

“Role of ILO in Development of International Law”

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Introduction

International labor organization is one of the major international legislations which address the problem of workers at a global front. There a lot of conventions which deal with the same concept. Apart from addressing the concern of workers another important feature of the ILO is about other key issues such as human rights, rights against the discrimination of people and protection of children etc. It is a not a surprising fact that the labor laws are governed by the other international laws. Labor laws will have a strong foundation only when the other laws are equally strong and they have equal scope for development. The nexus between different laws and their pattern works in this way- for example if human rights laws are included in labor law documents then it is labor law that means the characteristics of human rights law are enshrined in labor laws. The international legislations of other laws have been strengthened as a result of the formation of ILO. The main feature of nexus between all the laws arises depending on whether it is exercised individually or collectively. The labor laws are for a certain group of people, ILO is formed with the objective of aiding a collective group of people, and so are the other international laws which deal with collective freedom and collective rights of individuals. International labor law contains both substantive and procedural laws. ILO's main objective is to promote human rights and labor rights in a global level. In order to sustain a healthy economy, there is an ample need of an appropriate legislation which protects the workforce of a nation. ILO is the main source of international labor law formed as a result of various conventions and treaties. One of the major features of ILO is that there are numerous conventions and recommendations which are to be given by the member states according to article 19, member states are supposed to report for these nonratified conventions. According to article 22, periodic reports are requested to be submitted by the member states.¹ The system of governance based on treaties and conventions are less formal. The less formal working of ILO always ensures that the organization's main motto and agenda is development. There are important developmental steps that are always discussed from time to time. This paper entails the significant growth that the other international laws have undergone as a result of the formation of ILO.

International Labor Organization: Objective and its Need

Genesis of ILO and its objectives- Formed as per the Treaty of Versailles in the year 1919. In this same year, the British Prime minister David Lloyd opined in one of the statements that he has addressed in one of the letters that the country of Europe is in desperate need for a legislation which governs the working of the labor federations and this the need of the hour.

¹ *Labour law (international)*<https://www.ilo.org/inform/online-information-resources/research-guides/labour-law/langen/index.htm#:~:text=The%20ILO%20is%20the%20source,of%20those%20international%20labour%20standards>.

The entire Europe was filled with nothing more than the spirit of revolution and in order to address this problem there was a need for something which spoke for the workers, the most vulnerable of all the groups of people. There were two main theories of development, the reformist and the revolutionary. The reformist was primarily focused at advantages in the form of an ideology upon which the entire system of ILO was based. ILO followed the reformist ideology which helped the society to follow an approach that aimed at promoting a social system with harmony and peace. Other than that another important factor which is to be aimed at promotion of social justice is a revolutionary system of governance where the system is more aimed at bringing unconventional ideologies and development. Ideologies and development that are reformatory often bring in a lot of disadvantages as it brings a lot of oppression and hinders the harmony and peace of the environment that people are in. Therefore, it is not a surprise if the facts and figures that mentioned did not necessarily promote a governance system which promotes a revolutionary upbringing. In 1946, it became the first esoteric organization of the United Nations. ILO's main aim when it was formulated initially was to live up to the standards set up by the international labor standards. The organization has over 189 globally accredited conventions and around 202 recommendations which are not legally accredited but still can be used to standardize the working of the labor federation. The remaining ILO standards are for ensuring that the workers additional rights such as the remuneration, duration of work, right to health, right to a safe and secure environment. There are two decision making bodies in ILO, the international labor conference and the governing body. These two are to ensure that there is a collective improvement in the condition of the workers and all the objectives of the ILO are fulfilled and implemented effectively. ILO has published various articles, journals and a lot of other literature works to provide for the research works for other organizations. Rising disparities between the rich and poor and the correspondingly shrinking middle income groups may be viewed as the most serious challenge of the 21st century, with negative implications also for the ILO. The trend of increasing intra-country income inequality is most dramatic in the United States and in fast-growing China. According to UNCTAD, during the 1980s and 1990s, income inequality measured by the Gini-coefficient rose in 73 of the 105 countries with adequate statistical information, whereas it fell in only 24. In the period 2000-2010, there was a bifurcation in inequality trends. There was a continued upward trend in income polarisation in OECD countries, the European and Asian transition countries, South Asia, and the Middle East and North Africa.

Work agenda- The main aim of ILO is to help the nations in proliferation of employment opportunities and their protection. It is aimed at providing humane conditions to the workers and treating the workers with respect and dignity. There are about eight fundamental rights for the workers which have been addressed in the ILO statute. It has been detailed as follows-

Fundamental principles and the rights of the workers-

- a) Freedom to form unions and associations along with the right to collective bargaining.
- b) No compulsion on the employees to perform a task

- c) No prejudice or discrimination against any workers.
- d) Ensuring that there is minimum age for the workers and abolishing child labor completely.
- e) Effective abolition of forced labor.²

Despite having a collective work agenda, there were several times where the working and the provisions kept on changing for the ILO over the years. It is predominantly because of the factors that influence the working of ILO. It keeps on changing over the years and sometimes it may not even be as good as the previous provisions. The format of ILO has been changed for over nine years and when they do that it significantly affects the working of the system that prevails. It provides for a sense of confusion for the workers as to what is to be adopted and it even rings a question of their rights being infringed or not. In its first decade the ILO was primarily concerned with legislative and research efforts, with defining and promoting proper minimum standards of labour legislation for adoption by member states, and with arranging for collaboration among workers, employers, government delegates, and ILO professional staff. During the worldwide economic depression of the 1930s the ILO sought ways to combat widespread unemployment.³

What is the Need for International Labor Standards?

In the declaration of Philadelphia it was mentioned that 'labor is not a commodity'. Every person in the world deserves a free and fair environment of work, no person should be denied of their human rights and no person can exert their dominance on workers. Thus, the need of a legislation that addresses just the concern of the labor force but nothing else is mandatory to the society. People who are discriminated in a work force or those who are treated with prejudice are protected and their right to work is granted with in this situation.

Relationship between International Laws and Labor Laws

Human Rights Law

It is important for the workers to be protected at any cost. Several laws such as the human rights laws ensure that the workers are always kept at utmost importance because workers are human beings who are in need for treatment with dignity and respect, therefore, human rights law has evolved tremendously and has played a pivotal role in ensuring the success in ensuring the labor standards and vice-versa. The nexus between labor laws and human rights laws can be connected with the fact that they both are dependent on factors such as right to freely practice any job of interest without compulsion, right to be protected from arbitrary dismissal, right to strike, right to be represented by a trade union. The human rights and the labor laws intersect

² Werner Sengenberger, *The International labour organization*, <https://library.fes.de/pdf-files/iez/10279.pdf>

³ Karen Mingst, *International Labour Organization* <https://www.britannica.com/topic/International-Labour-Organization>

at the point of consideration and humane treatment of workers. Moving on with the particulars of the rights there are several of them which leads to the sustenance of both the laws. Universal Declaration of Human Rights (UDHR) is the primary body which deals with labor laws. The UDHR has several provisions that links them to labor laws and were developed as a result of ILO-

- 1) Article 4 of UDHR deals with the prohibition of slavery of workers. Slavery has been prevalent in the system since time immemorial. It has been built in the DNA of our countries. The hierarchal disposition of people is the primary reason why slavery still prevails and why our economy is badly affected. If for example in India, had there been no labor laws to govern the treatment of workers, the practice would still prevailed causing harm to the economy in general.
- 2) Article 23 deals with the right of a person to carry out any job of their choice, right to equal remuneration, guaranteed right to dignity and freedom. This also includes forced labor. No worker can be forced to undertake a work that he/she does not deem fit. The workers are supposed to be treated with respect and dignity and when there is a hindrance to it there has to be mechanisms which can curb the impact of such treatment of the workers. Although, there is a lack of concrete legislation marking the same, there is a dire need for the workers to be kept within the safe-keep of the legislation.
- 3) Article 24 deals with the right to a worker to relax and leisure and other allowances such as holidays and leaves etc. This can be explained in this way. For example, if there is a difficulty in the nature of the works itself like in mining or factories we have to ensure that there are ways for the workers to take adequate intervals of break. The nature of the work can prove detrimental to the workers due to continuous hours of shift for the workers. Therefore, it is important for the workers to be given adequate time for lunch breaks etc.
- 4) Article 6 and 7 deals with one of the most essential rights of workers. That is right to favorable conditions of work.
- 5) Article 11 of the CDEW talks about the prohibition of discrimination of women at the workplace.
- 6) Article 32 of the CRC talks about the abolition of the rights of the children when they are subjected to inhumane conditions of works.

Thus it can be inferred from the above points that not just the UDHR which enumerates the rights of the workers but various other legislations as well.

USA

Mentioning about other legislations here are few others which talk about the aspect of human rights in the labor legislations which are taken regionally. Articles and 7 of the San Salvador is a system which rightfully states the conditions of just, equitable and satisfactory conditions of work and how it is to be preserved. Apart from the ILO there are other separate legislations in America which ensures the security of workers. The democratic charter of America ensures

that there is 'free and fair exercise of rights' by the workers. This is an intergovernmental body which is primarily aimed at ensuring the statutory validity of the labor laws and the judicial interpretation of the same.

Europe

The essential conditions that should be ensured for the working of the European labor system is enshrined within the European charter in the articles 1, 2 and 3. These articles talk about the collective right to work, right to just and humane conditions, right to remuneration and right to collective bargaining. An important factor to be mentioned is that these rights are supposed to be ensured in a free and fair manner and they indirectly mean that all sorts of workers such as workers with disability, workers who have different origin, state and other factors. Thus, it can be concluded that various workers are included within the purview and none of the factors pertaining to discrimination of a person such as color, race and place of origin should not be treated within the purview of this legislation.

Labor is not a commodity or anything which can be used when in need, it is a factor sustaining the economy in varied ways and an important backbone of the system which is to be protected and looked after. The ILO has several conventions pertaining to various discrimination practices which are prevalent within the workforce such as 100 laws concerning equal remuneration, 111 regarding discrimination, 142 on human resource development, 29 concerning forced labor, 182 regarding the abolition of the practice of child labor, 98 concerning freedom of associations and several other rights relating to the worker's freedom etc. These laws are to ensure the effective implementation of all the human rights laws which are existing and there is a need for an effective system as impartial as the ILO to perform this. The right to work normally contains all the legal repercussions such as a stringent environment which can enable the workers to co-relate the stances by making sure that there shouldn't be any over-utilization of services that they can avail. It also means that the workers are supposed to understand that the minimum services that they can avail are separate from the work and should not interfere with their performance at work. For example, the citizens of India are guaranteed of their right to freedom of speech and expression but still there are reasonable restrictions for the same that ensures that there is no over-utilization of these rights.⁴

There were several case laws which were discussed to provide for a proper analysis of the human rights and labor laws.

- 1) Karakut V Austria⁵- This case has addressed the question of discrimination of people at the workplace and how it can affect the balance of the entire system. Therefore, it

⁴ *THE RIGHTS RELATED TO LABOUR*, <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-andfora/substantive-human-rights/the-rights-related-to-labour#:~:text=Article%2023%20UDHR%20sets%20out,as%20periodic%20holidays%20with%20pay>.

⁵ Karakut V Austria, CCPR/C/74/D/965/2000

can be interpreted as discrimination on the basis of race, caste or sex is strictly prohibited within the workplace.

- 2) *The Netherlands Bwalya V Zambia*⁶- mandatory age requirement proves it effective for the welfare for both the children and the work environment.
- 3) *Aduayom T. Diasso and Yawo S. Dobou v. Togo*⁸- The responsibility of placing that there is no discrimination against the workers and therefore, there should not be hindrance to the rights of the workers.

Notwithstanding the fact that right to strike or right to form associations or unions is a fundamental and important for the workers at all costs but these laws are secondary to the human rights law which pertains to the freedom of the workers and various other aspects. Freedom to choose the place of work, freedom to find necessary arrangements in the place of work etc are of prime importance but still the very idea of the process are enshrined within the labor laws and the statute of ILO. In the recent times, ILO prepared a list of labor rights as human rights- Declaration of fundamental rights and rights at work was formulated in the year 1998. It enabled all the member states of ILO to include all the principles of ILO into their context such as freedom to form associations and unions, eradication of child labor, eradication of forced labor, eradication of discrimination of the workers. Thus, these four rights were regarded as the most important rights or the core rights which forms the basis of human rights law.⁹

Laws Against Racial Discrimination

As mentioned before, the declaration of Philadelphia mentions the prohibition of racial discrimination of the workers. Though, UDHR mentions about discrimination in a very brief manner it did not necessary answer all the specific details pertaining to the question of racial discrimination in the system. It is to be noted that there are several factors which are supposed to be explored with regard to this aspect. Racism is built in the foundation of several countries; years of fighting for justice and freedom are still leaving so many questions unanswered. The OCHR is one of the conventions linked to ILO which deals with the question of this type of discrimination.

OHCHR (Officer for high commissioner for human rights)

- 1) Article 1, deals with discrimination on the bases of race. No worker shall be discriminated based on color, race, ethnicity etc. This provision is to be taken with higher regard as they are prevalent in today's society. For further clarification, discrimination in this article includes discrimination-
 - a) Or separation on anything based on caste, religion, beliefs or any individual identity of that person.

⁶ *The Netherlands Bwalya V Zambia*, (429/90)

- b) If such separation allegedly tampers with the integrity of the person, then he/she can consult the necessary authorities in dealing with the person.
 - c) Any separation on the basis of anything for the purposes of work and not based on any individual identity of the person would not be regarded as discrimination.
- 2) Article 2 talks about the declaration that each of the states who are party to this convention shall undertake, that they do not support any sort of discrimination or any other conduct which offends the sentiments of any ethnic group of people. The national declaration of this act can lead to its success because implementations promoted just in the global level cannot make a significant impact until and unless there is a requisite national legislation which is governed by the same principles in each of the different states.
- 3) Article 4 of this act suggests that any person who reasonably suspects of any racial discrimination will have to file a complaint and he/she even has the right to appeal in case of such act if that prevails.
- 4) Article 5 of this act states that all the people will be entitled to equal rights and opportunities irrespective of their origin or ethnicity. All the rights pertaining to normal fundamental rights of a citizen are enshrined otherwise. If any person not limited to the vulnerable class of people is subjected to any form of discrimination, the only way in which that can be addressed can avail the option of consulting the committee members to seek adequate redressal for the mental torture that person has undergone. Therefore, labor laws are also included in them.⁷
- 5) Article 6 every member who ratifies this convention shall take the necessary steps to make to enforce the said provisions in their respective states.
- 6) Article 8 this convention shall be binding only on the existing members of ILO. In case of any non-compliance the registrar will cancel all the requisite undertaking in the name of that country.
- 7) Article 13 of this states that a convention shall not be adopted until and unless the necessary findings are sufficient enough to prove the need of a new convention.
 - a) The ratification by a new member shall involve the immediate denunciation of the existing act subject to necessary changes.
 - b) After the new convention comes to force there shall be effective implementation of the same and its validity ceases to exist as soon the ratified party enters and there shall be no further ratified members within that particular convention.
- 8) Article 14 of the conventions is equally assertive in its interpretation and there cannot be any sort of misinterpretation of the conventions and there is a strict rule of compliance of the same.⁸

⁷ *International Convention on the Elimination of All Forms of Racial Discrimination*
<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

⁸ *Discrimination (Employment and Occupation) Convention, 1958*,
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/EmploymentAndOccupation.aspx>

Case laws pertaining to the discussion of racial discrimination

- 1) Home office (UK border agency) *Essop V Naeem V Secretary for state of justice*⁹- These were two cases tried together within the context of labor law. The important factor to be regarded within the ambit of the concept of racial discrimination is that USA and UK is the hub of discrimination based on color or caste. In the home office case there was a selection test which was necessary to be conducted for the employment of the workers in the office. But there was a significant lack in the number of black people or people from a different ethnicity. This proved that any person who are not in a special class are still discriminated. Similarly in the Naeem case, the pay for Muslim prison chaplain was paid more than the Christian prison chaplains. These two cases were brought before the Supreme Court and it involved the significant question of racism. The authorities in both the cases did claim that the discrimination was indirect and there was no direct implication of the same. However, the court in this case claimed that such a status can involve so many questions and proposed for a legal test to address this indirect discrimination. The basis of discrimination cannot be based on the fact that it was 'unintended'. This factor cannot be regarded as a pivotal factor in dealing with discrimination since the proof the same could be fabricated. Thus, it is essential to bring the interpretation that the court just passed a test sufficient for adequate representation of people in all walks of employment. Even though, it might seem intentional and purely demeaning another factor that can be attributed to the same would be considered as the flip side of the coin. Forcing of inculcation of a particular mandate can amount to the unintentional hiring of people with no requisite skills and sometimes in can amount to not having a strong workforce.
- 2) *Taiwo V Olaigbe and Another; Onu V Akwiwu and Another*¹⁰, this case concerns two Nigerian women who came to UK seeking jobs. The Taiwo case involved a woman who was serving as a domestic house-keeper was brutally attacked in the form of actual physical attacks like being slapped on, spat on and being paid minimum wages. All these inculcated an actual sense of disrespect to her as a person and there was utter disregard to her in the form of violent physical torture. This cannot be regarded as an indirect torture neither can it be regarded as a case of unintentional torture. Therefore, the court in both the cases passed a legislative that lead to the criminal prosecution of the employees. Since, it did not necessarily invoke any provisions of the ILO; it cannot really be relied on any of the said provided. Thus, discrimination of a person based on the person's race and gender and these people are always subjected to such unjust treatment because of the vulnerability that is associated with them.¹¹

⁹ Home office (UK border agency) *V Essop and Naeem V Secretary for state of justice*, [2017] UKSC 27

¹⁰ *Taiwo V Olaigbe and Another; Onu V Akwiwu and Another* [2016] UKSC 31 22 June 2016, SC

¹¹ Case law on race discrimination, <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/race-discrimination/cases>

UNCRC

UNCRC ensures that no child is discriminated neither denied of any rights that they are entitled to. Thus, it can be inferred that children who are forced for child labor also comes under the ambit of this.¹² Recognition of the rights of the rights of the children is important because of several reasons. Children are the foundations stone upon which the entire society is built upon, their education, their sustenance and most importantly their happiness has to be of prime importance and in order to fulfill that we should be informed of their rights too. The UNCR prohibits any sort of discrimination against children and in order to ensure that we need a proper governance system which ensures the dignity and freedom of children. Children should not only be ensured of their rights but they have to be given all the requirements pertaining to their age. Bombarding them with tasks is a mechanism to prevent their growth and development. There shall be active participation of local people. Individuals should grow the capacity to act towards a common perception. They are supposed to think critically and creatively in taking action. Every individual should recognize and enact to taking power for the outcomes. A local person has a vital act to play as they are resourceful in taking initiatives and finding solutions.¹³

Local individuals play a pivotal role in ensuring that discrimination of children is abolished or prevented. In order to ensure that there were several factors and mechanisms that can be ensured and practiced at an individual level. This shall not lead to any sort of development in the ILO regime but these can prove good to ensure the security of the children.

Case laws pertaining to prevention of child labor

- 1) In the case of Sheela Barse V UOI¹⁴- In this case, children who were being subjected to work in factories, glass furnaces etc were supposed to be immediately given all sorts of recourse mechanism and never be made to work in factories again.
- 2) MC Mehta V State of Tamil Nadu¹⁵- this was a landmark judgment in the case of child rights because it involves numerous legislation which were passed in order to prevent the abuse of children by letting them be in factories or other unhygienic work environments and as part of it several surveys were taken along with other necessary arrangements taken to prevent further exploitation of children.

India is one among the few countries to have a proper legislative system which protects the children from unjust practices because the other legislations do not necessarily protect the children or have a separate article governing them like in India which is article 25 of the Indian constitution.¹⁶

¹² *Child Labour*, <https://defenceforchildren.org/thematic-areas-2/child-labour-2/>

¹³ Diva Rai, *Judicial View on Child labour*

¹⁴ Sheela Barse V UOI, JT 1986 136

¹⁵ MC Mehta V State of Tamil Nadu, 1991 AIR 417

¹⁶ Dushyant Chautala, *Child Labour in India: A Judicial Perspective*,

SUGGESTIONS AND CONCLUSIONS

The foundation upon which the entire labor legislation is built is adherence to other laws such as human rights laws, rights pertaining to welfare of children etc. This is one of the reasons why labor laws still prevail over other legislations. There are numerous conventions and equivalent efforts being undertaken on a day-to-day basis just to ensure human dignity and honor. There have been significant contributions by the ILO in ensuring that the basic rights of human beings are not being hindered with. While, the whole regime of ILO is governed by several other laws such as the UDHR, UNRC and other laws. It is a pertinent fact that such kind of interpretations can actually evolve and there is always room for development if all of the laws are implemented and exercised effectively. Every other rule mentioned in the ILO conventions are in furtherance to all the other international laws such as the human rights laws, children's rights laws etc. These other laws have developed significantly because of the impact that ILO has created on them. Complying with the norms of ILO has led to the steady development of these laws and hence they play a significant role in ensuring the key legislative system of the development of international law. The important suggestion that can be incorporated into the legislations is a mandatory guideline to follow the orders mentioned in the conventions which was done in the case of UDHR. Thus, it can be inferred that all the legislative systems are linked to one another.

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