) of Section 2 of the Factories Act, 1948 is not an exhaustive definition, and hence it is obvious and that `premises' can consist of open area and need not be confined in its meaning to buildings alone. As a result, the scope of Factories Act, 1948 was tremendously expanded.In.***C.P. Sarathy v. State of Madrasand Ors.***[34] the Madras High Court while interpreting the definition of Trade Dispute held that no trade dispute can be said to have arisen unless an opportunity to the other party is given to express any view or indicate any positive or negative relation thereto. In***State of Bombay v. Hospital Mazdoor Sabha***[35] the Supreme Court observed that industrial activity involves the co-operation of the employer and the employees and its object is the satisfaction of material human needs. Thus, by giving the term Industrial Activitya broad interpretation, the Court leaned towards the Rights of Workmen. In ***Associated Cement Companies Ltd. v. Their Workmen***[36]the Supreme Court held that one of the principles of Industrial Adjudication is that the Tribunals hearing Industrial Disputes must act in a judicial manner, and should reach their decisions in an objective manner. In***Bangalore Water-Supply and Sewerage Board v. Rajappa and Ors.***[37]the

[32] Works Manager, Central Railway Workshop, Jhansi v. Vishwanath, AIR 1970 SC 488.
[33] Uttaranchal Forest Development Corporation and Another v. Jabar Singh and Ors, 2007 II LLJ 95 (SC).
[34] C.P. Sarathy v. State of Madras and Ors, AIR 1951 Mad. 191.
[35] State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610.
[36] Associated Cement Companies Ltd. v. Their Workmen, AIR 1959 SC 208.
[37] Bangalore Water-Supply and SewerageBoard v. Rajappa and Ors, 1978 AIR 548.

Supreme Court laid down the Triple Test in this case. It was stated that an Enterprise is an Industry when, there is a Systematic Activity, organised by Co-Operation between Employer and Workmen, for the Production and/or Distribution of goods and services calculated to satisfy human wants. Thus, the judgment enlarged the definition of Industry under Section 2(j) of the Industrial Disputes Act 1947 for ensuring the Welfare of Workmen.

Issues Dealt with by Labour and Industrial Jurisprudence in India

The Evolution of Labour and Industrial Jurisprudence in India has been a result of several Socio-Economic Changes and Social Welfare Legislations.[38] In such a scenario the Courts in India, have dealt with several issues such as-

a. Concept of Decent Work

The word decent means accepted moral standards. The term Decent Work shows an acceptable quality of work. It is a broad concept which related to overall development of the society and workers and is a way of capturing interrelated social and economic goals of development.It shows various types of freedoms and rights for men, women and children in order to maintain dignity of human life in the society, in other words, development of society, workers, as per labour standards.Decent work refers to work wider than job or employment including wage employment, self-employment and home working and is based on the core enabling labour standards viz, freedom ofassociation, collective bargaining, freedom from discrimination and child labour. Development involves the removal of restrictions such as poverty, lack of access to public infrastructures or the denial of civil rights. Decent work brings together different types of freedoms Such as labour rights, social security, employment opportunities etc.

b. Right to strike

Right to Strike is a powerful right which is available to the Workmen. But the right must be used only as a weapon of last resort because if the right is misused, it will create problems in the production and financial profit of the industry. Thiswould ultimately affect the economic growth of the country. In present day, most of the countries, especially India, are dependent upon foreign investment and under the circumstances it is necessary that countries which seek foreign investment must provide for some safeguards in their industrial laws. In India, the Right to Strike is not a Fundamental Right but a legal right, with which a statutory restriction is attached under the Industrial Disputes Act 1947. Unlike the United States, in India the Right to strike is not expressly recognised by the law. The Trade Unions Act

[38]MintuKant, Social Justice and Labour Jurisprudence, Encyclopedia of World, (Aug. 9, 2020, 7:21 PM), https://encyclopediaofworld.wordpress.com/tag/labour-jurisprudence-in-india.

1926, for the first time provided a limited right to strike by legalizing certain activities of Registered Trade Union in furtherance of a trade dispute which would otherwise breachCommon Economic Law. Today, the Right to strike is recoginised only to a limited extent permissible under the limits laid down by the law itself, as a legitimate weapon of Trade Unions. The right to strike in the Indian constitution set up is not an absolute right but it flows from the fundamental right to form unions. As every other fundamental right is subject to reasonable restrictions, the same is the case to form trade unionsand to give a call to the workers to go on strike and thus the State can impose reasonable restrictions.In ***All India Bank Employees Association v. National Industrial Tribunal***[39]the Supreme Court has held the, "right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause 4 of article 19 but by totally different considerations."Thus, while there is a guaranteed fundamental right to form associations and labour unions, there is no fundamental right to go on strike. Under the Industrial Disputes Act, 1947 the grounds and conditions for a legal strike have been laid down and if those provisions and conditions are not fulfilled then the strike will be illegal.In ***Mineral Miner Union v.Kudremukh Iron Ore Co. Ltd***[40]it was held that the provisions of Section 22 of Industrial Dispute Act, 1947 are mandatory and the date on which the workmen proposed to go on strike should be specified in the notice. If meanwhile the date of strike specified in the notice of strike expires, workmen have to give fresh notice. It may be noted that if a lock out is already in existence and employees want to resort to strike, it is not necessary to give notice as is otherwise required. In ***Bank of India v. T.S.Kelawala***[41]it was held thatthe right to strike is organically linked with the right to collective bargaining and will continue to remain an inalienable part of various modes of response/expression by the working people, wherever the employer-employee relationship exists. In ***Gujarat Steel Tubes v. Its Mazdoor Sabha***[42]Justice Bhagwati opined that right to strike is integral part of collective bargaining. He further stated that this right is a process recognized by industrial Jurisprudence and is supported by social Justice. Thus, while it is true that on one hand a strike is a legitimate and sometimes an unavoidable weapon in the hands of labour, it is equally important to emphasise that indiscriminate and hasty use of this weapon should not be encouraged. In this way, the Judiciary has played an importantrole in ensuring Justice to the Workmen in matters of Strikes, Lockouts, Lay-Offs, Entrenchments and Closures.

c. Rights of women employees

[39]All India Bank Employees Association v. National Industrial Tribunal, 1962 AIR 171.
[40] Mineral Miner Union v. Kudremukh Iron Ore Co. Ltd, ILR 1988 KAR 2878.
[41]Bank of India v. T.S.Kelawala,1990 4 SCC 744.
[42]Gujarat Steel Tubes v. Its Mazdoor Sabha,AIR 1980 SC 1896.

There are a number of cases in which the Supreme Court and the Judiciary helped to advance the rights of women by striking down discriminatory laws or practices. In ***C. B. Muthamma v. Union of India & Ors*** [43]the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 were challenged on the ground of gender discrimination. The rules provided that no married woman would be entitled to be appointed to the service. In fact, a woman member was required to obtain permission of the government in writing before her marriage was solemnized and that she could be required to resign if the government was satisfied that due to her family and domestic commitments she was unable to discharge her duties efficiently. The Supreme Court struck down these rules on the ground that they violated the fundamental right of women employees to equal treatment in matters of public employment under Article 16 of the Constitution.Similarly, in ***Air India Statutory Corporation v. Nargesh Mirza***[44] the discriminatory regulations in Air India challenged. The regulations did not allow the Air Hostesses to marry before completing years four years in service. If anyone of them married within that period then she had to resign and if she married after four years, but became pregnant she could only continue in service till she attained age of 35. These provisions were challenged in this case, and while the Supreme Court did not accept all the contentions, nonetheless the provision relating to pregnancy was held as being manifestly unreasonable, arbitrary and therefore violative of Article 14 by the Court.In ***Neera Mathur v. Life Insurance Corporation of India***[45] the Supreme Court recognized the right privacy of female employee. In the present case the Petitioner had been appointed by the LIC without her declaration of her pregnancy. Subsequently the Petitioner's services were terminated during her maternity leave on the ground of withholding information regarding her pregnancy during the recruitment questionnaire. The Supreme Court on perusing the questionnaire considered the questionnaire to be an invasion of privacy of person and violative of Article 21 which guarantees right life and therefore, directed the LIC reinstate the petitioner and delete the aforementioned columns from its future questionnaires. In the Landmark decision of ***Vishaka and Ors v. State of Rajasthan***[46]a writ petition was filed by several non-governmental organizations and social activists seeking judicial intervention in the absence of any law to protect women from sexual harassment in the workplace. The Supreme Court observed that every incident of sexual harassment is a violation of the Right to equality and hence to the Right to life and liberty under the Constitution and that the logical consequence of sexual harassment further violated a woman's right to freedom to choose whatever business, occupation and trade she wanted under Article 19(1) (g). The Court further held that gender equality included protection from sexual harassment and right to work with dignity which is a basic human right. Therefore, in the absence of a domestic law on the subject, reference

[43] C. B. Muthamma v. Union of India & Ors., 1979 AIR 1868.
[44] Air India v. Nargesh Mirza, 1981 AIR 1829.
[45]Neera Mathur v. Life Insurance Corporation of India, 1992 AIR 392.
[46]Vishaka and Ors v. State of Rajasthan, 1997 6 SCC 241.

was made to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)and its provisions which were consistent with the provisions of the Indian Constitution and therefore read those provisions into the Fundamental Rights interpreting them in the broader context of the adjective contained in the Preamble. While these cases demonstrate the instances in which the Judiciary stepped in to safeguard the fundamental human rights of women, there are several instances where such rights have been brazenly violated. The women workers are most vulnerable to discrimination when they are in the unorganized sector of the economy like agriculture, forestry, livestock, textile products, construction etc. In these sectors women, generally, tend to be employed in the lowest paid and highly labour intensive sectors. Similarly,while Section 48 of the Factories Act of 1948 does provide for crèches in factories where more than 25 women are employed, it does not extend to the unorganized sector. Considering that majority of the women workers are in the unorganised sector there is urgent need to ensure that the discrimination against women is ended and that the State takes immediate steps to ensure the implementation of many of its progressive welfare legislations for all the workers and especially women workers in the unorganised sector. Although some gains have been made but there is still a long way to go. The most important task is to ensure the implementation and enforcement of existing laws and enacting new legislations to ensure that women are not dissuaded from joining the labour force by being forced to endure various indignities.

Principles of Industrial Adjudication

Industrial Adjudication means a mandatory settlement of an industrial dispute by a labour court or a tribunal. The following are some of the Guiding Principles of Industrial Adjudication-[47]

- Promotion of Public Interest
- Maintenance of Industrial Harmony and Goodwill
- Development of Industrial Justice
- Expert Assistance in Technical Matters
- Consideration of Socio-Economic Effects
- Reference to facts and Circumstances of each case
- Tribunals to act in a judicial manner
- Expediency is no consideration
- Acceptability of Decision to all the parties
- Upholding the Priniciples of Natural Justice

[47] SN Misra, Labour and Industrial Laws, Pg. 15, (28th Edition).

Conclusion

The ultimate ideal in cases involving Workmen Rights is Social and Economic Justice, based on the principles of Social Welfare and Common Good. This ideal has been enshrined in Part III and Part IV of the Constitution containing Fundamental Rights and Directive Principles of State Policy respectively. The Constitution of India has been drafted in such a way as to ensure that all workers, men and women are equally protected by the law. The Directive Principles of State Policy which encapsulate the directives to the Government while formulating its policies are precise about many of these rights. These Principles contained in Part IV of the Constitution have been read into Article 21 of the Fundamental Rights in Part III by the Judiciary to safeguard and guarantee the workers their rights. However, with Globalisation and Liberalisation we see that more and more these rights have been eroded by both the Government and the Judiciary through its interpretation and decisions in cases that have come up before it since the 1990's. However, there are a few instances that demonstrate the ability and power the Judiciary possess to safeguard Workmen rights if they have the inclination and commitment to provide for Workers welfare. In such a scenario, Judiciary has performed a valuable role in assisting the State, the Workmen and Investors by providing a solution to industrial disputes. While the process may not be perfect it has nonetheless shown its effectiveness in upholding Constitutional and Statutory Framework.