Chapter – 2
HISTORICAL DEVELOPMENT OF
INDIAN LABOUR LAWS

I. INTRODUCTION

The maintenance of industrial peace designed to advance economic growth ought to be the objective of labour legislation. Even though the industrial revolution resulted in the maximization of production and the national income and so on the per capita income went to high pitch, paradoxically the fate of the vast multitude, namely the wage earning class did not improve. Rather their condition became more deplorable both outside and inside the factory.¹ Labour laws emerged when the employers tried to restrict the powers of workers' organizations and keep labour costs low. The workers began demanding better conditions and the right to organize so as to improve their standard of living. Employer's costs increased due to workers demand to win higher wages and better working conditions. This led to a chaotic situation which required the intervention of government. In order to put an end to the disputes between the ever-warring employer and employee, the government enacted many labour laws.

The term 'labour' means strictly any energetic work, though in general it implies hard work, but in modern parlance it is specially confined to industrial work of the kind done by the 'working-classes'.² Any work whether manual or mental, which is undertaken for a monetary consideration is called labour. Sometimes the term labour is used in a very broad sense of total working force or labour force which includes all persons who work for living as distinguished from those

who do not or are not expected to work for a living such as housewives, children, old persons etc.³

Labour is a concept in Marxist political economy that refers to "all those things with the aid of which man acts upon the subject of his labor, and transforms it."⁴ Means of labour include tools and machinery (the "instruments of production"), as well as buildings and land used for production purposes and infrastructure like roads and communications networks and so forth.⁵ A social class comprising those who do manual labour or work for wages; "there is a shortage of skilled labour in this field"⁶ Usually, the term 'Labour' is used for 'worker'. But, technically, it is not correct. Labour and Labourer (worker) are two different things.

Labour is an ability to work. Labour is a broad concept because it includes both physical and mental labour (as per above picture). Labour is a primary or human factor of production. It indicates human resource. Labourer is a person who owns labour. So labourer means worker. It is a person engaged in some work.⁷ In economics,

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⁴ Institute of Economics of the Academy of Sciences of the U.S.S.R., 1957.
labour is the general body of wage earners. In classical economics, labour is one of the three factors of production, along with capital and land. Labour can also be used to describe work performed, including any valuable service rendered by a human agent in the production of wealth, other than accumulating and providing capital. Labour is performed for the sake of its product or in modern economic life, for the sake of a share of the aggregate product of the community’s industry. The price per unit of time, or wage rate, commanded by a particular kind of labour in the market depends on a number of variables, such as the technical efficiency of the worker, the demand for that person’s particular skills, and the supply of similarly skilled workers. Other variables include training, experience, intelligence, social status, prospects for advancement, and relative difficulty of the work. All these factors make it impossible for economists to assign a standard value to labour. Instead, economists often quantify labour hours according to the quantity and value of the goods or services produced. A demand for labour laws reforms had been at the core of debate for a long time. Everything, including concentration of workforce in the unorganized sector, is blamed on rigid labour laws.

An important distinction that is popularly made nowadays in all discussions relating to labour legislation is between workers in the organised/formal sector and those in the unorganised/informal sector. Many who make this distinction do so with ulterior motives, yet we must reckon with it especially because out of the total workforce in the country, 92 percent work is in the informal sector while only eight percent work in the formal sector. At the outset it must be remembered that those who were unorganised yesterday are organised today and those who are unorganised today aspire to become the organised tomorrow. Moreover, many rights, benefits, and practices, which are popularly recognised today as legitimate rights of the workers, are those that have accrued as a result of the struggles

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carried out by the earlier generation of workers. The attempt, prevalent in some circles to pit one section of workers against the others, must therefore be carefully understood and deserves to be rejected outright.

The move towards granting protection to the Indian workforce continued in the post-independent India on the basis of the fact that the worker is a weaker partner in employer-employee equation. It was also in this background that the governments of independent India sided with the workers that resulted in enactment of about 100 codified laws which are connected to the labour. The effective enforcement of basic laws such as the Minimum Wages Act, 1948, the Interstate Migration Act, 1979, The Contract Labour (Regulation and Abolition) Act 1970, Child Labour (Prohibition and Regulation) Act, 1986, The Equal Remuneration Act, 1976 etc. is worth consideration. There are different stages in the development of labour laws. These stages are:

FIRST STAGE -

Human society has passed through two huge and lasting changes which deserve the name revolution. The first ‘the Neolithic Revolution’ the change comes a mere 10,000 years ago, when people first discovered how to cultivate crops and to domesticate animals. This is the most significant single development in human history. It happens within the Stone Age, for tools are still flint rather than metal, but it is the dividing line which separates the old Stone Age (palaeolithic) from the new Stone Age (neolithic). It has been aptly called the Neolithic Revolution. It begins in 8000 BC and continues...

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9 Act No. 11 of 1948.
10 Act No. 30 of 1979.
11 Act No. 37 of 1970.
12 Act No. 61 of 1986.
13 Act No. 25 of 1976.
through thousands of years. Its effect is to settle people on the land. It makes peasant agriculture the standard everyday activity of the human species.\textsuperscript{15}

\textbf{SECOND STAGE –}

The Industrial Revolution was a period from 1750 to 1850 where changes in agriculture, manufacturing, mining, transportation, and technology had a profound effect on the social, economic and cultural conditions of the times. It began in the United Kingdom, then subsequently spread throughout Western Europe, North America, Japan, and eventually the rest of the world. The Industrial Revolution marks a major turning point in history; almost every aspect of daily life was influenced in some way. Starting in the later part of the 18th century, there began a transition in parts of Great Britain’s previously manual labour. The Industrial Revolution witnessed the triumph of a middle class of industrialists and businessmen over a landed class of nobility and gentry. Ordinary working people found increased opportunities for employment in the new mills and factories, but these were often under strict working conditions with long hours of labour dominated by a pace set by machines. As late as the year 1900, most industrial workers in the United States still worked 10-hours a day (12 hours in the steel industry), yet earned from 20 to 40 percent less than the minimum deemed necessary for a decent life. However, harsh working conditions were prevalent long before the Industrial Revolution took place. Pre-industrial society was very static and often cruel child labour, dirty living conditions, and long working hours were just as prevalent before the Industrial Revolution.\textsuperscript{16}

Industrialization led to the creation of the factory. Arguably the first was John Lombe’s water-powered silk mill at Derby, operational by 1721. However, the rise of the factory came somewhat later when

\textsuperscript{15} Neolithic Revolution, available at en.wikipedia/wiki/Neolithic-Revolution#social-change (visited on September 16, 2012).

cotton spinning was mechanised. The factory system was largely responsible for the rise of the modern city, as large numbers of workers migrated into the cities in search of employment in the factories. Nowhere was this better illustrated than the mills and associated industries of Manchester, nicknamed "Cottonopolis", and arguably the world’s first industrial city. For much of the 19th century, production was done in small mills, which were typically water-powered and built to serve local needs. Later each factory would have its own steam engine and a chimney to give an efficient draft through its boiler. In other industries the transition to factory production was not so divisive. Some industrialists themselves tried to improve factory and living conditions for their workers. One of the earliest such reformers was Robert Owen, known for his pioneering efforts in improving conditions for workers at the New Lanark mills, and often regarded as one of the key thinkers of the early socialist movement.\textsuperscript{17}

II. DEVELOPMENT OF LABOUR LAWS AT INTERNATIONAL LEVEL

The Industrial Revolution concentrated labour into mills, factories and mines, thus facilitating the organisation of combinations or trade unions to help advance the interests of working people. The power of a union could demand better terms by withdrawing all labour and causing a consequent cessation of production. Employers had to decide between giving in to the union demands at a cost to themselves or suffering the cost of the lost production. Skilled workers were hard to replace, and these were the first groups to successfully advance their conditions through this kind of bargaining. In the year of 1832 the Reform Act which extended the vote in England but did not grant universal suffrage, six men from Tolpuddle in Dorset founded the

\textsuperscript{17} Id.
Friendly Society of Agricultural Labourers to protest against the gradual lowering of wages in the 1830s. They refused to work for less than 10 shillings a week, although by this time wages had been reduced to seven shillings a week and were due to be further reduced to six shillings.\textsuperscript{18}

In the 1830s and 1840s the Chartist movement was the first large scale organised working class political movement which campaigned for political equality and social justice. Working people also formed friendly societies and co-operative societies as mutual support groups against times of economic hardship. Enlightened industrialists, such as Robert Owen also supported these organisations to improve the conditions of the working class.\textsuperscript{19}

History of labour law concerns the development of labour law as a way of regulating and improving the life of people at work. The guilds and apprenticeship systems of the medieval world have identified labour standards as far back as the laws of Hammurabi.\textsuperscript{20} The Code of Hammurabi is a well-preserved Babylonian law code, dating back to about 1772 BC. It is one of the oldest deciphered writings of significant length in the world. The sixth Babylonian king, Hammurabi, enacted the code, and partial copies exist on a human-sized stone stele and various clay tablets. The Code consists of 282 laws, with scaled punishments, adjusting "an eye for an eye, a tooth for a tooth" (lex talionis) as graded depending on social status, of slave versus free man. Nearly one-half of the Code deals with matters of contract, establishing for example the wages to be paid to an ox driver or a surgeon. This code covered the trade, slavery and duties of workers.\textsuperscript{21}

\textsuperscript{18} \textit{Id.}
\textsuperscript{19} \textit{Id.}
\textsuperscript{20} Sixth Babylonion king, he made the law code.
Code of Hammurabi

The Law Code of Hammurabi currently resides in the Louvre Museum, Paris. The Code contemplates the whole population as falling into three classes:

The *amelu*, the *mushkenu* and the *ardu*. The *amelu* was originally a patrician, a man from an elite family, possessed of full civil rights, whose birth, marriage and death were registered. He had aristocratic privileges and responsibilities, and the right to exact retaliation for corporal injuries, but was liable to a heavier punishment for crimes and misdemeanours, higher fees and fines. To this class belonged the king and court, the higher officials, the professionals and craftsmen. Over time, the term became a mere courtesy title—already in the Code, when status is not concerned, it is used to denote anyone. There was no property qualification, nor does the term appear to be racial.²²

It is most difficult to characterize the *mushkenu* exactly. The term in time came to mean "a beggar", and that meaning has passed through Aramaic and Hebrew into many modern languages; but though the Code does not regard him as necessarily poor, he may have been landless. He was free but had to accept monetary

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²² *Id.*
compensation for corporeal injuries, paid smaller fees and fines, and even paid less offerings to the gods. He inhabited a separate quarter of the city. There is no reason to regard him as specially connected with the court, as a royal pensioner, nor as forming the bulk of the population. The rarity of any references to him in contemporary documents makes further specification conjectural.\textsuperscript{23}

The \textit{ardu} was a slave, his master's chattel, and formed a very numerous class. He could acquire property and even own other slaves. His master clothed and fed him and paid his doctor's fees, but took all compensation paid for injury done to him. His master usually found him a slave girl for a wife (the children were then born slaves), often set him up in a house (with farm or business) and simply took an annual rent of him. Otherwise, he might marry a free woman (the children were then free), who might bring him a dower that his master could not touch, and at his death, one-half of his property passed to his master as his heir. He could acquire his freedom by purchase from his master, or might be freed and dedicated to a temple, or even adopted, when he became an \textit{amelu} and not a \textit{mushkenu}.\textsuperscript{24}

Slaves were recruited by purchase abroad, from captives taken in war, or by freemen degraded for debt or crime. A slave often ran away; if caught, the captor was bound to restore him to his master, and the Code fixes a reward of two shekels that the owner must pay the captor. It was about one-tenth of the average value of a slave. To detain or harbour a slave was punishable by death. So was an attempt to get him to leave the city. A slave bore an identification mark, removable only by a surgical operation, that later consisted of his owner's name tattooed or branded on the arm.\textsuperscript{25}

\textsuperscript{23} Id.  
\textsuperscript{24} Id.  
\textsuperscript{25} Id.
On the other hand, on the great estates in Assyria\textsuperscript{26} and its subject provinces there were many serfs, mostly of subject race, settled captives, or quondam slaves; tied to the soil they cultivated and sold with the estate, yet capable of possessing land and property of their own. There is little trace of serfs in Babylonia, unless the \textit{mushkenu} is really a serf. Despite the multitude of slaves, hired labour was often needed, especially at harvest. This was a matter of contract, and the employer, who usually paid in advance, might demand a collateral against fulfillment of the work. Cattle were hired for ploughing, working the watering machines, carting, threshing, etc. The Code fixed a statutory wage for sowers, ox-drivers, field-labourers, and hire for oxen, asses, etc. There were many herds and flocks. The flocks were committed to a shepherd, who gave receipt for them and took them out to pasture. The Code fixed his wages. He was responsible for all care, must restore ox for ox, sheep for sheep and must breed them satisfactorily. Any dishonest use of the flock had to be repaid tenfold, but loss due to disease or wild beasts fell upon the owner. The shepherd made good all loss due to his own neglect. If he let the flock feed on a field of crops, he had to pay damages fourfold; if he turned them into standing crops when they ought to have been folded, he paid twelve fold.\textsuperscript{27}

Before the Industrial Revolution, craftsmen were their own masters, did work according to their convenience and sold the goods in the market on a barter system. The gradual disappearance of the handicraft method of production, making way for the development of large scale industries producing goods on a mass scale and at cheaper

\textsuperscript{26} Assyria was centered on the Upper Tigris river, in northern Mesopotamia (present day Northern Iraq). The Assyrians came to rule powerful empires at several times. It was named for its original capital, the ancient city of Assur.

cost, changed the status of the craftsman to that of a wage-earner.\textsuperscript{28} Latin-American authors point to the laws of the Indies promulgated by Spain in the 17\textsuperscript{th} century for its new world territories.\textsuperscript{29} In 1886, at Chicago USA different workers’ organizations held demonstration and agitations demanded eight hours work etc. which had effected the workers throughout the world on May Day and thereafter necessary amendments were made in the labour laws.

### III. DEVELOPMENT OF LABOUR LAWS IN INDIA

The labour movement has been an instrumental in the enacting of laws protecting labour rights in the 19th and 20th centuries. The labour movement has contributed a lot for the enactment of laws protecting labour rights in the 19th and 20th centuries. The history of labour legislation in India can be traced back to the history of British colonialism. The influences of British political economy were naturally dominant in sketching some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for chartering workers became necessary. This was obviously labour legislation in order to protect the interests of British employers.\textsuperscript{30}

However in India in the 19th century at least 80\% of the population was working class. In order to be considered middle class have at least one servant. Most servants were female. (Male servants were much more expensive because men were paid much higher wages). Throughout the 19th century 'service' was a major employer of women.\textsuperscript{31} Labour rights have been integral to the social and economic development since the industrial revolution. Labour law arose due to the demands of workers for better conditions, the right to organize,

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\textsuperscript{29} Labour law: Historical Development of Labour Law, available at Britannica online Encyclopedia (visited on September 20, 2011).
\textsuperscript{31} K. M. SARAN, \textit{Labour in Ancient India}, 30 (1957).
and the simultaneous demands of employers to restrict the powers of workers' many organizations and to keep labour costs low. Employer’s costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions.32 The development of Indian labour laws can be divided in three periods:

a. Ancient Period

Labour is constituted by those who do not possess means of production. They sell their physical labour skilled or unskilled to earn their livelihood. Assuming this, it can safely be said that in the Sanskritized society in India, Shudra constituted the labour force. The three ancient countries that had seen it, were India, China and Egypt whose civilizations and cultures had reached the peak of glory in the past and which had contributed enormously to the development of science, arts and literature.33

The ancient Indians had also excelled in agriculture, industry, trade and commerce. Agriculture industry was developed in these days. Agriculture grew more prominent with time as the community gradually began to settle down in post-Rigvedic times. The transition from the early to the later Vedic period was marked by the emergence of agriculture as the dominant economic activity and a corresponding decline in the significance of cattle rearing. Agriculture grew more prominent with time as the community gradually began to settle down in post-Rigvedic times. The economy was based on bartering with cattle and other valuables such as salt or metals. They had established a reputation for having developed the science of agriculture and for having acquired splendid mastery over various arts and crafts. Historians are one-idea in suggesting that agriculture was quite a flourishing industry in ancient India. In their opinion the practice of ploughing could be traced back even to the Indo-Iranian

32 Supra note, 30.
33 Id.
times. The description given by Hiuen Tsang of a wide variety of crops grown in India is no doubt a very reliable proof of the extent to which agricultural industry was developed in those days. More evidences are available in Kautilya’s Arthashastra and in quite a good number of ancient Indian scriptures.34

Several changes went hand in hand with this. For instance, several large kingdoms arose because of the increasing importance of land and long distance trade. Asoka’s inscriptions show that India had connections with Asian minor and near-west countries.35 Employers were expected to treat the labourers kindly and speak to them in a soft and gentle manner. "He should gratify them by gentle looks and smiles, soft words, good feast and clothes, and betels and wealth." Ashoka, in his Rock Inscription XIII, ordains kind and gentle treatment of the ‘dasas.’ Artisans were regarded in a special manner devoted to the royal service, and capital punishment was inflicted on any person who impaired the efficiency of a craftsman by causing the loss of a hand or an eye.

Mohenjo-Daro was a great industrial centre. Mohenjo-daro was most likely one of the largest cities of the ancient Indus Valley Civilization, also known as the Harappan Civilization. The known Economic history of India begins with the Indus Valley civilization. The Indus civilization’s economy appears to have depended significantly on trade, which was facilitated by advances in transport. Around 600 BC, the Mahajanapadas minted punch-marked silver coins. The period was marked by intensive trade activity and urban development. By 300 B.C., the Maurya Empire united most of the Indian subcontinent. The political unity and military security allowed for a common economic system and enhanced trade and commerce, with increased agricultural productivity.36 The prehistoric Indus

34 Supra note 31 at 11.
35 Id.
culture gave rise to the Indus Valley Civilization around 3000 BC. The civilization spanned much of what is now Pakistan and North India, but, the paramount duty of the king was to look to their welfare suddenly went into decline around 1900 BC.

Indus Civilization settlements spread as far west as the Iranian border, with an outpost in Bactria, and as far south as the Arabian Sea coast of western India in Gujarat. Among the settlements were the major urban centers of Harappa and Mohenjo-daro, as well as Lothal, Kalibangan, Dholavira, Rakhigarhi etc. At its height, Mohenjo-daro was the most advanced city in ancient Hindustan, displaying remarkably sophisticated engineering and urban planning for its time. Mohenjo-Daro maintained trade relations with Southern India, Central India and North-Western India. The excavations at Mohenjo-Daro prove that there were four different main classes—

(i) the learned class (ii) the warriors (iii) the traders and artisans and (iv) manual labourers.\(^37\) Industrial growth in India corresponds with the ups and downs in the Indian polity. In the colonies of Harappan Civilization, Mesopotamian trade relating things found, had a surprising effect.

Labour formed the back-bone of Hindu society. The authors of the Dharma and Arthasastras repeatedly observe that a contented labour class depends the growth of society and stability of government. It was the paramount duty of the king to look to their welfare and to defend their cause in case of difference of opinion between the labourers and their employers. There are some scholars who have given the following views---

Sukra\(^38\) Says, "According to the qualifications of the workers, there should be the rates of wages, fixed by the king carefully for his own welfare."

\(^38\) Shukra is the name of the son of Bhrigu, and preceptor of the Daityas, and the guru of the Asuras.
Brihaspathi\textsuperscript{39} says, "When a master does not pay wages for the labour stipulated, after the work has been performed, he shall be compelled by the king to pay it, and a proportionate fine besides." Disputes regarding wages were decided personally by the king on the strength of evidence furnished by witnesses.

Narada Says, "A master shall regularly pay wages to the servant hired by him, whether it be at the commencement, at the middle, or at the end of his work, just as he had agreed to." "An employer who postpones payment and fails to pay wages shall be punished with a fine of 12 panas or 5 times the amount of the wages."

Kautilya\textsuperscript{40} says,"In the absence of witnesses, the master who has provided work for the servant shall be examined."

Arthasastra provides some important clues on the extent and nature of slavery during this period. Apart from scattered references, the main relevant portion is, which discusses slavery under the significant title "rules regarding slaves and labourers".\textsuperscript{41} Wages in ancient India appear to have been fairly high, for again and again the law-givers observe that wages were expected to enable the labourer and the members of his family to lead a normal standard of life.

Labourers in ancient India enjoyed far more privileges than today. They were paid well, treated kindly and accommodated comfortably.\textsuperscript{42} But they were not forced to work. Labourers, who were attached to an employer for a long time, were entitled to several concessions. "The king should grant half the wages for life without work to the man who has passed 40 years in his service, and if the labourer was not living, this is to be given to the widow or son or to his well-behaved daughters. Every labourer is entitled to a respite of 15 days every year." Again, "the employer should give the servant one-

\textsuperscript{39} "lord of prayer or devotion" also known as Deva-guru, is a Hindu god and a Vedic deity.
\textsuperscript{40} Writer of Arathshastra and Guru of Chandragupta Mauryia.
\textsuperscript{41} Arthasastra chapter 13, book III.
eighth of the salary by way of reward every year and if the work has been done with exceptional ability, one-eighth of the services rendered." Sickness was not to be taken advantage of for dispensing with the services of labourers.\footnote{Id.}

On the other hand, they were to be given wages even when they were confined to their beds. "Even a slight portion should not be deducted from the full remuneration of a labourer, who has been ill for half a fortnight; but if the disease were to continue long, the labourer was entitled to three-fourths of his remuneration until the period of his recovery. But if he were permanently incapacitated, then three months’ wages were to be paid to a servant who had served for five years, and six months’ wages to those who had served longer. Every labourer was to be given enough leisure to attend to his domestic duties."\footnote{Id.}

"For the discharge of their domestic duties, servants should be granted leave for one \textit{yama}\footnote{The local currency is the Ethiopian Birr (ETB), made up of 100 cents. Birr notes are available in denominations of 5, 10, 50 and 100. Visitors may import an unlimited amount.} during day-time and three \textit{yamas} by night, and a servant who has been appointed for a day should be allowed half a \textit{yama}." Wages were thus fixed not merely for the labourers working under an employer, but also for artisans, for, in those days, the term labourer included all kinds of workers–artisans, domestic servants and industrial labourers.

In short, the term ‘labourers’ included (1) Agricultural labourers employed for village, watching and harvesting of crops, (2) Pastoral labourers employed for tending and grazing cattle and for dairy-production, (3) Industrial labourers employed in spinning, weaving and other manufactures, (4) Mercantile labourers employed for hawking wares, and (5) household labourers employed for domestic service.
Hiuen Tsang said, discussing the conditions of the India, he saw, "The families are not entered on registers and the people are not subjected to forced labour. When the public services require it, labour is exacted but paid for; the payment is in strict proportion to the work done." In Manu Samriti there are references of contracts of master servant relations. In this period master servant suits were not maintainable in the courts because servant was not an independent legal person. India had trade relations with a number of foreign countries in the ancient India.

Mauryan India had numerous private commercial entities. These existed purely for private commerce and developed before the Mauryan Empire itself. Irfan Habib historian of Indian history, had sought to present a survey of the entire pre-colonial history of India in two major papers written in 1965 and 1982. Habib believes that the principal contours of peasant production had evolved in the Gupta period - it meant a peasantry divided on caste lines and a great divide between the peasantry and the dalit agricultural labour. Subsequent technological changes did little to subvert peasant production and indeed reinforced it.

This period also saw the emergence of the village community controlled by influential landholders, collectively controlling other peasants, the landless dalit labourers and village artisans and acting as an intermediary between the tax collecting state and the peasantry. This lasted till the British period despite significant changes in the

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46 Supra note 42.
47 "Laws of Manu", also known as Mānava-Dharmaśāstra, The text presents itself as a discourse given by Manu, the progenitor of mankind to a group of seers, or rishis, who beseech him to tell them the "law of all the social classes" Manu became the standard point of reference for all future Dharmaśāstras that followed it. According to Hindu tradition, the Manusmriti records the words of Brahma.
49 Id.
manner in which the state or its representatives appropriated agrarian surplus.\textsuperscript{50}

b. Medieval Period

The history of the medieval period begins with the fall of Hindushahi Kingdom. India had seen many governments. There were strong Hindu kingdoms till 800B.C. Vasco-de-Gama with the help of a Gujrati Abdul Murid reached the port of Kalicuth on May 17, 1498. He was welcomed by Jamorin who was the local administrator. He provided trade facilities to Vasco-de-Gama. The southern state of Kerala had maritime business links with the Roman Empire from around 77 CE. Islam was introduced in Kerala through this route by Muslim traders.\textsuperscript{51} India was in no way inferior to any European country during the Middle Ages. India was considered as the ‘workshop of the world’ and Indian cotton textiles held a pride of place in international markets. In Mugal period the ruling classes exploited labourers. The Mugal state was a class state in which the ruling classes exploited the fruits of the labours of the working peoples. Under the Mughals a labourer had no free will of his own. There is no difference between him and the commodities he produced. The conditions of labour were no better than slavery. If there was any skilled worker of repute, a master craftsman, he would immediately be monopolized by the king.\textsuperscript{52}

The position of labour did not improve at all. The supply was more than the demand and the demand was restricted mainly to the capital. Labourers could be taken by force and paid whatever the master liked to pay. The efficiency of labour in India compared unfavourably with the efficiency of labour outside India. Besides the fact that the large and growing supply of cheap labour in India always

\textsuperscript{50} Available at http://revolutionarydemocracy.org/rdv11nl1/periodisation.htm (visited on July 14, 2011).
\textsuperscript{51} V.V.Giri, Labour Problems in Indian Industry, 391 (1972).
\textsuperscript{52} Dr. V.K.Sexena, Economic History of India Under The Mughals, 64 (1990).
undercut wages and was willing to put up with the tyrannies of rich men and officials, there was the importation of slaves and eunuchs from Africa and from the east of India. The new style of architecture began by Sher Shah Suri was greatly developed by Akbar who was the first Mughal emperor, who had the time to undertake construction on a large scale. In Mughal period, the organization of labour in the textile industry was quite varied. Workers also worked on the basis of wages. The building industry was another major sector of urban employment. Muhammad-bin-Tughlaq and Firuz Shah Tughlaq were also great builders and employed a large number of workmen. In consequence, brick constructions increased manifold in the 14th century. According to Barani, a work force of 70,000 was engaged in the construction of Ala-ud-din Khalji's buildings.

In 1615 Mughals used force to take over Khokhar diamond mines of Bihar, and in 1617 they annexed part of Orissa and Kishtwar, south of Kashmir. In the northeast Shan people had been moving down from Burma for two centuries. These Ahoms along the Brahmaputra River had become Hindus but without its caste and ritual restrictions. Ahom leaders mobilized their men into the military or used them as forced labour to build roads and irrigation systems.

The medieval period also witnessed a general withdrawal of women from agricultural field operations and their economic confinement to the home. For example, in seventeenth-century Bengal, women used to join men in transplanting paddy (rice), in reaping and spreading it to dry in the sun, and in husking it. With the deepening of Islamic influence after the seventeenth century, however, the division of labour became increasingly polarized along gender

53 Ibid at 130-131.
54 Bandyopadhyay and Vidya Ramamurty, Indian History, B-125 (2007).
lines, so today in Muslim areas only men perform field operations the transplanting, reaping, and spreading of paddy while only women do the husking, which is considered a domestic chore.\textsuperscript{57}

Slavery as forced appropriation of labour, skill or sexual gratification appears to have existed in various forms from the pre-500 BC period, though never as a legitimate and generally acceptable widespread practice. Historical consensus points to an intensification of slavery under India’s Islamic period. In many parts of India, caste barriers were fluid, and the working classes formed a type of vast labour pool, from which specializations were formed as and when needed without consideration of caste.\textsuperscript{58} The slave appears to have retained degrees of control over money, property, right to compensation or wage for labour, and had the right of redemption, and deceiving or depriving a slave of these rights was also a punishable offence. Slavery also appears to have been of limited duration or of temporary status, as only specific conditions are given for slavery for life.\textsuperscript{59}

History shows that Sultan Alauddin Khilji owned 50,000 slave-boys, in addition to 70,000 construction slaves. Sultan Firoz Shah Tughluq is said to have owned 180,000 slaves, roughly 12,000 of whom were skilled artisans. High demand for skilled slaves, and India’s larger and more advanced textile industry and agricultural production, architecture, demonstrated to its neighbours that skilled labour was abundant in the subcontinent leading to enslavement and export of large number of skilled labour, through successful invasions. After sacking Delhi, Timur enslaved several thousand skilled artisans, presenting many of these slaves to his subordinate elite, although reserving the masons for use in the construction of the Bibi-Khanym Mosque in Samarkand. Young female slaves fetched higher market price than skilled construction slaves, sometimes by 150% because of

\begin{footnotesize}
\begin{enumerate}
\item K. S. Lal, \textit{Muslim Slave System in Medieval India}, 50 (1994).
\item Anal Kumar Chattopadhyay, \textit{Slavery in India}, 28 (1959).
\item Id.
\end{enumerate}
\end{footnotesize}
their identification in Muslim societies as kafirs, "non-believers", Hindus were especially in demand in the early modern Central Asian slave markets, with Indian Hindu slaves specially mentioned in waqafnamas, and archives and even being owned by Turkic pastoral groups.\(^{60}\)

**c. British Period**

The history of labour legislation in India is naturally interwoven with the history of British colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for indenturing workers became necessary. This was obviously labour legislation in order to protect the interests of British employers.

An English traveller Captain Best who had defeated the Portuguese near Surat in 1612 got permission from Jahangir to set up a factory at Surat for trade. In 1618, Jahangir allowed the British for trade and for setting up factory in any part of Mugal Empire. First French expedition party under the leadership of Franco-Martin reached India in 1667. He set up a factory in Surat in 1668.\(^{61}\) From the beginning, the structure of the Dutch and the English East India Company was different from the Portuguese. These were joint stock companies which have been called the precursors of the modern multinational, multiproduct business corporations in the sense that their trade was world-wide and implied a world-wide distribution and marketing system.\(^{62}\) The British destroyed the ancient industries of India, which were village centric. This led to the downfall of self-sufficient rural economy of the country.

The foreign trade policy gave advantage to factory-made imported goods. Although there are some isolated instances of the setting up of modern industrial units in the earlier years of the 19th

\(^{60}\) Satish Chandra, *History (Medieval India) part-II*, 396 (2013).
\(^{62}\) *Supra note 60*.
century, its real beginning should be traced from the year 1854 when a coal mine and the first jute and cotton textile mills went into operation. Of these the last one was started by a Parsee entrepreneur. The introduction of railways in the previous year had indeed given, as foreseen by Karl Marx, an impetus to the growth of industry. “The coming of railways in India,” Jawaharlal Nehru says, “brought the industrial age in its positive side, so far only the negative aspect in the shape of manufactured goods from Britain had been in evidence. In 1860 the duty on the imported machinery which was imposed so as to prevent industrialization of India, was removed and large scale industry began to develop, chiefly with British capital. First came the jute industry of Bengal, with its nerve centre at Dundee in Scotland, much later cotton mills grew up in Ahmedabad and Bombay, largely with Indian capital and under Indian ownership, then came mining.”

History begins when men actually produce their means of subsistence. At a minimum, this involves the production of food and shelter. Marx argues that their first historical act is, therefore, the production of material life. Production is a social enterprise since it requires co-operation. Men work together to produce the goods and services necessary for life.

In that period, cotton mills, jute mills and coal mines provided employment to 212,720, 144,879 and 89,995 persons respectively. Nearly 700,000 workers were employed in modern factories worked by mechanical power, alone.” This early phase of industrialization was marked by inhuman exploitation of the workers who were paid a mere pittance and made to work for long hours in insanitary conditions, with hardly any provision for periodical rest or prescribed holidays. Prof. Bipan Chandra gives a brief sketch of the working conditions of this period in the following words: “With the advent of modern

65 *Supra* note 51 at 75.
66 An Indian historian, specializing in economic and political history of modern India.
industrialism and the accompanying capitalist system came all the evils that had earlier warped the lives of generations of English workers and the early generations of Indian men, women and children working in modern industries were subjected to as ruthless and revolting fit exploitation as known to the modern man. In the beginning an average perennial factory worked day night hours, i.e., eleven and a half hours a day or eighty and a half hours a week, in the cold weather, and fourteen hours a day or nintyeight hours a week, in hot weather. Later, from 1887, when electric light was introduced in the factories, the daily hours of work were extended even further and ranged from twelve and a half to sixteen in different localities.\footnote{Bipan Chandra, \textit{The Rise and Growth of Economic Nationalism in India}, 323 (1977).}

The plantation industry in Assam was the first to attract legislative control and number of Acts were passed from 1863 onwards. The most intolerable lot among all the segments are of employees in the modern industrial sector was undoubtedly that of the plantation workers. Mostly innocent tribal folk and the poorest of the poor landless labourers from Central India and other backward districts of Bihar, UP, and so on, these plantation workers were recruited, in reality enticed with many false promises and pretences, by unscrupulous agents and handed over to the despotic plantation managements. Instead of offering any legal protection to the suffering plantation labourers, the existing laws only armed the plantation management with wide powers over the labourers. The laws armed the plantation management to arrest and imprison the workers under certain circumstances. Indeed, there were various enactments or amendments to earlier laws between 1859 and 1882 to strengthen the authority of the managements over the life and liberties of the plantation workers.\footnote{Supra note 51 at 74.}

Bombay was the pioneer in the formulation of legislation on labour. Some form of trade union organizations came into existence

\footnotesize{67 Bipan Chandra, \textit{The Rise and Growth of Economic Nationalism in India}, 323 (1977).} 
\footnotesize{68 Supra note 51 at 74.}
after the establishment of factories in India in the 1870. The Indian Factory Act was enacted in 1881, in which employment of child labour was prohibited. A social worker Mr. N. M. Lokhande prepared a study report on their working conditions and submitted the report to the Factory Labour Commission. The British enacted the Factories Act with a really self-centered motive. It is well known that Indian textile goods offered serious competition to British textiles in the export market.69

In order to make India labour costlier, the Factories Act was first introduced in 1883 because of the pressure brought on the British Parliament by the textile moguls of Manchester and Lancashire. Thus received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly for the welfare of the labour force the real motivation was undoubtedly the protection of their vested interests. In 1886 May day demonstration in Chicago showed to the workers of the entire world the need to join hands in the struggle against capitalism. In a memorandum submitted to the Government of India in 1888, Surendranath Bannerji, one of the leading nationalist politicians of the day, said, "The coolies (this was the contemptuous term widely used to denote the plantation labourers) were in a state of quasi-slavery."70

In the 1890s, the entrepreneur Jamsetji Tata launched plans to move into heavy industry using Indian funding. The Raj did not provide capital, but aware of Britain's declining position against the U.S. and Germany in the steel industry, it wanted steel mills in India so it did promise to purchase any surplus steel Tata could not otherwise sell. The Tata Iron and Steel Company (TISCO), headed by his son Dorabji Tata (1859–1932), opened its plant at Jamshedpur in

69 Supra note 60.
70 Id.
Bihar in 1908. It used American technology, not British and became the leading iron and steel producer in India, with 120,000 employees in 1945. TISCO became India's proud symbol of technical skill, managerial competence, entrepreneurial flair, and high pay for industrial workers.\(^{71}\)

Bombay Mill -Hands association came into existence in 1890.\(^{72}\) After the First World War, labour legislation took shape at a rapid rate. The reasons generally ascribed for this accelerated pace are many. In the political field the introduction of the Montagu-Chelmsford reforms and association of popular representatives in the central legislature and the governments in the provinces served to bring the various problems of the country before public attention. The country received its first constitution under the Reforms of 1919, conferring a modified degree of autonomy on the provinces. So far as labour was concerned the central legislature was given the powers to legislate on all matters with exception housing.\(^{73}\)

All labour legislations in India under the Government of India Act, 1919 were enacted by the central legislature. In India there were number of labour laws which were applicable in different sectors and also there existed many trade unions. In 1923 Workman Compensation Act was passed, it was the most important measure of the socio-economic justice. On July 4, 1929 the Imperial Government of Britain constituted the Royal Commission on Labour in India with the express mandate to enquire into and report on the existing conditions of labour in industrial undertakings and plantations in British India.\(^{74}\) Recommendations under the Commission led directly to most of the legislation being passed from 1931 onwards. Before the Government of India Act,1935 came into

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72 Supra note, 51 at 87.
force, legislative powers in the field of labour were held jointly by the central and provincial governments. While this was continued under the constitutional provisions of the Government of India Act, 1935, there was a demarcation between provincial and central functions regarding legislation as well as administration. It was also provided that if central legislation passed any subjects involving “the giving of directions to a province as to carrying into execution” of such legislation, it must obtain the previous sanction of the Governor-General.  

The Bombay Industrial Disputes Act, 1938 was the first to provide for permanent machinery in the shape of an industrial court for the settlement of disputes. This Act was later replaced by still more comprehensive legislation known as the Bombay Industrial Relations Act, 1946. In 1943 appointed a Labour Investigation Committee known as Rege Committee to examine the exiting labour legislation and make necessary recommendations. The committee in its report 1946 pointed out some anomalies in respect of enforcement of labour legislations, the slow and tardy implementation of the recommendations of the Royal Commission in respect of labour legislation, varying standards of inspection with miserably small inspectorates and absence of social security legislation etc.

The Bombay Industrial Disputes Act was amended many times i.e. 1946, 1949 etc. In December 1947, an industrial conference was held. Under it Industrial Truce Resolution was adopted. The Resolution called upon labour and management to maintain industrial peace and avert strikes, lock-outs and slowing down of production for a period of three years. As an additional measure to solve the disputes between the employers and workers, the tripartite and

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75 Supra note 73 at 7.
76 Supra note 42 at157.
bipartite machinery of the labour conference played its part.\textsuperscript{79}Industrial Disputes Act, 1947 was passed and implemented.

\textbf{d. Post Independence Period}

\textbf{i) Constitution of India}

The Constitution of India, which came into force on January 26, 1950, retains the old division of powers between the union and states as in the previous Government of India Act, 1935. An important factor that is not much recognized, but which still prevails in many organised sector units is fixing and revising wages through collective bargaining. The course of collective bargaining was influenced in 1948 by the recommendations of the Fair Wage Committee, which reported that three levels of wages exist – minimum, fair, and living. These three wage levels were defined and it was pointed out that all industries must pay the minimum wage and that the capacity to pay would apply only to the fair wage, which could be linked to productivity.\textsuperscript{80}

The Constitution of India in its preamble has declared that it aims at securing for all citizens-‘justice, social, economic and political.’ These objectives and social goals, for which the Indian Constitution has been founded, reflect the concern and dedication of the people of India to establish a really welfare State for the good of all people irrespective of caste, language, religion and belief. The executive, legislative and judiciary processes are thus enjoined to adhere to this social philosophy and secure content of social services for the people.\textsuperscript{81}

In \textit{Crown Aluminium Works v. Workmen},\textsuperscript{82} Mr. Justicee Gajendragadkar observed that the Indian Constitution has given a place of pride to the attainment of the ideal of social and economic justice, and that is the basis of new guiding principles of social welfare

\textsuperscript{79} \textit{Ibid} at111.
\textsuperscript{81} \textit{Supra} note 77 at 214.
\textsuperscript{82} AIR 1958 SC 34.
and common good. Indeed the modern labour legislation in India bears a striking impact of the basic law of the country.

Thus, the enactment as well as the administration of labour laws is the responsibility of both the union and state governments, being on the Concurrent List\(^{83}\) of the Constitution. The Constitution of India has adopted several clauses concerning labour enunciated in the Philadelphia Declaration.\(^{84}\)

The philosophy of social justice, enshrined in the various provisions of the Constitution, has given a sweeping content of social justice to Indian labour legislation. It is neither narrow, nor one-sided or pedantic, and is not confined to industrial jurisprudence alone. Its sweep is comprehensive. It is founded on the ideal of socio-economic equality and its aim is to assist the removal of disparities and inequalities. Indeed, modern Indian labour legislation is enacted to carry out the constitutional promises and pledges to the people of India in general, and the working class in particular. The constitutional commitment for labour is direct and it involves the creation of a new social order through law for the benefit of the common and needy man. The framers of the Indian Constitution realized the significance, the new wind of change, and incorporated Directive Principles of State Policy which it shall be the duty of the State to apply in making its laws. \(^{85}\) There are certain provisions in Constitution of India and those are meant for the labour. These are:-

| Art. 19 | Right to freedom |
| Art. 23 and 24 | Right against exploitation. |
| Art. 32 | Right to constitutional remedies. |
| Art. 39 | Equal pay for equal work. |
| Art. 41 | Right to work. |


\(^{84}\) The 26th Session of the ILO at Philadelphia, May 10,1944.

\(^{85}\) Supra note 77 at 219.
Art.42 Just and humane conditions of work and maternity relief.
Art.43 Living wage, etc. for workers.
Art.43-A Participation of workers in management of industries.
Art.136 Special leave to appeal to the Supreme Court.
Art.226 Power of High Court to issue certain writs.

The Constitution guarantees all such fundamental rights concerning labour also. The State shall not deny to any person equality before law or the equal protection of laws. Article 19(i) provides that all citizens shall have the right (a) to freedom of speech and expression (b) to assemble peaceably without arms; (c) to form association and unions; (d) to practise any profession or to carry on any occupation, trade and business. There cannot be any right which is injurious to the community as a whole. If people were given complete and absolute liberty without any social control the result would be ruin.86

Article 23 protects the individual not only against the State but also against private citizens. It imposes a positive obligation on the State to take steps to abolish evils of “traffic in human beings” and beggar and other similar forms of forced labour wherever they are found.87

Article 24 of the constitution prohibits employment of children below 14 years of age in factories and hazardous employment. This provision is certainly in the interest of public health and safety of life of children.88

State has to ensure for its people adequate means of livelihood, fair distribution of wealth, equal pay for equal work and protection of children and labour.89

The State is directed to ensure to the people within the limits of its economic capacity and development in employment, education

87 Ibid at 237.
88 Ibid at 240
and public assistance in cases of unemployment, old age, sickness and disablement etc.\textsuperscript{90}

Article 42 relates to economic rights. It provides that State is required to make provisions for just and humane conditions of work and for maternity relief.

Article 43 requires the State to strive to secure to the workers work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Article 43-A provides that the State should take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

There are Constitutional provisions relating to appeals against the awards of the industrial tribunals etc. Under the Constitution, any person aggrieved by a tribunal’s award can, on the violation of Fundamental Right guaranteed by part III, move the Supreme Court or the High Court under Article 32 and Article 226. Another alternate course for aggrieved person is to invoke the Supreme Court’s discretionary jurisdiction under Article 136. \textsuperscript{91}

These Fundamental Rights are obligations and responsibilities towards their members and society and Directive Principles are more of moral rather than legal precepts, for they are not enforceable and are non-justiciable. But their incorporation in the Constitution makes the Government answerable to people for promoting well being of the common man. These are a guidance or directive to the State in regard to the manner in which it should exercise power. The form and extent of labour legislation in India is an index of the concern and interest of the State in keeping with its goals. \textsuperscript{92}

Under the Constitution of India, labour is a subject in the Concurrent List, where both the Central and State Governments are

\textsuperscript{90} Ibid at Art. 41.  
\textsuperscript{91} Supra note 77 at 215.  
\textsuperscript{92} Ibid at 217.
competent to enact legislation subject to certain matters being reserved for the Centre.

**Constitutional Status**

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<tr>
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<td>Entry No. 61: Industrial disputes concerning Union employees.</td>
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<td>Entry No. 65: Union agencies and institutions for &quot;Vocational ... training...&quot;</td>
<td>Entry No. 24: Welfare of labour including conditions of work, provident funds, employers’ liability, workmen compensation, invalidity and old age pension and maternity benefit.</td>
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Matters relating to social security are Directive Principles of State Policy and the subjects in the Concurrent List. The following social security issues are mentioned in the Concurrent List.

**Item No. 23:** Social Security and insurance, employment and unemployment.

**Item No. 24:** Welfare of labour including conditions of work, provident funds, employers’ liability, workmen’s compensation, invalidity and old age pension and maternity benefits.

However, compulsory service for public purposes, such as in case of flood, forest fire or military service is excluded from the operation of this principle. This exception is made in order to enable the government to carry out its obligations even by conscripting people in times of major calamities.
Article 39 contains economic principles. These principles, as a matter of fact, deserve to be positive rights. However, it must be remembered that economic rights could not be made positive rights and enforceable by a court of law unless an economic base is created. Parliament in India passed the Equal Remuneration Act, 1976. The Act was amended in 1987. Thus Directive Principle has been judicially enforced by the Supreme Court which laid down that the State must give equal pay for equal work.93

In a Madras case, it was urged that a worker whose continuous employment suffered because of the government's failure to supply electricity to the industry is entitled to get compensation as a result of Article 41. This plea was turned down by the court.94

In D. Bhuvan Mohan Patnaik v. State of A.P.95 the Supreme Court relied upon Article 42 and observed as follows: “We cannot do better than say that the Directive Principle contained in Article 42 may benevolently be extended to living conditions in jail. There are subtle forms of punishment to which convicts and undertrial prisoners are sometimes subjected. It must be realized that these barbarous relics of a bygone era offend against the letter and the spirit of the Constitution”. Parliament passed the Maternity Benefit Act, 1961. This Article was relied upon, along with Articles 14, 15 and 21, by the Supreme Court for formulating guidelines to combat sexual harassment at the workplace.96

In Bijay Cotton Mills Ltd. v. State of Ajmer,97 Article 42 was relied upon by the Supreme Court to justify the legislation providing for minimum wages under the Minimum Wages Act, 1948. Legislation affecting unfair labour practices was also considered in the light of this Article. Under Article 42-A participation of workers in the

94 Radhakrishna Mills Ltd. v. Special Industrial Tribunal, AIR 1954 Mad 686.
95 AIR 1974 SC 2092, 2096.
97 AIR 1955 SC 33.
management of industrial undertakings is expected to increase industrial production and to secure industrial peace.

Article 136 enables the Supreme Court to give special leave to appeal from any order in any cause made by any court or a tribunal. It may grant special leave in any cause i.e. civil, criminal, labour etc. Moreover the appeal may be against the judgement or order of any court or tribunal.\(^98\)

Article 226 under High Courts have power to issue these writs. The Supreme Court has power to issue writs only for the enforcement of fundamental rights. The power of High Court is wider. High Court can issue writs “for any other purpose” it indicates enforcement of any right other than the fundamental rights.\(^99\)

**ii) Labour Laws**

Labour legislation is one of the most dynamic and vital institutions in modern society and has a much larger scope and deeper significance in national life than anything that could be effected by an outside organization or external force.

The pre-war\(^{100}\) history of labour legislation in India generally is characterised by a protective interest in respect of workers. Stringent statutes were there, but these were more the exception than the rule. Legislation that was meant to supervise trade unions was also in a larger sense promotive of the organisational needs of workers, and in no mean measure enlarged the legal scope of the right of association and of collective bargaining. Minimal wages and standards were a blessing to workers who were unorganised, and even to those who though organised were unable or unwilling to exert sufficient pressure at a bargaining table. Maternity benefits as well as legislation which protected women and children from being pushed into certain kinds of

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98 *Supra* note 93 at 657.
99 *Ibid* at 849
100 Before Second World War.
employment, made imperative the observance of certain norms in their employment.101

Indian labour policy has shown a remarkable degree of consistency coming down from the British times. Classification of labour legislation at present in force in India is under the following headings:-

1. Laws relating to children and women
   i) The Child Labour Prohibition Act
   ii) The Maternity Benefit Act
   iii) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

2. Laws relating to specific industries, i.e:
   i) Factories and Workshops
   ii) Mines and Minerals
   iii) Plantations
   iv) Transport, i.e (a) Railways (b) Ports and Docks (c) Inland Water (d) Air (e) Road
   v) Shops and Commercial Establishments
   vi) Construction Works
   vii) Agriculture

3. Laws relating to specific matters, i.e:
   i) Wages
   ii) Indebtedness
   iii) Welfare
   iv) Housing
   v) Forced Labour

4. Laws relating to Social Security-
   (a) Employee’s Compensation (b) Maternity Benefits (c) Insurance (d) Retirement Benefits (e) Bonus Schemes (f) Payment of Gratuity

5. Laws relating to trade unions and industrial relations.


The Royal Labour Commission on labour, 1929, had promised lot in the direction of social security, social welfare, wages, social insurance, industrial relations, industrial adjudication, collective bargaining etc. In sequel to the recommendations made in the Report of the National Commission on Labour, series of labour enactments were passed. First National Labour Commission (NLC) was constituted on December 24, 1966 when Jagjivan Ram was the Union Labour Minister, under the Chairmanship of Dr. Gajendragadkar to study and review the conditions of labour since 1947, the labour legislation and the living conditions of workers. The Resolution of the Government of India that announced the appointment of Commission set two tasks: i) to suggest rationalisation of existing laws relating to labour in the organised sector and ii) to suggest an Umbrella Legislation for ensuring a minimum level of protection to the workers in the unorganised sector. It has also suggested the various factors that contributed to the creation of the context in which the Government deemed it necessary to appoint the Commission. The Commission took into account the need to ensure a minimum level of protection and welfare to labour, to improve the effectiveness of measures relating to social security, safety at places of work, occupational health hazards; to pay special attention to the problems of women workers, minimum wages, evolving a healthy relation between wages and productivity and to improve the protection and welfare of labour and in August 28, 1969 Commission signed its report.\textsuperscript{102}

In 1991, economic policy was changed completely due to liberalization and globalization and foreign investment was encouraged in a variety of industries, import restrictions were removed, customs tariff was brought down and the doors of the Indian economy were opened for foreign competition. Smt. Indira Gandhi, the

\textsuperscript{102} Supra note 78.
third Prime Minister of India, nationalized 14 banks and abolished the privy purses of Indian Rajas and Nawabs. She did not encourage the Multi National Companies in India. All the Five Year Plans marked large sums of rupees for the encouragements and developments of public sectors undertakings. When in 1977 Sh. Morarji Desai became the Prime Minister of India he started bringing changes regarding the working of public sector undertakings and Multi National Companies. Similarly, during the regime of Sh. Atal Bihari Vajpayee disinvestment of public sector undertaking and encouragement to Multi National Companies started. The emerging economic environment involving rapid technological changes, required response in terms.

The Second National Commission on Labour under the Chairmanship of former Union Labour Minister Dr. Ravindra Varma, was set up on October 15, 1999 to suggest rationalization of the existing labour laws in the organized sector. On June 29, 2002 he presented the report and suggested change in methods, timings and conditions of work in industry, trade and services, globalization of economy, liberalization of trade and industry and emphasis on international competitiveness, and the need for bringing the existing laws in tune with the future labour market needs and demands.\textsuperscript{103}

India enforced number of labour legislations specially dealing with social security. e.g. The Workmen’s Compensation Act, 1923\textsuperscript{104}, which requires payment of compensation to the workman or his family in cases of employment related injuries resulting in death or disability. The promulgation of Employees’ State Insurance Act, 1948 envisaged an integrated need based social insurance scheme that would protect the interest of workers.

\textsuperscript{104} Now the title is Employee’s Compensation Act, 1923, it was changed in 2010.
IV. EFFORTS BY VARIOUS COMMISSIONS AND COMMITTEES

Government of India set up a number of Commissions and Committees and those effected the social security laws. These are following-

a. Royal Commission on Labour, 1929\(^{105}\)

On July 4, 1929 the Imperial Government of Britain constituted the first Royal Commission on Labour in India with the express mandate to enquire into and report on the existing conditions of labour in industrial undertakings and plantations in British India. It was the first of a series of such commissions of labour. It submitted its report in 1931 under the Chairmanship of Whitley.

The Commission observed that regarding its jurisdiction in approaching the discussion of the future position of labour in the Constitution, we found ourselves handicapped by the fact that we have had to consider the question at a time when it is uncertain what form that Constitution will take. The main lines of the Constitution must be determined by considerations which lie outside our scope, and until these are determined, it is not possible to advise with precision as to the best, manner of securing that the interests of labour shall be adequately served. A further difficulty is that the Constitutional issues relate to the whole of India, whereas our field has been limited to the provinces of British India. In these circumstances, our best course is to set down what appears to us the main considerations relating to our own problems, to recognise frankly that these can exercise only a minor influence on the bigger issues, which may be decided in more than one way, and to offer some recommendations which believe, will be of service, whatever solution is reached.\(^{106}\)

The Commission analysed the existing medical facilities at that time. According to Commission in India the provision of hospitals,
dispensaries and medical treatment has been made mainly by the State, although a number of municipalities and industrial concerns have their own medical institutions, the former aided by lump-sum grants from Government. In addition a number of small hospitals are maintained by religious and charitable bodies. There has been any considerable body of independent medical practitioners, but these tend to be concentrated in the populous centres. With the development of industry in different parts of the country, a new situation has gradually arisen which has three different aspects requiring consideration. The first is where industry has grown up by degrees in the centre of a large town, the numbers employed in the industry being only a fraction of the whole population. In such cases workers are accustomed to utilise the medical facilities already available to the general population. In Bombay, for example, the employers, with few exceptions, have considered it unnecessary to provide additional facilities for the treatment of sick employees. At the same time it was made clear to us that the existing number of hospital beds is quite inadequate to meet the city’s needs. The second is where industry has developed in a particular area to such an extent that the industrial workers constitute the bulk of the population. In many such cases the local hospital, originally intended to meet a far smaller need, has not attempted to cope with the steadily increasing population. The third case is where a new industrial concern is started in a rural area remote from any existing medical institution capable of dealing with the large number of new-comers attracted by opportunities for employment.107

The Commission mentioned its views in its Report that in recent years the development of welfare schemes in some of the larger industrial centres have received considerable attention from a number of employers. Although some of these schemes are still at an elementary stage, many have made considerable advance and a few

107 Ibid.
are models of their kind. The manifold welfare activities include schools, meal-sheds, a co-operative society, workmen's stores, an ambulance corps, athletic associations, a work-people's institute and club, a dramatic society, a literary and debating society and village committees or panchayats. We were particularly impressed with the educational facilities provided by this company, which included a sound elementary course, some technical classes and training in hygiene. The British India Corporation in Cawnpore has also devoted much time and thought to the welfare of its workers. In its housing settlement at McRobertganj it has provided boys' and girls' schools, play grounds, dispensaries, maternity and child welfare centres, club-rooms, wrestling pits, a community hall, a segregation hospital, a home for widows, a central office, woodyards and shops, whilst local self-government is effected by a sadar panchayat. The Empress Mills in Nagpur employ a full-time welfare officer who has successfully developed a number of activities. These include refreshment shops in the mills, meal-sheds, co-operative stores, a co-operative credit society, maternity benefits, creches, a boy scouts organisation, recreations and amusements of different kinds and an extensive educational scheme. There was facility of nursery and kindergarten classes for infants up to 6 years of age, and provides primary schools for children from 6 to 12 years, industrial classes for boys over 12 years and factory schools for half-time workers.  

The Commission pointed out in some of the larger industrial concerns employers have voluntarily introduced maternity benefit schemes for their women workers, but, except in Bombay and the Central Provinces, where Acts of limited application have been passed, there is no legislation on the subject. As most people now accept the principle of maternity benefit for industrially employed women, it is unnecessary to put forward here any special plea for such a scheme. The general standard of life being so low, there can be little doubt that

108 Ibid.
some form of maternity benefit would be of great value to the health of the woman worker and her child at a vulnerable period in the lives of both. We do not attach importance to the argument that compulsory maternity benefits will result in employers reducing the amounts already being paid to the minimum laid down by law. Most pioneers in the field of social betterment are not deterred by enactments compelling others to follow in their footsteps. Nor do we attach weight to the argument that legislation will result in an appreciable restriction of the employment of women who are an essential part of certain of the leading Indian industries. The Commission had suggested that we believe the time is ripe for the introduction of legislation throughout India making a maternity benefit scheme compulsory in respect of women permanently employed in industrial establishments on full-time processes. We would exempt from such provisions seasonal and part-time workers and would confine legislation to those women employed full time in the perennial factories covered by the Factories Act. This legislation should extend to women employed in the mines and on the docks, but the majority doubt whether the number of women in those industries likely to qualify for benefits is sufficient to justify this step.\footnote{Ibid.}

According to Commission the benefit and bonus together should not exceed the amount laid down in the Act. The administration of the Act should be entrusted to the factory inspection staff and, wherever possible, to women factory inspectors. The Women's medical service might profitably be asked to survey the field and to advise those local Governments most affected as to how maternity benefit schemes under the Act could best be combined with existing medical facilities.\footnote{Ibid.}

Commission gave stress on the need of provision for sickness of the workers. The medical facilities are much less adequate, and the

\footnotesize{109 Ibid. 
110 Ibid.}
wages generally paid make it impossible for most workers to get through more than a very short period of illness without borrowing. Indeed, sickness is an important contributory cause of indebtedness, with all that debt entails under existing conditions; for often, at his time of greatest need, the worker may find himself destitute of resources, unable to take proper measures to restore his health and in difficulties regarding even the means of subsistence.\textsuperscript{111}

The Commission was of the view that medical attendance and cash benefit to the workers should be given. Mr Joshi and Diwan Chaman Lal consider that the problem of making provision for old age is one that will compel early attention, particularly in the case of industrial workers. Industrial life tends to break down the joint family system. Those workers who, at the beginning of their industrial career, own a plot of land, are often unable to retain possession, and with the passage of years the connection with the village becomes loosened. According to the findings of the commission workers in the main are unable to save out of their low earnings against old age. Those in intimate touch with the life of the workers know something of the misery in which many pass their old age.\textsuperscript{112}

The Commission found that the provisions relating to the payment of funeral expenses of deceased workmen are unsatisfactory. The Commission recommends that it should be attained by preventing the funeral expenses from being deducted from the compensation which has to be deposited, and providing instead that, on the “deposit of the compensation, the Commissioner shall deduct the actual cost of the workman’s funeral expenses.”\textsuperscript{113}

Persons injured by accident may have a remedy by a suit for damages against their employer in the civil court, and it is suggested that the law there applicable is inequitable because two defence may be evoked by the employer to defeat claims which he should justly be

\textsuperscript{111} Ibid.
\textsuperscript{112} Ibid.
\textsuperscript{113} Ibid.
called upon to meet. One is the defence of "common employment" by which an employer can plead that an accident was due to the default of a fellow-workman, and the other is the defence of "assumed risk" by which an employer is not liable for injury caused to workmen through the ordinary risks of employment, and a workman is presumed to have assumed risks which were apparent when he entered upon his occupation. Commission considers that the substantial increases in the scales of compensation and the wide extension of the scope of the Workmen's Compensation Act, now recommended, not only will reduce any need there may be for such legislation but also form the correct line of advance in social legislation of this kind.114

b. B.P. Adarkar Committee, 1944

It blossomed as the first social security scheme in 1944, when the govt. of the day was still British. The first document on social insurance was “Report on Health Insurance” submitted to the Tripartite Labour Conference, headed by Prof. B.P. Adarkar, an eminent scholar and visionary. The Report was acclaimed as a worthy document and forerunner of the social security scheme in India and Prof. Adarkar was acknowledged as “Chhota Beveridge” by none other than Sardar Vallabhbhai Patel. Sir William Beveridge, was one of the high priests of social insurance. The report was accepted and Prof. Adarkar continued to be actively associated with it till 1946. On his disassociation he strongly advocated management of the Scheme by an expert from ILO.115

Right from 1927 onwards a health insurance scheme for the industrial workers was considered as an essential requirement. The Royal Commission of Labour in its report suggested such a scheme in 1931. In 1943 the task of designing such a scheme was given to Prof

114 Ibid.
B.P. Adarkar. Prof Adarkar prepared and submitted his report to the Government in December 1944. The Adarkar Plan along with various other suggestions were instrumental in the emergence of “Workmen State Insurance Bill 1946”. This bill was referred to a select committee who made some modifications and also changed its name to “Employees State Insurance Bill”. The Employee State Insurance Act was passed by the Government on 19th April 1948. The Scheme under the Act aims at providing for certain cash benefits to employees in the case of sickness, maternity benefit, employment injury, and medical facilities in kind, and to make provisions for certain other matters in relation thereto.\footnote{Available at http://www.esipf.com/esic/employees-state-insurance-act.pdf (visited on July 20, 2013).}

The Employer is relieved of his legal obligations towards his employees by getting his unit covered under the Employees State Insurance Act, 1948. He gets exemption from the applicability of a number of enactments like Workmen’s Compensation Act, 1923, Maternity Benefit Act, 1961. The employer gets rebate in Income Tax for the amount of contribution paid to ESIC as Employer’s share of contribution. The ESI scheme also takes care of the health of the family members of the workers and also ensures the workers against industrial accidents and employment injury including occupational diseases. Thus, it is always beneficial for the employers to get themselves covered under the scheme.\footnote{Id.}

c. Five Year Plans

In recognition of its duty to protect the working class and promote its welfare, a blueprint on labour policy—A Five Year Programme for Labour—was drawn up in 1946 when the interim National Government came to power at the Centre. In the course of a debate in the Central Legislative Assembly in 1946, Shri Jagjiwan Ram, the Member in-charge of Labour, revealed that Government had
formulated a plan for bringing about essential reforms in the interest of the working classes of India. The main features of the proposed programme were reduction in the hours of work in mines to bring the working hours in line with the hours of work in factories which have been recently reduced from 54 to 48 a week, Organization of the Health Insurance Scheme, applicable to factory workers to start with, for the provision of medical treatment and monetary relief during sickness, maternity benefit on an extended scale, medical treatment in the case of disablement and the substitution of pensions during periods of disablement and to dependents, in case of death, in place of the present lump-sum payments. "Revision of the Workmen’s Compensation Act with a view to extending it to other classes of workers, the benefit provided for under the Health Insurance Scheme in respect of disablement and dependent benefits." A central law for maternity benefits to secure for other than factory workers the extended scale of benefits provided under the Health Insurance Scheme. "Extension to other classes of workers, the right, within specified limits, to leave with allowance during periods of sickness. Welfare of the coal mining labour and welfare of the mica mining labour etc.

The meaning of Industrial health according to Commission comprises measures for:—

(a) protecting the workers against any health hazards which may arise out of their work or the conditions in which it is carried on;

(b) contributing towards the workers’ physical and mental adjustment in particular by the adaptation of workers to the jobs for which they are suited; and

(c) contributing to the establishment and maintenance of the highest possible degree of physical and mental well-being of the workers.

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118 Supra note 78 at 93.
119 Ibid at 93.
The first is important; the other two should be left to the process of evolution. The changing character of health hazards necessitates a continuous study of new problems connected with it with a view to adapting remedies suitable to environments. There are two aspects of such protection: (i) preventive and (ii) curative. The former consists of pre-employment and periodic medical examination; removal of health hazards to the extent possible; surveillance over certain classes of workers such as women, young persons and persons exposed to special risks; emergency treatment for accidents; training of first-aid personnel; and education of workers in health and hygiene. The curative aspect will begin once a worker suffers from ill-health or disease. The statutory provisions in the labour laws for safeguarding the health of workers such as restrictions on employment of women at certain hours and places; protection for young persons; provision of first-aid and ambulance services; provisions relating to cleanliness, disposal of wastes and effluents, ventilation and temperature, and dust, fumes and lighting. This is an area where closer cooperation between authorities who are in charge of prevention and others who look after cure will be necessary. Help may be sought from agencies like the Central Labour Institute, the All-India Institute of Public Health and Hygiene, the Industrial Hygiene Division of the Central Public Health Research Institute, the Employees' State Insurance Corporation and various sections of the Central Mining Research Station, Dhanbad, which deal with safety, health and efficiency in mines.120

The elements relating to labour welfare in the 1946 Programme were: (1) Provision of medical treatment inside the establishment, (2) provision of creches and canteens, (3) welfare of the coal mining labour and the mica mining labour. To give effect to this programme,

120 Ibid at 106.
Government considered it urgent in 1947 to amend the Factories Act, 1934.  

The elements of social security\textsuperscript{122} Programme for Labour (1946) were (i) organisation of the Health Insurance Scheme, applicable to factory workers to start with, (ii) revision of the Workmen’s Compensation Act, (iii) a central law for maternity benefits, and (iv) extension to other classes of workers, of the right, within specified limits, to leave with allowance during periods of sickness. Some Slate Governments have also instituted old age pension schemes which are non-contributory and provide pensions to old and infirm citizens by way of social assistance.

All the three Plans (1951—66) emphasised the need for social security schemes. The objectives of our Plan policies have been better implementation, wider coverage of employees and better benefits to them. While the first, two Plans outlined schemes of social insurance to cover the limited number of urban wage earners, the Third Plan sought to break new ground in social assistance. It said, "it would be desirable to make a modest beginning- in respect of three groups of persons the physically -handicapped, old persons unable to work and women and children— where they are altogether lacking in the means of livelihood and support. Assistance for them will have to come from voluntary and charitable organisations, municipal bodies. Panchayat Samitis and Panchayats and voluntary organisations With a view to enabling these organisations to develop their activities with the help of local communities and giving them a little support, it might be useful to constitute a small relief and assistance fund."\textsuperscript{123} The expenditure on social security in plan periods have been increasing till now.

d. First National Commission on Labour, 1966

The first National Commission on Labour was set up on 24\textsuperscript{th} December 1966 under the Chairmanship of Justice P.B.

\textsuperscript{121} Ibid at 113.
\textsuperscript{122} Indian Labour Gazette, 461-62, April, 1947.
\textsuperscript{123} Supra note 78 at 164.
Gajendragadkar. The Commission submitted its report in August, 1969. Its recommendations covered issues like recruitment agencies and practices, employment service administration, training and workers education, working conditions, labour welfare, housing, social security, wages and earnings, wage policy, bonus, workers/employers organisations, industrial relations machinery etc.

It was set up to review the changes in conditions of labour since Independence and to report on existing conditions of labour and the existing legislative and other provisions intended to protect the interests of labour, to assess their working and to advise how far these provisions serve to implement the Directive Principles of State Policy in the Constitution on labour matters and the national objectives of establishing a socialist society and achieving planned economic development. Study the the standard of living and the health, efficiency, safety, welfare, housing, training and education of workers and the existing arrangements for administration of labour welfare both at the Centre and in the States and the existing arrangements for social security and measures for improving conditions of rural labour and other categories of unorganized labour.¹²⁴

The overall growth of the economy since Independence has affected the working class in more ways than one. A larger per capita availability of goods and services might help raise living standards provided the wage can buy these goods and services. This will depend upon the cost at which they are produced and made available. Both would require an analysis of the general production and price movements, the behaviour of the consumer price index numbers, the state of monetary and fiscal discipline and balance of payments in the system.¹²⁵

In 1945-51, after the period of the Second World War was one of expanding employment opportunities. With the close of hostilities,

¹²⁴ Ibid at I.
¹²⁵ Ibid at 18.
arrangements had to be made for transfer of the defence personnel to civilian employment. These did not encounter serious difficulties since they meant no special hardship to persons in the labour force. The Rege Committee which apprehended the spectre of mass unemployment looming ahead was perhaps unduly alarmed. While no reliable data are available for the years after its report and for the early years after Independence, it is gathered that the employment situation during this period was in a way easy. This was due to the expansion of governmental activities and its multiplier effect on employment.\textsuperscript{126}

Commission found that in the years since the Whitley Commission reported, the situation had undergone a change. The Rege Committee observed in 1946 that the working class had become more stabilised and organised. Its ties with villages, which the Whitley Commission valued and sought to regularise, had been loosened. During this period, there was a greater concentration of working class population in industrial areas and this led to the rise of an industrial proletariat in most cities. Workers were prepared to stick to the town to a greater extent than before, to fight for their legitimate rights and to seek livelihood in urban rather than in rural areas.\textsuperscript{127}

According to Commission, “The industrial worker has acquired a dignity not known to his predecessor. He is no longer the unskilled coolie of the days gone by, engaged in an unending struggle to eke out his existence, neglected by society except for his labour, and with very limited aspirations. He has now a personality of his own. He shares the benefits, albeit meagre, which a welfare state with a vast population and inadequate resources can offer, and some more. He enjoys a measure of social security; he is secure in his employment once he enters it; he cannot be dismissed unjustly and has been given statutory protection against retrenchment and lay-off. All this,

\textsuperscript{126} Ibid at 25.
\textsuperscript{127} Ibid at 31.
however, does not mitigate his worries about the future of his dependents, the employment situation in the country being difficult. In the days since Independence, there has been a continuous rise in his money earnings. Several new amenities are a part of his working life both because of legislation and also because the conditions of the new industries require the provision of these facilities. Increase in money earnings has neither been without struggles nor has it necessarily improved standard of living.”128

The social composition of labour is undergoing a change. Labour is not restricted to certain castes and communities. Apart from the fact that caste and occupation have always inter-acted and the relation between the two has been ‘elastic’ in our society, social mobility today accounts for the emergence of a mixed industrial work force. While in traditional industries this change is slow, one cannot escape noticing it in sophisticated employments such as engineering and metal trades; oil refining and distribution: chemicals and petro-chemicals: machine tools and machine building; synthetics and in many white-collar occupations. The background of the intermediate and lower cadres in the latter industries is overwhelmingly urban; their level of education is higher. They come from middle or lower middle classes comprising small shopkeepers, petty urban landlords, lower echelons of public service and school teachers and professional groups. They have a pronounced polyglot character. Higher skills and educational requirements expected of workers in modern factories and better wage levels consequent on them have tended to blur further the traditional distinctions between manual and non-manual workers. The social and political climate in the country has had its own effect on the process. Against the background of a rising tempo of industrialisation, the society has acquired a better sense of dignity of labour, though some trades like scavenging and tanning where the

128 Ibid at32.
work is disagreeable still continue to be performed on a hereditary basis and are looked down upon.\textsuperscript{129}

The concept of 'welfare' is necessarily dynamic, bearing a different interpretation from country to country and from time to time, and even in the same country, according to its value system, social institution, degree of industrialisation and general level of social and economic development. Even within one country, its content may be different from region to region. According to pre-Independence notions, it could cover, apart from known amenities, items like housing, medical and educational facilities, cooperative societies, holidays with pay and social insurance measures.\textsuperscript{130}

According to Commission, the quest for social security and freedom from want and distress has been the consistent urge of man through the ages. This urge has assumed several forms. According to the needs of the people and their level of social consciousness, the advancement of technology and the pace of economic development from its modest beginnings in a few countries in the early decades of the present century, social security has now become a fact of life for millions of people throughout the world. Social security measures have introduced an element of stability and protection in the midst of the stresses and strains of modern life. It is a major aspect of public policy today and the extent of its prevalence is a measure of the progress made by a country towards the ideal of a Welfare State.\textsuperscript{131}

Social security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose private resources can seldom be adequate to meet them. It covers, through an appropriate organisation, certain risks to which a person is exposed. These risks are such that an individual of small means cannot

\begin{itemize}
  \item \textsuperscript{129} \textit{Ibid} at 34.
  \item \textsuperscript{130} \textit{The Report of Labour Investigation Commitee, 345, 1946.}
  \item \textsuperscript{131} \textit{Supra} note 118 at 162.
\end{itemize}
effectively provide for them by his own ability or foresight alone or even in private combination with his colleagues. The concept of social security is based on ideals of human dignity and social justice. The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country’s welfare should be given protection against certain hazards.

The Whitley Commission commented upon the industrial workers’ attachment to his native village and observed that it was not advisable to discourage this feature of Indian industry. The village home with the joint family was a cover for the worker, something which the worker could turn to in times of need. The Commission took note of two other contingencies for which there was legislation already, viz., the Workmen’s Compensation Act, 1923 to protect workers against employment injury and the maternity benefit legislation in some states to provide for grant of leave and payment of cash benefits for certain periods before and after confinement to women workers in factories.

Discussions about the need for extending these earlier social security measures were a part of the Indian labour scene in the thirties. One of the earlier decisions of Labour Ministers’ Conferences between 1940 and 1942 was to invite an expert to frame a scheme to provide health insurance to workers. The scheme drawn up by Prof. B. P. Adarkar in pursuance of this decision was later examined by two ILO experts and this joint effort became the basis of health insurance in this country and culminated in the enactment of the Employees’ State Insurance Act, 1948.

In addition to the Industrial Relations Commission, suggest the setting up of standing Labour Courts which would be entrusted with judicial functions of interpretation and enforcement of all labour laws,

132 Id.
133 The Government of India adopted similar legislation for mines in 1941. To provide uniform benefits all over the country, Maternity Benefit Act was passed by the Parliament in 1961.
134 Supra note 78 at 163.
awards and agreements these courts will deal broadly with disputes relating to matters mentioned in the Second Schedule of the Industrial Disputes Act, 1947 in respect of the industrial relations issues brought to them.

i. There will be a labour court in each State constituted of judicial members only. The strength and location of such courts will be decided by the appropriate Government;

ii. Members of the labour court will be appointed by Government on the recommendations of the High Court. Generally, the Government should be able to choose from a panel given by the High Court in the order in which the names are recommended;

iii. Labour courts will deal with disputes relating to rights and obligations, interpretation and implementation of awards of either the National or State IRC and claims arising out of rights and obligations under the relevant provisions of laws or agreements, as well as disputes in regard to unfair labour practices and the like.

iv. Labour courts will thus be the courts where all disputes specified in clause (iii) will be tried and their decisions implemented. Proceedings instituted by parties asking for the enforcement of rights falling under the aforesaid categories will be entertained by labour courts which will act in their execution jurisdiction in that behalf. Appropriate powers enabling them to execute such claims should be conferred on them.

v. Appeals over the decisions of the labour court in certain clearly defined matters, may lie with the High Court within whose area/jurisdiction the court is located.135

The Commission studied certain issues relating to unorganized workers. These are: (i) contract labour including construction workers;

135 Ibid at 335.
(ii) casual labour; (iii) labour employed in small scale industry; (iv) hand-loom/power-loom workers; (v) bidi and cigar workers; (vi) employees in shops and commercial establishments; (vii) sweepers and scavengers; (viii) workers in tanneries; (ix) tribal labour, and (x) other unprotected labour.

The building and construction industry covers a variety of works and operations. Its activities range from construction of dams and bridges, and roads and tracks to factories and offices, schools, hospitals and ordinary residential buildings. Together with the workers required for maintaining 'construction', this forms a major sector of employment. Most of these operations are seasonal, and at times involve fluctuations in the employment pattern largely due to climatic conditions. Building activity is at its peak during winter months, but is at a standstill in the rainy season. In minor construction projects, work is of short durations and workers are required to move from place to place where construction may be in progress. Big projects may employ workers at a stretch for many years; even so re-deployment of workers poses a problem.

According to Commission the social security measures for a large majority of unorganized workers like scavengers and sweepers are almost non-existent. While those employed by the Government and larger corporations are eligible for retirement benefits, employees of local bodies, except where workers are organised, are not entitled to such benefits. Except in larger municipalities and corporations, such security generally takes the form of contributory provident fund; the rate of contribution is usually 6.25% of the basic pay by the employee, a similar amount being contributed by the local body. This amount is admittedly too meagre. To make matters worse, a number of municipalities do not deposit their own contribution and the contribution deducted from the pay of the employees is not deposited into the provident fund account regularly, resulting in loss of interest to the employees. Moneys are withdrawn from the provident fund
accounts for 'ways and means' adjustments. Gratuity schemes are in existence in still fewer local bodies. When a sweeper or scavenger meets with an accident, he does not get any compensation; whereas a large number of workers in other occupations in local bodies are covered under the provisions of the Workmen’s Compensation Act, 1923.\textsuperscript{136}

e. Second National Commission on Labour, 1999\textsuperscript{137}

The Second National Commission on Labour under the Chairmanship of former Union Labour Minister Dr. Ravindra Varma, was set up on October 15, 1999. The National Commission on Labour was a high powered body comprising of a Chairman and 02 full time members. In addition, there were 07 part-time members representing government, industry and workers. The Commission was required to give its final report in 24 months from the date of its constitution. The need for setting up of the Second National Commission on Labour had been felt for the following reasons :-

i) During the period of three decades since setting up of the First National Commission on Labour, there has been an increase in number of labour force etc. because of the pace of industrialisation and urbanisation.

ii) After the implementation of new economic policy in 1991, changes have taken place in the economic environment of the country which have in turn brought about radical changes in the domestic industrial climate and labour market.

iii) Changes have occurred at the work places, changes in the industry and character of employment, changes in hours of work and overall change in the scenario of industrial relations. These changes have resulted in certain uncertainties in the labour market requiring a new look to the labour laws.

\textsuperscript{136} \textit{Ibid} at 429.
\textsuperscript{137} Available at http://www.indialabourarchives.org (visited on July 18, 2013).
The detailed terms of reference of the Second National Commission on Labour were as follows:

i) to suggest rationalisation of existing laws relating to labour in the organised sector; and

ii) to suggest an umbrella legislation for ensuring a minimum level of protection to the workers in the unorganised sectors;

In developing the framework for its recommendations the Commission will take into account the following:

a. follow up implications of the recommendations made by the Commission set up in Maady, 1998 for review of various administrative laws governing industry;

b. the emerging economic environment involving rapid technological changes, requiring response in terms of change in methods, timings and conditions of work in industry, trade and services, globalisation of economy, liberalisation of trade and industry and emphasis on international competitiveness, and the need for bringing the existing laws in tune with the future labour market needs and demands;

c. the minimum level of labour protection and welfare measures and the basic institutional framework for ensuring the same, in a manner which is conducive to a flexible labour market and adjustments necessary for furthering technological change and economic growth; and

d. improving the effectiveness of measures relating to social security, occupational health and safety, minimum wages and linkage of wages with productivity and in particular the safeguards and facilities required for women and handicapped persons in employment.

India was only in July 1991 that it embarked on the new economic policy and started making efforts to integrate the Indian economy with the world economy. Thus, the year 1991 has come to be regarded as a landmark, on the nature of these reforms and their
impact on the Indian economy. During 1980s, India had a fairly good economic performance. But towards the last years of the decade, and particularly in 1990-91, Indian economy entered an unprecedented liquidity crisis. This was due to the combined effect of many factors. The economy of the Soviet Union and that of most of the East European countries collapsed towards the end of the eighties. Some of them were India’s major trading partners. The Gulf war in January 1991 resulted in rising oil prices and there was a virtual stoppage of remittances from Indian workers in the Gulf. As a result of these factors, India’s credit rating in international markets fell considerably. In these markets, there was an erosion of confidence in the strength of India’s economy. As a result, India found it difficult to raise funds in the international markets. What was more, there was an outflow of the deposits of Non-resident Indians from Indian banks. India was on the verge of default on external payment liabilities. It had to borrow from the IMF under the standby arrangements, and also borrow from the Bank of England by mortgaging the gold reserves of the country. Emergency measures had to be taken to restrict imports. Under these circumstances, it was felt that there was no alternative but to undertake drastic economic reforms.\footnote{Supra note 103 at 162.}

Some enterprises have refused to buy their workers’ insurances for unemployment, industrial accidents and endowments. Some have failed to offer working protection facilities to their workers, according to federation sources.\footnote{Ibid at 216.} Indian mining industry have also been affected because of globalisation. Indian coal is of poor quality. Low ash coking coal for making steel has not been available in the country, and therefore the steel industry has been importing coal. The coal produced in the country has been used by thermal plants. But for many coastal states like Gujarat, Tamil Nadu, Karnataka, Kerala, the cost of transportation of this coal has been very high. Therefore some

\footnote{138 Supra note 103 at 162.}  
\footnote{139 Ibid at 216.}
of these States have been importing coal from Australia and other countries. It has been cheaper for them to do so. Moreover, the cost of production of coal has been very high in India. As regards other mineral products, there has been now no demand for mica because cheaper substitutes have been available. Because of reduction in tariff and other factors, imported copper has been much cheaper than indigenously produced copper. Therefore, Hindustan Copper Ltd. which owns the copper mines, have been incurring heavy losses. Over manning of operations have also added significantly to the losses.

The closure of industrial units and bankruptcy are a normal feature in the developed economies all over the world. The incidence of closures tends to be high in economies characterised by fierce competition and in industries with a high degree of obsolescence. Developed economies with their well-established social security systems, easily take care of workers displaced by such closures. So even when labour has been displaced, the social safety net ensures that basic needs have taken care of. Developing economies, with their limited investible resources and relatively limited alternative employment opportunities, however, cannot, easily afford their productive assets and labour force turning non-operational. The resultant loss of jobs, production and revenue are not easily absorbed and, depending upon the number of persons involved, this situation may lead to serious social consequences. Industrial sickness and its resultant consequences have, therefore, to be handled carefully to see that its adverse impacts fall least on workers and on society. With globalisation, the incidence of sickness, bankruptcies and closure of industrial units appears to be on the increase.\textsuperscript{140}

The Commission has imposed Prohibition of Lay Off in Certain Cases, no employer of an establishment (other than the establishment of a seasonal character or in which work is performed intermittently) wherein 300 or more worker are employed on a average per working

\textsuperscript{140} \textit{Ibid} at 263.
day for the preceding 12 months, shall lay off the workers (other than badli and casual workers) for more than 30 days, no worker (other than a badli worker or a casual worker) whose name is borne on the muster rolls of an establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 300 workers were employed on an average per working day for the preceding 12 months, shall be laid off for more than 30 days by his employer and if in the opinion of a employer of an establishment to which sub section (1) is applicable the lay off is likely to continue for more than 30 days the employer shall forthwith or as soon as is possible but before the expiry of 30 days from the date of commencement of lay off shall make an application to the appropriate Government for seeking post facto approval of the Government for such lay off and for continuance of the lay off after 30 days.\(^{141}\) In the case of every application for the approval of lay off or for permission to continue lay off the appropriate Government may, after making such inquiry as it thinks fit, grant or refuse, for reasons to be recorded in writing, the permission applied for or refer the matter to Labour Relations Commission for adjustment. Where an application for the approval of lay off for permission to continue lay off has been made and the specified authority does not communicate the permission or approval or refusal of permission or approval to the employer within a period of 60 days from the date on which the application is made, the permission applied for, shall be deemed to have been granted on the expiration of the said period of 60 days, on application which has been refused, such lay off shall be deemed to be illegal from the date on which the workers have been laid off and the workers shall be entitled to all the benefits under any law for the time being in force as if they had not been laid off. If a question arises whether an establishment is of a seasonal character or whether work is performed therein only

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\(^{141}\) *Ibid* at 563.
intermittently, the decision of the appropriate Government thereon shall be final.

Commission laid down Conditions Precedent to Retrenchment of Workers no worker employed in any establishment who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the worker has been given two months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of notice; a copy of the notice has been sent to the negotiating agent. The worker has been paid at the time of retrenchment compensation. Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in official gazette. Where an employer has served notice for retrenchment he shall be liable to pay retrenchment compensation as if the establishment has been making profits, 60 days average wages for every completed year of continuous service or any part thereof in excess of 6 months; and if has not been making profits, 45 days average wages for every completed year of continuous service or any part thereof in excess of 6 months. Provided that in case of establishment employing less than 100 workers the compensation payable shall be reduced by 50% of the compensation.

In report the procedure for retrenchment where any worker in an establishment, is to be retrenched and he belongs to a particular category of workers in that establishment, in the absence of any agreement between the employer and the worker in this behalf, the employer shall ordinarily retrench the worker who was the last person to be employed in that category.\textsuperscript{142} Provided that the employer may for reasons to be recorded in writing retrench a worker other than the last worker employed in a category.

\textsuperscript{142} \textit{Ibid} at 565.
The re-employment of retrenched worker where any worker is retrenched and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workers who are citizens of India to offer themselves for reemployment and such retrenched workers as offer themselves for reemployment shall have preference over other persons. The Commission recommended compensation to workers in case of transfer of establishment where the ownership or management of an establishment or undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment or undertaking to a new employer, every worker who has been in continuous service for not less than one year in that establishment or undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Act as if the worker had been retrenched. Provided that nothing in this section shall apply to a worker in any case where there has been a change of employer by reason of the transfer, if the service of the worker has not been interrupted by such transfer; the terms and conditions of service applicable to the worker after such transfer are not in any way less favourable to the worker than those applicable to them immediately before the transfer; and the new employer is under the terms of such transfer or otherwise, legally liable to pay to the worker, in the event of his retrenchment, compensation and gratuity on the basis that his service has been continuous and has not been interrupted by the transfer.143

It laid down that procedure for closing down of the establishment where an employer who intends to close down an establishment shall not do so unless the workers have been given two months notice in writing indicating the reasons for closure and the period of notice has expired, or the workers have been paid in lieu of such notice wages for the period of notice; a copy of the notice has

143 Ibid at 560.
been sent to the negotiating agent; the workers have been paid compensation, notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official gazette; The compensation payable to the workers for closing down of the establishment shall be as where the establishment has been making profits, 45 days wages for every completed year of continuous service or any part in excess of 6 months thereof; and not for the last 3 years continuously, 30 days wages for every completed year of continuous service or any part in excess of 6 months thereof; Provided that in case of establishment employing less than 100 workers the compensation payable shall be reduced by 50% of the compensation prescribed.\textsuperscript{144}

Conditions precedent to closing down of establishment in certain cases the provisions shall apply to all establishments employing 300 or more workers irrespective of the nature of activity carried on in the establishment. Provided that nothing shall apply to an establishment set up for the construction of buildings, bridges, roads, canals, dams or for other construction work. An employer who intends to close down an establishment to apply, for prior permission at least 90 days before the date on which the intended closure is to become effective, to the appropriate Government stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the worker or negotiating agent in the prescribed manner, where an application for permission has been made, the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workers, the negotiating agent and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public

\textsuperscript{144} \textit{Ibid} at 567.
and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer, and the negotiating agent. Where an application has been made and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of 60 days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period, of 60 days and an order of the appropriate Government granting or refusing to grant permission shall be final and binding on all the parties and shall remain in force for one year from the date of such order. The appropriate Government may, either on its own motion or on the application made by the employer, the negotiating agent or any worker review order granting or refusing to grant permission or refer the matter to Labour Relations Commission for adjudication: Provided that where a reference has been made to a Labour Relations Commission, it shall pass an award within a period of 30 days from the date of such reference. Where no application for permission is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the worker shall be entitled to all the benefits under any law for the time being in force as if the establishment had not been closed. Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like it is necessary so to do, by order, direct that the provisions shall not apply in relation to such establishment for such period as may be specified in the order. Where an establishment is permitted to be closed down or where permission for closure is deemed to be granted, every worker who is employed in that establishment immediately before the date of application for
permission under this section, shall be entitled to receive compensation as prescribed under section 84.\textsuperscript{145}

\textbf{V. CONCLUSION}

Labour laws have been changing from pre vedic period to post vedic period, Hindu kingdoms periods, Muslim kingdoms periods, British periods and then in independent Indian period. In the previous periods due to the powers of the kings the conditions were not tolerable but in independent India due to the international influence and the influence of the UNO and ILO, with their various Conventions, Recommendations and Covenants passed, the condition of the Indian labour has under gone a great change. In Muslim period slavery system was at peak if we see today’s condition then according to the Global Slavery Index, a maiden ranking of 162 countries for their record in modern-day practices of slavery says there are 30 million slaves living in the world as now, half of them in India i.e. 13.9 million and as per ILO statistics, was 21 million.\textsuperscript{146}

The job prospect in India has really grown up over the years. Some of the well known sectors that have been successfully operating their businesses are Information Technology, agro products, health care, beauty and personal care and so on. All these sectors have led to high demand which has improved the overall labour standard of the country.\textsuperscript{147} India is mandated to create a work environment conducive to achieving a high rate of economic growth with due regard to protecting and safeguarding the interests of the working class in general and those of the vulnerable sections of the society in particular. This process will be sustainable in the long run if it is in tune with the emerging needs of the economy such as attaining higher levels of productivity, competitiveness and increasing employment

\begin{footnotes}{
145 \textit{Ibid} at 569. \\
146 The Tribune, 1-2, October 20, 2013. \\
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opportunities. It is well accepted that survival of workers depends upon survival of industry. Therefore, creation of conditions and environment conducive not only for survival but further growth of industry is the need of the hour. In this context, the concern of employers that the existing labour laws need a thorough and wholesale review with a view to rationalizing and simplifying them by consolidating them and by amending certain provisions which may be out of tune with present needs to be addressed in earnest. At the same time, interests of workers also must be protected.

Labour indicates human resources. At the outset it must be remembered that those who were unorganized yesterday are organized today and those who are unorganized today aspire to become the organized tomorrow. Moreover, many rights, benefits and practices, which are popularly recognized today as legitimate rights of workers, are those that have accrued as a result of the struggles carried out by the earlier generation of workers. However, harsh working conditions were prevalent long before the industrial revolution took place. The main objective of labour laws is that poor and downtrodden should partake gains of globalization and economic growth and to bridge the wide gap between existing social infrastructure and aspirations of the masses. Need of the time is to reform the labour laws which should not be at the cost of social welfare and security of the labour. Thus, it can be said that globalization means interaction of global economy sources, in all sectors of economy for the welfare, uplift and development of world humanity, functions of the countries not coming in the way. The workers demanding better conditions and rights to organize so as to improve their standard of living. Hence development of labour laws is a continuous process. The social workers, ILO, Trade Unions at National and International level, Non Government Organization and political parties have played a commendable role in history, in the development of labour laws in India.