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Application and Enforcement of International Labour Standards in India: A Critique

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Abstract

Industrial peace is a prelude to progress, especially in developing countries, which need absolute harmony at the work place to maintain the pace of development vital to the survival of their economies. A unilateral imposition of terms by the employer or the union, even if supported by strong might, cannot help to establish cordial industrial relations. Any cord of discord can lead to disharmony and spoil the system. International Labour Organisation (ILO), in its experience, has evolved certain sets of minimum standards for adoption by member states to promote and sustain good industrial relations. India as a founder member of ILO has also contributed to the codification of these standards. It is very apt to examine that to what extent India has so far complied with the ILO Standards as reflected by the relevant case law and the legislation. This is more required because of the contemporary radical change in the national and transnational economies. In this paper, an attempt has been made to detail out the deficiencies in the Indian industrial relations legal frame work with suggestions to fill the gaps in the area of collective bargaining, elimination of forced labour, equal remuneration requirements and employees' state insurance schemes.

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I-Introduction

The International Labour Organisation has played a vital role in promoting international labour standards. India is the founder member of International Labour Organisation and has contributed a lot for the codification of the standards. In fact, it has benefited from those standards in developing its own legal system on social and labour aspects. The association of India with the International Organisation began in 1919. Three years later the country became a permanent member of the International Labour Organization and in 1928 the first ILO branch was established in Delhi.[1] Over the years, the ILO branch in Delhi has been coordinating assistance in fields such as "rural labour, women workers, employment generation, occupational safety, health and population control in India. The stronger position of employer's as compared to workers in industry has emerged now as an important area of research, criticism and reforms. To strengthen the workers' position, a properly formulated version of International Labour Standards came up first at the global level under the International Labour Organisation regime in Europe and some parts of North America. The standards so formulated became a model for industrialized Asian countries in general and India in particular after the process of industrialization in this part of the world had begun. Important aspects like collective bargaining, forced labour, equal remuneration and state insurance became the focal points of reference and reformation of the standards. As such the collective bargaining system brings workers on equal footing vis-a-vis their employers. Though legally forbidden, the ghost of forced labour is not yet finally buried. The ugly practice is still continuing in varied forms in different industries throughout the country and the situation is worst in unorganized sector.

[1]. International Labour Organisation, *ILO in India* January 10, 2008 page 105.

International Labour Standards have resulted in establishing the norm of equal remuneration in India to a large extent but still efforts are needed for adopting a clear equal remuneration policy. An Employees State Insurance(ESI) mechanism has also been put in place for granting security to workers, which is, of course, required to be upgraded in accordance with the ILO Standards. In this paper, an attempt has been made to have an appraisal of the enforcement of ILO standards in India as regards collective bargaining, restriction on forced labour, equal remuneration requirements and ESI mechanism.

II-Status of Collective Bargaining Standards

The object of collective bargaining is to harmonize labour relation and to promote industrial peace by creating equality of bargaining power between the labour and the capital. It can exist only in an atmosphere of political freedom. According to the International Labour Orgnisation, Collective bargaining means "negotiations about working conditions and terms of employment between an employer, a group of employers or one or more organizations of employers on the one hand and one or more representative organizations of workers on the other, with a view to conclude agreements."[2]

In twentieth century, collective bargaining became a general feature of industrial jurisprudence. It is a fact that the trade union movement in India has not been able to reach that standard which it could in other developed countries, yet it has impacted industrial relations very significantly. The object of any labour movement at all times is to seek an ever rising standard of living. Collective bargaining is not a means of seeking a voice in

[2]. ILO, *Collective Bargain A Workers Education Manual,* Geneva, 1960, p.3.

management, it is no doubt, a method adopted by the trade unions in championing the cause of their members.[3]

Possibly, the terms and conditions of employment can be either-(a) determined by the dictate of the employer; or (b) imposed by the union; or (c) regulated by the government; or (d) determined by the joint negotiation between the employer and workers. As regards determination of employment conditions by the dictate of the employers, with the beginning of industrialization almost all industries or other establishments such as railway, factories and mines were run by autocratic managers whose words were law. This method remained as such in vogue for quite a long time till the birth of trade unions. So far as imposition of employment conditions by unions is concerned the method of determining conditions of employment unilaterally by trade unions did not take birth in India because of the poor labourers weaknesses and loose trade unionism. Looking to the regulation by the government, the government has enacted labour and industrial laws governing various aspects of employment relations with various dimensions. These laws prescribe rates of wages, minimum wages, hours of work, health, safety and welfare measure etc. The process is still continuing with the growth of industrialization. The method of negotiation between elected representatives of workers and management has received statutory recognition in India. A trade union can raise or sponsor a trade dispute and represent its members in legal proceedings in consequence of an industrial dispute. It does not mean that the workman himself cannot, where a trade union has right to represent his case, pursue or represent his own case in a legal proceeding. Section 36 of the Industrial Disputes Act, 1947, being permissive in nature, allows a workman

[3]. Observation by George Meany President of the American Federation of Labour in his Article "What American Labour Want" Published in *Reader Digest*, (July, 1955).

to himself represent his case or his case may be sponsored and represented by a trade union of which he is a member. [4]

An employer can negotiate with an unregistered trade union as well.[5] An unregistered union, commanding allegiance of a majority of the workmen has a better claim to negotiate with the employer on behalf of its workmen in preference to a registered trade union representing a minority of the workmen.[6] An unregistered trade union is, however, not competent to represent its members interest in proceedings initiated under the Industrial Dispute Act, 1947 because only an officer of a registered trade union is entitled to represent its members interest in any proceedings under the Act. A worker who is a member of an unregistered trade union is entitled to be represented by an officer of a registered trade union or by any other workman employed in the industry in which such worker is employed, provided there is an authorization to represent in prescribed manner.[7]

India has not ratified ILO Convention No-87 on Freedom of Association and Protection of the Right to Organize and Convention No-98 on the Right to Organize and Collective Bargaining. The right is, however, guaranteed by the Constitution of India.[8] The Trade Union Act, 1926 provides for like treatment in favour of all union members and organizations in the formal and informal sectors without distinction. Employers may be penalized if they discriminate against employees engaged in union activities. [reference]

Collective bargaining has been, before the advent of the new economic regime, used as a means of setting wages most of the times in unionized plants in the organized industrial sector.

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[4]. *Workers of B and C Com. v. Labour commissioner,* AIR 1964 Mad. 538.
[5]. *Ibid.*
[6]. *Ibid.*
[7]. *Ram Kapil Singh* v. *Ali Hasan* AIR 1964 Pat 271.
[8]. Article 19 Clause (I) Sub Clause (a) and (b) of the Constitution of India.

Many important collective agreements expired in 1998, because unions were put under considerable pressure by the authorities to sign ten year agreements rather than the traditional five year agreements.[9] Though workers have a right to establish and join trade unions without prior authorization, there exists no legal obligation on employers to recognize trade unions or to engage in collective bargaining. A legislation, in 2001, amended the Trade Union Act, 1926 requiring a trade union to represent at least 100 workers or 10 percent of the workforce, whichever is less. Earlier the required number of workers was only seven. Such a minimum requirement of 100 workers is very high by international standards. Public sector workers have only limited rights to organize and bargain collectively. Though the Trade Union Act prohibits discrimination against union members and organizers but it is not sufficiently observed or enforced. The Act does not apply in Sikkim, although some workers organizations exist there and no one sector as such is organized. In practice, only a small group of workers employed in the organized industrial sector enjoys protection of its rights. Over 90% of the workers are employed in informal employment relationship or in agriculture, which are characterized by almost no union representation due to non-enforcement of the law.

The State of Tamil Nadu has proposed a bill to extend the right to form trade unions to workers in informal employment, which includes domestic workers, but has not been passed yet. There is, however, now a growing use of contract labour which makes organizing difficult and has led to a weakening of trade unions. In general, employers are often hostile towards trade unions and use intimidation, threats, beating and demotion. Legal proceedings are long and costly and labour inspection and

[9]. Report for the WTO General Council Review of Trade policies of India, (Geneva, 19 & 21 June, 2002).

enforcement of labour legislation are often lacking, rendering the exercise of legal rights to freedom of association extremely difficult. There is no statutory obligation to undertake collective bargaining and consequently many employers are reluctant to negotiate with unions. Workers have the right to strike but this right is restricted under the Industrial Dispute Act, 1947.[10]

In Export Processing Zones (EPZs) and Special Economic Zones (SEZs) in India, in theory, all labour and factory legislations apply fully and workers in these zones have a right to organize and bargain collectively. The government has expressed an assurance at the Indian Labour Conference and Standing Labour Committee that it will protect workers and trade union rights in these zones. However, in practice trade unions are rare despite the efforts of trade unions to organize workers there. There are moves to exempt the zones from the applicability of labour laws, and some states such as Andhra Pradesh, have directed labour departments against conducting inspections in the zone. Women constitute the bulk of the workforce in the EPZs employed in the establishments such as readymade garments and electronics based and software industries. In the Santacruz Electronic Processing Zone (SEEPs) near Bombay, 90% of the workers are women who are generally young and too frightened to form unions.[11]

The Right to Organize and Collective Bargaining Convention No. 98 [reference] stipulates that workers shall enjoy adequate protection against the act of anti-union discrimination in respect of their employment, that workers and employers' organizations shall enjoy adequate protection against any act of interference by each other or each other's agents or members in

[10]. Report for the WTO General Council Review of the Trade Policies of India, (Geneva, 23 & 25 May 2007).

[11]. Report for the WTO General Council, *Review of the Trade Policies of India*, (19 & 21 June, 2002).

their establishments, functioning or administration, and that appropriate machinery should be established to secure such protection. Article 4 of the Convention No. 98 specifies that the national conditions may be taken into consideration wherever necessary to encourage and promote the full development and utilization of machinery for voluntary negotiation between employer or employer's organization and workers organizations. The extent to which this convention shall be applied to the armed forces and the police is left to be determined by national laws and regulations.[12]

The Industrial Dispute Act, 1947, the Bombay Industrial Relations Act, 1946 and the Madhya Pradesh Industrial Relation Act, 1960 protect workers against dismissal as a measure of anti-union discrimination.[13] However, there is no specific provision in these enactments protecting workers against discrimination at the time of engagement as required by the Convention.

If the pace of industrial growth in India is to be increased, the living standard of the people should be raised and peace and order in industry are to be maintained. Collective bargaining, instead of over adjudication, needs to be given more attention to be promoted and effectively encouraged.[14] The Industrial Labour Conference in 1951, place had recommended that the machinery appropriate to the conditions existing in each industry should be established by means of agreements or laws or regulation, as may be appropriate under national conditions, to negotiate, conclude, revise or review collective agreements, or to be available to assist the parties in the negotiations, conclusion or revision, and renewal of collective agreement. The organization, methods of operation

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[12]. N. Vaidyanath, '*ILO Conventions & India*,' at pp. 98-99 (1975).

[13]. A Voluntary Tripartite Agreement for Ensuring Peaceful Industrial Relations, Drafted and Accepted by the Indian Labour Conferences in 1958.

[14]. Indian Law Institute, *Labour law and Labour Relation*, pp. 106 (New Delhi, 1968).

and function of such machinery should be determined by agreements between the parties or by national laws or regulations as may be appropriate under national authority.[reference]

The current position taken by the judiciary in India is reflected by the decision of the Supreme Court in *Chairman, State Bank of India v. All Orissa State Bank Officers Association.*[15] The respondent Association was a non-recognized union and the Supreme Court held that there was no common law right of a trade union to represent its members whether for purposes of collective bargaining or individual grievances of its members. For redressal of grievances the bank was having a grievance procedure that had been functioning smoothly for the last several decades. The union recognized by the employer, which represented more than 90 per cent of officers employed in the concerned circle, had also not been given the privilege of representing its members in grievance proceedings.

Earlier the trend was as in *Ram Singh v. M/s. Ashoka Iron Foundary,*[16] that a suit for perpetual injunction restraining the workmen from indulging in unfair labour practice was deemed as one of civil nature and hence cognizable under section 9 of the Civil Procedure Code. Therefore, where the court has barred the workmen from holding meeting, *dharna* and interfering in the rights of a company, such a restraint does not curtail the just trade union activities of the workers. It cannot be construed as unjust and the workmen are at liberty to carry on legitimate trade union activities peacefully. ,[17]

The pro-workmen position existed even before that as in *Piparaich Sugar Mills Ltd.* v. *Their Workmen,*[18] certain employees

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15. (2003) III L.L.J. 751 (S.C.).
16. (1993) I L.L.J. 987 (P & H).
17. *Ibid.*
18. AIR 1960 SC 1258.

who held key positions in the Mills resorted to hunger strike at the residence of the Managing Director, with the result that even those workmen who reported to their duties could not be given work. It was held that the concerted action of the workmen who went on hunger strike amounted to strike.

III-Position of Standards against Forced Labour

The Forced Labour Convention No-29 requires ratifying members to undertake to "suppress the use of force or compulsory labour in all its form within the shortest period of time". However the word "forced" or "compulsory" labour do not include work or service forming part of normal civil obligations, minor communal services, compulsory military service work or service exacted in the case of emergencies such as fire, flood, famine etc. and work or service exacted from person convicted by the court of law.[19] India ratified the Forced Labour Convention in 1954 and Convention No-105 on the Abolition of Forced Labour in 2000. Article 23 of the Constitution of India prohibits trafficking in human beings and forced labour. There are various provisions in the criminal law, both in the Indian Penal Code and in the Immoral Traffic (Prevention) Act, 1956 which deal with forced labour. The Bonded Labour System (Abolition) Act was adopted in 1976. Bonded labour is a serious problem in India, and although programmes of action have been implemented, much more remain to be done.[20] It is a specific form of forced labour which describes a private contractual relationship whereby a worker insures or inherits debts to a contractor and then must work off the debt plus interest. The lender ensures this that the debt is never paid off. As long as any part of the loan remains outstanding, the worker is be bound to his

[19]. N. Vaidyanathan, *ILO Conventions and India*, (1975), p.44-45.
[20]. Report for the WTO General Council Review of Trade polices of India (Geneva, 23 & 25 May 2007).

creditor. In the case of sickness or death the debtor's family is responsible for clearing the debt. Through this mechanism, the debt is passed down from one generation to another in the form of intergenerational bondage.

Bonded child labour is common in agriculture, particularly in state of Bihar, Rajasthan and Uttar Pradesh. It is also prevalent in the factories of brassware, fireworks, footwear, glass blowing, lock making, brick making and beedi rolling.[21] Children working in carpet industry are also treated like forced Labour.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) report has noted that according to the government reports 2,82,970 bounded labourers were identified between 1976 (at the enactment of the Bounded Labour system (Abolition Act) and 2003 of which just 2,62, 952 were rehabilitated.[22] The 1976 Act provides for vigilance committees to deal with the Bounded labour. In 2001 such committees existed in 29 states.

India does not fully comply with the standards due to lack of clarity with regards to the definition of forced labour. Article 23 of the India Constitution is supportive to ILO standards and prohibits traffic in human beings and forced labour. Any contravention of this provision is declared to be an offence punishable in accordance with law. Also, Article 51 (c) of the Constitution requires the state to foster respect for International law and treaty obligations in the dealings of organized people with one another[23] and Article 253 has empowered the Parliament 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

[21]. Report for the WTO General Council Review of Trade Policies of India, (Geneva 19 & 21 June 2002).
[22]. ILO, CEACR report from 2004-05, 2006.
[23]. Article 51 (c) of the Constitution Indian.

country or countries or any decision made at any international conference, association or other body.[24]

Begar is expressly prohibited by article 23 (1) of the Indian Constitution. As a traditional social practice lower castes were obliged to provide free labour to high caste people. The Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 is based on this provision of the Constitution. This Act defines any kind of forced labour, including "bounded labour as an 'atrocity' if the victim is a member of a scheduled caste or tribe. Committing an atrocity is punishable with imprisonment upto five years and fine.[25] To this extent are the ILO Conventions No. 29 and No. 105 followed in India.

The Supreme Court has supported and strengthened the compliance of minimum standards under the ILO Conventions that prohibit forced labour and also has required states to meet additional criteria. In *People's Union for Civil Liberties v. State of Tamil Nadu,*[26] the question before the court was regarding rehabilitation of bonded labour. Going through the report of the National Human Right Commission and the expert group, the Supreme Court pointed out that *the major issue in regard to bonded labour was their rehabilitation and issued directions to respective governments for achieving such rehabilitation*. The Court urged that the rehabilitation processes must adhere to 'general guidelines' under which the state should tailor programmes to meet the needs of all individual. There should be a skilled or craft based approach depending upon the choice of the bonded labour. If a state is not in a position to make arrangements for such rehabilitation, then it should identify two NGOs or philanthropic organizations for rehabilitating released bonded

[24]. Article 253 of the Constitution of India.
[25]. Schedule castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.
[26]. (2004) 111 L.L.J 7 (S.C)

labourers within a period of six months. This is to ensure that after release they should not join back the bonded labour.

Bandhua Mukti Morcha v. Union of India,[27] is an important decision of the Supreme Court relating to the bonded labour system. In this case an NGO informed the Supreme Court through a letter that they conducted a survey of the state quarries situated in Faridabad, Haryana and found that there were a large number of workers working in these state quarries under inhuman and intolerable conditions and many of them were bonded laborers. The court treated the letter as a writ petition and appointed a commission of two advocates to visit these state quarries and make an enquiry and report to the court about the existence of bonded labour. The government raised certain objections about the maintainability of the petition but the court observed that where a Public Interest Litigation alleging the existence of bonded labour is found it is not proper for the government to raise preliminary objection. On the contrary, the government should welcome an enquiry by the court so that bonded labourers or workers living in inhuman conditions can be set right. Article 32 does not only confer a power on the Supreme Court regarding issue of writ for the enforcement of fundamental rights but also lays a constitutional obligation on the court to protect the fundamental rights of the people even by forging new remedies or fashioning new strategies designed to enforce fundamental rights. The Supreme Court by innovating new methods and strategies of accepting and treating a letter as a writ petition was only helping the government in fulfilling its constitutional obligation. The Court ordered the state to provide effective provisions for the individuals affected by bonded labour such as, immediate access to minimum wage, educational workshops on social welfare and labor laws, access to clean air in the workplace, access to clean water in the workplace,

[27]. AIR 1984 SC 802.

clean toilets, first aid facilities, medical treatment for laborers and their families, and legal assistance for any workers compensation claims. Thus, the Supreme Court has taken a number of substantial steps in the realm of rehabilitation of forced/bonded labourers which comply with ILO Conventions No.29 and No. 105. However a discrepancy between ILO and the Indian Supreme Court with regard to forced labour, is the definition of forced labor. The International Labor Organization defines 'forced or compulsory labor' as "… all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[28] This broad definition leaves little room for exceptions to labor made compulsory. The few specific circumstances where the ILO Conventions on forced labor permit national governments to require participation of labour on a project is narrowly limited to projects largely geared toward social services or civic obligations and the beneficiary is the community that provides the laborers. It is notable that the Indian Supreme Court ruled in *People's Union for Democratic Rights v. Union of India*,[29] that any labor that is forced upon another is not considered 'forced' if the laborer receives minimum wage. The defendants in this case were workmen brought from different states of India to work on a construction project in Delhi for less than minimum wage. The court interpreted article 23 of the Indian Constitution, which prohibits forced labor, as a requirement that employers must be in compliance with minimum wage law.

The Supreme Court has allowed an exception that completely undermines the essence of the ILO Conventions that deal with forced labor. The Conventions, although mention remuneration for labour are primarily focused on freedom of choice to offer oneself for work. In the absence of this choice, the

[28]. ILO Convention 29 Art.2, Para1.
[29]. 1982 SCC (3) 235

ILO considers any work, for any amount of pay, to be 'forced' under Convention No. 29 and No. 105.

IV-Equal Remuneration Standards

International Labour Organization has, from the very beginning accepted the principle of equal remuneration for men and women doing work of equal value. The question was in the limelight during the Second World War, when women were employed in large numbers to meet urgent demands of labour, particularly in war industries. At that time, the problem of equal remuneration was primarily considered as that of protecting wages of men and of preventing their being leveled down by the employment of women at lower rate.[30]

The Constitution of the International Labour Organization, as originally adopted in 1919, proclaimed the "special and urgent importance" of "the principle that men and women should received equal remuneration for the work of equal value".[31] The preamble of the amended ILO Constitution which came into force in 1948 proclaims that "improvement (of the condition of labour) is urgently required by recognition of the principle of equal remuneration for the work of equal value."

A special Convention concerning the equal remuneration for men and women workers for the work of equal value namely, Equal Remuneration Convention, 1951, No. 100, adopted by the General Conference of the ILO on June 29, 1951 is ratified by India. The Convention required that each ratifying state shall promote equal remuneration for men and women for the work of equal value. The principle should be applied not only to the basic or minimum wages but also to any additional emoluments paid

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[30]. Internation Labour Conference, 'Equal Remuneration for Men and Women Workers for Work of Equal Value', 33rd Session, Geneva, (1950) Report V(1), p.2.

[31]. Article 41, Constitution of International Labour Organization, 1919.

whatsoever directly or indirectly, whether in cash or in kind.[32] India ratified the Convention No.100 on Equal Remuneration in 1958. Another Convention No. 111 on Discrimination (Employment and Occupation) was ratified by India in 1960.[33] The Constitution of India provides several provisions with regard to non discrimination, including equality before law and equal protection of the laws within the territory of India, and prohibition of discrimination by the state on the ground of sex equality of opportunity in matters of public employment and no discrimination in respect of any employment or office under the state on the ground of sex.[34] Furthermore the State has to ensure that the citizens have a right to an adequate means of livelihood and that there is equal pay for equal work for both men and women.

In spite of this the fast growing urbanization has yet to show its effect in terms of a better female participation rate. It has been estimated that 80% of working women are working as cultivators, agricultural labourers, forest produce collectors, tea plantation labourers, construction industry workers, animal husbandry helpers, tobacco and *beedi* workers, and are in home based occupations as weavers, spinners, garments makers, food processors and domestic servants. The fact is that women constitute only a small majority of the formal work force and this is an indication of the level of discrimination in the labour market and the lack of opportunities for them to enter formal work sector.[35]

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[32]. Article 1 of the Equal Remuneration Convention, 1951.
[33]. Report for the WTO General Council Review of Trade Policies of India, (Geneva, 23 and 25 May, 2007).
[34]. Article 16 of the Constitution of India.
[35]. Report for the WTO General Council Review of the Trade Polices of India, (Geneva, 19 and 21 June 2002).

In urban areas most of the women are employed in informal employment relationship in sectors like garments, small trading, services, domestic work, *agarbati* (incense sticks) producers, *beedi* rolling (cigar), teaching and nursing in private establishments and home based work. The vast majority of them are domestic workers who are not covered by any national law for the protection of their rights, although the states of Kerala and Karnataka have law on minimum wages for domestic workers. The lack of regulation in this sector has led to the violation of domestic worker's rights whose working hours are between 8 to 18 hours a day and face absence of job security.

The Equal Remuneration Act of 1976, which applies to informal employment relationships, also requires employers to pay workers not less than is paid to the opposite sex that performs the same or similar work. Employees must also not discriminate on the basis of sex in the recruitment of workers for the same or similar work, or in any terms or conditions of employment, such as promotion, training or transfer. The work of similar nature means the "work in respect of which the skill, effort and responsibility are the same when performed under similar conditions or where any differences are not of practical importance in relation to the conditions of employment.[36]

The ILO Committee of Experts on the Application of Convention and Recommendation (CEACR) in its report of 2005 notes that the Equal Remuneration Act is not in line with the Convention, as it merely requires employers to pay equal remuneration to men and women for the *same work* or *work of similar nature.* The Convention stipulates, however, that the same pay should be given for *work of equal value,* which goes beyond '*same'* or '*similar'* work. The CEACR report of 2005 further observed that the job classification is biased. Work traditionally done by women such as weeding and transplanting in agriculture is

[36]. Section 2 (h) of The Equal Remuneration Act 1976.

often classified as right work which does not correspond to the real task.[37] As per the report of 2005, the enforcement of Equal Remuneration Act, is applied only in relation to employment carried out within the central government or under its authority and regarding some specific sectors identified in the Act. The majority of the establishments and sectors are under the jurisdiction of the respective state governments. The report, however, points out that pursuant to the tenth five yearly plann the government appears to have adopted a more proactive approach with regard to monitoring compliance with the minimum wage and equal pay legislation in the unorganized sector which had provided for reduction of gender pay gaps by at least 50% by 2007. The CEACR report of 2007 has, however, mentioned that there are in contravention to the Convention some past cases of voluntary occupational retirement schemes in India which have focused only on women and such schemes should not be gender biased.

In 2007, Human Rights Watch (HRW) Report about caste discrimination against untouchables estimates in India that there are more than 165 million *dalits* in India and due to caste based discrimination they are segregated in housing, schools and access to public service. They are denied access to land, are forced to work in degrading conditions and are routinely abused. Many *dalits* are still engaged in occupation of cleaning, landless labouring and leather work as well as in the most exploitative form of labour such as agriculture, manual scavenging and sewerage work. The report underlines that the exploitation of labour is at the very heart of the caste system and *dalits* are forced to perform tasks deemed as "polluting" or "degrading" for non-*dalits* to carry out. More than half of dalits, mainly women are engaged as manual scavengers. The United Nations Committee on the

[37]. Report for the WTO General Council Review of the Trade Polices of India (Geneva, 23 & 25 May, 2007).

Elimination of Discrimination against Women also reported in 2007 that *dalit* women in India suffer from "deeply rooted structural discrimination". The HRW report has termed it as "Hidden Apartheid".

With the gradual decay of the joint family concept, the unfortunate widows, the dependent and uneducated women began to seek employment in the agriculture and allied industries. Plantations, mining, building and construction industries also provided employment to such women. They are taken on labour jobs carrying lesser wages and there was no avenue of promotion to them nor protection or security of employment.[38]

The problem of participation of women in economic activity has become serious. Technological changes, fixation of minimum work load and standardization of wages, rationalization and mechanization of schemes and certain occupations being found hazardous, have necessitated retrenchment of women workers. Some employers recruit unmarried women only, on condition to resign their post on getting married. This has been discriminatory, unfair and unjust.[39] The over all situation thus is far from ILO standards.

The Supreme Court, in *People's Union for Democratic Rights V. Union of India,*[40] ruled that it "is the principle of equality embodied in Article 14 of the Constitution which finds expression in the provision of the Equal Remuneration Act, 1976." The court held in *Randhir Singh v. Union of India*[41] that construing articles 14 and 16 in the light of the preamble and article 39(d), shows that

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[38]. Mis D'Souza, 'Status of Women in Industry', cited by M.S.Shah, loc cit, 167.

[39]. M.S. Shah "Wages and Employment of Women in India", I.L.J., Feb., 1975, p. 169.

[40]. See *Supra* note 26.

[41]. AIR 1987 SC 2049.

the principle of "equal pay for equal work" is deducible from them and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification.

V-Employees' State Insurance

The ILO Social Security (Minimum Standards) Convention 1952 is an important instrument for the security of employees to be respected by the member states. It has not been ratified by India so far. In India the Employees State Insurance Act, 1948 (The ESI Act) is a social welfare legislation for providing certain benefits to the employees in case of sickness, maternity and employment injury and certain other matters. In fact, the Act strives to attain the goal of socio-economic justice envisaged by articles 41,42 and 43 of the Constitution, which enjoin the state to make law for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. The Act endeavours to materialize these objects though only to a limited extent. The Act becomes a wider spectrum than Factory Act, in the sense that the Act is concerned with the health, safety, welfare, leave etc. of the workers working in the factory premises only. But the benefits of this act extend to employees whether working inside the factory or establishment or elsewhere or they are directly employed by the principal employees or through an intermediate agency if the employment is incidental or in connection with the factory or establishment. Thereafter the scheme was implemented in a phased manner across the country with active involvement of state governments.

The Act applies to non-seasonal, power using factories or manufacturing units employing ten or more persons and non-power using establishments employing twenty or more persons. Under the enabling provisions of the Act, a factory or establishment, located in a geographical area, notified for implementation of the scheme, falls in the purview of the Act. The appropriate government is empowered to extend the provisions of the ESI Act to various

classes of establishments of industrial, commercial, agricultural nature or any other such establishment. Under these enabling provisions most of the state governments have extended the ESI Act to certain specific classes of establishments like shops, hotels, restaurants, cinemas, employing 20 or more persons.[42] But no industry has the right to opt out of the scheme.

The monthly wage limit for coverage under the ESI Act is prescribed by the central government in the ESI (central) rules, 1950. The existing wage ceiling is Rs.6500 per month (rule 50 of ESI central rules, 1950) excluding overtime work remuneration. An employee who is covered at the beginning of a contribution period shall continue to remain covered till the end of that contribution period notwithstanding the fact that his wages may exceed the prescribed wage ceiling at any time after the commencement of that contribution period. The corporation has now recommended for the increase of the wage limit to Rs 10,000 and its implementation is awaited.

An insured person or his dependants shall not be entitled to receive or recover, whether from the employer or any other person, any compensation or damages under the Workmen's Compensation Act or Provident Fund Act or any other law for the time being in force, in respect of an employment injury sustained by the insured person as an employee under this Act.[43]

Under the scheme, there are available medical facilities for self and dependants, benefits in the event of specified contingencies resulting in loss of wages or earning capacity, family pension, funeral expenses and vocational rehabilitation. Maternity benefit for confinement is available to insured women. The Act does not include workers in transport, construction, and mining industries and that the actual coverage is not proportionate to proposed coverage in the ILO Social Security Convention 1952.

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[42]. Section 1, ESI Act 1948.
[43]. Sections 53 and 61.

Other deficiencies with respect to the convention are related to provision for hospitalization of the families of workers and the minimum duration for the provision of sickness benefit.

VI-Conclusion

In India, in the formal sector, trade unions generally function in a friendly environment but there is no such practice in the unorganized sector. The position of workers in the unorganized sector is pathetic because of the absence of trade unionism or collective bargaining. They are working under a constant threat to their jobs. There is much room for the role of trade unions in the unorganized sector and export processing zone. The public sector workers are restricted in their rights to organize and to collective bargaining.

The forced labour, though prohibited by the law does occur in the form of trafficking of persons for the purpose of labour and forced prostitution. It is a grave problem despite the existence of a legislation for it prohibition, but there is no proper implementation and execution of the existing laws. Substantial action by the authorities is needed to ensure effective implementation of the law on forced labour and release of bonded labourers from the yoke of master or creditor and their rehabilitation.

The legislation guaranteeing equal pay for equal work is quite deficient. The Equal Remuneration Act, 1976 seeks to provide for payment of equal remuneration to male and female workers, but it does not guarantee equal pay for equal work among men. Also, it provides for equal wages for men and women for same or similar work, but there are legal shortcomings and in practice discrimination in employment and wage is very much common. A serious discrimination exists in the employment and wages of *dalits* who comprise the most exploitative section of labour. Further legislations providing for exemplary penalty for violation of equality norms may generate employment potentiality

of exploited workers and assure them equal benefits with other counterpart.

The goal of employees' state insurance schemes can be achieved by the joint efforts of concerned citizens and other non-profit agencies, which advocate for workers proper health care rights. Such an effort can help, at least, improve medical service, the supply of medicine and benefits related to the accidents and occupational diseases. Genuine efforts should be made to ensure ratification of the ILO Social Security (Minimum Standards) Convention, 1952 to provide further social security to workers in India.