CHAPTER -I

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I. INTRODUCTION

In India the growth of labour legislations owes its origin to the latter part of the 19th century after the industrial revolution. Initially, the then British Government enacted the Apprentices Act, 1850 to enable the young persons to learn the crafts and employments with an object that when they attain full age they may gain a meaningful livelihood.\(^1\) The Indian Fatal Accident Act, 1855 was enacted un-provokingly by the British Government following the model in England with a view to provide compensation to the deceased workman families on account of death occasioned by the wrongful act, neglect or default of the employer. In order to regulate the employment of seamen who go on long voyage, the Merchant Shipping Act, 1859 was passed with a view to protect the seamen employed in the event of ill health. At the same time aggressive laws in order to protect the interests of the master against the negligent conduct of his workmen were initiated and one such example was the Workmen’s Breach of Contract Act, 1859 providing criminal penalty for the workers for committing the breach of contract of service. For the purpose of investigation and settlement of disputes pertaining to workmen employed in the construction of railways, canals and other public works,

the Employers and Workmen (Disputes) Act, 1860 was passed to settle speedily and summarily disputes involving wages of workmen. All these legislations were initiated by the British Government on its own motion without any influence of the organized strength of the workmen.

The latter part of the 19th century witnessed the establishment of large-scale industries in India. These factories have drawn into employment partly the urban population and partly the surplus population with rural background who have migrated.² This period witnessed the enactment of labour law regime by the then Government out of the organized trade union movement pursued by philanthropists and social reformers. The first causality were the women and the children who are burdened with excessive working hours with meager wages. Due to the struggles and movements initiated by these leaders the emergence of Factory legislation in 1881 was witnessed and subsequently it was consolidated in the year 1911. Thus the emergence of the legislation, which dealt with regulation of working conditions of the workers employed in factories, was witnessed through the organized movement of the workers in India.

The birth of International Labour Organization (hereinafter referred as ILO) in 1919 influenced to a considerable extent the growth of labour

legislations in India. The formation of ILO has contributed to the emergence of All India Trade Union Congress and as well as the enactment of key labour legislations. As the first foundation step, the ILO propounded the concept of social security protection for the workers employed in factories on the premise that the State cannot be mere spectator to the sufferings of the workers who after the establishment of large scale industries were exposed to various risks to their limbs and lives. The resulting factor was the Workmen’s compensation Act, 1923 was passed. Later due to the pressure induced by ILO as well as the organized trade union movement, the unwilling British Government was compelled to bring the Trade Unions Act, 1926 legally recognizing the existence of trade unions in India. Thus in India the law has not created the trade unions but the law simply recognized the existence of trade unions.

The ILO through its conventions on Minimum Wages Fixation of 1928, induced considerable pressure on the British Government in India to bring a legislation in order to prevent the exploitation of sweated labour from the payment of unduly low wages. Later, the country witnessed the appointment of first high power Commission in India to investigate the over all labour conditions in Indian factories. The Royal Commission on Labour has submitted a comprehensive report in 1931 covering all the

aspects pertaining to the employment of labour in factories. The resulting factor was the passing of Payment of Wages Act, 1936 regulating the payment of wages for the employees employed in certain employments.

The Second World War has a direct impact on the living of working class in India due to the inflation, which created a wide gap between the purchasing power and the wages drawn by the workers. This has led to wage disputes in many industries which compelled the Government to invoke Defence of India Rules 1941 by introducing compulsory adjudicatory system of industrial disputes. Up to this period one can conveniently classify the history of labour legislation movement in India as a first phase.

In the Second phase of the history, the enactment of major labour legislations commenced in the year 1946. The breakout of Second World War let to a tremendous increase in trade and industrial activity in support of the war. The Indian subcontinent was well suited for the uninterrupted production of goods and services for the benefit of the war. With increased industrial activity the problem of employer-workmen relations assumed added significance. To smoothen relations between capital and labour, the idea of the Indian Labour Conference was conceived, and its first session was called in 1942. Section 81-A was added to the Defence of

6. Ibid. 51.
India rules to provide for the settlement of disputes and to prevent strikes and lock-outs. With the emphasis laid in the Indian Labour Conference in its first session, the important legislations of employment namely, the Industrial Employment (Standing Orders) Act was passed in 1946.\textsuperscript{7} The next step was the consolidation of the law; namely Industrial Disputes Act, 1947 enacted for the purpose of investigation and settlement of industrial disputes by replacing the Defence of India Rules, 1941 was carried out just prior to the date of independence. The Factories Act of 1948 was passed consolidating the previous existing laws with view to define precisely the conditions of employment of workmen employed in Indian Factories. The major reform in the area of social security measures for the industrial workers was the passing of Employee's State Insurance Act in the year 1948.\textsuperscript{8} However, the Governments efforts in brining a legislation by defining the norms relating to fair wages fixation for the workers employed in the organized sector remain unfulfilled in spite of thorough efforts.\textsuperscript{9} Yet the Recommendations of Committee on Fair Wage, which was set up in 1949 to lay down norms for fixation of fair wages for the workers in the organized sector made considerable impact before the judiciary as well as the wage fixing authorities including tribunals, though the report was not accepted by the Government of India.\textsuperscript{10} Thus by the

\textsuperscript{7} Supra Note. 2. at. 51.
\textsuperscript{8} The law was enacted on the basis of the Report submitted by Prof. Adarkar, 1944.
\textsuperscript{9} On the basis of the Report of the Committee on Fair Wages, the Government introduced the ‘Fair Wages Bill’ in the Constituent Assembly of India. The Bill was lapsed due to the dissolution of the Constituent Assembly. It was not pursued in the Parliament later.
\textsuperscript{10} The Supreme Court with approval quoted extensively the excerpts from the Report of Committee on Fair Wages in \emph{Express News Papers Ltd. Vs. Union of India}, \textit{AIR} 1958 SC 573.
time the Constitution of India came into existence the country has already witnessed the emergence of major labour legislations covering the areas of freedom of association, social security, conditions of work, regulation of employment and wages.

The Constitution came into existence in the year 1950 creating the Supreme Court as the highest judicial body in the land to entertain the matters by way of appeals from the High Courts and inferior tribunals, and also for other important purposes.11 At the early stages of its inception, the Supreme Court was called upon to decide the labour matters that have reached either directly from inferior tribunals under Article 136 or under appeals from the High Courts. Setting aside the misconception rendered by the Law Commission that labour matters are being thrust upon a Court which has not the means or materials for adequately informing itself about the different aspects of the questions which arise in these appeals and therefore, finds it difficult to do adequate justice have not prevented the Supreme Court from expressing itself decisively and comprehensively on every subject that enters into labour-management relations.12

From its inception the Supreme Court has brought to bear on the adjudication of industrial disputes particularly of disputes relating to the

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areas of industrial relations, collective bargaining, industrial discipline, wages and social security an ethical, equitable and social outlook,\textsuperscript{13} liberally interpreting the progressive spirit of the Constitution on the ground that the requirements of a workman living in civilized and progressive society must be recognized on the basis of equality. Hence, according to the Supreme Court, the social philosophy of the age supplies the background for the decision of industrial disputes relating to the interpretation and application of the relevant statutes.\textsuperscript{14}

At the early stage of its inception the Supreme Court was called upon to decide the labour matters which are based on the interpretation and application of the specific statutes. Indeed it was a challenging task for the highest Court of the land. The interesting equation is that though the labour statutes are not as voluminous but the jurisprudence that has been emanated from the judgments flown under the statutes rendered by the Supreme Court are voluminous and has laid solid foundations. The most crucial and difficult challenge that the Supreme Court was called upon to tackle are the areas relating to industrial relations, industrial discipline and wages. The Industrial Disputes Act, 1947 which was brought into force by the Parliament with an object of investigation and settlement of industrial disputes was the tough law in this context. The interesting aspect was that the interpretation of the provisions of the

\textsuperscript{13} Bharat Bank Ltd. Delhi v/s. Employees of the Bharat Bank Ltd. Delhi, (AIR 1950 SC 188).
\textsuperscript{14} Crown Aluminium Works v/s. Their Workmen, AIR 1958 SC at. 35.
Industrial Disputes Act, 1947, which necessarily led to the application of certain other provisions from the Trade Unions Act, 1926 and Industrial Employment (Standing Orders) Act, 1946. The crucial areas under the Industrial Disputes Act, 1947 namely; the definition of industry, industrial dispute, the provisions relating to strikes and lockouts, closure, regulation of employment and social security have stood very often before the Supreme Court calling upon for its interpretation. This has led to the voluminous growth of labour jurisprudence in the history, often compelling the Parliament to initiate a legislative reform. 15

In this background an examination of the decisions rendered by the Supreme Court and High Courts on the aforesaid issues need a close investigation in order to ascertain how far the consistency has contributed to the growth of labour jurisprudence in the context of societal imbalances? The approach of the Supreme Court and the High Courts in this context can possibly be classified into three different phases. The first one is the progressive approach where the judiciary stage after stage has strengthened its approach and substantiated the law in accordance with the Constitutional spirit.

The Second stage being the one, which was by attributed by some authors as 'emotional inclination era' namely strengthening the precedents

15. The definition of individual dispute under section 2A, the major provisions in Chapter VA and VB and some vital provisions under section 4 to 10 of the Industrial Disputes Act are the solid instances.
beyond. The last stage being the one, which may be due to indirect influence of the prevailing political economy of the State, the judiciary unprovokingly disturbed the status quo in vital areas of labour law. This approach can be classified as imbalance approach of the judiciary. In this context the role of the "Doctrine of Precedent" comes prominently into picture under the influence of the constitutional stamp of 'social justice'.

The judicature, like other constitutional instrumentalities, has a culture of national accountability. Two factors must be highlighted in this context. A Court is more than a judge; a collegium has a personality, which exceeds its members. The price a collective process, free from personality cult, has to pay is long patience, free exchange and final decision in conformity with the democracy of judicial functionality. ¹⁶

II. THE PROBLEM

In India the labour is classified as a special subject and accordingly the Parliament and the State legislatures have enacted abundant labour legislations covering every aspect of employer-employee relationship. Historically the labour were perused as an exploited class in the society by the capitalist. This perception has undergone a considerable change from the latter part of the 19th century. Today the bulk of labour law growth was the result of the fact that the Supreme Court as well as the High Courts

have contributed enormously to the growth of labour jurisprudence while deciding the matters that have stood before them under each labour legislation. The only legislation under which plethora of case law has been emanated is the law relating to industrial disputes. This law takes within its ambit all the crucial labour management relation aspects namely; the definition of industry, industrial dispute, collective bargaining, industrial adjudication, industrial discipline, closure of an undertaking and wages.

The application of this law progressively involves the effective coverage of vast segment of work force in the country. Any step initiated by the judiciary in narrowing down the application and interpretation involve the denial of equitable justice to the needy labour class. This is what exactly being pursued in recent times in the approach of Supreme Court and some High Courts by deviating from the earlier set of norms.

It is highly interesting to investigate whether the approach initiated by the Supreme Court in this direction is the influence of prevailing political economy of the State or the change is necessary under the normal pretext.

III. IMPORTANCE OF CONSISTENCY

Where the law enacted by the Parliament creates an ambiguity and where the judiciary interprets that provision by taking into consideration the object behind the enactment in the normal process when this
approach is put into practice for certain period there exists a uniformity in
the context. This necessarily involves the policy of consistency in
achieving the equality in a society like India. The labour law legislations
are social welfare measures to further the general interest of the
community of workmen as opposed to the particular interest of individual
entrepreneur. The poor and the workman can secure and realize
economic and social freedom only through the right to adequate means of
livelihood, to just and humane conditions of work, to a living wage, a
descent standard of life and leisure. To them, these are fundamental
facets of life. To make rights enshrined in Articles 14, 21, 38, 39, 43–A
and 46 meaningful to workmen and meaningful right to life a reality to
workmen, shift of judicial orientation from private law principles to public
law interpretation harmounisly fusing the interest of individual
entrepreneur and the paramount interest of the community is essential.

The judicial function of a Court, therefore, in interpreting the
Constitution and the provisions of the relevant labour statues, requires to
build-up continuity of socio-economic empowerment to the poor to sustain
equality of opportunity and status. Therefore, the concepts engrafted in
the labour statues required interpretation from that prospective, without
doing violence to the object basing on which the laws are enacted. Such
an interpretation would elongate the spirit and purpose of the Constitution
and make the aforesaid right to the workmen a reality lest establishment of an egalitarian social order be frustrated and constitutional goal defeated.

IV. OBJECTIVES OF THE STUDY:

1. The enactment of the dominant labour legislations that are aimed to govern equitably the labour-management relations are with definite object of achieving egalitarian society.

2. Though there is a gap between the enactment of key labour legislations and the commencement of the Constitution, certainly there exists a co-relationship between these legislators and the spirit of the Constitution.

3. The judiciary immediately after the commencement of the Constitution has based its decisions pertaining to the dominant areas of labour legislations underlining the Constitutional goal of social welfare and social justice.

4. The popular view that there exists a period of emotional inclination unto labour in the judicial era is an ill conceived premise but only led to solid foundations to the growth of labour jurisprudence keeping in view strictly the constitutional spirit.
5. The recent unprovoking trend demonstrated by the judiciary while deciding the core-labour issues is only to further the prevailing political economy of the State.

6. Owing to the dominance of capital oriented external influence, the State efforts under new economic policy in negating the Constitutional mandate of social justice would lead to further growth of inequality in the society.

V. METHODOLOGY

The study is primarily doctrinal and not empirical. But the complete empirical scenario is ascertained by placing clearly the background and the factual issues of the cases that stood before the judiciary to arrive at certain conclusions. The study employed is the descriptive method with a critical analysis, the evolution of State policy, the legislative background, the legislations and the judicial decisions pertaining to core areas of labour laws. In the course of analysis original sources such as the labour enactments, the decisions of the Supreme Court of India, High Courts and the original studies undertaken by the experts are consulted. There is an element of inter-disciplinary approach. Standard form of citations and references are used in the work.
VI. IMPORTANCE OF THE STUDY

The importance of study of this sort lies in better understanding of political and social background behind the enactment of each labour legislations that touch upon the core areas of labour relations. The study would not only help the academics but more intimately to the employers, administrators, policy-makers, legislators, lawyers and the like. The study is also accepted to be useful for the judges as it involves a critical evolution of major judicial decisions of the Courts in India. The importance of the study lies in its purpose, namely to achieve the noble aspirations of the founding fathers of the Indian Constitution.

VII. LIMITATIONS

At this stage, it is necessary to emphasize certain limitations to this study. The study confines itself to the critical evolution of analyzing the basic object behind the enactment of the core labour legislations and the study of its key provisions that intimately affect the matters namely, industrial relations, collective bargaining, adjudication, industrial discipline, closure of the industry and wages. Thus the study excludes the enquiry into other aspects of labour legislations.

The Second limitation relates to the critical evaluation of the Supreme Court and other High Court decisions pertaining to the specified
labour law provisions. Though each and every decisions rendered by the judiciary in the area of labour law provisions have certainly contributed to the growth of labour jurisprudence, the study is limited to certain key areas.

However, as already stated the best view of intended study is made in order to make the study more purposeful.

VIII. PLAN OF THE THESIS

The critical study of the "Doctrine of Precedent and Its Impact on the Growth of Labour Jurisprudence in India" is planned into Twelve Chapters. The First Chapter is concerned with an elucidation of the problem and its context, objectives of investigation, the importance of the subject and the methodology. A brief attempt is made to present the basic themes underlying different chapters below.

1. Conceptual Framework of Pre-Independent Labour Legislations:

The labour law regime in India can be broadly classified into three stages. The first two stages witnessed the enactment of important labour legislations. The first stage pertains to primitive evolution stage where the workers risk of exposing themselves to fatal accidents in the work place due to the fault or negligence of the employer in a limited spear. The
enactment of factory laws regulating the conditions of work in large scale industries owing to the pressure of organized trade union movement and the enactment of laws relating to freedom of association, regulation of payment of wages and strengthening of the law relating to industrial injurious. This stage witnessed the enactment of specific categories of labour legislations under different circumstances.

The next stage is an effect of the aftermath of Second World War and the independence that ultimately led to creation of solid labour legislations touching the aspects of regulation of employment, regulation of conditions of work and strengthening the concept of social security. This regime had the force of policy pronouncements followed by the definite commitment on the part of the Indian Government.

This chapter traces the historical evolution of labour legislations immediately after the Industrial Revolution. The beginnings of the organized struggles of the working class in inducing the pressure on hostile British Government in bringing the needy legislations, the impact of International Labour Organization on the growth of basic labour legislations and the subsequent efforts made by the Government in bringing the paramount labour legislations till the date of Independence period are discussed.
2. The Beginning of New Labour Law Regime - The Post-constitutional Period:

Immediately after the independence, the Government of India pursued the task of strengthening the labour law legislations through the policy pronouncements followed by the action plan. The consolidation of the laws relating to the working conditions of the labour in factories and introducing a systematic contributory social security mechanism by widening the benefits were the immediate results.

The necessary amendments in the areas of industrial relations laws were carried out in order to fulfill the Constitutional aspirations. The period witnessed the appointment of high power Commissions and Committees with a view to bring far reaching reforms in the area of labour laws which are in tune with the planned economic development perceived by the Government immediately after the Independence. Also the period witnessed the suitable amendments to the key areas of labour legislations, which are in tune with the corresponding judicial reflections and the enactment of various other labour legislations dealing with the welfare of particular categories of unorganized sector workers.

The stage of reversals through the systematic attempts of the State is also dealt in this chapter in order to have a clear idea about the
emergence of labour laws regime in the country under different contextual dimensions.

3. Constitutional Impact on the Growth of Labour Jurisprudence:

Though many prominent labour legislations dealing with the areas of freedom of association, right to livelihood, decent conditions at work place, the right to employment and the right to life through the mechanism of social security were enacted prior to the commencement of the Constitution, yet all these areas of legislations are strongly based on the principles of equality, social welfare and social justice.

This part of the study is concerned with the analysis of the provisions in the Constitution touching the spirit of equality, right to livelihood, freedom of association, leisure in employment, decent conditions of work and right to social security in order to substantiate the claim that there is a close proximity between the basic purpose of these legislations and the Constitutional commitment.

4. The Doctrine of Precedent and the Constitutional Framework:

In this chapter an initial attempt is made to present the *stare decisis* as a source of law in India having an equal strength to that of a competent
legislations enacted by the Parliament or legislature by discussing various
dimensions of this concept. The Constitution of India provides for the
creation of highest judiciary namely the Supreme Court in the matters of
appeal and original jurisdiction in respect of certain matters and in each
State a judiciary at the highest level namely the High Court.

This chapter includes an analysis of the binding nature of the
decisions rendered by the Supreme Court on Supreme Court itself, on the
High Courts and the binding nature of the decisions of the High Courts on
High Courts themselves through force of the Constitutional provisions.

5. The Definition of Industry – The Changing Political Perspectives:

The background information regarding the definition of the term
‘industry’ as contained in section 2(j) of the Industrial Disputes Act, 1947
reveals the borrowing of the experience from the Australian Statues.
Originally when the law was put into practice the judiciary was called upon
to apply this definition to a number of spears of social and economic
activities. This has led to the emergence of catena of case law on the
definition that ultimately led to a great controversy as for as the application
of this legislation to a number of activities is concerned.
The Supreme Court in 1978 has put an end to this unending controversy through the judgment delivered by the Constitutional bench. Certainly this ratio ruled the stage for two decades by resolving to a great extent the problems surmounted thereunder. Subsequently the attitude demonstrated by the judiciary showing scant regard for the principal of *stare decisis* is witnessed in later stages.

This chapter makes an analysis of the latest trend prevailing in the minds of the judiciary, the extent of the influence of the prevailing political economy and the extent of damage caused to the poor labour class in the society that resulted due to the lack of consistency.

6. Collective Bargaining Dimensions:

The concept of freedom of association and the rights that have emerged thereunder with a Constitutional backing under the various dimensions is examined purely with the support of judicial decisions prevailing thereunder over a period of four to five decades. The role played by the judiciary in filling the legislative gap in the areas of collective bargaining and regulation of employment are demonstrated with a view to pursue the deviation from this attitude as exhibited by the judiciary in recent times.
This chapter consists of a detailed analysis of the relevant legislative provisions and a critical evolution of judicial decisions emerged thereunder with a view to ascertain the recent trend demonstrated by the judiciary is in tune with the political order prevailing in the country.

7. Law Relating to Closure – The Changing Perceptions:

The law relating to investigation and the settlement of industrial disputes originally does not contain the provisions relating to closure of an industry. The provisions relating to law of closure were inserted in the year 1957 in view of the Supreme Court judgment. Subsequently over a period of years the law relating to closure has been undergone series of amendments from time to time and thus was consolidated to the present position in the year 1982. This particular area in the law relating to investigation and settlement of industrial disputes has undergone a close judicial scrutiny starting from later seventies. It is a unique law in India unlike in any industrialized country in the World.

Of late many controversial decisions have flown from various High Courts touching the very essence of the concept of closure of an industry. The State is seriously making efforts to negate this law altogether to suit it to the prevailing political economy.
This chapter analyses the legislative, judicial and political dimensions under which the area relating to closure under Industrial Disputes Act, has taken its solid shape and how the judiciary is contributing to the needs of workers under different circumstances created by the economic norms of 'closure' of an industry and the later attitude demonstrated by the judiciary in this regard.

8. The Claims of Contract Labour and the Defeats:

In India, the employment of labour by the principal employer through a middleman is not a new phenomenon. The Contract Labour (Regulation & Abolition) Act, 1970 though passed with a dual object of abolition of the system altogether wherever it is possible and where it is not possible altogether to regulate the system by ensuring certain welfare measures to the contract labour. But in practice the law has favored more the employer than meeting the agonies of workmen. Employer favoring the system to reduce the cost of production, the overhead cost and the transactional cost. Millions of poor labours are being exploited by the employer under this legal instrument. The worst situation faced by the workers under this system is job insecurity, low wages and social insecurities.
In this chapter an examination of the provisions of the law in the context, the loopholes exists, thereunder and the efforts made by the judiciary in resolving crisis. Of late the Supreme Court exhibited a trend through a Constitutional bench defeating forever the claims of the contract labour unprovokingly. This work includes an examination of the influence of the prevailing political economy and the attitude of the judiciary that rendered the Constitutional commitment a nugatory.

9. The Disciplinary Proceedings and the Judicial Reflections:

One piece of law that has grown totally outside the framework of labour legislations is the law relating to disciplinary proceedings in an industry. The Supreme Court at the initial stages only, has laid-down solid foundations in upholding the rule of industrial discipline. Industrial discipline is a must for the growth of any industrial activity. The Industrial Employment (Standing Orders) Act, 1946 defines certain limitations basing on which the employer can enforce the industrial discipline over the years, the judiciary upheld the prerogative of the employer in this area and at the same time also has laid down certain far reaching norms in protecting the rights of ignorant workmen. Of late there is a slight change in the approach of the judiciary in strictly adhering these principles towards the favour of the employer unequivocally.
This chapter examines briefly the development of this particular branch of law and the trend exhibited by the judiciary of late in order to ascertain the exact reasons behind this attitude.

10. Law Relating to Industrial Injuries:

The Workmen’s Compensation Act, 1923 and the Employee’s State Insurance Act, 1948 bear the major thrust of the concept of social security for the industrial workers in the country. These normative standards are having the force of the Constitutional mandate of social welfare. The law relating to compensation for workers in respect of industrial injuries is the resulting factor of the development trend exhibited by the judiciary over the decades. The law has gradually undergone sea changes with solid foundation as laid-down by the judiciary. Again of late the judiciary started exhibiting a trend, which is not of that favourable to the workmen in the event of risks to his life that are sustained in the course of his employment.

In this chapter a study of the development of principles as laid down by the judiciary in respect of claiming compensation for the injuries sustained by the workmen and the changing perceptions in this regard is made.
11. Conclusions

Throughout the investigation an attempt has been made to demonstrate various dimensions involved in the growth of labour jurisprudence in the country. This role is the responsibility of the policy makers, the legislators and the judiciary. Of all the Judiciary plays a dominant role in the interpretation and application of the law. There is a need that the realization of Constitutional goal is paramount in this endeavour.