

INDIAN CONSTITUTION: AS A SAFEGUARD OF THE RIGHTS OF LABOURS

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I. Introduction

Industrialization is the modern trend in developing countries. But industrialization is a result of a complex socio-economic organisation. While a number of factors lead to the success of the programme of industrialisation the most important factor is the employer- employee relationship. If there is a contended labour free from exploitation, it leads to rapid industrilisation.² Industry plays a vital role in building the economic structure of a society. Therefore the importance of labour and industrial laws in shaping the economy of a country cannot be ignored. We in our country are mainly embarking upon the industrial and technological advancement but mere technological advancement is likely to widen the social imbalance. It is both economic and social justice which we cherish in our constitution.³ The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout recorded history. Several ancient documents and later religions and philosophies included a variety of concepts that may be considered to be human rights. Notable among such documents are the Cyrus Cylinder of 539 BC, a declaration of intentions by the Persian emperor Cyrus the Great after his conquest of the Neo-Babylonian Empire; the Edicts of Ashoka issued by Ashoka, the Great of India between 272-231 BC; and the Constitution of Medina of 622 AD, drafted by Muhammad to mark a formal agreement between all of the significant tribes and families of Yathrib (later known as Medina), including Muslims, Jews and Pagans. The English Magna Carta of 1215 is particularly significant in the history of English law, and is hence significant in international law and constitutional law today. Labour has its own human rights and for the protection of those rights, our legislation has given a number of laws to protect them.

Human rights have always found a pride of place in the theocracy of religious beliefs of all ages throughout the world. It is indeed, noteworthy that human rights have always had a close link with man's civilization and even today their existence is a symbolic attainment of the standard of civilization.

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 - 2 These lines were said by Justice Mr. Mahavir Singh, Judge Allahabad High Court on 29 December 1979 while writing Foreword to the book authored by Dr.V.G. Goswami, "Labour Industrial Law", (2004).
 - 3 S.N.Mishra, "Labour and Industrial Laws" (2008), mentioned in the Preface to Twenty-Fourth Edition.

Up to the early part of the 20th century, the neglect of human rights continued by the imperialist of colonial European powers. The freedom of religion was denied and as a result the recognition of human rights by religious existed in different forms was marked with brutality and inhuman practice of depriving human rights which were degenerating. However, the history of civilized societies clearly indicates that, importance was given to human rights. American Declaration of Independence of 1766, the Bill of Rights of 1688 passed by British democrats is the witness of recognition of human rights.⁴

Many groups and movements have managed to achieve profound social changes over the course of the 20th century in the name of human rights. The women's rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. One of the most influential was Mahatma Gandhi's movement to free his native India from British rule. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them the civil rights movement, and more recent diverse identity politics movements, on behalf of women and minorities in the United States. Day by day as we are developing or our law is developing, a number of new things are coming in front of the society. We have uncountable problems in society with related to the labour and for the violation of law, our legislation provides a number of rights to the labour, but out of those laws our constitution provides the human rights, fundamental rights and directive principles of state policy and it is really important, in addition to it the legislation has enacted a number of acts to protect the labour and to give them the justice. Under our constitution state has been directed 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 conform all institutions of national life.⁵

II. Constitutional Provisions for the Protecting the Rights of Labours

In Indian Constitution, there are a number of provisions which are given to save the human rights or justice of the labour and those human rights or provisions are as following:- First and foremost, the Indian Constitution ensures equality before law and extends to citizens equal protection of the laws within the territory of India. Articles 14 and 15 prohibit any discrimination against a citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Art 16 mandates equality of opportunity in the matter of public employment and prohibits any form of discrimination.⁶ In the same part of the Constitution, freedom of association and the right to form trade unions is guaranteed, and forced labour is prohibited, now being made a criminal offence.

4 Kanta Nalini Dutta, "Contemporary Socio-Legal Problems", p. 14.

5 S.C. Srivastava, "Industrial Relations and Labour Laws", Fifth Edition, p. 12.

6 G.B. Pai, "Labour Law in India" (2004) vol. I, p.152.

The framers of the Constitution of India, in order to ensure social and economic justice to all citizens, have laid down certain directive principles in Part IV of the Constitution as fundamental in the governance of the country. Article 37 states that it shall be the duty of the state to apply these principles in the making of laws.⁷

(a) Right to Equality

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.⁸

In the case of **West Bengal State Electricity Board**⁹ the Supreme Court held that any provision in the regulation enabling the management to terminate the services of a permanent employee by giving the three months notice or pay in lieu thereof, would be bad as violative of Article 14 of the Constitution. Such a regulation was held to be capable of vicious discrimination and was also held to be naked 'hire and fire' rule.

In the case of **O.P. Bhandari**¹⁰ Supreme Court of India held that Rule 31 (v) of the Indian Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1978, which provided that the service of a permanent employee could be terminated by giving him 90 days' notice or pay in lieu thereof, would be violative of Articles 14 and 16 of the Constitution.

(b) Prohibition of discrimination¹¹

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex and place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -
 - (a) Access to shops, public restaurants, hotels and places of public entertainment;
 - (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (3) Nothing in this article shall prevent the State from making any

⁷ Ibid

⁸ Constitution of India, Article 14.

⁹ West Bengal State Electricity Board & Ors. V. Desh Bandhu Ghosh & Ors, (1985) 3 SCOH6

¹⁰ O.P. Bhandari v. Indian Tourism Development Corporate Ltd. & Ors, (1986) 4 SCC 337

¹¹ Constitution of India; Article 15. The state shall not discriminate on the grounds of religion, race, caste, sex and place of birth.

special provision for women and children.

- (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

In the case of **Nirmla Textile Finishing Mills Ltd.**¹² the Supreme Court observed that neither the industrial disputes act nor any provision thereof is void as infringing the fundamental rights guaranteed by Article 14 or 19. Thus, it has now been settled that the provisions of Industrial Disputes Act are not violative of the fundamental rights guaranteed under the constitution.

(c) Equality of opportunity in matters of public employment¹³

- (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 of, 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 favour of any backward class of citizens, which, in the opinion of the State, is not adequately represented in the services under the State.
- (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
- (4B) Nothing in this article shall prevent the State from considering

12 *Nirmla Textile Finishing Mills Ltd. v. Industrial Tribunal, Punjab*, (1957) 1 LLJ 460 (SC).

13 Constitution of India; Article 16. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.

- (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.

In the case of **D.K. Yadav**¹⁴ Supreme Court has laid down that where the rule provided that the service of an employee who overstays the leave would be treated to have been automatically terminated, would be bad as violative of Article 14, 16 and 21 of the Constitution. It further held that if any action was taken on the basis of such a rule without giving any opportunity of hearing to the employee, it would be wholly unjust, arbitrary and unfair. The court emphasized that principles of natural justice would have to be read into the provision relating to automobiles termination of services.¹⁵

(d) Protection of life and personal liberty¹⁶

No citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence. (Attempted suicide being interpreted as a crime has seen many debates. The Supreme Court of India gave a landmark ruling in the year 1994. The court repealed section 309 of the Indian penal code, under which people attempting suicide could face prosecution and prison terms of up to one year. In the year 1996 however another Supreme Court ruling nullified the earlier one.) "Personal liberty" includes all the freedoms which are not included in Article 19. The right to travel abroad is also covered under "personal liberty" in Article 21.

(e) Abolition of Forced Labour

Prohibition of traffic in human beings and forced labour¹⁷—

¹⁴ D.K. Yadav v. J.M.A. Industries Ltd., AIR 1987 SC 2408.

¹⁵ Uptron India Ltd. v. Shammi Bhan & Anr. AIR 1991 SC 101.

¹⁶ Constitution of India; Article 21. No citizen can be denied his life and liberty except by law.

¹⁷ Id; Article 23.

- (1) Traffic in human beings and 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.
- (2) Nothing in this article shall prevent the state from imposing compulsory service for public purposes, and in imposing such service; the state shall not make any discrimination on grounds only of religion, race, caste, class or any of them.

Article 23 is clearly designed to protect the individual not only against the state, but also against other private citizens. Article 23 is not limited in its application against the state, but it prohibits 'traffic in human beings and begar, and other similar forms of forced labour' practiced by any person. The prohibition against 'traffic in human being and begar and other similar forms of forced labour' is clearly intended to be a general prohibition, total in its effect and all-pervasive in its range, and it is enforceable not only against the state, but also against any other person indulging in any such practice.¹⁸

In the case of **Deena**¹⁹ Hon'ble Supreme Court observed that it was held that labour taken from prisoners without paying proper remuneration was "forced labour" and violative of Art. 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the court is under duty to enforce their claims. In the case of **Bandhua Mukti Morcha**²⁰ Supreme Court held that when an action is initiated in the court through public interest litigation alleging the existence of bonded labour the Government an opportunity to examine whether bonded labour system exists and as well as to take appropriate steps to eradicate that system. This is constitutional obligation of the Government under Article 23 which prohibits forced labour in any form. Article 23 has abolished the system of bonded labour but unfortunately on serious effort was made to give effect to the article. It was only in 1976 that parliament enacted the Bonded Labour System (Abolition) Act, 1976, providing for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people.

(f) Prohibition of employment of children in factories, etc²¹

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. We are therefore, of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words

18 G.B. Pai, "Labour Law in India" vol. I, p.159.

19 Deena v. Union of India, A.I.R. 1983 SC 1155.

20 Bandhua Mukti Morcha v. Union of India, A.I.R. 1984 SC 802.

21 Ibid; Article 24.

‘forced labour’ under art 23. Such a person would be entitled to avail the court of law for the enforcement of his fundamental rights under art 23 by a prayer to direct payment of the minimum wages to him so that the labour or service provided by him ceases to be ‘forced labour,’ and the breach of Article 23 is remedied.²²

Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act 1970, and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, which became enforceable with effect from 4 June 1982, are clearly intended to ensure basic human dignity to the workmen; and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislations, that would clearly be a violation of art 21 by the Union of India, the Delhi Administration and the Delhi Development Authority who, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen.

The word beggar in Art 23 is not a word of common use in the English language, but a word of Indian origin, which like many other words has found its way in English vocabulary. It is a form of forced labour under which a person is compelled to work without receiving any remuneration. Begar is thus clearly a form of forced labour.²³

The freedom of the individual and his right to a dignified life is commensurate with his status in society and is a freedom assured to every person in democracies. The Constitution of India makes traffic in human beings a punishable offence.

In the case of **Vishaka**²⁴ the three Judge Bench of the Supreme Court in an epoch-making judgment made a significant contribution in evolving the Code against sexual harassment. While emphasizing the need to have guidelines the Supreme Court said that: “The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.”

22 G.B. Pai, “Labour Law in India” (2004) vol. I, p.158.

23 Ibid

24 Vishaka v. Union of India, 1997 LLR 991.

III. Directive Principles: Article 38 to Article 48 of the Constitution of India

The Directive Principles commit the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight economic inequality. The State must continually work towards providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, protection against exploitation and reduce the concentration of wealth and means of production from the hands of a few. Articles 38 to 48 broadly enunciate the basic principles given below:

(a) To secure a social order for the promotion of welfare of the people

- (1) The state shall 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.²⁵
- (2) The state shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

(b) Principles of policy to be followed by the state.—The state shall, in particular, direct its policy towards securing²⁶

- (a) That the citizens, men and women 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 sub serve 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 pay for equal work for both men and women;
- (e) That the health and strength of workers, men and women, and the 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.

²⁵ Constitution of India; Article 38.

²⁶ Ibid; Article 39.

(c) Equal pay for equal work

Equal pay for equal work is not expressly declared by the Constitution as a fundamental right, but in view of the Directive Principles of State Policy as contained in art 39(d) of the Constitution, 'equal pay for equal work' has assumed the status of a fundamental right in service jurisprudence, having regard to the constitutional mandate of equality in arts 14 and 16 of the Constitution. Equal pay for equal work and security of service by regularizing casual employment within a reasonable period, has been accepted by the Supreme Court as a constitutional goal to our socialistic pattern. This socialist trend of law has ceased to be a judge-made law as it is the part of the constitutional philosophy which ensures a welfare-oriented socialistic pattern where a state must provide equal opportunity to all and equal pay for equal work, for similarly placed employees of the state. The Supreme Court has zealously enforced the fundamental right to equal pay for equal work in effectuating the constitutional goal of equality and social justice. Therefore, the principle equal pay for equal work, even in an establishment which is an instrumentality of a state, is applicable to its full vigour.²⁷ The principle of 'equal pay for equal work' is not an abstract doctrine but one of substance. The higher qualification for the higher grade, which may either, be according to academic qualifications or experience, based on the length of service, reasonably sustains the classification of officers of two grades with different pay scales. But, in case of unequal scales of pay based upon some unreasonable or irrational classification, a breach of the principle is clearly made out. 'Equal pay for equal work' means equal pay for equal work for all, as between either gender. Where two groups of workmen are doing the same work, the principle of equal pay for equal work is attracted. Persons employed on a daily wage basis are entitled to the same wage as are paid to employees similarly placed. The provisions in the service rules requiring a female employee to obtain the permission of the government in writing before her marriage is solemnized, and the right to be appointed on the ground that the candidate is a married woman are discriminatory against women. The equality of opportunity in matters relating to employment does not, however, mean that men and women are absolutely equal in all occupations, and do not exclude the need to pragmatise where requirements of a particular employment, gender sensitivity, or the peculiarities of certain social sectors, or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrated, the rule of equality must govern.

(d) Right to work, education and public assistance²⁸

The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to

²⁷ G.B. Pai, "Labour Law in India", vol. I, p.195.

²⁸ Constitution of India; Article 41.

education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

(e) Provision of humane conditions of work and maternity relief²⁹

The state shall make provision for securing just and humane conditions of work and for maternity relief.

(f) Living wage, etc for workers.³⁰

The state shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions or work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

(g) Free and compulsory education for the promotion of educational and economic interests of weaker sections³¹

The state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

(h) Improvement in the level of the standard of living and of public health³²

The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Throughout the four decades of the intensive freedom struggle, it was the common man and the worker, both urban and rural, who struggled for freedom in conjunction with national leaders to gain the country its independence. It was therefore, inevitable that the resolutions of the Indian Congress advocated the basic principles of the socio-economic organisation of an independent India to be broad-based on the advancement of the standard of living of the entire population with particular reference to the industrial and agricultural working class.

29 Ibid; Article 42.

30 Ibid; Article 43.

31 Ibid; Article 45.

32 Ibid; Article 47.

(i) Promotion of international peace and security³³

The state shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another.³⁴

(j) Legislation for giving effect to international agreements³⁵

Notwithstanding anything is the foregoing provisional of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

(k) Seventh Schedule List 1 – Union List

Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventional with foreign countries.³⁶ Due to these provisions the international conferences and treaties are binding on the Indian people and the rules of those conventions are followed in India. Some conventions are as following:-

- (1) Freedom of Association and the Protection Of the Right to Organize 1948
- (2) Rights of Association (Agriculture) 1921
- (3) Right to Organize and Collective Bargaining 1949
- (4) Rural Worker’s Organizations 1975
- (5) Forced Labour 1930
- (6) Abolition of Forced Labour 1957
- (7) Equal Remuneration 1951
- (8) Discrimination (Employment and Occupation) 1958.

(l) Provisions concerning migrant workers

- I. The terms and conditions of employment of workers living away from their home shall take into account their normal family needs.
- II. Such workers should be induced by agreement or otherwise, to voluntarily transfer part of their wages and savings to their families, and further, it should be ensured that they enjoy protection and advantage not less than those enjoyed by workers resident in the area of labour utilisation.
- III. Where workers and their families move from inexpensive to expensive localities, account shall be taken by the increased cost of living resulting from such change.

33 Ibid; Article 51.

34 Suresh C. Srivastava, “Cases on Indian Labour Law”, vol. III, p. 557.

35 Constitution of India; Article 253.

36 Ibid.

(m) Standard of living, wages and education

There is a close relationship between efficiency and the standard of living. The foundation of industrial progress rests on improved standards of living. The poor standard of living means poor mental and physical growth of the workers resulting in low efficiency. It may be noted that climatic, racial and dietary habits on one hand and efficiency on the other, are reciprocally interdependent in this country. The gradation as per dietary and physical efficiency closely corresponds to gradation in income.³⁷

A reasonably high wage will ensure adequate supply of food and other necessities of life, and the requirements of the workers and his family leading to an improved efficiency; provided he does not waste his income and is conscious and wise whilst spending it. Education in the real sense, stimulates and strengthens the right type of instinct and builds up a character. An educated worker is resourceful and conducts himself in a responsible manner, as he realises his duty.³⁸

IV. Guidelines and Norms to be Observed by an Employer³⁹

In the case of Vishaka the Supreme Court laid down the following guidelines and norms to be strictly observed at all work places for the preservation and enforcement of the right to gender equality of the working women. These directions according to the Court would be binding and enforceable in law until suitable legislation is enacted to occupy the field. However, these guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

(a) Duty of the Employer or Other Responsible Persons in Workplaces and Other Institutions- It shall now be duty of the employer or other responsible persons in workplaces or other institutions to take necessary steps to prevent the commission of acts of sexual harassment, deter the commission of the acts of sexual harassment; and provide the procedure for the (i) resolution, (ii) settlement and (iii) prosecution of acts of sexual harassment.

(b) Preventive Steps- All employers or persons incharge of workplace whether in public or private sector should take appropriate steps to prevent sexual harassment. They are further required to take the following steps:

- (i) Express prohibition of sexual harassment as defined above at the workplace, should be notified, published and circulated in appropriate ways.

37 Dr R.D Mukerji, "Indian Working Class", p 251-254.

38 Mehotra, "Labour Problems in India" (1998), p 105-106.

39 Vishaka v. Union of India, 1997 LLR 991.

- (ii) The rules / regulations of Government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (iii) As regards private employers steps should be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.
- (iv) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

(c) Disciplinary Action- Where the conduct of the accused amounts to misconduct in employment under the relevant service rules, the employer should initiate disciplinary action in accordance with the rules.

(d) Complaint Mechanism- Employer is required to create an appropriate complaint mechanism in his organisation for redressal of the complaint made by the victim whether or not the conduct of the accused constitute an offence under law or a breach of service. Such complaint mechanism should ensure time bound disposal of complaints.

(e) Complaint Committee-

- (a) Design of Complaint Mechanism: The complaint mechanism should be adequate to provide where necessary a complaint committee, a special counsellor; or other support service (including maintenance of confidentiality).
- (b) Composition of Complaint Committee: The composition of complaint committee shall be as under:
 - (i) It shall be headed by a woman;
 - (ii) Not less than half of its members of the committee be women;
 - (iii) The committee should involve third party, either NGO or other body familiar with the issues of sexual harassment, in order to prevent the possibility of any undue pressures or influence from the senior levels.
- (c) Annual Report: The complaint committee of the concerned Government department shall prepare an annual report of its activities during the previous year. Such report should also state complaints and action taken by them. The committee shall forward a copy thereof to the head of the organisation concerned who shall forward the same to the Government department concerned with its comments.

(Compliance Report: The employer and the person in charge is also required to report:

- (i) On compliance with the aforesaid guidelines;
- (ii) Compliance on the reports of the complaint committee;
- (iii) Such report must be sent to the concerned Government department.

(f) Workers' Initiative- In order to prevent and control sexual harassment at Workplace employers should be allowed to raise these issues:

- (i) at workers' meeting; and
- (ii) in other appropriate forums.

The issues of sexual harassment should be affirmatively discussed in employer-employee meetings.

(g) Awareness- In order to create awareness about the right of female employees in regard to sexual harassment the employer should take the following steps: (i) prominently notify the guidelines in a suitable manner and (ii) enact appropriate legislation on the subject, and be also suitably notified and displayed.

(h) Third Party Harassment- Where sexual harassment occurs as a result of an act or omission by (i) any third party or (ii) outsider, the employer and persons in charge are required to take necessary and reasonable steps to assist the affected person (a) in terms of support; and (b) take preventive action.

(i) Steps to be taken by the Government- The Central and State Governments are required to:

- (i) Take suitable measures (including legislation);
- (ii) Ensure that the guidelines are observed by the employers in private sector.

Two years later in the case of **Export Promotion Council**⁴⁰ the Supreme Court was requested to decide the following issues:

1. Does an action of the superior against a female employee, which is against moral sanctions and does not withstand the test of decency and modesty, not amount to sexual harassment?
2. Is physical contact with the female employee an essential ingredient of such a charge?
3. Does the allegation that the superior "tried to molest" a female

⁴⁰ Export Promotion Council v. A. K Chopra JT 199(1) SC 61.

employee at the “place of work”, not constitute an act unbecoming of good conduct and behaviour expected from the superior?

The response of the Supreme Court on the aforesaid issues was as follows:

As regards the first issue the Supreme Court ruled that “each incident of sexual harassment at the place of work results in violation of the fundamental right to gender equality and the right to life and liberty — the two most precious fundamental rights guaranteed by the Constitution of India”. The Supreme Court answered the second issue in negative and ruled that it was erroneous to hold that since the respondent had not “actually molested” Miss X and that he had only “tried to molest” her and had “not managed” to make physical contact with her, the punishment of removal from service was not justified. On the third issue the Supreme Court ruled that the act of the respondent was unbecoming of good conduct and behavior expected from a superior officer and amounted to sexual harassment.

V. Conclusion and Suggestions

Social and economic justice is ultimate ideal of industrial adjudication⁴¹ and the basis lies in the guiding principles of social welfare, common good and the directive principles of state policy enshrined in the Constitution.⁴² The essential function of industrial adjudication is to assist the state by helping a solution of industrial disputes.⁴³ the twin objective of any industrial adjudication are industrial peace and economic justice. The former implies restoration of industrial peace and goodwill in boosting production which would help in general economic progress of the community and strengthen national economy. The latter implies that restoration of industrial peace and goodwill should be on a fair and just basis.⁴⁴ The Indian Constitution imposes an express limitation on it. Labour legislation, therefore, should not be inconsistent with or in derogation of the fundamental rights. It is to the extent of such inconsistency void. Further, the rights are enforceable by the courts under Articles 32 and 226 and cannot be denied in case of violation of fundamental rights. The liberalized industrial policy fascinated a large number of private investors both national and foreign to invest in the Indian economy on a large scale. The multinational companies are availing this golden opportunity in a remarkable way to share Indian markets ostensibly to have dominance in the competitive environment. The labour legislation today has assumed greater importance and relevance under the changed industrial scenario because more the industries are established

41 *Crown Aluminum Works v. Workmen*, AIR 1958 SC 30.

42 *State of Mysore v. Workers of Gold Mines*, AIR 1958 SC 923.

43 *State of Bombay v. Hospital Mazdoor Sabha*, AIR 1960 SC 610.

44 *Supra* n 45. See also S.N. Mishra, “Labour and Industrial Laws”, (2008) p 13.

the more labour force would be required and recruited and consequently more labour problems would crop up. We have to plan and restructure the system of education to cultivate talented and high caliber skills and value system keeping in view the constitutional commitments to ensure socio-economic justice for weaker sections and labours. Hence at last we can say that we have a number of laws or enactments but due to the lack of enforcement of law, we are lacking to give the justice to the labour. But it does not mean that they are not getting the justice but all are not getting the justice upto the mark. Constitution has provided a number of good provisions to save the labour and to save their human rights. In present era, the entire world is working on these types of issues and each country is taking parts in these types of programmes. To provide the justice only laws are not sufficient but their enforcement is also necessary and to make the enforcement successful, the mentality of the public should amend first because the rich person never thinks about the poor, he always thinks about his own benefit, if the rich will think about the welfare of poor then mostly dispute will come to an end. When the public will start think that we are the fundamental unit of society and if we will exploit someone today then the other will exploit that person tomorrow, so if they will think about the welfare of the society then according to me there will be no need of law in the society. In addition the workers have to inculcate the work culture and have to be infused with the spirit of sincerity, devotion to duty, hard labour and tendency to learn at every stage so that they may be able to adjust themselves in the fast growing technological development. It is our moral duty to contribute our Government in the implementation of state welfare policies to enable our labour to enjoy the fruits of those policies.