RELEVANT FOR DECEMBER, 2019 SESSION ONWARDS

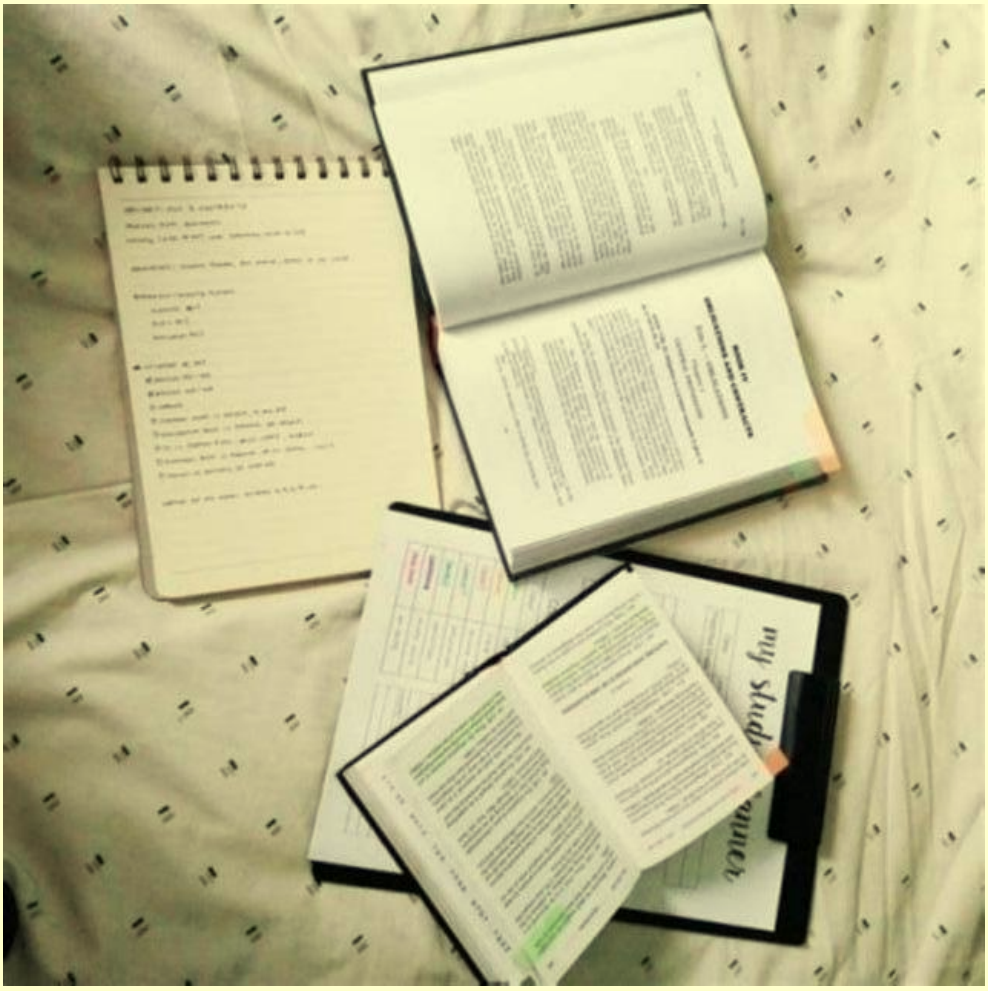
STUDY MATERIAL

PROFESSIONAL PROGRAMME

LABOUR LAWS & PRACTICE

MODULE 3
ELECTIVE PAPER 9.6

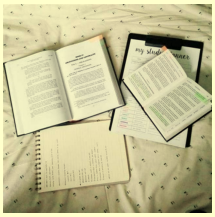
THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)
ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003
tel 011-4534 1000 **fax** +91-11-2462 6727
email info@icsi.edu **website** www.icsi.edu



Law College Notes & Stuffs

Exclusive group for Law Students

Join Us Here for More Materials



Law College Notes & Stuffs

TIMING OF HEADQUARTERS

Monday to Friday
Office Timings – 9.00 A.M. to 5.30 P.M.

Public Dealing Timings
Without financial transactions – 9.30 A.M. to 5.00 P.M.
With financial transactions – 9.30 A.M. to 4.00 P.M.

Phones
011-45341000

Fax
011-24626727

Website
www.icsi.edu

E-mail
info@icsi.edu

Laser Typesetting by AArushi Graphics, Prashant Vihar, New Delhi, and
Printed at M P Printers/July 2019

PROFESSIONAL PROGRAMME
LABOUR LAWS & PRACTICE

The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". Industrialization is considered to be one of the key engines to support the economic growth of any country. The commence of industry and its growth is not a venture of the employer alone; yet it involves the hard work and tough grind of each and every stakeholder of the industry including the labourers, supervisors, managers and entrepreneurs. With the initiation of the concept of welfare state in the early realm of independence of our country, various legislative efforts have made their first move in the direction of welfare, equitable rights, social justice, social equity and equitable participation of the labour as a stakeholder at parity. A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.

Labour laws are the one dealing with employment laws in any organization – whether it is a manufacturing organization or trading organization or shops and establishment. The labour laws address the various administrative rulings (such as employment standing orders) and procedure to be followed, compliance to be made and it address the legal rights of, and restrictions on, working people and their organizations. By and large the labour law covers the industrial relations, certification of unions, labour management relations, collective bargaining and unfair labour practices and very importantly the workplace health and safety with good environmental conditions. Further the labour laws also focus on employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay and many other issues related to employer and employee and the various compliance requirements.

The labour laws derive their origin, authority and strength from the provisions of the Constitution of India. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Labour law reforms are an ongoing and continuous process and the Government has been introducing new laws and amending the existing ones in response to the emerging needs of the workers in a constantly dynamic economic environment. Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

Under the Companies Act, 2013 the role of the company secretary has been considerably widened in as much as now he is not only responsible for the compliances under the company law but also in respect of compliances under all other applicable laws.

Keeping in view these rapid developments and significance of role of Company Secretary in the field of Labour Laws, this study material has been prepared to provide an understanding of certain labour legislations which have direct bearing on the functioning of companies. This study material has been published to aid the students in preparing for the Labour Laws & Practice paper of the CS Professional Program, Module 3, Elective Paper 9.6.

It is part of the education kit and takes the students step by step through each phase of preparation stressing key concepts, pointers and procedures. Company Secretaryship being a professional course, the examination standards are set very high, with emphasis on knowledge of concepts, applications, procedures and case

laws, for which sole reliance on the contents of this study material may not be enough. Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws made upto six months preceding the date of examination. The material may, therefore, be regarded as the basic material and must be read alongwith the original Bare Acts, Rules, Regulations, Case Law, as well as recommended readings given with each study lesson.

As the area of industrial, labour and general laws undergoes frequent changes, it becomes necessary for every student to constantly update himself with the various legislative changes made as well as judicial pronouncements rendered from time to time by referring to the Institute's journal 'Chartered Secretary' as well as other law/ professional journals.

In the event of any doubt, students may write to the Institute for clarification at **academics@icsi.edu**. Although due care has been taken in publishing this study material yet the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

Should there be any discrepancy, error or omission noted in the study material, the Institute shall be obliged if the same are brought to its notice for issue of corrigendum in the 'e-bulletin'.

PROFESSIONAL PROGRAMME
MODULE 3
ELECTIVE PAPER 9.6
LABOUR LAWS & PRACTICE (MAX MARKS 100)

Objective

To acquire expert knowledge, understanding and application of Labour Laws.

SYLLABUS

Detailed Contents

1. **Constitution and Labour Laws:** Fundamental rights vis-à-vis labour laws, Equality before law and its application in Labour Laws, Equal pay for equal work; and Article-16 and reservation policies, Articles 19, 21, 23 and 24 and its implications.
2. **International Labour Organization :** Aims and objects; Cooperation between governments and employers' and workers' organizations in fostering social and economic progress; Setting labour standards, developing policies and devising programmes to promote decent work.
3. **Law of Welfare & Working Condition :** The Factories Act, 1948; Contract Labour (Regulation and Abolition) Act, 1970; The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996; The Mines Act, 1952; The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955; The Weekly Holidays Act, 1942; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.
4. **Law of Industrial Relations :** Industrial Disputes Act, 1947 (downsizing, retrenchment, lay-off, bench employees and termination) & Industrial discipline and domestic inquiry. The Industrial Disputes (Central) Rules,1957; The Plantation Labour Act, 1951; The Industrial Employment (Standing Orders) Rules, 1946; Industrial Employment (Standing Orders) Act, 1946; The Industrial Employment (Standing Orders) Act, 1946; Indian Trade Union Act, 1926; The Trade Unions (Amendments) Act, 2001.
5. **Law of Wages:** Payment of Wages Act, 1936; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Equal Remuneration Act, 1976.
6. **Social Security Legislations:** Employees' Compensation Act, 1923; Employees Compensation (Amendment) Act, 2017; Equal Remuneration Act, 1976; Employees' State Insurance Act, 1948; Employees' Provident Funds and Miscellaneous Provisions Act, 1952; Payment of Gratuity Act, 1972; Maternity Benefit Act, 1961; Maternity Benefit (Amendment) Act, 2017; The Payment of Gratuity Act, 1972; The Unorganized Workers' Social Security Act, 2008; Apprentices Act, 1961; Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.
7. **The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.**
8. **Labour Codes:** Labour Code on Wages; Labour Code on Industrial Relations; Labour Code on Social Security & Welfare; Labour Code on Safety &Working Conditions.

9. Industrial and Labour Laws Audit covering the above Acts and other Industry Specific Acts.

Case laws, Case Studies and Practical Aspects.

LESSON WISE SUMMARY
LABOUR LAWS & PRACTICE

LESSON 1 – CONSTITUTION AND LABOUR LAWS

Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.

Under Union List, Entry No. 55 of the Seventh Schedule of the Constitution of India dealing with Regulation of labour and safety in mines and oilfields; Entry No. 61 dealing with industrial disputes concerning Union employees and Entry No. 65 dealing with Union agencies and institutions for – (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.

Under Concurrent List, Entry No. 22 of the Seventh Schedule of the Constitution of India dealing with Trade unions; industrial and labour disputes; Entry No. 23 dealing with Social security and social insurance; employment and unemployment and Entry No. 24 dealing with Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

The objective of the lesson is to introduce the students regarding:

- Fundamental rights vis-à-vis labour laws
- Equality before law and its application in Labour Laws
- Equal pay for equal work

LESSON 2 – INTERNATIONAL LABOUR ORGANIZATION

India is the founder member of International Labour Organization (ILO) and has been actively contributing to evolution of global policy on labour welfare. International Labour Organization which came into existence in 1919 and has been a permanent member of the ILO Governing Body since 1922. At present the ILO has 187 Members. A unique feature of the ILO is its tripartite character. At every level in the organization, Governments are associated with the two other social partners, namely, the workers and employers. The three organs of the ILO are - (1) International Labour Conference- General Assembly of the ILO (2) Governing Body- Executive Council of the ILO and (3) International Labour Office - a Permanent secretariat.

It is expected that, at the end of this lesson, student will, inter-alia, be in a position to:

- Aims and objects of International Labour Organization
- Setting labour standards
- Developing policies and devising programmes to promote decent work.

LESSON 3 – LAW OF WELFARE & WORKING CONDITION

The productivity of labour is an essential condition for the prosperity of enterprises and the well being of the workers and their families. The value placed by the society on dignity of labour are equally important in influencing the productivity of labour. Appropriate conditions at work are ensured by measures taken to promote safety at the workplace and minimizing occupational hazards. Under Seventh Schedule, Concurrent List, Entry No. 24 of the Constitution of India dealing with Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

The objective of the lesson is to facilitate students to acquaint with:

- The Factories Act, 1948;
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996
- The Mines Act, 1952 etc.

LESSON 4 – LAW OF INDUSTRIAL RELATIONS

An economy organized for planned production and distribution, aiming at the realisation of social justice and the welfare of the masses can function effectively only in an atmosphere of industrial peace.

Sound industrial relations and effective social dialogue are a means to promote better wages and working conditions as well as peace and social justice. As instruments of good governance they foster cooperation and economic performance, helping to create an enabling environment for the realization of the objective of Decent Work at the national level.

The objective of the lesson is to familiarize the students to acquaint with:

- Industrial Disputes Act, 1947
- The Plantation Labour Act, 1951
- Indian Trade Union Act, 1926
- The Industrial Employment (Standing Orders) Act, 1946;

LESSON 5 – LAW OF WAGES

Wages are among the most important conditions of work and a major subject of collective bargaining. Wages in the organized sector is generally determined through negotiations and settlements between the employer and the employees. The minimum rates of wages are fixed both by Central and State Governments in the scheduled employments falling within their respective jurisdictions under the provisions of the Minimum Wages Act, 1948. The Act binds the employers to pay the workers the minimum wages so fixed from time to time.

It is expected that, at the end of this lesson, student will, *inter-alia*, be in a position to:

- The Minimum Wages Act, 1948
- The Payment of Wages Act, 1936
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

LESSON 6 – SOCIAL SECURITY LEGISLATIONS

The social security legislations in India derives their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. These provide for mandatory social security benefits either solely at the cost of the employers or on the basis of joint contribution of the employers and the employees. While protective entitlements accrue to the employees, the responsibilities for compliance largely rest with the employers. The principal social security laws enacted for the organised sector in India are:

- The Employees' State Insurance Act, 1948
- The Employees' Provident Funds & Miscellaneous Provisions Act, 1952
- The Employee's Compensation Act, 1923

- The Maternity Benefit Act, 1961
- The Payment of Gratuity Act, 1972

LESSON 7 – THE LABOUR LAWS (SIMPLIFICATION OF PROCEDURE FOR FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS) ACT, 1988

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. Small establishments were exempted from furnishing returns and maintaining registers under certain enactments mentioned in the first Schedule to the Act and instead they were required to furnish returns and maintain registers in the forms set out in the Second Schedule to the Act.

The objective of the lesson is to facilitate students to acquaint with:

- Schedule Act
- Small Establishment
- Very Small Establishment
- Exemption from maintenance of Register and Return

LESSON 8 – LABOUR CODES

Reforms in labour laws are an ongoing process to update the legislative system to address the need of the hour so as to make them more effective, flexible and in sync with emerging economic and industrial scenario. The Second National Commission on Labour has recommended that the existing Labour Laws should be broadly grouped into four or five Labour Codes on functional basis. Accordingly, the Government has taken steps for drafting four Labour Codes on Wages, Industrial Relations, Social Security & Welfare and Occupation Safety, Health and Working Conditions respectively, by simplifying, amalgamating and rationalizing the relevant provisions of the existing Central Labour Laws.

The objective of the lesson is to familiarize the students to acquaint with:

- Labour Code on Wages
- Labour Code on Industrial Relations
- Labour Code on Social Security & Welfare
- Labour Code on Safety &Working Conditions

LESSON 9 – INDUSTRIAL AND LABOUR LAWS AUDIT

In order to ensure sound corporate governance, company secretary professional could assist the companies in conducting due diligence to ensure compliance with applicable labour laws. Due diligence is one of the core competence area of company secretary professional accordingly, practicing company secretaries could assist the companies in rectifying and correcting any lacunae which are highlighted upon conducting the due diligence exercise. Labour audit covers all labour legislations applicable to an Industry/factory or other commercial establishments. Company Secretaries can conduct such audits and make value addition to the business of the employer.

It is expected that, at the end of this lesson, student will, *inter-alia*, be in a position to:

- Scope of Labour Audit
- Benefit of Labour Audit
- Labour Law Compliance
- Significant Role of Company Secretary in Labour Audit

LIST OF RECOMMENDED BOOKS

LABOUR LAWS & PRACTICE

BOOKS FOR READINGS

1. P.L. Malik : Industrial Law; Eastern Book Company; 34, Lalbagh, Lucknow.
2. N.D. Kapoor : Handbook of Industrial Law; Sultan Chand & Sons, 23, Darya Ganj, New Delhi – 110002.
3. S.S. Gulshan & G.K. Kapoor : Economic, Labour and Industrial Laws; Sultan Chand & Sons, 23, Daryaganj, New Delhi- 2.
4. P. L. Malik : Labour and Industrial Laws (Pocket Edition); Eastern Book Company, 34, Lalbagh, Lucknow-226 001.
5. H.L. Kumar : Labour Laws; Universal Laws Publishing Co. Pvt. Ltd., G.T. Karnal Road, Delhi – 110033.
6. Labour & Industrial Laws (Legal Manual) : Universal Law Publishing Co. Pvt. Ltd., G.T. Karnal Road, Delhi – 110033.
7. Relevant Bare Acts.
8. N.D. Kapoor & Rajni Abbi : General Laws and Procedures; Sultan Chand & Sons. New Delhi.
9. Taxmann's :Labour Laws.
10. Rai Technology University, Labour Laws

JOURNALS

1. e-bulletin : Available on ICSI website - www.icsi.edu
2. Chartered Secretary : The ICSI, New Delhi-110 003. (Monthly)
3. All India Reporter : All India Reporter Ltd., Congress Nagar, Nagpur.

ARRANGEMENT OF STUDY LESSON

Module-3 Elective Paper-9.6

LABOUR LAWS & PRACTICE

CONTENTS

SECTION II

THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

SECTION III

THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996

SECTION IV

THE MINES ACT, 1952

SECTION V

WORKING JOURNALISTS AND OTHER NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT, 1955

SECTION VI

THE WEEKLY HOLIDAYS ACT, 1942

SECTION VII

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

SECTION III

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

SECTION II

MINIMUM WAGES ACT, 1948

SECTION III

PAYMENT OF BONUS ACT, 1965

SECTION IV

EQUAL REMUNERATION ACT, 1976

LESSON 6

SOCIAL SECURITY LEGISLATIONS

SECTION I

EMPLOYEES' COMPENSATION ACT, 1923

SECTION II

EMPLOYEES' STATE INSURANCE ACT, 1948

SECTION III

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

SECTION IV

PAYMENT OF GRATUITY ACT, 1972

SECTION V

MATERNITY BENEFIT ACT, 1961

SECTION VI

THE UNORGANISED WORKERS' SOCIAL SECURITY ACT, 2008

SECTION VII

APPRENTICES ACT, 1961

SECTION VII

EMPLOYMENT EXCHANGES (COMPULSORY NOTIFICATION OF VACANCIES) ACT, 1959

LESSON 7

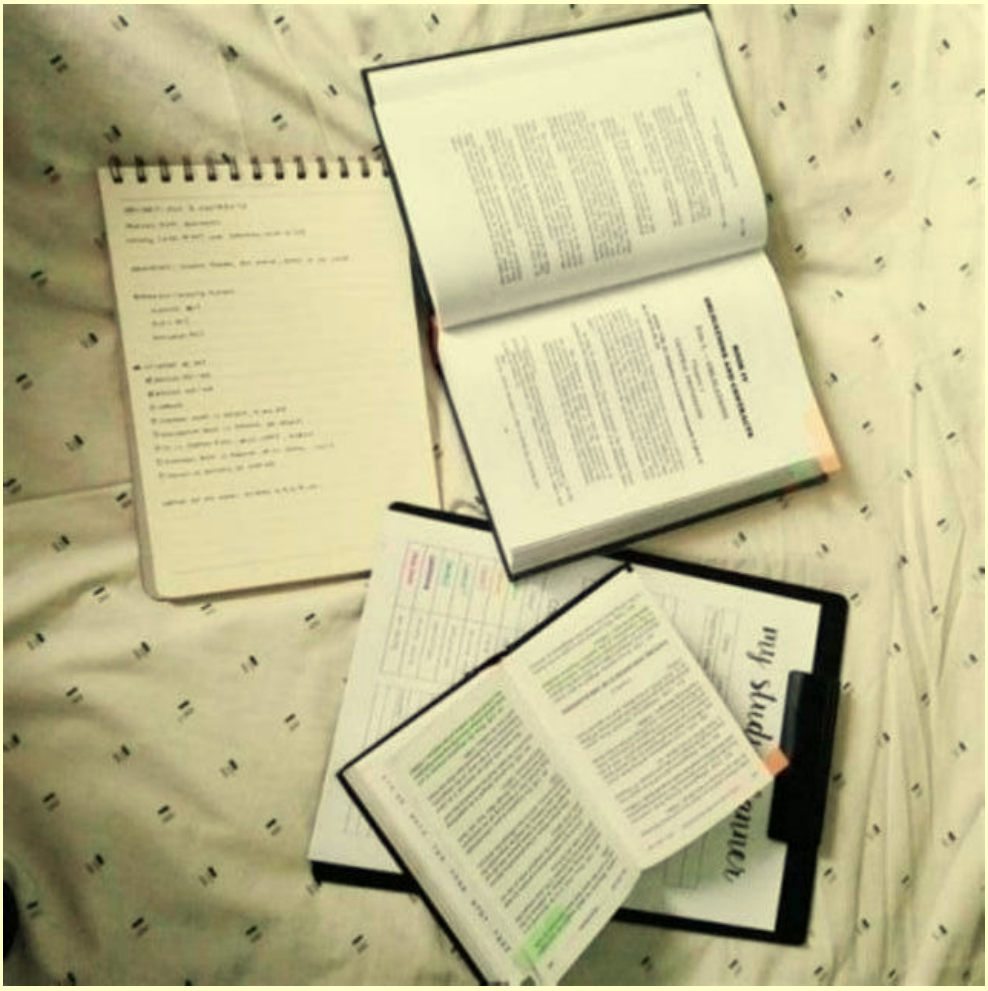
LABOUR LAWS (SIMPLIFICATION OF PROCEDURE FOR FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS) ACT, 1988

LESSON 8

LABOUR CODES

LESSON 9

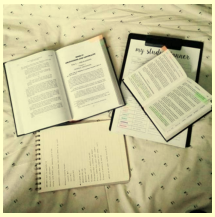
INDUSTRIAL AND LABOUR LAWS AUDIT



Law College Notes & Stuffs

Exclusive group for Law Students

Join Us Here for More Materials



Law College Notes & Stuffs

Lesson 1
Constitution and Labour Laws

LESSON OUTLINE

- Introduction
- Constitutional bearing on Industrial Laws and Industrial Relations
- Social Justice and Industrial Laws
- Constitutional Remedies
- Constitutional framework of Fundamental Rights and Industrial Relations
- Labour Laws with reference to Directive Principles of State Policy
- Social Security Provisions
- Working Conditions
- Living Wage
- Workers Participation in management
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The Labour Laws were also influenced by important human rights and the conventions and standards that have emerged from the United Nations. These include right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management.

Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.

INTRODUCTION

Majority of the constitutions throughout the world have a basic document of Government called "Constitution". The Constitution of a country is the fundamental law of the land on the basis of which all other laws are made and enforced. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the constitution and there is no authority, no department or branch of the State, which is above or beyond the Constitution or has powers unfettered and unrestricted by the Constitution.

Thus, a Constitution is supreme or fundamental law of the country which not only defines the framework of the basic political principles, but also establishes what the different government institutions should do in terms of procedure, powers and duties. A Constitution if the vehicle of a nation's progress. The Constitution is the supreme law of the country and it contains laws concerning the government and its relationships with the people.

CONSTITUTIONAL BEARING ON INDUSTRIAL LAWS AND INDUSTRIAL RELATIONS

Industrial relations affect not merely the interest of labour and management, but also the social and economic goals to which the State is committed to materialise. Therefore, it develops within the province and function of the State to regulate these relations in society desirable channels.

The extent of state control or intervention is determined by the stage of economic development. In developed economy, work stoppages to settle claim may not have much impact, unlike in developing economy. Countries like the U.S. and England, etc. with advanced and free market economy only lay down bare rules for observance of employers and workers giving them freedom to settle their disputes. In the U.S., States intervention in industrial dispute is eliminated to actual or threatened workers' stoppages that may imperil the national economy, health or safety.

However, in developing economy, the States rules cover a wider area of relationship and there is equally greater supervision over the enforcement of these rules. This is emphatically so in developing countries with labour surplus. It is a concern of the state to achieve a reasonable growth rate in the economy and to ensure the equitable distribution thereof. This process becomes more complex in a country with democratic framework guaranteeing fundamental individual freedoms to its citizens. Hence, the a state in a developing country concerns itself not only with the content of work rules but also with the framing of rules relating to industrial discipline, training, employment and so on.

The founding fathers of democratic Constitution of India were fully aware about these implications while they laid emphasis to evolve a welfare state embodying federal arrangement. Entries about labour relations are represented in all the three lists in the Constitution. Yet most important ones come under the Concurrent list. These are industrial and labour disputes, trade unions and many aspect of social securities and welfare like employer's' liability, employees' compensation, provident fund, old age pensions, maternity benefit, etc. Thus, the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Employees' State Insurance Act, 1948, etc. come under the concurrent list. Some States have enacted separate amendment Acts to some of the above legislations to meet local needs. Such amendments are recommended either with the assent of the President of India or by promulgating rules pursuant to the powers delegated by the Central Act. Under the rule making powers delegated by the Centre, the States have often been able to adopt Central Act to local needs without the President's assent. The Central acts often delegate such powers. For example, Section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many is the State Government, the power to promulgate such rules as may be needed for making the Act effective. Similarly, Section 29 and Section 30 of the Minimum Wages Act and Section 26 of the Payment of Wages Act delegated the rule making power to the State. In pursuance to this, several States have promulgated separate minimum wages rules and payment of wage rules. The Factories Act also contains similar provisions and they have been similarly availed of.

Further, the goals and values to be secured by labour legislation and workmen have been made clear in

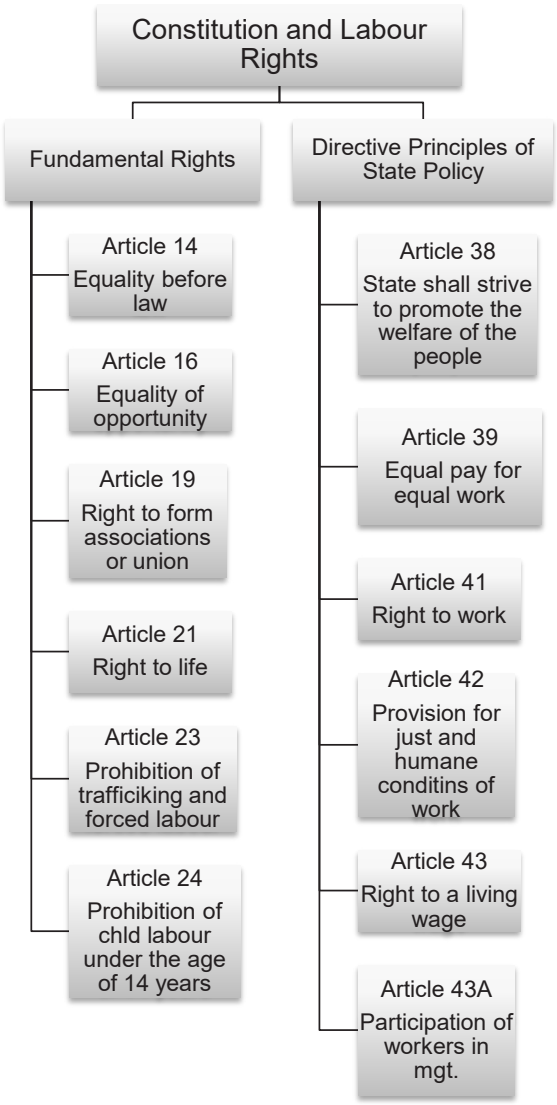
Part IV, Directive Principles of the State Policy of the Constitution. Thus, the State shall secure a social order for the promotion of welfare of the people and certain principles of policy should be followed by the State towards securing right to adequate means of livelihood, distribution of the material resources of the community to subserve the common good, prevention of concentration of wealth via the economic system, equal pay for equal work for both men and women, health and strength of workers including men, women and children are not abused, participation of workers in management of industries, just and humane conditions of work and that childhood and youth are protected against exploitation against exploitation and against moral and material abandonment.

By and large industrial and labour legislations have been directed towards the implementation of these directives. Factories Act, 1948, ESI Act, 1948, Employees' Compensation Act, 1923 are focused to the regulation of the employment of the women and children in factories, just and humane conditions of work, protection of health and compensation for injuries sustained during work. Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 regulate wage payment. Payment of Bonus Act, 1965 seeks to bridge the gap between the minimum wage and the living wage. However, the directives relating to distribution of wealth, living wages, equal pay for equal work, public assistance, etc. have not been generally implemented as yet.

List of Labour laws enactments are as under:

- The Employees' Compensation Act, 1923
- The Trade Unions Act, 1926
- The Payment of Wages Act, 1936
- The Industrial Employment (Standing Orders) Act, 1946
- The Industrial Disputes Act, 1947
- The Minimum Wages Act, 1948
- The Employees' State Insurance Act, 1948
- The Factories Act, 1948
- The Plantation Labour Act, 1951
- The Mines Act, 1952
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
- The Working Journalists (Fixation of rates of Wages) Act, 1958
- The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
- The Motor Transport Workers Act, 1961
- The Maternity Benefit Act, 1961
- The Payment of Bonus Act, 1965
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- The Contract Labour (Regulation and Abolition) Act, 1970.
- The Payment of Gratuity Act, 1972
- The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972

- The Bonded Labour System (Abolition) Act, 1976
- The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
- The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act, 1976
- The Beedi Workers Welfare Cess Act, 1976
- The Beedi Workers Welfare Fund Act, 1976
- The Sales Promotion Employees (Conditions of Service) Act, 1976
- The Equal Remuneration Act, 1976
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
- The Cine Workers Welfare Fund Act, 1981
- The Dock Workers (Safety, Health and Welfare) Act, 1986
- The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
- The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
- The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996
- The Building and Other Construction Workers Welfare Cess Act, 1996
- The Unorganized Workers' Social Security Act, 2008



SOCIAL JUSTICE AND INDUSTRIAL LAWS

The Preamble of the Constitution highlights the concept of socio-economic justice, being the main objectives of the State required by the Constitution. Article 38 of the Constitution provides the concept of social justice by providing that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, social order in which justice, social, economic and political shall inform all institutions of the national life. Further, Article 39 says that it shall be the duty of the state to apply certain principles of social justice in making laws.

"The concept social and economic justice is a living concept of revolutionary import, it gives sustenance to the rule of law, meaning and significance to the ideal of the welfare state." (*Justice Gajendragadkar in the State of Mysore* v. *Workers of Gold Mines*, *AIR 1958 SC 923)*. In the economic sphere, social justice means opportunities in greater measure to the poor and the needy for the betterment of their social and economic conditions. "It does not mean making rich man poor in order to make poor men rich. It does not mean that all wealth should be shared equally provision of basic mimimum to all in response to life and living facilities for promoting one's own values and manner worth are the essential contents of social justice." (*K.N. Bhattacharya, Indian Plans, A Generalist Approach, (1963) p. 97)*. It is the responsibility of both the State and the citizens to work hand in hand for achieving social justice. "The State has constitutional responsibilities and the citizens

have moral responsibility and the combination of the two types of responsibilities tend to create an ideal society worthy to live in". *(Chakradhar Jha, 'Judicial Review of Legislative Acts' (1974), p. 254.)*

Industrial laws are socio-economic justice oriented

The concept of social justice is so innate and demonstrated in the industrial laws of our country. As proclaimed in the Preamble of the Constitution and the Directive Principles of State Policy, the industrial jurisprudence of the country is founded on the basic idea of socio-economic quality and its aim is to assist the removal of socio-economic disparities and inequalities. The laws particularly the industrial laws of the country revolve on this basic philosophy of the Constitution.

The concept of social justice is though not limited to any particular branch of legislation although it is more prominent and conspicuous in industrial laws and relations. Its scope is comprehensive and is founded to the basic ideals of social economic equality and it aims at assisting the removal of social economic disparities and inequalities of birth and the competing claims especially between the employers and workers by finding a just, fair and equitable solution to their human relation problem, so that peace, harmony and collection of the highest order prevails among them which may further the growth and progress of nations. *(Mahesh Chandra, 'Industrial Jurisprudence' (1976), p. 47)*

Constitutional Limitations

The goals and values proclaimed under Part IV of the Constitution are to be effectuated consistent with the fundamental rights enshrined in Part III of the Constitution. The socio-economic reconstruction should not give scope to eat away the existence and worth of man. The fundamental rights are envisaged with the overall object of protecting individual liberty and democratic principles based on equality of all members of society. The State in its ebullience to evolve and streamline socio-economic reforms is bound to respect the dignity and worth of the citizens. Without these fundamental rights, the values of life may be stifled and annihilated. Therefore, the State cannot make laws inconsistent with the fundamental rights. Any law that contravenes fundamental rights will be void to the extent of inconsistency. Article 32 and 226 provide for remedy to enforce the fundamental rights through Supreme Court and High Courts respectively. Hence, the legislative competence of the law making bodies is delimited by these fundamental provisions.

Article 14 requires the State not to deny to any person equality before law or the equal protection of the laws. Thus, discriminatory laws or unequal laws are not to be passed to equal or uniform laws are not to be passed to unequal. In the Industrial legislative sphere this protection extends to both the labour and the capital. The freedom of speech and expression, freedom of assembly, right to form associations and unions, guaranteed under Article 19(1)(a), (b) and (c) and the prohibition against forced labour and child labour protect some of the vital interests of the workers strengthening their hands in forming trade unions, in staging demonstrations and in carrying on collective bargaining. *(Indian Law Institute, 'Labour Law and Labour Relations' (1968) p. 82)*. The freedom of trade and occupation guaranteed in Article (19)(1)(g) primarily goes to the benefit of the employer.

What if a law enacted to enforce a directive principle infringes a Fundamental Right? On this question, the judicial view has veered round from irreconcilability to integration between the Fundamental Rights and Directive Principles and, in some of the more recent cases, to giving primacy to the Directive Principles.

The Fundamental Rights are not an end in themselves but are the means to an end. The end is specified in Directive Principles. On the other hand, the goals set out in Directive Principles are to be achieved without abrogating the Fundamental Rights. It is in this sense that Fundamental Rights and Directive Principles together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the balance between the two parts will *ipso facto* destroy an essential element of the basic structure of our Constitution. (*Minerva Mills v. Union of India*, AIR 1980 SC 1789).

Thus, the integrative approach towards Fundamental Rights and Directive Principles, or that the both should

be interpreted and read together, has now come to hold the field. It has now become a judicial strategy to read Fundamental Rights along with Directive Principles with a view to define the scope and the ambit of the former. Mostly, Directive Principles have been used to broaden, and to give depth to some Fundamental Rights and to imply some more rights therefrom for the people over and above what are expressly stated in the Fundamental Rights.

Within the limits above stated and consistent with the distribution of legislative powers, Parliament and State legislatures make laws to regulate industrial relations and connected matters. The social security legislations, legislations to provide for retirement benefits, against industrial injuries, child labour, etc. are only resonating with the concept of social justice as highlighted by International Labour Organisations., since its inception in 1919. This has definitely shaped the industrial relations and labour laws of this country.

CONSTITUTIONAL REMEDIES

The Constitution also envisages remedy by Supreme Court under Article 32 against violation of fundamental rights against injuries and illegalities etc. Article 32 is itself a fundamental right. Apart from the writ jurisdiction under Article 32, the Supreme Court is envisaged with discretionary jurisdiction to entertain appeal by special leave under Article 136 from decree, sentence, or order passed by any court or tribunal in India. Similarly, High Courts are given writ jurisdiction under Article 226 and the power of superintendence over all courts and tribunals under Article 227. A person aggrieved by an award of the High Court can appeal to the Supreme Court under Article 132 if any constitutional question is involved or under Article 133 in civil appeal.

Can a Trade Union move the High Court under Article 226 to redress the fundamental rights of its members?. This issue was discussed by the Rajasthan High Court in *Jaipur Division Irrigation Employees Union* v*. State of Rajasthan and others.* Here a large number of the employees of the irrigation department were declared surplus. The Union challenged it in this writ petition. The Single Bench held that the petition is not maintainable holding that the fundamental rights of the individual are not the rights of the union. On appeal, the Division Bench reversed it and sent back to the Single Bench for disposal of the writ petition in accordance with the merits of the case. The traditional concept of *locus standi* underwent sweeping changes in the modern age of public action and public interest litigation. (*S.P. Gupta and others v. President of India and others*, *AIR 1982 SC 149).*

Public Interest Litigation

The general process of law in India is that the legal process can be initiated in a court of law at the instance of an aggrieved person. A third party generally does not have the capacity to initiate proceedings against others. The traditional rule in regard to *locus standi* is that only a person who has suffered a legal injury by reason of violation of his legal right by the impugned action or who is likely to run an injury by the reasoning of violation of his legal right, can alone approach the Court invoking its jurisdiction for the issuance of any writ either under Article 226 or under Article 32 of the Constitution of India. However, the Court now permits Public Interest Litigation (PIL) or Social Action Litigation (SAL) at the instance of 'public spirited citizens' for the enforcement of Constitutional rights and other legal rights of any person or group of persons who because of their socially or economically disadvantaged position unable to approach the Court for relief. Once the fundamental rights of labourers are infringed they can approach the Court for relief under Article 32 and if any other legal right is also infringed for relief under Article 226.

In *Fertilizer Corporation Kamgar Sabha* v. *Union of India*, *AIR 1976 SC 1455),* the Court held that Public Interest Litigation is part of the process of participative justice and standing in civil litigations of that pattern must have liberal reception at the judicial doorsteps.

In *Bandhua Mukti Morcha* v. *Union of India*, *AIR 1984 SC 802),* a social cause organisation approached the Supreme Court through a letter under Article 32 to request the Hon'ble Supreme Court to investigate the existence of inhuman conditions in certain mines where numerous persons were working as forced/bonded

labourers. The Supreme Court directed and appointed two inquiry commissions to find out the true facts and circumstances as alleged by the petitioner. The Court rebuked the State government for raising a preliminary objection to stall in an inquiry by the Court into the matter in the following words: *"We should have thought that if any citizen brings before the Court a complaint that a large number of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits of social welfare laws, the State Government, which is, under our constitutional scheme, charged with the mission of bringing about a new socioeconomic order where there will be social and economic justice for every one and equality of status and opportunity for all, would welcome an inquiry by the court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict sense of the term as defined in the Bonded Labour System (Abolition) Act* 1976 but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation such a situation can be set right by the State Government."

The Court held that though no fundamental right of the petitioner may be said to be infringed, yet the petitioner who complains of such violation may succeed by virtue of PIL. The court further pointed out that the jurisdiction of High Court under Article 226 is wider than Supreme Court under Article 32 because the High Court can exercise its writ jurisdiction not only for the enforcement of fundamental right but also for enforcement of any legal right.

CONSTITUTIONAL FRAMEWORK OF FUNDAMENTAL RIGHTS AND INDUSTRIAL RELATIONS

Articles 12 to 35 of the Constitution pertain to Fundamental Rights of the people. The Indian Constitution guarantees essential human rights in the form of Fundamental Rights under Part III and also Directive Principles of State Policy in Part IV which are fundamental in the governance of the country. Freedom and civil rights granted to all under Part III have been liberally construed by various pronouncements of the Supreme Court in the last half a century. The object has been to place citizens at a centre stage and make the State accountable. Fundamental Rights must not be read in isolation but together with directive principles and fundamental duties. The need for protecting and safeguarding the interest of labour as human beings has been enshrined in Article 14, 16, 19, 21, 23 and 24 giving an idea of the conditions under which labour had to be for work.

Article 14: Equality before law and Article 16: Equal opportunity for all citizens

Equality is one of the magnificent corner-stones of Indian Democracy.

Article 14 of the Constitution of India reads as under:

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 14 bars discrimination and prohibits discriminatory laws. The said Article is clearly in two parts – while it commands the State not to deny to any person 'equality before law', it also commands the State not to deny the 'equal protection of the laws'. Equality before law prohibits discrimination. It is a negative concept. The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally.

Article 16: Equality of opportunity in matters of public employment

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

3. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment
4. Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State
5. Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

Article 16 assures equality of opportunity in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. This Article also provides the autonomy to the State to grant special provisions for the backward classes, under-represented States, SC & ST for posts under the State. Local candidates may also be given preference is certain posts.

Article 16 is an instance of the application of the general rule of equality before law laid down in Article 14. The concept of equal protection and equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension. Equality is for equals, that is to say, those who are similarly circumstanced are entitled to an equal treatment but the principle of equality under Articles 14 and 16 cannot be carried beyond a point. There is no bar of reasonable classification of various employees and there is no question of equality between separate and independent classes of employees. The court cannot interfere with a promotion policy unless it is vitiated by arbitrariness or discrimination; a court or Tribunal cannot issue directions in this regard.

In the case of Randhir Singh v. Union of India (AIR 1982 SC 879), the apex court observed: "It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39 (d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for every one and as between the sexes. Directive Principles have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word 'Socialist' must mean something. Even if it does not mean 'to each according to his need', it must at least mean 'equal pay for equal work'."

In the case of *Dhirendra Chamoli and Anr. v. State Of U.P. (AIR 1982 SC 879),* the Court stated: "The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the

different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees."

In *Daily Rated Casual Labour v. Union of India (1987 AIR 2342),* 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 D.A. 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. Although the directive principle contained in Articles 38 and 39 (d) is not enforceable by virtue of Article 37, but they may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination: Denial of minimum pay amounts to exploitation of labour. The government can not take advantage of its dominant position. The government should be a model employer."

In the case of *Gopika Ranjan Choudhary* v. *Union of India JT 1989 (4) SC 173* it has been held that "The Third Central Pay Commission (1973) recommended unified pay scales to the combatant staff of the Force on parity with the Army staff. However, as regards the ministerial staff of the Force (such as the UDAs and LDAs with whom we are concerned in the present case), the Commission recommended two different scales of pay, one for those attached to the Head Quarters and the other to the Battalions/Units, and the same came into force by an order of the Ministry of Home Affairs issued in March 1975. The pay scales of the staff at the Headquarters were higher than those of the staff attached to the Battalions/Units" it was held that this was discriminatory and vocative of Article 14 and there was no difference between staff working at the headquarters and battalion and the service of Battalion is transferrable to headquarters."

In the case of *Mewa Ram Kanojia vs All India Institute of Medical Sciences and Ors. (AIR 1989 SC 1256),* the Court observed: "The doctrine of 'Equal Pay for Equal Work' is not an abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of 'Equal Pay for Equal Work' is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay."

Commenting on the principle of 'Equal Pay for Equal Work', the court has observed: "While considering the question of application of principle of 'Equal Pay for Equal Work' it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is rounded on unreal, and unreasonable basis it would be violative of Article 14 and 16 of the Constitution."

It is not necessary that for a classification to be valid, its basis must always appear on the face of the law. To find out the reasons and the justification for the classification, the court may refer to relevant material, In the case of *State of Orissa vs Balaram Sahu,* (2003) 1 SCC 250 the court has observed: "Though 'equal pay for equal work' is considered to be a concomitant of Article 14 as much as 'equal pay for unequal work' will also be a negation of that right, equal pay would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference."

Article 19(1)(c) of the Constitution

Article 19 (1) (c) speaks about the 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. The right of association pre-supposes organization as an organization or permanent relationship between its members in matters of common concern. It thus 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 also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.

In the case of *Damyanti Naranga v. The Union of India* 1971 SCR (3) 840, the court observed that: "The right to form association necessarily implies that the persons forming the society have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form association. The right guaranteed by Article 19(1)(c) cannot be confined to the initial stage of forming an association. if it were to be so confined, the right would be meaningless because as soon as an association is formed, a law may be passed interfering with its composition so that the association formed may not be able to function at all. The right can be effective only if it is held to include within, it the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association. And, Article 19(4), on the face of it, cannot be called in aid to claim validity for the Act."

In the case of *P. Balakotaiah v. Union of India* 1958 SCR 1052, the apex court held: *"*The argument is that action has been taken against the appellants -under the rules, because they are Communists and trade unionists, and the orders terminating their services under R. 3 amount, in substance, to a denial to them of the freedom to form associations, which is guaranteed under Art. 19(1)(c). We have already observed that that is not the true scope of the charges. But apart from that, we do not see how any right of the appellants under Art. 19(1)(c) has been infringed. The orders do not prevent them from continuing to be Communists or trade unionists. Their rights in that behalf remain after the impugned orders precisely what they were before. The real complaint of the appellants is that their services have been terminated; but that involves, apart from Art. 31, no infringement of any of their Constitutional rights. The appellants have no doubt a fundamental right to form associations under Art. 19(1)(c), but they have no fundamental right to be continued in employment by the State, and when their services are terminated by the State they cannot complain of the infringement of any of their Constitutional rights, when no question of violation of Art. 311 arises."

In the case of *M.H. Devendrappa v. Karnataka State Small Industries Development Corpn*, AIR 1998 SC 1064 : (1998) 3 SCC 732, the Supreme Court has dissented from the *Balakotaiah* ruling entailing freedom v. service. The Court has now said that legitimate action discreetly and properly taken by a government servant with a sense of responsibility and at the proper level to remedy any malfunction in the organisation may not be barred. A person who legitimately seeks to exercise his rights under Art. 19 cannot be told that you are free to exercise the rights, but the consequences will be so serious and so damaging, that you will not, in effect, be able to exercise your freedom. This means that the *Balakotaiah* approach saying that a government servant is free to exercise his freedom under Art. 19(1)(a) or (b), but at the cost of his service, clearly amounts to deprivation of freedom of speech. Therefore, what the Court has to consider is the reasonableness of service rules which curtail certain kinds of activities amongst government servants in the interests of efficiency and discipline in order that they may discharge their public duties as government servants in a proper manner without undermining the prestige or efficiency of the organisation. If the rules are directly and primarily meant for this purpose, "they being in furtherance of Art. 19(1)(g)",87 can be upheld although they may indirectly impinge upon some other limbs of Art. 19 qua an individual employee. Courts ensure that such impingement is minimal and rules are made in public interest and for proper discharge of public interest. "A proper balancing of interests

of an individual as a citizen and the right of the state to frame a code of conduct for its employees in the interest of proper functioning of the state, is required".

Thus, *M.H. Devendrappa* case reduces somewhat the harshness of the *Balakotaiah* ruling. *Balakotaiah* seemed to suggest that a government servant cannot exercise any freedom under Art. 19 and he can enjoy his freedom only if he gives up government service. But *Devendrappa* ruling permits some space to a government servant to enjoy his freedoms subject to proper functioning of the state. A balance has to be drawn between the interests of a government servant as a citizen and the interests of the state as an employer in promoting the efficiency of public service.

Dealing with the question as to whether temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay-scale, alongwith dearness allowance (as revised from time to time) on account of their performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts, the Court said that the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.

The bench of J.S. Khehar and S.A. Bobde, JJ said that in a welfare state, an employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Such an action besides being demeaning, strikes at the very foundation of human dignity as any one, who is compelled to work at a lesser wage, does not do so voluntarily.

The Court, however, clarified the legal position for the application of the principle of 'equal pay for equal work'. Some of the principles highlighted by the Court are as follows:

- The 'onus of proof', of parity in the duties and responsibilities of the subject post with the reference post, under the principle of 'equal pay for equal work', lies on the person who claims it.
- Mere fact that the subject post occupied by the claimant, is in a "different department" vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of 'equal pay for equal work'. However, for equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity.
- Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as – 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or some other relevant criteria.
- The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post.
- A comparison between the subject post and the reference post, under the principle of 'equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master.
- Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable and also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post.

In the present case, all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted by the State of Punjab, that during the course of their employment, the concerned temporary employees were being randomly deputed

to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. The Court hence, held that there can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post. [*State of Punjab v. Jagjit Singh*, *2016 SCC OnLine SC 1200, decided on 26.10.2016]*

Right to Strike

In the case of *All India Bank Employees vs National Industrial Tribunal* 1962 SCR (3) 269, the court held: "The object for which labour unions are brought into being and exist is to ensure collective bargaining by labour with the. employers. The necessity for this has arisen from an incapacity stemming from the handicap of poverty and consequent lack of bargaining power in workmen as compared with employers which is the reason for the existence of labour organizations. Collective bargaining in order to be effective must be enforceable labour withdrawing its co-operation from the employer and there is consequently a fundamental right to strike a right which is thus a natural deduction from the right to form unions guaranteed by sub-cl. (c) of cl.(1) of Art. 19. As strikes, however, produce economic dislocation of varying intensity or magnitude, a system has been devised by which compulsory industrial adjudication is substituted for the right to strike. This is the ratio underlying the provisions of the Industrial Disputes Act 1947 under which Government is empowered in the event of an industrial dispute which may ultimately lead to a strike or lock-out or when such strikes or lock-outs occur, to refer the dispute to an impartial Tribunal for adjudication with a provision banning and making illegal strikes or lock-outs during the pendency of the adjudication proceedings. The provision of an alternative to a strike in the shape of industrial adjudication is a restriction on the fundamental right to strike and it would be reasonable and valid only if it were an effective substitute."

In the case of *Mineral Miners' Union v. Kudremukh Iron Ore Co. Ltd. ILR 1988 KAR 2878*, the court held: "The consequential hardship to go on strike, due to the delay in the action of the authorities under the Act, was held to be unfortunate, by the Supreme Court; but such a delay would not vest a right in the workmen to ignore the mandatory requirements of the law. The remedy of workmen lies elsewhere. As the Act now stands, it is not possible to entertain the plea put forth by the learned Counsel for the workmen."

In *Syndicate Bank v. K. Umesh Nayak*, *(AIR 1995 SC 319)* Justice Sawant opined: "The strike, as a weapon, was evolved by the workers as a form of direct action during their long struggle with the employer, it is essentially a weapon of last resort being an abnormal aspect of employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of enterprise. It is a use by the labour of their economic power to bring the employer to meet their viewpoint over the dispute between them. The cessation or stoppage of works whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation, while not denying for the rights of workmen to strike, has tried to regulate it along with the rights of the employers to lockout and has also provided machinery for peaceful investigation, settlement arbitration and adjudication of dispute between them. The strike or lockout is not to be resorted to because the concerned party has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demands. Such indiscriminate case of power is nothing but assertion of the rule of 'might is right'. Thus, initially, employees must resort to dispute settlement by alternative mechanisms. Only under extreme situations when the alternative mechanisms have totally failed to provide any amicable settlement, can they resort to a strike as a last resort.

Even a very liberal interpretation of Article 19(1) (c) cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or the right to declare a lockout may be controlled or restricted by appropriate industrial legislation. (*Baldev Singh Gandhi v. State of Rajasthan*, *AIR 2002 SC 1124).*

Article 21 of the Constitution

Article 21 assures every person right to life and personal liberty. The term 'life' has been given a very expansive meaning. The term 'personal liberty' has been given a very wide amplitude covering a variety of rights which go to constitute personal liberty of a citizen. Its deprivation shall only be as per the relevant procedure prescribed in the relevant law, but the procedure has to be fair, just and reasonable.

The right to life enshrined in Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It therefore includes all those aspects of life which go to make a man's life meaningful, complete and worth living.

In course of time, Article 21 has come to be regarded as the heart of Fundamental Rights. Article 21 has enough of positive content in it and it is not merely negative in its reach. This liberal interpretation of Article 21 by judiciary has led to two very spectacular results within the last two decades, viz.:

(1) Many Directive Principles which, as such, are not enforceable have been activated and have become enforceable.

   a) Right to livelihood

   b) Right to live with human dignity

   c) Right to medical care

   d) Health of labour

   e) Sexual harassment

   f) Right to health

   g) Economic Rights

(2) The Supreme Court has implied a number of Fundamental Rights from Art. 21.

In the case of *Olga Tellis & Ors v. Bombay Municipal Corporation*, AIR 1986 SC 180, the Court held: "As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of 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 his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which people their desertion of their hearths and homes in the village is that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to

live: Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in Baksey that the right to work is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois, (1877) 94 U.S. 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed"

In the case of *D.K. Yadav vs J.M.A. Industries Ltd* 1993 SCR (3) 930, the court held: "Article 21 of the Constitution clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice."

In the case of *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (*AIR 1996 SC 2426),* a mazdoor fell from a running train and was seriously injured. He was sent from one government hospital to another and finally he had to be admitted in a private hospital where he had to incur an expenditure of Rs. 17,000/- on his treatment. Feeling aggrieved at the indifferent attitude shown by the various government hospitals, he filed a writ petition in the Supreme Court under Art. 32. The Court has ruled that: "the Constitution envisages establishment of a welfare state, and in a welfare state, the primary duty of the government is to provide adequate medical facilities for the people. The Government discharges this obligation by running hospitals and health centres to provide medical care to those who need them. Art. 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance."

Occupational accidents and diseases remain the most appalling human tragedy of modern industry. Health hazards faced by the workers in the Asbestos factories were brought to the attention of the Supreme Court in *CERC v. Union of India*, *AIR 1995 SC 922)* in which after taking note of the cases in which it has been held that the right to life in Art. 21 includes "right to human dignity", the Court now held that: "right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a Fundamental Right under Article 21, read with the Directive Principles in Articles 39(1), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workmen meaningful and purposeful with dignity of person."

The Supreme Court has made a novel use of Article 21 to ensure that the female workers are not sexually harassed by their male co-workers at their places of work.

In the case of *Vishakha & Ors. v. State of Rajasthan* (1997) 6 SCC 241 whereby a woman was assaulted and harassed at her workplace, the Supreme Court observed*:* "Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'."

The Parliament enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on December 9, 2013 that seeks to protect women from sexual harassment at their place of work. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced at work place by the Supreme Court of India.

Article 23 and Article 24: Right against Exploitation

According to Article 23(1), traffic in human beings, begar, and other similar forms of forced labour are prohibited

and any contravention of this provision shall be an offence punishable in accordance with law. Article 23(1) proscribes three unsocial practices, viz., (1) begar; (2) traffic in human beings; and (3) forced labour.

The term 'begar' means compulsory work without any payment. Begar is labour or service which a person is forced to give without receiving any remuneration for it.

Withholding of pay of a government employee as a punishment has been held to be invalid in view of Article 23 which prohibits begar. 'To ask a man to work and then not to pay him any salary or wages savours of begar. It is a Fundamental Right of a citizen of India not to be compelled to work without wages.' *(Suraj v. State of Madhya Pradesh, AIR 1960 MP 303*).

The expression 'traffic in human beings,' commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is constitutionally abolished.

The words 'other similar forms of forced labour' in Article 23(1) are to be interpreted *ejusdem generis*. The kind of 'forced labour' contemplated by the Article has to be something in the nature of either traffic in human beings or begar. The prohibition against forced labour is made subject to one exception. Under Article 23(2), the State can impose compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. The State may thus exempt women from compulsory service for that will be discrimination on the ground of sex and this has not been forbidden by Article 23(2).

The Supreme Court has given an expansive significance to the term "forced labour" used in Art. 23(1) in a series of cases beginning with the Asiad case in 1982.*(People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473).* The Court has insisted that Article 23 is intended to abolish every form of forced labour even if it has origin in a contract. Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to the basic human values.

in *Sanjit Roy v. State of Rajasthan*, *1983, SCR (2) 271* case, it was held that when a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words 'forced labour' under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32) for the enforcement of fundamental rights which include the payment of minimum wages.

Article 24 of the Constitution of India is also enforceable against private citizens and lays down a prohibition against the employment of children below the age of fourteen years in any factory or mine or any other hazardous employment. This is also in consonance with Articles 39(e) and (f) in Part IV of the Constitution which emphasizes the need to protect the health and strength of workers, and also to protect children against exploitation. The Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits the employment of children in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.

Article 39(f) of the Constitution of India enumerates the importance of protecting children from exploitation and to give them proper opportunities and facilities to develop. These ideas are in consonance with the prohibitions against 'forced labour' and employment of children below the age of fourteen years, which have been laid down under Article 23 and 24 respectively.

LABOUR LAWS WITH REFERENCE TO DIRECTIVE PRINCIPLES OF STATE POLICY

The makers of the Constitution had realized that in a poor country like India, political democracy would be useless without economic democracy. Accordingly, they incorporated a few provisions in the Constitution with a view to achieve amelioration of the socio-economic condition of the masses. Today we are living in an era of welfare

state which seeks to promote the prosperity and well-being of the people. The Directive Principles strengthen and promote this concept by seeking to lay down some socio-economic goals which the various governments in India have to strive to achieve. The Directive Principles are designed to usher in a social and economic democracy in the country. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles give directions to the legislatures and the executive in India as regards the manner in which they should exercise their power.

The Courts however do not enforce a directive principle enshrined in Part IV of the Constitution unlike rights enshrined in Part III. The reason behind the legal non-enforceability and non-justiciability of these principles is that they impose positive obligations on the state. While taking positive action, government functions under several restraints, the most crucial of these being that of financial resources. The constitution-makers, therefore, taking a pragmatic view refrained from giving teeth to these principles. They believed more in an awakened public opinion, rather than in Court proceedings, as the ultimate sanction for the fulfilment of these principles. Nevertheless, the Constitution declares that the Directive Principles, though not enforceable by any Court, are 'fundamental' in the governance of the country, and the 'state' has been placed under an obligation to apply them in making laws. The state has thus to make laws and use its administrative machinery for the achievement of these Directive Principles.

Articles 38, 39, 41, 42 and 43 have a special relevance in the field of industrial legislation and adjudication. In fact, they are the substratum or rather 'magna carta' of industrial jurisprudence. They encompass the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country.

Social Order Based On Socio-Economic Justice

Article 38(1) directs the state to strive "to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

Article 38(2) directs the state to strive "to minimise the inequalities in income," and endeavour "to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different vocations".

Article 38 needs to be read along with Article 14. This directive reaffirms what has been declared in the Preamble to the Constitution, viz., the function of the Republic is to secure, inter alia, social, economic and political justice. On the concept of equality envisaged by Article 38, the Supreme Court has observed *in the case Sri Srinivasa Theatre v. Govt. of Tamil Nadu, AIR 1992 SC 999:* "Equality before law is a dynamic concept having many facets. One facet--the most commonly acknowledged--is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the state to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution [viz. Directive Principles]. For, equality before law can be predicated meaningfully only in an equal society, i.e., in a society contemplated by Article 38 of the Constitution."

Reading Articles 21, 38, 42, 43, 46 and 48A together, the Supreme Court has concluded in *Consumer Education & Research Centre v. Union of India (AIR 1995 SC 923),* that "right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a Fundamental Right...to make the life of the workman meaningful and purposeful with dignity of person." Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights of the workmen.

Article 38 is always supplemented and must be read with Article 39 which seeks to lays down the guidelines and principles for achieving such social order.

Principles of State Policy

Article 39 requires the state, in particular, to direct its policy towards securing:

(a) that all citizens, irrespective of sex, equally have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal work for both men and women;

(e) that the health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter 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.

The Supreme Court has taken recourse to Art. 39(a) to interpret Art. 21 to include therein the "right to livelihood." The Supreme Court has observed in *Olga Tellis v. Bombay Municipal Corporation*, *AIR 1986 SC 180,* that : "If there is an obligation upon the State to secure to the citizens 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."

The Supreme Court has however put a rider on the right to livelihood. The state may not be compelled, by affirmative action, "to provide adequate means of livelihood or work to the citizens." But the state is under a negative obligation, viz., not to deprive a person of this right without just and fair procedure. Thus, according to the Court: "But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Art. 21."

In a major pronouncement in *Madhu Kishwar v. State of Bihar*, *AIR 1996 SC 1870* with a view to protect the economic interests of tribal women depending on agriculture for their livelihood, the Supreme Court has ruled that on the death of the last male holder in an agricultural tribal family, the dependent family female members have the constitutional remedy of continuing to hold the land so long as they remain dependent on it to earn their livelihood. Otherwise, the females will be rendered destitute. It is only on the exhaustion of, or abandonment of land by such female descendants, can the males in the line of descent takeover the holding exclusively. The Court has come to this conclusion on the basis of Article 39(a) which puts an obligation on the state to secure to all men and women equally, the right to an adequate means of livelihood.

The directive principles of State policy have to be reconciled with the fundamental rights available to the citizens under Part III of the Constitution and the obligation of the State is to one and all and not to a particular group of citizens.

Article 39(b) and (c) are very significant constitutional provisions as they affect the entire economic system in India. The aim of socialism is the distribution of the material resources of the community in such a way as to subserve the common good. Socialism means distributive justice-an idea ingrained in Article 39(b).

Pursuant to Article 39 (d), Parliament has enacted the Equal Remuneration Act, 1976. The directive contained in Article 39 (d) and the Act passed thereto can be judicially enforceable by the court. The Act provides for payment of equal remuneration to men and women workers for the same work, or work of a similar nature and for the prevention of discrimination on grounds of sex. The Act also ensures that there will be no discrimination against recruitment of women and provides for the setting up of advisory committees to promote employment opportunities for women. Provision is also made for appointment of officers for hearing and deciding complaints