CHAPTER-I

Introduction

The emergence of international norms aiming at the protection of the individual is one of the most significant developments of modern international law. Two key dimensions in this regard are international labour law on the one hand and international human rights law on the other. A number of intersections can be discerned between these two dimensions. Numerous labour rights form part of the body of human rights enshrined by the relevant international human rights instruments. At the same time, many general human rights are relevant for labour rights issues since they constitute the necessary precondition for the exercise of labour rights, including freedom of expression, the right to life, the right to personal integrity and liberty, and the freedom from torture.

Broadly speaking human rights may be regarded as those fundamental and inalienable rights which are essential for life as human being. Human rights are the rights which are possessed of every human being, irrespective of his or her nationality, race, religion, sex, etc, simply because he or she is a human being. Human rights are thus those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedom allow us to fully develop and use our human qualities, our intelligence, our talents, and our conscience and to satisfy our physical, spiritual and other needs.

1Justice Paul Vasantha Kumar, “Human Rights and Indian Judiciary”, 2007 (3) CTC Jor.109
It may be noted at the outset human right are a matter of international law because human rights do no depend on an individual’s nationality and therefore the protection of these rights cannot be limited to the jurisdiction of any state.

Though the concept of human rights is as old as human civilization the present form is of recent origin. It denotes all those rights, which are inherent in human beings irrespective of caste, creed, religion, sex and nationality. Every individual is entitled to some basic rights, without which we cannot live as human beings. It is very difficult to give a precise meaning of the term human rights. There are the rights, which no one can be deprived without a grave affront to justice. Human rights are the natural rights of the human race without which we cannot live as human beings. Therefore, human rights sometimes are also called as natural rights or basic rights or fundamental rights.  

**Evolution of Human Rights**

The nature has bestowed man with two related characteristics; first as an individual and then as a social being. Living in group organized community is natural to him to understand human rights; one must look through their history, which will take us back to the day when man first started living in groups. It was natural that many instances might prevailed over what was right; those who held power dominated the weak.

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With the passage of time, these rights of established customs or understandings including the relationship between the rules and the ruled were brought together in different forms in various parts of the world.

They found expression in the concept of natural law became the symbol of people's movement against absolute despotism, and the cornerstone of constitutional democracy everywhere. The Magnacarta in England, the American Declaration of Independence, the French Declaration on the rights of man, the Bolshevik Revolution in Russia could be cited as important landmarks in the development of the concept of human rights.

There are still many people whose fundamental rights are infringed. Armed conflict has not been banished, poverty has not been abolished, and nowhere do women enjoy fully equal rights with men, millions of children labour. Two major international instruments which were adopted in 1948 are part of the explanation for the gains which have been realized. First, the Freedom of Association and Protection of the Right to Organise Convention was adopted by the International Labour Conference in July, thereby formalizing in international labour law protection of the rights of workers and employers to associate freely, without prior authorization. Then later in that year, the United Nations General Assembly adopted the Universal Declaration of Human Rights⁴, which set a framework for the pursuit of human rights globally.

There is no need to go back to prehistory to find a world where few had the rights of free speech, assembly and organization. It was only after

⁴General Assembly Resolution A/RES/3/217December 10, 1948
the liberation of human ingenuity from feudal bonds and the emergence of industrial society that some prescient thinkers began to see that respect for human rights might be in the general interest. It took much longer before these principles were enunciated internationally. It is only in this century that the process of global institution-building got under way, laying a basis for the international instruments that many now take for granted. And in this, the International Labour Organization (ILO) has played a central role.

The concept of international labour standards is a fairly recent development in the context of world history. It was the Industrial Revolution in the nineteenth century and the related movement of ideas that served as a catalyst for the evolution of international human rights, and in particular of international labour standards. As the human cost of industrialization became apparent, there was increased awareness of the importance of protecting workers and establishing a universal set of international standards to ensure equal protection for all. In parallel, industrialists feared that they would lose out to competitors if they unilaterally improved working conditions. This led to the need for international social regulation in order to achieve a level playing-field for all parties.

The International Labour Organization was established in 1919 with the aim of promoting social justice. The Declaration of Philadelphia of 1944 further specified and developed this approach. The main means of action was the adoption of international standards in the form of Conventions which are similar to treaties and create obligations for member States once they have been ratified. The principle that labour standards are an essential
pillar of development and peace was enshrined in the ILO Constitution. The application of standards is seen as being vital for social stability, economic progress and lasting peace. A unique element in the development of ILO standards, which sets them apart from other international standards, is the aspect of tripartitism. The participation of governments, along with the most representative workers’ and employers’ organizations, is an integral part of the ILO. Despite the sometimes conflictual nature of tripartitism, the participation of all three parties is necessary to find common ground for social and economic goals. Standards adopted through tripartitism result in a certain degree of dynamism and universality due to the fact that they are adopted by means of a process of consultation and result in a consensus of the diverse opinions of the various parties. As a result, the standards adopted are more adaptable to differing economic and social situations, while retaining all their universality. At the same time, these human rights at work are closely interlinked with the full range of other human rights, which would lose much of their meaning without the solid basis of fundamental economic and social rights developed by the ILO.

Fundamental principles of labour rights and human rights are set out in the ILO’s Constitution of 1919 and in the Declaration of Philadelphia of 1944. In particular, the Preamble to the ILO’s Constitution refers to “recognition of the principle of freedom of association” to confront injustice, hardship and privation. The Declaration of Philadelphia reaffirms that “freedom of expression and association are essential to sustained progress” (Art. I (b)) and constitute a fundamental principle on which the ILO is based. Confronted again with questions as to the relevance and universality of
fundamental labour rights and human rights, the International Labour Conference has in 1998 declared that all member States have an obligation “to respect, to promote and to realize, in good faith”. The fundamental rights which are the subject of those Conventions are freedom of association and the effective recognition of the right to collective bargaining.

It has been rightly pointed out that the competence of the United Nations on the subject of human rights is an established fact and provisions of Article 2(7) of the UN Charter could not be invoked against such competence. The question of violation of human rights was no longer a matter of domestic jurisdiction but international concern.

The commitment represented by that Declaration in effect raises the cost of infringing fundamental rights. Not by specifying new rights, but because of the provision for effective follow-up which includes a method of obtaining regular reports on the four areas of core rights, a requirement that the ILO prepare a global review, and the obligation of the ILO to reorient the use of its resources to assist member States in applying these principles. The purpose of the Declaration is to promote respect for fundamental rights, not to punish failure.

There is intrinsic value in this solemn Declaration in that it represents a reaffirmation, by governments and both social partners, of the universality of fundamental principles and rights at a time of widespread uncertainty and questioning of those rights.

The principles of human rights and industrial justice system in India, labour jurisprudence enjoin upon an employer to hold exploitation against
to a workmen. Honestly and bonafide and with care. Such the labour legislations do no become an empty formality.

It is an elementary principle of labour law that while holding human rights of natural justice must be faithfully followed and fair play strictly insured. It is written to note that neither the human rights violation nor they find an express mention in the labour status. Added to this problem lack of uniformity in labour law and rules which create human rights violation this is a serious lacuna, which an Industry workers suffers from which ultimately, may end of with great human right violation and injustice done to the workmen.

**Important Components of Labour Right**

Though many labour rights are recognised the following are found to be important among them.

- The freedom to work; freedom concerning the choice of occupation as well as the place of performance
- The right to earn a living from work of one’s own choice, encompassing the freedom to establish one’s own independent form of employment or business
- The right to free employment services; the right to work has been interpreted as the commitment of the state to undertake continuous efforts to ensure full employment. Such efforts include the formulation and implementation of employment promotion policies and the promotion of technical and vocational education programmes aimed at increasing employment, as well as free access to information and assistance for job seekers
The right to safe and healthy working conditions, as well as rest, leisure and reasonable working hours

The right to employment; the right not to be arbitrarily dismissed and the right to protection against unemployment.

A human rights approach, it is urged, facilitates partnerships with human rights allies, works well with the inexorable internationalization of labour struggles, allows the “naming, blaming and shaming” of labour abusers, and is more responsive to the current political and cultural than traditional labour arguments. Human rights reframing will bring authoritativeness to labour discourse that trade unionists can never achieve.

While the motives of those advocating a human rights approach are laudable, the reliance on reframing labour struggles as first and foremost human rights struggles is misplaced. It is not an exaggeration to say that the replacement of solidarity and unity as the anchor for labour justice with “individual human rights” will mean the end of the union movement as we know it is true tactically, strategically, and philosophically. Rights discourse individualizes the struggle at work. Union movement, however, was built on and nourished by solidarity and community.

**SIGNIFICANCE OF THE STUDY**

The rights which are dealing with the relation between the employer and employee under the Industrial Laws are termed as Labour Rights or otherwise group rights. These rights are generally used to negotiate worker’s benefits viz., pay, safe working condition, clean environment etc. these rights are once considered as legal rights now becomes human rights.
Connecting worker's rights to human rights shows those workers’ rights are vital, and must not be traded off casually. They should, in most cases, trump arguments of profit and efficiency.

Human rights are valuable for workers. They give workers a voice and offer political and moral space for the most vulnerable of groups, such as the unorganised, under-skilled, and undocumented. They demand that the law protect workers, and that no one can easily do away with them. Finally, with human rights to back them, workers are able to refuse exploitation done in the name of efficiency.

The right to work affects the degree of enjoyment of many other rights such as the right to education, health and culture. Its realisation is not only important for the provision of income to the individual, but also for the individual’s personal development and dignity, as well as for peaceful progress of society. On the other hand, the right to work intrinsically creates a degree of dependency of the employed on his employer. As such, it could create a relationship of inequality. To protect the employed and to make a more level playing field, the right to strike and the right to associate are guaranteed, as well as the right to organise and to bargain collectively. Closely linked to the rights relating to work, are the rights related to social security.

The right to work, in a broad sense, implies the right to enter employment, and the right not to be deprived of employment unfairly. The first component encompasses the factors that come into play regarding access to work; such as education, vocational training, and unemployment
levels. The latter component deals with issues regarding employment security, for instance, security from being fired unjustly.

A fundamental obligation laid on states is to ensure freedom from slavery and forced labour\(^5\). Whereas a state is not obliged to guarantee work for all, it does have an obligation to take measures to achieve progressively a high, stable rate of employment. Establishing a system of government that clearly sets out a high, permanent rate of unemployment could be regarded a violation of the right to work.

The right to work does not imply the right to be provided with employment. The state must ensure, however, that it does not discriminate in access to public jobs; distinctions based on gender, race, colour, nationality, or ethnicity may not be made. Neither Article 6 of ICESCR nor international or national case-law have been interpreted to establish a right to receive a function in a public or private institution. An absolute right not to be dismissed is not established, but several human rights standards protect against arbitrary deprivation of one’s right to work.

The right to work contains aspects that reflect strict and legally enforceable rights, such as the freedom to work and the principle of non-discrimination, while other elements have traditionally been more difficult to enforce; they are in essence policy objectives, framed in terms of legal obligations for states.

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\(^5\) It is important to note that the Constitution of India also ensures the freedom from exploitation under Art.23, which runs as “Trafficking in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”. See also State of Gujarat V High Court of Gujarat, (1998)7SCC392, PUDR V Union of India, (1982)3SCC235.
Man has the basic right to a life of dignity in a civilized society where the rule of law prevails which is essential for the growth. Development and stability are the personality of an individual. “Dignity of all” is indispensable for social peace as it is a matter of a fair social adjustment with dependable economic and ethical support which has been an exception rather than a rule in almost every human aggregated and culture. This is a fact particularly with regard to the dignity of labour. Therefore, recognition of labour as a subject of social justice was established only after the painful struggle and cries of suffering of millions of workers.

Industrialization plays a vital role in providing employment opportunities and generating income. Industrial development has been a major factor in the economic development of the country as it serves the role of a catalyst that transforms agriculture, construction, transport and other service industries into highly productive sector leading to a sophisticated life.

Primitive man sometime sought safety in plight and sometimes his innovative mind would have motivated him to master and control numerous sources of insecurity through human ingenuity. The lifting of some wooden stick or stone by him in defense against the aggressive postures of some carnivorous beast was probably the first effort of man to overcome insecurity. It seems that from the primitive time to the present industrial society, man is not entirely free from insecurity because in order to ensure physical survival he strives continuously for material security to protect

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himself from pangs of human and also deadly diseases. Thus, concept of social security is as the history of man.

Prior to industrialization, when human needs were limited and livelihood was based primarily on agriculture, the artisans were also existed as independent self employed persons. They used to market their own products. In case of agriculture, the independent peasant or farmer worked with his own holding by the labour of himself and his family. As regards India, we are not merely a pastoral band since industries like handicrafts of export quality; mining, metal processing and manufacturing of jewels were existing prior to industrialization though not industry in the modern sense.

In the episode of human civilization from pre-industrial society to the present day, everyone is dependent on others because no one is capable and versatile as to be able to satisfy all his needs. In every society, there have been sick people requiring medical aid and care, handicapped and aged people unable to work for a living, pregnant women need assistance during the period of pregnancy before and after delivery and then unemployed persons not able to make both the ends meet. hence, during the pre – industrial society joint families, craft guilds, churches, charitable, philanthropic and other institutions provided securities to overcome the hazards of life and work.

Since the laissez-faire policy ruled supreme during the colonial period, there was no interference of the government to provide compensation or

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7 G.B Pai, Labour Law in India (New Delhi: Butterworths India 2001) p. 81
medical care when workers were exposed to serious accidents due to unproductive methods of handling machines and sickness due to unhealthy living and working conditions. Therefore, the cause of accidents might be attributed to work related causes and worker related causes\textsuperscript{10}. Most of the industrial workers were temporarily or permanently disabled resulting in their unemployment causing financial misery and other consequences due to hazardous working condition. The need of the compensation to the worker arises when his working conditions is at risk.

Social security is an important component of any social development agenda and is as relevant as physical security in the evolving concept of human dignity. Right to social security is a human right\textsuperscript{11}. And hence everyone has a right to a standard of living adequate for the health and well being of himself and his family.

India, being a socialist democratic state, has a commitment of providing social and economic justice to its citizen for the survival of democracy. Moreover, the creation of a welfare state is to execute instrumentalities which are enshrined in the Directive Principles of State Policy serve as fundamental guides for the state’s action towards social, economic and welfare programmes with a view to ameliorate the conditions of labour\textsuperscript{12}.

\textsuperscript{11} Article 22 and Article 25 of Universal Declaration of Human Rights, 1948.
\textsuperscript{12} Articles 38, 39, 41, 42, 47 of the Constitution of India.
OBJECT OF THE STUDY

The Concept of Human Rights is profoundly influencing every field in the present society. The Labour Rights are also influenced by these principles. Therefore, the object of this present research work is to study the influence of the human rights on labour rights in India.

HYPOTHESIS

Considering the object of the study, the research is undertaken on the basis of the following hypothesis; “the influence of Human Rights on Indian Industrial jurisprudence has indeed elevated some of the labour rights to the status of human Rights and today several labour rights are considered as Human Rights thus expanding the Scope and application of labour rights.”

To test this hypothesis the study has been made on the various aspects of Labour Rights and Human Rights in India –its evolution, conventions, statutory and constitutional provisions.

Moreover, to have an in-depth analysis, the following questions were framed and answered:

1. What is meant by human rights?
2. What are labour rights?
3. What is the impact of the Human Rights jurisprudence on Labour Rights?
4. To what extent the International Conventions relates to the human rights in general and particularly the provisions relating to the labour Rights in those conventions are incorporated in any of the labour legislations in India?
5. Whether the Directions and Standards set by the ILO are implemented in India?

6. To what extent Human Rights influenced the Labour Laws in India to protect the Rights of the Labour?

7. Whether all the Rights pertaining to Labours in the International Conventions are made available to Indian Labours?

**Methodology**

In this research work, the doctrinal research has been adopted mainly. Going by the words of S.N. Jain¹³ doctrinal research is analyzing the existing statutory provisions, legal documents, decided case laws of various courts etc. The historical method also has been employed in this work for tracing out the history of the concept of human rights and labour rights.

**SOURCES**

For realizing the object of the study materials from both primary and secondary sources has been utilized.

Many Statues, Legislations and enactments like the Constitution of India, International instruments like UDHR-1948, ICCPR-1966, ICESCR-1966 and ILO Conventions are relied as the primary sources.

The secondary sources referred herein are Text Books, Commentaries, case Comments, Law Journals, and Law Commission Reports, Case Reports both National and International.

Websites, the modern sources are also referred.

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¹³ S.N. Jain, “Doctrinal and Non Doctrinal Legal Research”, ed. S.K. Verma & Afsal, Legal Research and Methodology,( Indian Law Institute, Delhi,1983) p.8
CHAPTERISATION

For the purpose of effective study, the thesis is divided into Five Chapters. The Concept of Labour Rights as Human Rights in India is elaborately and effectively dealt in these chapters.

The First Chapter going by tradition deals with Introduction. In this chapter, the significance of the study, object of the study, Hypothesis and Methodology are outlined.

Broadly speaking human rights occupies a very important place in the discussion of politics and political theory. Internationally human rights occupy a very high place among the theorists. The Second Chapter explains the origin of the concept of Human Rights, its development. The most outstanding theories among the various theories of human rights are theory of natural right, the legal theory of rights, the social welfare theory of rights, the idealistic theory of rights, the historical theory of human rights are discussed here in detail.

The Third Chapter looks Labour Rights in the international perspective. In this Chapter the Universal Declaration of Human Rights, International Covenant on Economic Socio Cultural Rights and International Organization its establishment and the Role in protecting the Labour Rights are highlighted.

Fourth Chapter easily forms the nucleus of the chapter. In India number of labour legislations is available to protect and save workers from exploitation. Otherwise called human rights violation viz; unfair labour practice, low wage child labour, bonded labour, indecent wage atrocity against women worker in working premises. To protect from above human

Having so much discussion and deliberation in this background the Fifth Chapter is an attempt to review this microscopic work for commenting positive remarks, conclusion and Suggestions.

The thesis also contains the useful Bibliography at the end.