

Social Justice Through Labour Legislation

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Abstract

Social justice is a fundamental concept in modern societies, embodying the principles of equality, fairness, and inclusivity. One of the key avenues for achieving social justice is through labor legislation, which plays a crucial role in shaping the rights, protections, and opportunities of workers. This study provides a comprehensive analysis of the intersection between social justice and labor legislation, exploring the ways in which legal frameworks have evolved to address historical injustices and promote equitable treatment in the workplace. The study begins by tracing the historical context that has led to the development of labor legislation as a tool for social justice. It examines how early industrialization and exploitation of workers prompted the need for legal interventions to ensure fair wages, safe working conditions, and protection against exploitation. Furthermore, it delves into the role of labor movements, advocacy groups, and international organizations in influencing the creation and implementation of labor laws that prioritize social justice. The analysis then proceeds to dissect the key components of labor legislation that contribute to social justice. These components include anti-discrimination measures, minimum wage laws, collective bargaining rights, occupational health and safety regulations, and measures to combat child labor and forced labor. Each of these aspects is examined in terms of their historical development, legal implications, and impact on fostering social justice within the workforce. Additionally, the study explores the challenges and debates surrounding labor legislation's effectiveness in achieving social justice. It addresses questions such as the balance between flexibility and worker protections, the role of technology and automation in reshaping labor dynamics, and the global dimension of labor rights in an interconnected world economy. In conclusion, this study underscores the critical role that labor legislation plays in advancing social justice. It emphasizes the ongoing need for robust legal frameworks that address contemporary labor issues and adapt to changing socioeconomic landscapes. By promoting equitable treatment, empowering workers, and safeguarding their rights, labor legislation continues to be a powerful instrument for achieving social justice and fostering a more inclusive and fair society.

Keywords: Social justice, equality, fairness, labor movements, collective bargaining rights, occupational health and safety regulations, minimum wage laws, more inclusive and fair society

INTRODUCTION

Historical Background

Labour laws can be traced back to varied parts of the world. The relevance of medieval guilds and apprenticeship systems were emphasized by European researchers. Asian scholars, on the other hand, trace labour laws back to the Babylon code (18th century BCE) and the Manu laws describing the four varnas, under which the fourth varna, Shudras, were declared slaves and were compelled to serve the above three varnas without questioning or voicing for their rights because no dignity was attached to them. They had no separate identity and were instead regarded as limbs of their masters.

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Even the UK statutes of 1351 supported prolonged working hours and strict punishments were levied for forming trade union and the workers

were treated as servants but gradually labour legislation began to formulate after a series of radical events in which one of the important events, the industrial revolution, during the 18th century as after this it became essential to stop the unfair treatment meted out to the workers, as the rate at which the industries were going at the cost of labour was a disaster, on the flip side with the French revolution in the picture, society was moving towards social justice so as the cumulative result of conflict.

The second shift toward social justice was felt shortly after the 19th century, since the 19th century was defined by the laissez faire (the motto meaning "let it be", which originated in France in the 18th century. It represents the merchant community's desire for governmental non-interference,) [1] in which there was minimal government authority, free enterprise, contractual freedom, and so on. Individualistic theories thrived throughout this time period. The government played a detrimental role. It was largely a police state that helped to maintain law and order, protect the nation from external attack, administer justice to its residents, and collect taxes to fund such operations, but the faults of this system were apparent early in the 20th century.

The uneven distribution of wealth was caused by contractual freedom and entrepreneurial freedom. This spawned a number of socialist movements, particularly those that addressed labour problems. This led to the idea that the state ought to be more than a police state. It will aid in the alleviation of poverty, the regulation of individual enterprise, and, most significantly, the establishment of social justice. This led to the formation of the welfare state. An example of this is India. Before independence, India was effectively a police state since the British were more concerned in pursuing their own interests than working for the welfare of the people; hence, the notion of social welfare was adopted shortly after independence, particularly following the passage of the Constitution.

Social Justice

"Social justice is a device to ensure life to be meaningful and liveable with human dignity. State has to provide facilities to reach minimum standard of health, economic security and civilized living to the workmen. Social justice is a means to ensure life to be meaningful and liveable [2]."

Part IV of the Constitution is headed "Directive Principles of State Policy", and it directs the state to implement a program of social justice and upliftment of the oppressed that is governed by the basic postulates of welfare.

Article 38 (1) [3] urges the state to try to promote the welfare of the people by establishing and safeguarding a social order in which social, economic, and political justice influence all institutions of national life as efficiently as possible.

Article 39 [4] of the Constitution states that the State shall, in particular, ensure that:

- (a) Citizens are provided with an adequate means of subsistence; and
- (b) Equal pay is paid for equal work.

The Indian Constitution also recognises right to work.

Article 42 [5] advocates fair and equitable working conditions and maternity leave.

Article 43 [6] articulates about living wage and working conditions that guarantee a standard of living.

Under social justice, industrial democracy [7] plays a critical role in transforming employees from simple servants to having an equal say in the operation of enterprise. The Constitution of India is based on the democratic socialist model [8]. The social order that existed before to the establishment of the Indian Constitution was constructed by colonial rulers on exploitation of the weak by the powerful, with the ultimate goal of building a class of loyalists. As a result, the social, economic, political, and legal institutions have shifted in favour of the elite and against the majority.

The Constitution's vision of socioeconomic-political development demanded the establishment of a number of instruments as necessary prerequisites in the legislative, executive, and judicial realms to accomplish the intended change. For example, industrial democracy has been identified as one of the means to progress towards achieving the socialist objectives outlined in the Constitution. Let's explore the dynamics of industrial democracy.

Mamkoottam (1978:41) rightly remarks:

"The tremendous concern with industrial democracy arises from the fact that the industrial workforce, apart from being a producer of goods, is also a political system. Not only are the decisions made in industry of great importance to its members, but also the experience of social relationships in the plant has a bearing on the perception of life outside."

The terms 'industrial democracy' and 'workers engagement in management' have been used interchangeably. Participation, in fact, refers to a process by which employees may influence administrative choices at various hierarchical levels within an organization. The 2nd Five-Year Plan stated unequivocally that industrial democracy was required before establishing socialist democracy.

Basically, labour law deals with industrial relations, unionization, labour management, collective bargaining, unfair labour practices, workplace health and safety, employment standards, holidays, hours, unfair dismissals, minimum wages, layoffs, and severance pay (Table 1).

Table 1. Entries of 7th schedule promoting labour welfare legislation [9].

Union List	Concurrent List
Entry No. 55: Regulation of labour and safety in mines and oil fields	Entry No. 22: Trade Unions; Industrial and labour disputes.
Entry No. 61: Industrial Dispute concerning Union employees	Entry No.23: Social Security and insurance, employment and unemployment.
Entry No. 65: Union agencies and institutions for "vocational training"	Entry No. 24: Welfare of about including conditions of work, provident funds, employers 'Invalidity and old age pension and maternity benefit.

Therefore, this social justice has been provided through numerous labour legislations enumerated by the researcher under this topic.

AIMS AND OBJECTIVE

- The researcher aims to explain the history of social justice for labour.
- The researcher aims to highlight how Indian Constitution promotes social Justice for labour.
- The researcher aims to explain the objective and need for labour legislation in India.
- The researcher aims to illustrate about the different principles of labour legislation keeping social justice at centre.
- The researcher also aims to bring out the need for the reformation in the existing labour legislation so as to meet the contemporary requirements.

LITERATURE REVIEW

Social Justice and Labour Jurisprudence: Justice V.R. Krishna Iyer's Contributions

Throughout the history of India, the Supreme Court has always had pro-socialist judges, and the most prominent of these has been Justice VR Krishna Iyer. Justice Iyer's work in the field of labour law is renowned, and this book analyses and reviews the most important judgments delivered by Justice Iyer from the point of view of social justice. The judgments are presented in the light of the subject matter and the prevailing industrial laws. The authors elaborate on the essential aspects of industrial relationships in India and explain the relationship between labour law and the Constitution as interpreted by Justice VR Krishna Iyer.

Equal Freedom and Forced Labour: Gautam Bhatia (MAY 12, 2020) [10]

In this article published in newspaper 'The Hindu', the author basically criticizes the Indian labour law in contemporary times and how social justice promised to the workers are not available at their reach.

Labour Legislation and Social Justice: Rhetoric and Reality by Saini (Formerly Professor of HRM Management Development Institute) [11]

The purpose of this paper is to explain and understand how labour relations law works in relation to labour organizations and labour dispute settlement as it is framed in India's political economy: how does the functioning of the legal order actually work? What are the institutional mechanisms and what are the factors that neutralize the empowerment of labour; who benefits from the process; and what are the specific manifestations of the process of de-powerment of labour? The article is a study of labour law sociology and is based on sociological reconstructions of various labour organizations situations collected from the field.

STATEMENT OF RESEARCH PROBLEM

Social Justice is a *sine qua non* to ensure a dignified healthy and respectful life of the workers protected by labour legislation.

HYPOTHESIS

1. The researcher assumes that in order to ensure proper functioning of industry having a harmonious relation between the workers and employer labour legislation is a *sine qua non*.
2. The researcher assumes that in order to protect the workers from any kind of exploitation and recognize the rights of the workers is important to maintain social justice via labour legislation.

SOURCES OF DATA COLLECTION

The researcher has gathered data from both primary and secondary sources.

The primary sources are:

1. Legislations, and
2. Case Laws.

The secondary sources are:

1. Articles,
2. Books, and
3. Lectures.

LIMITATION TO STUDY

The researcher, who had read the legislation, the comments, the books, the articles and the reports herself, could see the problem clearly, but would have seen it more clearly if she had read the comments of more writers. Social Justice is a very wide concept but the researcher restricts herself only to the topic that what role social justice plays in labour legislation.

Secondly, the historical need and background of the subject is also essential for having a 360-degree view of the topic and it develops only through effective and long-term reading over long periods of time. The broad scope of labour law and the comparison of the situation of workers in a police state and a welfare state necessitate in-depth knowledge of administrative law as well as some other disciplines. However, the required material cannot be covered in the prescribed time frame. Nevertheless, researcher has managed to extract the best possible results through her efforts.

NEED FOR LABOUR LEGISLATION

The labour relations legislation is the most important part of every country's labour laws. This part of law allows labour to organize and strive for social justice by aiming for a fair distribution of organizational advantages.

In the second place, social justice is at the heart of democracy. Social justice requires the protection of people who cannot protect themselves. Workers in modern industrial settings are unable to safeguard their own interests if left to their own devices. As a result, the state must act to assist them by guaranteeing them freedom of association, collective bargaining power, and providing for mediation or arbitration in the event of a labour dispute. Legislation based on this premise requires the attainment of certain goals.

The word 'labour legislation' refers to all of the laws that have been passed to deal with "employment and non-employment" pay, working conditions, industrial relations, social security, and the welfare of those who work in industries. It refers to all legislation established by the government to guarantee social and economic security to labour or workers.

In India, there are many labour laws that affect the labour conditions, the major Labour Legislations in India are:

- The Factories Act, 1948.
- The Industrial Disputes Act, 1947.
- The Payment of Wages Act, 1936.
- The Minimum Wages Act, 1948.
- The Equal Remuneration Act, 1976.

These acts are intended to reduce production losses caused by labour disputes and to assure prompt payment of salaries and other worker necessities.

The fundamental concept of industrial regulation is to promote workers' social fairness. The goal of law is to provide a fair division of profits and benefits from industry between industrialists and employees, as well as to protect workers from adverse effects on their health, safety, and morale. Labour legislation is especially important in developing countries like India because any industry in a planned economy requires a spirit of cooperation and mutual dependence to achieve the common goal of greater, better, and cheaper production voluntarily, and for this need, State intervention is required.

The need for labour legislation may be summarized as:

- It is necessary for the health, safety, and welfare of workers;
- It is necessary to protect workers against oppressive terms because individual workers are economically weak and have little bargaining power;
- It is necessary to encourage and facilitate workers in the organization;
- It is necessary to deal with industrial disputes; and
- It is necessary to enforce social insurance and labour welfare schemes.

It outlines the methods through which these concepts and rights may be implemented and enforced and serves as a clear and continual reminder and assurance of basic values and rights at work that have acquired widespread social support.

MAJOR LABOUR LAW ACTS PROMOTING SOCIAL JUSTICE

The Indian Factories Act, 1948

The primary objectives of the IFI (Indian Factories Act 1948) are to regulate the working conditions in the factories, health and safety, social welfare and annual leave, as well as to lay down special provisions for the youth, women and children working in the factories [12].

1. *Working Hours:* According to the Adult working hours requirement, an adult worker should not be forced or allowed to work at a factory for longer than 48 h/week [13]. A weekly holiday should be implemented.

2. *Health*: To preserve the health of employees, the Act requires that every plant be maintained clean and that all required precautions be implemented. The factory should have a sufficient drainage system, enough lighting, ventilation, and temperature control, among other things.
3. *Safety*: To ensure worker safety, the Act requires that machinery be gated, young individuals are prohibited from operating dangerous machines [14], and that in confined places, enough manholes be provided so that employees may escape [15] in an emergency.
4. *Workers' Welfare*: The Act requires that adequate and acceptable washing facilities be supplied and maintained in every plant for the benefit of workers.
5. *Penalties*: When the terms of The Factories Act, 1948, or any rules enacted under the Act, or any written order issued under the Act, are infringed, it is considered an offense [16].

The Occupier(s) or Manager(s) of the factory(s) responsible for the survey(s) at the time of the survey(s), and the Occupier(s), Manager(s) or other person(s) claiming to be the manager(s) or occupier(s) of a factory(s) at that time, shall provide all the necessary facilities for the safety/occupational health survey(s), including facilities for examining and testing plant and machinery(s), as well as facilities for collecting samples and other information pertinent to the survey(s) [17].

The Industrial Disputes Act, 1947 [18]

The term industry “means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen [19].”

The tripartite test was first established in the well-known case of *Bangalore Water Supply and Sewerage Board vs A Rajjapa* [20] wherein it was given that any establishment which carries a systematic activity carried on within a corporation of employer and employee including contract worker for the production and distribution of goods and service i.e., material service was laid down in this case.

The absence of a profit motive or a profitable goal is unimportant.

In accordance with Section 2(k) of the Act, "industrial dispute" is any disagreement between employers and employees, or between workers and employers, that is related to the employment, non-employment, terms of employment, or the conditions of labour of any person [21]. This Act was passed with the primary objective of maintaining a peaceful work culture in the industry in India, as outlined in the Statement of Objects and Reasons. The Act also provides for the payment of compensation to workers for closure or layoff [22] or retrenchment [23], the procedure for obtaining prior permission from the relevant government, and the measures to be taken against any unfair labour practices on the part of an employer, trade union, or workers.

The Payment of Wages Act, 1936 [24] and The Minimum Wages Act, 1948 [25]

Wages refers to any remuneration, whether monetary or otherwise, that is paid to a person in respect of their employment or work in that employment, provided that the terms of the employment, expressed or implied, are fulfilled, and includes:

- (a) Basic pay,
- (b) Dearness allowance, and
- (c) Retaining allowance, if any [26].

Wages can be sub divided into:

- Living wages,
- Fair wages, and
- Minimum wages.

Living wages, as defined by the Supreme Court, is a wage that will keep the workers in the best state of industrial efficiency, which will allow them to provide for their family with all the essentials of a healthy and physical life, and will be sufficient to enable them to perform their duties as a citizen [27].

Fair Wages is a mean between living wages and minimum wages. In case of fair wage, while the lowest limit is the minimum wages, the upper limit is the capacity of industry to pay. The word minimum wage has not been defined anywhere under minimum wages act of 1948 or code on wages 2019.

Minimum wages are designed to protect workers from being paid too low a wage. They contribute to ensuring a just and equal share of the rewards of progress for everyone, as well as a decent wage for those who are working and require such protection. Minimum wages can also play a role in the fight against poverty and inequality, particularly gender inequality. Minimum wage systems must be designed and implemented in a way that complements and strengthens other social and employment programs, including collective bargaining, which governs employment conditions and conditions of employment.

Wage payment on time provides employees with security and promotes social justice, as social justice cannot be completely obtained and fulfilled in the absence of economic justice. The Code on Wages Act, 2019, Minimum Wages Act, 1948, and Payment of Wages Act, 1936 aid in the eradication of wage-related issues such as unauthorized deduction of salary, delay in payment of salary, or manner in which salary was paid; as a result of all of these issues, the worker could not live his life in a dignified manner, which is very important in providing justice in society; thus, these labour legislations act as a backbone to workers' respectful living.

Article 14 discusses equality before the law, which includes the promise of equal legal protection to each individual, citizen, non-citizen natural person, and legal person. Second, because social justice is antithetical to discrimination, it promotes equal pay for equal work under article 39(d) [28] and The Equal Remuneration Act, 1976, which demonstrate equal pay for equal work policy and gender equality, including protection from sexual harassment and the right to work with dignity within the scope of article 14.

Employers and other responsible parties in the workplace must take the necessary steps to prevent or deter sexual harassment and ensure that sexual harassment is dealt with, resolved, or prosecuted.

Payment for equal work is not recognised as a fundamental right, but is undoubtedly a constitutional requirement under Article 39 (d) of the Constitution, which states, "The principle of equal pay for male and female workers shall be established as a directive principle of State Policy [29]." In several of its decisions, the Supreme Court has also decided that Article 39(d) must be paired with Articles 14 [30] and 16 [31] and should be secured via appropriate legislation.

According to Article 41 of the Constitution of India, Social Security can be divided into Employee Compensation Scheme (ECS) and Employee Insurance Scheme (EIS) (Table 2).

Table 2. Difference between workers compensation and employee state insurance [32].

Employees compensation Scheme	Employees insurance Scheme [33]
Compensation is given by employer to employee (no contribution formula applied)	Contribution is done by employer, by government and even by employee.
<i>Example:</i> total or partial disablement	<i>Example:</i> Given when need arise like medical, maternity, funeral, disablement (partial, total) given to insured person.
Given to aggrieved party or dependent	Given to insured person.
Limited only to injury assurance)	Wider in scope (insurance) art.42, art 39(e), and art 47 of Indian Constitution.

In its judgment in the case of *Kriloskar brothers Ltd. vs ESI Corporation* [34], the Supreme Court stated that that the idea behind the adoption of the Employees State Insurance Act, 1948 is that every human being has the right to survive and feed himself and his dependents.

Orderliness requires the security of one's own life and livelihood. Every person's liberty, equality, and dignity are interconnected and valuable to every citizen.

ILO DECLARATION ON SOCIAL JUSTICE FOR A FAIR GLOBALIZATION

The world of work is being profoundly changed by the current globalized conditions, which are characterized by the emergence of disruptive technologies, the spread of knowledge, the sharing of products and services, an influx of capital and financial resources, the globalization of commercial and business practices and communications, and the mobility of people, especially women and men in the workforce.

Economic cooperation and integration have enabled many countries to reap the benefits of rapid economic development and job growth, absorbing many rural poor into today's urban economy, driving their development objectives, and driving innovation in product innovation and idea circulation.

In contrast, the global economic integration has led to significant challenges for many countries and industries, including income inequality, persistent high rates of poverty and unemployment, economic vulnerability to shocks, and the expansion of unprotected work and informal economies, all of which affect the employment relationship and its protections.

Acknowledging that the need for a better and more just future for all has increased in these circumstances, the ILO has a vital role to play in achieving the universal aspiration of social justice, achieving full employment, sustaining open societies and the world economy, achieving social cohesion, and combating poverty and increasing inequality [35]. Labour is not a commodity; and poverty anywhere constitutes a danger to prosperity everywhere [36]. Some of the principles and mandates for social justice and labour rights are as follows:

1. Recognises the ILO's solemn duty to promote among the nations of the world programs that will accomplish the objectives of full employment and a higher standard of living; a minimum living wage; and the expansion of social security programs to ensure a basic income for all in need, as well as all the other objectives set forth in the Declaration of Philadelphia [37].
2. Charges the ILO with examining and considering all international economic and financial policies in light of the fundamental goal of social justice.
3. Encouraging employment by establishing a long-term institutional and economic environment in which: persons may acquire and update the capabilities and skills required to be productively engaged for their own fulfilment and the general good.
4. Working circumstances that are healthy and safe.
5. Building on and re-affirming the ILO declaration of fundamental principles and rights at work (1998), as updated in 2022, Members acknowledged the importance of fundamental rights in fulfilling the mandate of the Organization, including: freedom of association, effective recognition of collective bargaining, the abolition of all forms of compulsory or forced labour, the abolition of child labour and the eradication of child labour; and safe and healthy working conditions [38].

CONCLUSION

There are several labour laws that address various labour and industrial challenges. The purpose of the Acts was to achieve social and economic justice. They also exemplify the spirit of the Constitution as expressed in several Articles.

The government's positive steps toward promoting safe employment for transgender people are a source of pride, as they uphold the golden thread running through the Indian constitution's equality scheme, which is "enjoyment of life by all citizens and an equal opportunity to grow as human beings irrespective of their race, caste, religion, community, social status, and gender", as one of the basic tenets of the equality scheme is the recognition and acknowledgement of the "right of choice and self-determination".

India's laws are mostly set in binary terms, meaning you can only be a man or a woman. But in 2014, the Supreme Court recognized Transgenders as the "third gender" under India's Constitution and for the purpose of laws passed by the Parliament and the state legislatures [39].

The fact that the Third Gender is not recognised in our legal system has resulted in the denial of equal rights and social and economic discrimination in society and in the Indian labour market. In the wake of the Nalsa judgment, the Indian Parliament approved the Protection of Rights of Transgender Persons Act, 2019 ("the Act").

The legislature has made it clear that there are two types of actions that need to be taken: those that need to be done right away, like setting up social welfare programs, and the ones that need to take place over time, like changing the public's attitude towards transgender people. The legislature has set out a list of positive obligations for everyone involved in the process, from chapter II to chapter VIII, which includes things like not discriminating against transgender people, recognizing their identity and giving them the right and privilege to get a certificate of their identity from the right authorities, creating and passing out welfare measures, programs, and education that will help them participate in society, and making it easier for them to access these and other welfare programs. Plus, the state governments have to provide rescue and rehabilitation services, including the right of residence.

Individuals who: (i) Compel or force individuals into involuntary or bonded labor (except in instances of compulsory public service); (ii) obstructs the right of free movement or the right to use public places; (iii) remove transgender persons from their homes, villages, or other places of residence; and (iv) commit or intend to commit acts of violence, harassment, or abuse against transgender persons. Individuals who commit acts of violence or harassment against transgender persons shall be sentenced to imprisonment, which may range from 6 months to 2 years, with a fine [40].

Therefore, it will be a challenge to prepare the Indian workplace to accept transgenders, as social change of this magnitude has traditionally been a slow process in India.

Transgender community upliftment must be a collaborative effort, and strengthening this group at work would go a long way toward removing social stigmas as well as economically uplifting them. While the Act only places responsibility on interested parties and does not mandate them, given the evolving landscape, some of the actions that businesses/organizations could take to create a more equitable and inclusive environment.

Before any changes are made, organizations need to make sure their employees are aware of gender inclusivity, how to assimilate transgender people into the workplace, and how to accept them for who they are. They should also make sure everyone has access to the restroom that matches their gender identity. Recruitment should also be made more inclusive, and organizations should provide training to help employees get better. Finally, they should have anti-harassment policies in place to handle harassment claims while keeping the person behind them anonymous.

Thus, this shall ensure promotion of social justice for everyone under labour laws.

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