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Labour and Employment Law: A Requisite in India

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ABSTRACT

Labour laws are the one dealing with employment in any organization. Those laws address the various administrative rulings and procedure to be followed to be made and legal rights. Labour and Employment laws are the laws framed by the respective government for protecting the economic and social interest of the working class. By analysing this writing, we can readily comprehend, why the labour and employment laws are needed, how they derive their origin from the Constitution of India keeping in line with "Fundamental rights and Directive principles of state policy ". This paper also throws light on "Industrial Disputes Act 1947" and the plight of workers during COVID-19.

Keywords: *Constitution of India, Directive principles of state policy (DPSP), Industrial Disputes Act 1947, Covid-19.*

I. INTRODUCTION

The law concerning labour and employment in India is primarily renowned underneath the broad class of "industrial law". Industrialization is one in every one of the key engines to support the economic process of any country. The growth of the industry is not the venture of the employer alone, it involves the hard work and tough grind of every stakeholder of the industry including the labourers. The law relating to labour and employment has developed in respect to the vastly increased awakening of the workers of their rights, social justice, social equity, and equitable participation of labours as a stakeholder at parity.

These plethoras of labour laws have been established to ensure elevated health, safety, and welfare of workers to protect workers against oppressive terms, as individual workers are economically weak and have little bargaining power, to encourage and facilitate the workers in the organisation, to deal with the industrial disputes, to enforce social insurance and welfare schemes and alike.

Labour laws are the one dealing with employment law in any organisation- whether it is a manufacturing organisation or trading organisation or shops and establishments. These labour laws cover the industrial relations and provide many of the basic guarantees to workers

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ensuring that employees get paid decent wages on time, have reasonable working hours, not subject to discrimination and very importantly the workplace health and safety with good environmental conditions. Further, these labour laws also focus on the issues related to employer and employee and the various compliance requirements.

II. LABOUR AND CONSTITUTION

The labour laws derive their origin, authority and strength from the provisions of the constitution of India 1949. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in chapters-III [2][article- 16, 19, 23&24] and chapter-IV [3][article 39,41,42,43&43A] of the Constitution of India keeping in line with fundamental rights and Directive principles of state policy.

Fundamental rights related to labours: -

- Article 16: - Equality of opportunities in a matter of public employment. This article provides that no discrimination be made during employment and also enables the government to pass laws for the resurrection of appointment of backward class of citizens.
- Article 19(1)(C): - Rights to form associations and unions. This article gives labours the rights to form unions. In India trade unions are governed and registered under specific law called the “trade unions act 1926”. Trade unions play a significant role in asserting labour rights which have been provided for in the constitution as well as under various labour laws. They help in negotiating better working conditions for workers and help in the settlement of disputes between employer and workers.
- Article 23: - Prohibitions of traffic in human beings and forced labours. This article provides that any kind of forced labours is punishable and proceedings will be initiated against the person who deals with forced labour or human trafficking.
- Article 24: - Prohibition of employment of children in factories. This article prohibits child labour in any factories or mine or any other hazardous employment. This additional paved approach for the Child Labour (Prohibition and Regulation) Act, 1986 which when amended in 2016 prohibited the employment of children (below 14 years)

[2] These are the fundamental rights of the citizens of the county for their benefits <https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles>
[3] The principles laid down therein are considered in the governance of the country, making it the duty of the State <https://www.constitutionofindia.net/constitution_of_india/directive_principles_of_state_policy/articles>

in all types of occupation and adolescents (between 14 to 18 years of age) in hazardous occupations.

Directive principles of state policy: -

- Article 39: - Require the state to direct its policy towards securing:

  (a) that the citizens, men's and women's equality have the rights to an adequate means to livelihood.

  (d) that there is an equal remuneration for equal work for both men and women.

  (e) that the health and strength of workers, men and women, and the tender age of children of children are not abused and that citizens are not forced by economic necessity to enter avocations ill-sorted to their age or strength.

- Article 41: - Right to work, to education and to public assistance in certain cases The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, illness and disablement, and in alternative cases of unmerited need.

- Article 42: - Provision for just and humane conditions of work and maternity relief. The State shall build provision for securing simply and humane conditions of labour and for maternity relief.

- Article 43: - Living wage, etc, for employees. The State shall endeavour to secure, by appropriate legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, specifically, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

- Article 43(a): - The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

III. LABOUR RIGHTS IN COURTS

The principle of equal pay for equal work[4] for upheld by the Supreme Court in 1982. It held that even though this principle is not expressly mentioned within the Indian Constitution as a

[4] Randhir Singh v. UOI, AIR (1982) SC 879

fundamental right, it is certainly a "constitutional goal" and thus is implemented in cases of unequal scales of pay supported on irrational classification.

Right to livelihood is organically a part of labour rights. In Olga Tellis vs. Bombay Municipal Corporation[5], known as the 'pavement dwellers case', a five-judge bench of the apex court had ruled that right to livelihood is include in the right to life guaranteed by Article 21 of Indian Constitution. "If the right to livelihood is not treated as a part of the constitutional right to life, the best ways in which of depriving an individual of his right to life would be to deprive him of his means of livelihood. Since Articles 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer ostentation to exclude the right to livelihood from the content of the right to life".

The Supreme Court held that the right against forced labour included the right to a minimum wage[6]. It noted that always, migrant and contract labourers had no alternative however to just accept any work that came their way, even though the remuneration offered is less than the minimum wage. Consequently, the Court held that "the compulsion of economic circumstance which leaves no choice of alternatives to an individual in want and compels him to provide labour or service" was no less a form of forced labour than any other, and its remedy lay in a constitutional guarantee of the minimum wage.

IV. ENSURING BASIC LIVING CONDITIONS

- Working Hours: - It mandates that working hours should be limited to 9 hours in one day, with a maximum of 48 hours per week. Any extra hours of work need to be compensated as overtime wages at twice the ordinary rate.
- Remuneration for work: - Employers are mandated by law to pay workers no less than the minimum wages on time, and also supplement the incomes of their low wage employees with yearly bonuses drawn from their profits. Besides, laws on gratuity ensure that at the end of employment, due to retirement, death or disability, the employees or their families are compensated for the length of their service. Workers covered by Employee State Insurance (ESIC) are entitled to half of their monthly wages as unemployment benefits for a maximum of two years, and the Employees Provident Fund (EPIF) permits them access to a little fund at retirement, or throughout an associate degree emergency.

[5] (1985) SCR Sup. (2) 51
[6] PUDR v. UOI, 1982 AIR 1473

- Health and Safety of the workers: - Some of the labour laws that enjoin employers to protect the health and well-being of their workers. These laws offer for clean, oxygenated and adequately lit operating areas with drinking water, and toilets. An employer is additionally expected to provide first aid facilities, sitting areas and creches. These laws conjointly mandate inspections for safety and health, safe disposal of hazardous materials, notifications of industrial accidents and occupational diseases.
- Grievance redressal machinery and collective bargaining: - Acts primarily shield workers from unpaid lay-offs and retrenchments, unreasonable changes in their operating conditions, unfair labour practices etc. They permit for a system of labour courts, industrial tribunals and arbitration boards, wherever the workers will raise an industrial dispute relating to wages, working hours, conditions of work etc, and get their grievances redressed. The Trade Unions Act acknowledged associations of workers to act as their representatives and enter into collective agreements with the employers. The Tripartite arrangement ensured after years of struggle among the workers is aimed toward making certain a lot of equal negotiation power with the worker, who, without the assurance of some adjudication is left to the mercies of rapacious employers and unregulated work conditions.
- The welfare of the workers: - There are many other labour laws which afforded some protection to the most vulnerable category of workers, such as pregnant women, migrant workers, contract workers, manual scavengers, and people operating within the beedi industry, in mines and also the unorganized sector, world health organization square measure currently conjointly left hospitable exploitation by business house owners.

V. MINIMUM-WAGE

"The minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract"[7].

The purpose of having minimum wage lies in an underlying principle that no one should be denied a fair day labour pay. It tries to safeguard the rights of workers about their pay-scale and the amount of money they are paid as per their work. Minimum wages can also be seen as a policy implementation to reduce poverty and inequality among equal citizens of a country.

[7] ILO: General Survey concerning the Minimum Wage Fixing Convention, 1970 (No. 131). Also, See, the Minimum Wage Fixing Recommendation, 1970 (No. 135) Committee of Experts on the Application of Conventions and Recommendations, 2014.

This can also be seen as a wagon that promotes equal pay for an equal value of work keeping aside the disparity related to gender, age, race etc.

Wages are among the foremost necessary conditions of work and a significant subject of collective bargaining. Wages within the organized sector is usually determined through negotiations and settlements between the employer and the employees. The minimum rates of wages are fastened each by Central and State Governments within the regular employments falling within their respective jurisdictions under the provisions of the Minimum Wages Act, 1948. The Act binds the employers to pay the workers the minimum wages thus fastened from time to time. It was enacted to manage the payment of wages to workers employed in industries and to make sure a speedy and effective remedy to them against illegal deductions and/or unwarranted delay caused in paying wages to them.

The Payment of Bonus Act, 1965 provides for the payment of bonus to persons employed in certain establishments, employing 20 or more persons, based on profits or the premise of production or productivity and for matters connected thereupon.

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of comparable nature without any discrimination and prevent discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service after recruitment such as promotions, training or transfer. The provisions of the Act have been extended to all categories of employment.

- **Minimum Wages Act,1948:**

The Minimum Wages Act was passed in 1948 and it came into force on 15th March 1948. The National Commission on Labour has represented the passing of the Act as a landmark within the history of labour legislation within the country. The philosophy of the Minimum Wages Act and its significance within the context of conditions in India[8] has been explained by the Supreme Court as follows:

"What the Minimum Wages Act purports to realize is to forestall exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages within the scheduled industries. In an underdeveloped country that faces the problem of unemployment on a very large scale, it is not unlikely that labour might offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour

[8] U. unichayi v. State of Kerala, AIR (1962) SC 12

in the interest of the general public and so in prescribing the minimum rates, the capacity of the employer need not be considered. What is being prescribed is earning rates that a welfare State assumes, every employer must pay before he employs labour"

According to its "preamble" the Minimum Wages Act, 1948, is an associate act to produce for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as 'Scheduled Employments'. The Act extends to the whole of India.

- Wages: - According to section2(h) of the minimum wages act, 1948, "Wages" means all remunerations capable of being expressed in terms of money, which might, if the terms of the contract of employment, express or implied, were fulfilled, be owed to someone utilized in respect of his employment or of work done in such employment and includes house rent allowance but does not include:
  i. the worth of
    (a) any house accommodation, the availability of light, water medical;
    (b) any other amenity or any service excluded by the final or social order of the appropriate government.
  ii. contribution by the employer to any Pension Fund or Provides Fund or below any theme of welfare.
  iii. any travelling allowance or the worth of any travelling concession.
  iv. any sum paid to the person employed to pay special expenses entailed on him by the nature of his employment.
  v. any gratuity owed on discharge.
- Fixation of minimum rates of wages: - Section 3(1)(a) lays down that the 'appropriate Government' shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and employment added to either part by notification under Section 27. Just in case of the employments specified in Part II of the Schedule, the minimum rates of wages might not be fastened for the complete State. Parts of the State is also unnoticed altogether. In the case of employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. In Basti Ram v. the State of AP[9], it is said that rates to be fixed

[9] AIR (1969), AP 227

need not be uniform. Completely different rates can be fastened for various zones or localities.

Manner of fixation of wages: - According to Section 3(2), the 'appropriate Government' may fix minimum rate of wages for:

i. time work, known as a Minimum Time Rate.

ii. piece work, known as a Minimum Piece Rate.

iii. employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where the operation of minimum piece rates fixed by the appropriate Government might lead to a worker earning less than the minimum wage), and

iv. an "Over Time Rate" i.e. minimum rate whether a time rate or a chunk rate to use in substitution for the minimum rate which might well be applicable in respect of overtime work done by an employee.

- Penalty and Offences: - Section 22 of the Act provides that any employer who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which can be six months or with fine which can be five hundred rupees or with both.

While imposing any fine for an offence under this section the court shall take into thought the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

It is further stipulated under Section 22A of the Act that any employer who contravenes any provision of this Act or any rule or order created under it shall if no different penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

- **Payment Of Bonus Act,1965:**

The object of the Act is to produce for the payment of bonus to persons employed in certain establishments and for matters connected thereupon. Shah J. ascertained in Jalan Trading Co. (Pvt.) Ltd. v. Mill Mazdoor Sabha[10], that the "object of the Act being to maintain peace and harmony between labour and capital by permitting the employees to share the prosperity of the

[10] AIR (1967) SC 691

establishment and prescribing the utmost and minimum rates of bonus along with the theme of "set-off" and "set on" not solely secures the right of labour to share within the profits however conjointly ensures an inexpensive degree of uniformity".

The Act deals solely with profit bonus, it had been ascertained by the Supreme Court in Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai[11], that "bonus" is a word of many generous connotations and, in the Lord's mansion, there are many houses. There is a profit-based bonus that is one specific kind of claim and perhaps the foremost common. There is the customary or traditional bonus that has its emergence from long, continuing usage resulted in a speech act and expectancy scenario materialising during a right. There is an attendance bonus and what not. The Bonus Act speaks and speaks as a whole Code on the only real subject of profit-based bonus however is silent and cannot, therefore, wipe out by implication, other distinct and different styles of bonuses, like the one oriented on custom.

In Hukum Chand Jute Mills Limited v. Second Industrial Tribunal, West Bengal[12], it is said that provision of this Act has no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually, statutory bonus and customary bonus operate in two fields and do not clash with each other.

- **Equal Remuneration Act,1976:**

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of comparable nature without any discrimination and conjointly prevents discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service after recruitment.

The Act provides that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether or not payable in cash or kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such institution or employment for activity an equivalent work or work of an analogous nature and employer shall not cut back the speed of remuneration of any worker.

It may be noted that the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in-kind, to a person employed in respect of employment or work, is done in such employment, if the terms of the contract of employment, express or implied, were fulfilled and in respect of which the skill, effort and responsibility needed area unit an equivalent, when performed under similar working conditions, by a man or a woman and the

[11] (1976) AIR 1455
[12] (1979) AIR 876

differences, if any, between the skill, effort and responsibility required of a man and those required of woman are not of practical importance concerning the terms and conditions of employment.

VI. INDUSTRIAL DISPUTES ACT, 1947

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and certain other purposes. It ensures the progress of the industry by bringing about harmony and cordial relationship between employers and employees. Definitions of the words 'industrial dispute, workmen and industry' carry specific meanings under the Act and provide the framework for the application of the Act.

The Industrial Disputes Act, 1947, is, therefore, the matrix, the charter, as it were, to the industrial law. The Act and other analogous State statutes provide the machinery for regulating the rights of the employers and employees for investigation and settlement of industrial disputes in the peaceful and harmonious atmosphere by providing scope for collective bargaining by negotiations and mediation and, failing that, by voluntary arbitration or compulsory adjudication by the authorities created under these statutes.

The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice. This being the object of the Act, the Court by the interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in the larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage (Workmen, Hindustan Lever Limited v. Hindustan Lever Limited)[13].

By and large, all these subjects are "connected with employment or non-employment or terms of employment or with the conditions of labour" of industrial employees. In other words, these matters are the subject matter of industrial disputes, which can be investigated and settled with the aid of the machinery provided under the Act or analogous state statutes. The Act applies to an existing and not to a dead industry. It is to ensure fair wages and to prevent disputes so that production might not be adversely affected. It applies to all industries irrespective of religion or caste of parties. It applies to the industries owned by Central and State Governments too

[13] (1984) 1 SCC 728

(Hospital Employees Union v. Christian Medical College) [14].

- **Parties to dispute**

Most of the industrial disputes exist between the employer and the workmen and the remaining combination of persons who can raise the dispute, has been added to widen the scope of the term "industrial dispute". So, the question is who can raise the dispute? The term "industrial dispute" conveys the meaning that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides. The disputes can be raised by workmen themselves or their union or federation on their behalf. This is based on the fact that workmen have the right to collective bargaining. Thus, there should be a community of interest in the dispute. The dispute doesn't need to be raised by a registered Trade Union. Once it is shown that a body of workmen either acting through their union or otherwise had sponsored a workmen's case, it becomes an industrial dispute (Newspaper Ltd., Allahabad v. Industrial Tribunal)[15]. The dispute can be raised by minority union also. Even a sectional union or a substantial number of members of the union can raise an industrial dispute. However, the members of a union who are not workmen of the employer against whom the dispute is sought to be raised, cannot by their support convert an individual dispute into an industrial dispute. In other words, persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are not the employees of the same employer cannot be regarded as so interested. But industrial dispute can be raised in respect of non-workmen (Workmen v. Cotton Greaves & Co. Ltd)[16].

- **Subject Matter of Dispute**

The dispute should relate to employment or non-employment or terms of employment or conditions of labour of any person. The meaning of the term "employment or non-employment" was explained by Federal Court in the case of Western India Automobile Association v. Industrial Tribunal[17]. If an employer refuses to employ a workman dismissed by him, the dispute relates to non-employment of the workman. But the union insists that a particular person should not be employed by the employer, the dispute relates to the employment of workman. Thus, the "employment or non-employment" is concerned with the employer's failure or refusal to employ a workman. The expression "terms of employment" refers to all terms and conditions stated in the contract of employment. The expression terms

[14] (1987) 4 SCC 691
[15] AIR (1960) SC 1328
[16] (1971) 2 SCC 658
[17] (1949) 51 BOMLR 894

 [ISSN 2581-9453]

of employment would also include those terms which are understood and applied by parties in practice or, habitually or by common consent without ever being incorporated in the Contract (Workmen v. Hindustan Lever Ltd)[18].

- **Strike**

According to section 2(q) of this act "Strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

The strike is a weapon of collective bargaining in the armour of workers. The following points may be noted regarding the definition of the strike:

i. Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or a concerted manner. Time factor or duration of the strike is immaterial. The purpose behind the cessation of work is irrelevant in determining whether there is a strike or not. It is enough if the cessation of work is in defiance of the employer's authority.

ii. A concerted refusal or a refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike. A general strike is one when there is a concert of a combination of workers stopping or refusing to resume work. Going on mass casual leave under a common understanding amounts to a strike. However, the refusal by workmen should be in respect of normal lawful work which the workmen are under an obligation to do. But the refusal to do work which the employer has no right to ask for performance, such a refusal does not constitute a strike (North brook Jute Co. Ltd. v. Their Workmen)[19]. If on the sudden death of a fellow-worker, the workmen acting in concert refuse to resume work, it amounts to a strike (National Textile Workers Union v. Shree Meenakshi Mills)[20].

iii. The striking workman must be employed in an "industry" which has not been closed down.

VII. COVID-19 OUTBREAK

There is no denying that the worst-hit section or class of people ever since the nationwide lockdown was haphazardly and recklessly declared, have been our "workers". This is a rather

[18] (1984) 1 SCC 392
[19] AIR (1960) SC 879
[20] (1951) II LLJ 516

generic term that stretches across sectors; it covers the vast numbers of those who work in our unorganised sector, migrant labourers and landless labourers. Right from a mason, carpenter, Kedia, plumber, zardozi embroidery worker, to one who drives an autorickshaw and one who sells vegetables for a living. Any such person who lives a hand-to-mouth existence and is at risk of losing even a day's earnings or wages leading to their entire family becoming unable to afford a good meal the next day.

Plight of workers during outbreak:

Since March 24, when the lockdown was announced and all transport came to a standstill and people were locked up in their homes, these very workers were yearning to go back home in the absence of any means of their wages, unable to buy food or pay rent to their landlords. These 'guest workers', the Kerala lingo for migrant workers, were then to be provided for by the host state as it was found unfeasible to send them back to their home states. Most of the host states failed to deliver even though citizens' initiatives bravely and stoically stepped in.

Straining at the leash -stressed out in cities like Mumbai and in Gujarat where the COVID virus spread was not being contained - crowds gathered, in Mumbai, in Surat and few other cities, desperate to reach home. What seemed unfeasible then was made feasible just a few days later when special trains were arranged for these workers to go back to their home states, to enable them to at least live a life of dignity, in their homes in their village rather than living off the ration and essentials given by some well-meaning citizens groups and, in some cases, the government.

Most host states, that benefit from the hard work and labour of these "guest" or "migrant" workers, have just not been able to instil a sense of trust, leave alone give these workers what they demanded in this moment of pandemic driven crisis: some transparency and communication forget a life of dignity which would let them earn through their hard work and provide for their families.

The massive human tragedy as lakhs of migrant workers found themselves stranded during the lockdown, without any means of getting food or work. Much of this could have been averted had the laws on migrant workers been properly implemented, and all of them been duly documented. Many of these workers have not been paid for months. Again, had the laws relating to the timely payment of wages been enforced, many of these workers would not have been forced to take desperate measures like walking thousands of kilometres back to their homes.

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VIII. CONCLUSION

Reforms in Labour laws is being much talked in recent years. It is being advocated that all talk of liberalization is futile without squarely facing up to the imperative of labour reforms. Reforms in labour laws are an ongoing process to update the legislative system to address the need of the hour to make them more effective, flexible and in sync with emerging economic and industrial scenario. Indian Labour Laws are highly protective of labour, and labour markets are relatively inflexible. If labour laws are implemented in their truest sense, India can achieve its projected goals of labour empowerment which was envisioned by the framers of our Constitution.

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