CHAPTER-III: LABOUR LEGISLATION AND ITS APPLICATIONS

The chapter deals with the important labour laws which have been applied to Kanpur textile workers. The main provisions of the Acts and their implementation are therefore first discussed.

The history of factory legislation in India starts with the rise of large scale industries in the latter half of the nineteenth century. But prior to 1881, when the first Factory Act was passed, the policy of the State towards matters concerning labour was virtually one of Laissez-faire. Hours of work in most of the factories were from sunrise to sunset. Large number of women and children were employed. There was no provision for weekly holidays. 'Despite these conditions, various industrially advanced states and public opinion did not favour any form of legislation'.¹ This reflected the lack of concern among the public for the conditions of the industrial workers. The first factories Act was passed in 1881. As V.V. Giri has pointed out, it reflected a compromise between the conservative and radical points of view. The Act was primarily designed to protect children and to provide some

¹ V.V. Giri, Labour Problems in Indian Industry, 1972, p. 141.
facilities for their safety at work. The Act was amended, from time to time, widening its scope and enlarging the rights of workers. But this was a very slow and halting process till 1948.

Since the Act of 1881 did not have sufficient provisions for the protection of children and the regulation of female labour, the Factories (Amendment) Act, 1891 was passed. The Act restricted the employment of women at night, raised the lower and upper age limits for child workers in factories to 9 and 14 years respectively and reduced the daily hours of work for children from 9 to 7 during the day time. For the first time in India, it provided for the grant. If a regular rest interval of half an hour, in the middle of the day, and a weekly day of rest to all workers in factories.

The Act was amended in 1911, the working hours for male workers were limited to 12 in a day with a rest interval of 1 hour. The hours of work for child labourers were reduced to 6 with a rest interval of half an hour and the children were prohibited from working in night shifts. The Act also contained provisions for health and safety of child labour. These amendments fell short of the improvements in minimum standards recommended by the 1908 Labour Commission.
The Factories Act of 1934, overhauled the Act of 1911 with a view to implementing the recommendations of the Royal Commission on Labour in India (1931). The Act reduced the hours of work for children to 5 a day and provided for rest-shelters and creches.

A new Act to consolidate and amend the laws relating to labour in factories was passed by the Constituent Assembly on 28 August, 1948 and it came into force on 1 April 1949.

The Factories Act, 1948 covered all factories employing ten or more workers, where power was used and twenty or more workers, where power was not used. The Provincial (State) Governments were empowered to apply the provisions of the Act to any premises, irrespective of employment therein, where manufacturing process was being carried on with or without the aid of power except where work was done by the worker solely with the help of the members of his family. Here, 'power' meant power obtained from electricity, steam or petroleum or sources other than human or animal. In order to cover an establishment under

the expression 'factory', it was not considered necessary that the manufacturing process be carried on in all the parts of the building or premises.

The main provisions of the Act related to health, safety and welfare, hours of work, employment of young persons and women, annual leave with wages, occupational diseases and enforcement of penalties for offences committed by the employers.

Chapter III of the Act prescribed several measures to safeguard the health of factory workers. These measures mainly relate to cleanliness, disposal of wastes and effluents, ventilation, control of temperature, elimination of dust and fumes, lighting, drinking water facilities etc. The Act also required that the factory must be kept clean and prescribed standards of adequate ventilation and reasonable temperature, which was to be maintained in every factory so that the workers could work comfortably. Effective measures were to be adopted to prevent inhalation and accumulation of any dust on fume or other impurity which was likely to be injurious to the health of the workers.

In factories in which humidity had to be artificially increased, the State Government had powers to
make rules prescribing standards of humidification and regulating the methods used for the purpose. This was particularly related to the cotton textile industry where high levels of humidity were maintained to avoid breaking of cotton threads. The Act therefore, prescribed methods to be adopted for securing adequate ventilation and cooling of the air and the workroom in such factories.

To eliminate overcrowding the Act prescribed a minimum space of 500 cubic feet for each worker in factories built after the commencement of the Act and 350 cubic feet per worker for factories which were in existence on the date of the commencement of the Act.\(^1\) The Act also contained provision for the maintenance of sufficient and suitable lighting, natural or artificial or both, in every part of the factory. Every factory had to make effective arrangements to provide and maintain sufficient supply of drinking water for all workers at suitable places. The factory had to provide proper toilet facilities to the workers and also sufficient number of spiltoons.

The provisions relating to safety of workers working at machines were contained in chapter IV of the Act of 1948. These related to the fencing of machinery,

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testing and examination of appliances and plants, supply of safety appliances to workers, precautionary measures against dangerous fumes and fire-safety measures. The Act also prescribed the conditions under which young persons may be employed and it prohibited employment of women and children near cotton openers on machinery used for mixing cotton.

But it is surprising that the Act did not contain any provision for the safety of an employee who was assigned the work of repairing machinery or shifting of machinery or installing new machinery.

It was provided that the hoists and lifts used for carrying goods and persons were to be of good construction and to be properly maintained and thoroughly examined at regular intervals. The maximum working load had to be marked clearly on every hoist or lift and no greater load than that was to be carried thereon.

The Act restricted the daily hours of work to 9 for adults and 4 1/2 for children and provided for a weekly rest day. It prohibited the employment of women workers at night i.e. between 7 PM and 6 AM. Any child, who had not completed 14 years of his age, was not permitted to work in any factory. Children were also prohibited from working at night and in dangerous jobs.
To prevent accidents, the provision of appointment of Safety Officers was added in the Act in 1976. The amendment provided for the appointment of Safety Officer in factories employing 1,000 or more workers or where any manufacturing process or operation is carried on, which involves any risk of bodily injury, poisoning or disease or any other hazard to health, to the persons employed in the factory.

The welfare of labour included the provision of suitable washing facilities, rest shelters and canteens. It was made obligatory on part of the employer to run a canteen, where 250 or more workers are ordinarily employed. In factories there was no statutory provision for recreational facilities. Some of the enlightened employers, on their own initiative, provided for recreational facilities. Also, education and housing facilities were not covered under the Act.

The Act marked an improvement over the earlier legislation and contained better and more provisions for health, safety and welfare of industrial workers. But violations of some provisions of the Act still take place in most factories owing to the absence of an effective monitoring and enforcing mechanism.
Trade Unions Act, 1926:

The passing of the Indian Trade Unions Act in 1926 is an important landmark in the history of trade union movement in the country. In addition to giving a legal status to the registered trade unions, the Act conferred on trade unions and their members a measure of immunity from civil suits and criminal prosecution. Registration also enhanced the status of unions in the eyes of the public as well as the employers; and in the process even the unregistered unions benefited and the movement as a whole gained greater confidence of the workers.¹

The Royal Commission on Labour in India, 1931 also observed that "the stimulus given by the Act to trade unionism resulted not so much from any rights or liabilities that it created, as from their enhanced status in the Statute Book."²

The Act was passed with the objective of providing for the registration of trade unions and verification of their membership. It did not have any provision for compulsory recognition of unions by the employers.

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1. V. V. Giri, op. cit., p. 13.
The Act defined Trade Union as any combination, whether temporary of permanent, formed primarily for the purpose of regulating the relations between workmen and employers, between workmen and workmen and between employers and employers or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more unions.¹ This definition has made it possible even for the employers' Association to get registered under the Trade Unions Act. The association need not be a permanent combination but can be formed even for a short period.

The Act has been amended several times mainly to remove administrative difficulties. The Indian Trade Unions (Amendment) Act, 1928 defined the procedure regarding appeal against the decision of a Registrar refusing to register a trade union or withdrawing certificate of registration. The Amendment Act of 1947 which contained provisions for compulsory recognition of unions and for penalising unfair labour practices could not be fully enforced. A more comprehensive Trade Unions (Amendment) Act was passed in 1982.

¹V.B. Singh, Climate for Industrial Relations - A Study of Kanpur Cotton Mills, 1968, p.87.
Registration of Trade Unions:

Though it is not compulsory on the part of the trade unions to be registered according to the Act of 1947, it is desirable for any union to be registered since it gives immunity to its officers and members against civil and criminal proceedings under certain circumstances.\(^1\) At least seven members may apply for registration of a union to the Registrar of trade unions of the concerned State. Schedule II of the Central Trade Union Regulations, 1938, has specifically mentioned the conditions under which a trade union could be registered. It is obligatory on the part of the Registrar to register a trade union once it satisfies all the conditions laid down. Similarly no trade union has the right to deny membership to anybody who satisfies the conditions of membership and pays the subscription.

The Act fails to put any restriction on the multiplicity of unions. The provision that only seven members are required for the registration of a union has resulted in the formation of too many unions with small membership and small funds at their disposal. Another reason for the multiplicity of unions is that the Act does not

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\(^1\) V.P. Michael, *Industrial Relations in India and Worker’s Involvement in Management*, 1991, p. 45.
empower the Registrar to refuse registration of trade unions in cases where one or more unions are already in existence in the factory. However, as a registration certificate is issued by the Registrar of trade unions, it may also be withdrawn or cancelled by him, under the provision of the Trade Unions Act, 1926.¹

According to Section 10 of the Act, a certificate may be withdrawn or cancelled by the Registrar on any of the following grounds:

(i) On the application of Trade Unions.
(ii) At the discretion of Registrar.
(a) that the certificate has been obtained by fraud or mistake.

Legislative Steps for Recognition of Trade Unions:

No effective legislative action was taken until 1947 for compulsory recognition of trade unions by employers. The Indian Trade Unions (Amendment) Act, 1947 contained provision for recognition of trade unions and prohibition of unfair labour practices. It provided for voluntary as well as compulsory recognition of trade unions by the employers. The Act provided that the employer could recognise any trade union voluntarily and did not place any

¹ Trade Unions Act, 1926, Section. 10.
restriction on the size of the trade union or its representative character and also on the employer recognising more than one union claiming to represent the same category of workers. Compulsory recognition was to be granted in cases where an employer refuses to recognise any trade union voluntarily. This was now to be done by an order of the Labour Court.

The amendment Act of 1947 also contained a provision for withdrawl of the recognition. Under the Act the Registrar or the employer was given the right to apply in writing to the Labour court for withdrawl of recognition on certain specified conditions.

**The Payment of Wages Act, 1936:**

The main purpose of the Act is to ensure regular and prompt payment of wages and to prevent oppressive exploitation of wage-earner by prohibiting arbitrary fines and deductions from wages.

As explained by the Bombay High Court in the Arvind Mills Ltd. Vs K.R. Gadgil\(^1\) case, the general purpose of the Act is to provide that employed persons shall be paid their wages in a particular form and at regular intervals

without any unauthorised deductions.

Initially the Act was applicable to workers drawing less than Rs 200 per month. In 1958, it was amended to extend its scope to employees earning Rs 200 or more but less than Rs 400 per month. The amending Act of 1982 raised the wage limit to cover persons drawing upto Rs 1600 per month.¹

Section 2(vi) of the Act define ‘Wages’ as all remuneration (whether by way of salary allowances or otherwise) expressed in terms of money, or capable of being so expressed, which would be payable to a person employed in respect of his employment or of work done in such employment.²

The Act in its original form suffered from a number of lacunae and failed to serve as an effective measure against malpractices in the payment of wages. It needed to be amended as experience accumulated. The rules framed under the Act provide for maximum safeguards against delay in payment of wages and other unfair practices. The provisions of the Act on fines and prosecution were also

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2. Ibid.
amended to raise the penalties on employers for defaults in timely payment of wages. According to the assessment of the Department of Labour and Employment, Government of India and several State Governments, even the amendment Act has not effectively checked malpractices on the part of the employers.¹

The Act provided for the fixation of wage period which is not to exceed a month. Undertakings employing less than 1,000 persons must pay wages before the expiry of seventh day and those employing 1,000 or more persons, before the expiry of the tenth day.

The Act permits certain kinds of deductions from wages for fines, absence from duty, damages and loss, house-rent, income-tax payable by employees and for provident fund.

The Act prohibits the imposition of fines without the prior approval of the Government or the prescribed authority and lays down the procedure according to which fines may be imposed. The employed persons must be given an opportunity of showing cause against ‘fine’ before it is imposed.

Section 9 of the Act provides that an employed person shall be deemed absent from the place where he is required to work, if although present, he refuses to carry out his work in pursuance of a stay-in-strike or a go-slow strike.

The Minimum Wages Act 1948:

The Minimum Wages Act 1948, requires the appropriate Government, Central or State, to fix minimum rates of wages payable to employees (defined as persons ‘employed for hire or reward to do any work, skilled or unskilled, manual or clerical etc.’) in an employment covered by the schedule to the Act. The items in the schedule are those where Sweated labour is most prevalent and where there are bigger opportunities of exploiting labour.

The Act specifies industries where sweated labour was employed, as woollen-carpet making and shawl weaving, rice flour and dal mills, tobacco (including bidi making) manufacturers, plantation and oil mills. It also included workers employed under local Authorities in road construction and building operations, stone breaking, lac manufacturing, mica works, public motor transport, tanneries and leather manufactures and agriculture. Under
this Act, minimum wages have been fixed in most of the scheduled employments all over the country, including the textile industry.

The Act provides for the fixation of, (a) a minimum time rate of wages, (b) a minimum piece rate of wages, (c) a guaranteed time rate of wages and (d) an overtime rate of wages for different occupations, localities or classes of work and for adults, adolescents and children.

The appropriate Government is also empowered to fix the number of hours of work per day, provide for weekly holidays and the payment of overtime wages etc. in regard to any scheduled employment in respect of which minimum rates of wages have been fixed under this Act.

The payment of Wages Act, 1936 had protected the total wages of an employee which he was to receive but did not establish a minimum below which wages could not fall. The Minimum Wages Act 1948, was brought in force on the recommendations of the Royal Commission on Labour to set up a machinery for fixing minimum rates of wages in those trades where wages were lowest and where collective bargaining was not possible. The Act aimed at fixing statutory minimum wages which workers would get in any case and do not have to bargain for it.
The Payment of Bonus Act, 1965:

The recommendation of the Bonus Commission led to the passing of the Payment of Bonus Act, 1965. The Act applies to every factory as defined under the Factories Act, 1948 and to every other establishment which employs 20 or more persons. Those public sector undertakings which are not run departmentally and which compete with establishments in the private sector to the extent of 20 percent are also covered by the Act. The benefits of bonus was made available to every worker employed on a salary or wage not exceeding Rs 1600 per month. The Act recommended minimum and maximum limits of bonus at the rate of 4 and 20 percent of annual earnings respectively. The Bonus Commission had given a formula under which an employee who has worked throughout the year, including periods of leave with pay, would be entitled to a minimum bonus of 4 percent of his annual earnings, made up of basic wage and dearness allowance or Rs 40 whichever is higher. For a worker who has worked for a shorter period, the amount payable would be on prorata basis.

The Act was amended in 1972 and the minimum limit of bonus was raised from 4 percent to 8.33 percent. The amending Act of 1976 made the bonus payable on the basis of
profits and productivity. The Government was empowered to extend the Act to establishments employing 10 or more persons.

Despite the benefit of payment of bonus granted to industrial workers under the Act, there were a number of cases of non-payment of bonus to textile workers of Kanpur when it had fallen due. This has been the reason behind a number of strikes between 1970 and 1990. One of the strikes on the issue of bonus took place in the Elgin Mill No.2 in 1980.

The Industrial Disputes Act, 1947:

The Industrial Disputes Act, 1947 was passed in March 1947 repealing the previous legislation on the subject i.e. the Trade Disputes act, 1929. The Act was a comprehensive measure adopted by the Central Government with a view to improving industrial relations. It authorised the Government to set up a machinery for the two-fold purpose of prevention and settlement of labour disputes. It also provided for the establishment of Works Committees to promote harmonious relations between the employers and workers. The Act introduced the principle of compulsory arbitration and prohibited strikes without notice in public utility services. It also provided for
establishment of Industrial Tribunals for adjudication of industrial disputes.

In order to remove shortcomings in the working of the Act, the Central Government have amended the Act from time to time. The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 enlarged the definition of 'workman' to include technical staff and supervisory personnel.


Appropriate Governments have been empowered to prescribe that Works Committees, composed equally of representatives of employers and workers, should be constituted in every industrial establishment in which one hundred or more workmen are employed.

Under the amended Industrial Disputes Act, such categories of workers as are eligible for lay-off compensation, are also entitled to retrenchment compensation. No worker, employed in any industry, who has
been in continuous service for a year or more can be retrenched by an employee until one month's notice is given to him in writing indicating the reason for retrenchment. Retrenchment compensation is to be paid also in the event of closure of a factory.

The Uttar Pradesh Industrial Disputes Act, 1947:

The Uttar Pradesh Industrial Disputes Act, 1947 was passed in December, 1947. The act was patterned after the Central Act. It requires employers and workers to observe specific terms of employment and to refer industrial disputes to conciliation and adjudication.

In 1948, the Government of Uttar Pradesh thoroughly reorganised the machinery for the prevention and settlement of industrial disputes. The reorganised machinery consists of Works Committees in factories employing more than 200 workers and Regional Conciliation Boards for Textile, Sugar, Leather and some other industries. Industrial courts were set up with appellate jurisdiction over cases heard by Regional Conciliation Boards.

The Works Committees have not been very effective in Kanpur. The main reason for their failure, as pointed out by the Study Group of the National Commission on Labour,
on Industrial Relations, have been the indifference on the part of the employers in the discussions with workers' representatives, the inter union rivalries affecting the constitution of these committees and lack of authority behind the decisions of Works Committees. It was found, generally, that the management often disregarded the decisions of Works Committees as there was no legal sanction behind them. The matters entrusted to these committees were mostly of a minor character and because of lack of interest, meetings too were held irregularly and were often considered a mere formality. The formation of the Works Committees has amounted to no more than a mere compliance with a statutory requirement.¹

The U.P. Industrial Disputes Amendment and Miscellaneous Provisions Act, 1956 replaced the old adjudication machinery by a two tier-system consisting of Labour Courts and Industrial Tribunals. Accordingly, four Labour Courts (Kanpur, Lucknow, Bareilly and Meerut) and three Industrial Tribunals (Textile, Sugar and General) were set up.²

The U.P. Industrial Disputes Act was further

¹ V.V. Giri, op.cit., p. 177.
² V.B. Singh, op.cit., pp. 93-94.
amended in July, 1957 providing that no officer of a trade union shall be entitled to represent his union, unless a period of two years has elapsed since its registration; and the union has been registered for one trade only.