

International Labour Legislation: with special reference to ILO

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Synopsis:

The subject of this monograph is International Labour Law. This paper basically discusses about the legal rules though not have force of law as it is the subject of International Law. It deals with a branch of law that is international, and more specifically universal in origin, it does not deal with regional instruments because they deals a wide range of issues.

The objectives of the monograph would be for acquainting with or looking in greater depth at this branch of law, the aim is to familiarize with the legal instruments in force and with the scope of the States obligations. The ratification of international instruments by the States play a key role in this respect, the absence of ratification doesn't make them unaccountable, the legislators base their texts, the government its social policy, employers' organizations and trade unions their collective bargaining positions, companies their code of conduct, and the judiciary its rulings, on the international conventions and recommendations. The laws of several countries compared with different legal and social backgrounds, international labour standards are both useful instruments of analysis and excellent yardsticks for identifying the common denominators. They set an international standard of rules which are accepted universally.

The outline of the monograph would be it briefly gives an introduction to the International Labour Law the historical perspective, the aim and objectives and the current International standards and developments in this field and finally it discusses the effectiveness of these instruments and finally the implementation difficulties.

Terminological note: The vocabulary used here was chosen with an eye to the readers for whom these were written like the students, researchers, it doesn't correspond to the terminology used in the international institutions.

Key words: Freedom of Association-Labour standards- International Institutions-Social Justice

Introduction and History of International Labour Law

In the era of industrialization in the 19th century the plight of workers men, women and children there was the concern from thinkers, politicians, and the leaders of the emerging labour and socialist movements, civil servants, economists, doctors, humanistic employers. The charitable urge to put constraints on *laissez-faire*

conditions of labour by the employers and politicians was set against a preoccupation that was economic in nature; the firms which were introducing improvement in the working conditions faced so many problems. In 1802, the British parliament enacted a law prohibiting children from working longer than twelve hours per day. Prussia in 1839, France in 1841 and other statutes and other countries followed. Another reason for enacting laws was deteriorating physical strength at large, many young workers were declared unfit for defence service. Discussions happened even in Germany, Australia, and Belgium particularly in the academic circles and among industrialists. Subsequently, on 30th April 1881, the Swiss National Council requested the Federal Council to control the industrial power and possible adoption of such legislation. Even though this has not worked the pressure for international regulation of working conditions increased.

In the subsequent events the German Emperor, William II, took up the proposal of Swiss and organized international conference for discussing the issues. It happened during March 1890 and so many states participated, i.e Austria-Hungary, Portugal Sweden and Norway, Switzerland, Great Briton, Denmark, France, Luxemburg, Netherlands, Germany and Italy. The outcome was not satisfactory. After a year, Pope Leo XIII offered two international Conferences. Both the conferences gave raise an idea of an International Association for regulating the labour law. Thus, the idea was materialized in 1900 at an international congress on labour legislation in Paris.

The purpose of International Association for the Legal Protection of Workers was to provide a link between the industrialized countries. The head quarter was provided in Basle and the object given for the association was to publish a periodic review on national labour legislation. It also got a duty to encourage and promote labour legislation though international conferences. Several conferences held during 1905, 1906 and adopted international labour conventions. The association was under the process of several other conventions war broke out in 1914.

The First World War drastically changed the general, political and social conditions in which the regulation of employment conditions firstly made. The workers were represented by political organizations and trade unions internationally. Some revolutions happened in Russia, some were reformists wanted peaceful change.² Part XIII of the Peace Treaty signed on 29 June 1919 in the Hall of Mirrors at the Chateau of Versailles was made foundation for a permanent labour organization. It laid down the formation for the ILO Constitution and the tripartite institution with the participation of the governing bodies and employers and workers. The object and objectives reflected in the preamble³ linked universal peace and justice.

² For detailed discussion see, Jean-Michel Servais, "*International Labour Law*", Second revised edition, Wolters Kluwer Law & Business

³ Whereas universal and lasting peace can be established only if it is based upon social justice; And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising

The Treaty of Versailles⁴ which gave wide authority to ILO was led to so many controversies. The controversies blasted at a time when the economic crisis happened soon after First World War, it leads to the retrenchment of generous plans for labour. During 1922 and 1932 the Permanent Court of International Justice opined in several cases regarding the wide powers of ILO.

1939-1945 post Second World War era:

During 1941 the USA and Britain issued joint declaration from the *Potomac*, 'somewhere in the Atlantic Ocean' with some rules that laid down base for the future peace. The Atlantic Charter based on four principles freedom from fear, respect for human rights, freedom from want, fight against poverty. It was the source for the declaration of Philadelphia in 1944. This declaration was later added to the constitution of ILO. This declaration stands on four principles, the protection of the workers, freedom of speech and expression and of association, war on property, and principle of tribalism.

In 1951 ILO a special agreement instituted in the constitution, an agreement with the United Nations Economic and Social Council (ECOSOC), a special body to examine into complaints about violations of human rights like freedom of association. It organized so much research in the area of forced labour, discrimination in specific situations. In 1951 along with the United Nations, it constituted Ad Hoc Committee for looking into the matters of forced labour.

In this Globalizing world the roots which were found in the Industrial Revolution and Industrialization has changed. The changes in the consolidation of market economy and vanishing of communist groups, technology and communication growth brought drastic changes in the 1980s and 1990s.

Sources of International Labour Law

The ILO conventions are the main source of International Labour Law; these conventions are even reflected in the regional mechanisms such as Council of Europe and Arab Labour Organization. The treaties

out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization:

Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO. Last visited on 28th November, 2014 at 11:00am

⁴ See original text in Knipping (Ed), *The United Nations System and its Procedure*, Vol.II (1997) 709

introduced by the United Nations and its other branches like United Nations Educational, Scientific and Cultural Organization are not directly and specially related to labour rights and social security. Other instruments like International covenants on Human Rights discuss about the Civil and Political, Cultural and Educational Rights in general but no specific focus on the Fundamental Labour Rights. To avoid the conflict between these Conventions and Covenants by deferent institutions relating the matters of common interest the clauses of compatibility have been adopted to avoid the direct conflicts.⁵ The other source would be the conferences organized by the two institutions ILO and UNESCO in Rome, 1961 for recommending the Protection of Performers, Producers and Phonograms and Broadcasting Organizations and in Paris,1966 for concerning the status of the teaching personnel.

ILO Constitution-Framework

The ILO's main object is to fulfill the Preamble and the objects set in the Declaration of Philadelphia. For achieving the social justice and universal peace and to ensure the justice and avoid privation and hardship and to provide such conditions of labour is the ultimate goal set in the Preamble. Regulating the hours of employment and protection of young labour and women the principles of equal remuneration etc had been much focused upon while setting the labour standards.

The ILO's constitutional text created a link between the universal peace and social justice, and provided an alternative to for violent methods of change.

Membership

Any State member of the UN may join the ILO by intimating the Director –General and by accepting formally the obligations of the constitution of ILO. Article 1 indicates that these obligations are for membership countries. As on 30th June 2004 the total members are 177. For withdrawal from the organization the Member State shall give a notice of two years and has to complete all financial obligations arising out of membership. A point to note is that there would be no affect on the continuing validity of the obligations under any convention ratified by that State earlier to the withdrawal.

The member States are represented by a tripartite delegation comprising the representatives of the government, representatives of national workers and the employer's associations (2:1:1).⁶ Tripartism also exists in the GB of the International Labour Office and in the regional conferences and major committees.

⁵ Article 8, para.3 of the International Covenant on Economic, Social and Cultural Rights, adopted in 1966 by the United Nations provides for example that 'nothing in this Article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention'. Similar provision exists in Article 22, para. 22 of the International Covenant on Civil and Political Rights (also adopted by the United Nations in 1966)

⁶ For further details see Jenks. "*Some characteristics of International labour Conventions*",(1953) 33 Can, B.R 448-462.

India is a Founding Member of the ILO and a permanent member of the ILO Governing Body since 1922. The first ILO Office in India started in 1928.⁷

Organs of ILO and their functions

The ILO works through three main bodies: the *International Labour Conference*, the *Governing Body*, and the *International Labour Office*. All are characterized by the tripartite composition in varying forms.⁸ The Organization's General Assembly, the ILC meets at least once in a year.⁹ It decides upon the issues relating to entry into the Organization by the non members of UN.¹⁰ The ILC meets to debate, establish, and adopt international labour standards. The Conference also adopts the budget of the ILO and elects the Governing Body.

The *Governing Body*, the executive council of the ILO, holds three sessions a year; one in the autumn, another in the spring and a post Conference session to make policy decisions, establish the budget, and elect the Director-General when necessary.

At present the group is comprised of fifty six titular members (twenty eight government members, fourteen employer members, and fourteen worker members) and sixty six deputy members (twenty eight government members, nineteen employer members, and fourteen workers). The representatives of other member nations are elected at the Conference every three years, taking geographical distribution into account. The employer and worker constituents elect their own representatives.¹¹

The *International Labour Office* the permanent secretariat of the Organization at Geneva has a Director General, elected by GB. He appoints the staff of the Offices, on the geographical basis.¹² The functions of the Director General and the staff thereof are International in character and independent in the performance of the duties they 'shall not seek or receive instructions from any government or from any other authority external to the Organization'.¹³ International Labor Office lends assistance to the Conference and the GB in preparation of their work and provides legal and administrative assistance to governments in the fields of labour.¹⁴

⁷ http://www.ilo.org/newdelhi/aboutus/WCMS_166809/lang--en/index.htm

⁸ www.yale.edu/gegdialogue/docs/ilo

⁹ Article 3 (para 1), of the constitution of ILO

¹⁰ Article 14 and 15 of the constitution of ILO

¹¹ Articles 3,7 of the constitution of ILO

¹² Article 9 (paras 1-3) of the constitution of ILO

¹³ Article 9 (paras 4 and 5) of the constitution of the ILO

¹⁴ See Philippe Sands Q.C and Pierre Klein, '*Bowett's Law of International Institutions*', Sixth Edition, Sweet&Maxwell South Asian Edition, 2011.

International Labour Standards and its contents

The International Labour Standards set forth by the ILO were broadly classified into three 1. Freedom of Association and Social Dialogue, 2. Labour and Employment, 3. Social Security. We shall now consider each in detail.

1. Freedom of Association and Social Dialogue

ILO Conventions and Recommendations are mostly emphasized on the freedom of the workers and employers and the harmonious relationship. According to the International Covenant on Civil and Political Rights, 1966 every one has a right to freedom of association including right to form or join trade unions.¹⁵ The International Covenant on Economic, Social and Cultural Rights, 1966 is also ensured this right more specifically¹⁶ and ILO reiterated the same in Convention No:87 and adds an expression provision for right to strike. The right regarding collective bargaining is incorporated in Convention No:98.

The Freedom of Association includes the freedom to create and join an association,¹⁷ the right to form federations and confederations and to join International Employer's and Worker's Organizations, the protection of the Trade Union from administrative suspension or dissolution,¹⁸ the freedom and guarantee of Trade Union activity.

Apart from the collective bargaining¹⁹ the social dialogue is also dealt in ILO Recommendation No:113. Social dialogue grew considerably in most of the Western European countries. Even though, it is more general the brief recommendation no:92 discuss about the voluntary conciliation and arbitration (1951). The employment practices of anti trade union is also eliminated by restricting the dismissal, transfer, demotion, lays off through Recommendation No:143 on workers representatives.

2. Labour and Employment

¹⁵ Article 22 of ICCPR, 1966.

¹⁶ . **Article 8** of ICESCR, 1966.1. The States Parties to the present Covenant undertake to ensure:(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

¹⁷ Article 2 of Convention No:87 "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization."

¹⁸ Article 4 of Convention No:87 "Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority."

¹⁹ Convention No:98, Convention No:154 and Recommendation No:163 on the promotion of collective bargaining (1981)

Freedom of work is a fundamental right of the person in the democratic countries. The ICCPR, 1966, says that no one shall be held in slavery or servitude, or required to perform forced or compulsory labour.²⁰ The ICESCR, 1966, also insists upon the freedom of work.²¹ The two ILO Conventions 29 (1930), 105 (1957) are aimed at eradicating forced labour.

The prohibition of child labour is one of the measures adopted by the industrialized states in the era of industrial revolution. The Convention No:5 (1919) which prohibited the employment of children under age of fourteen years subsequently raised to fifteen and even higher for difficult works. Convention No:138 and the supplementary recommendation No:146 in 1973 was codified by the ILO in the area of child labour.

The protection of young workers at work place is also given much importance as a part of protection of Labour and Employment. These protections include providing suitable employment, providing medical examinations, arrangement of working time, avoiding dangerous work and providing facilities like sports and recreational activities.

Several other safeguards and protections provided by ILO are occupational security, security for non standard form of employment, protection of the labour from foreign countries, protection for special category of workers like hotel and restaurant workers, nursing personal plantation workers, dock workers, fisherman, seamen etc.

3. Social Security

The first steps towards this aspect by ILO was establishment of social insurance schemes, i.e the obligatory coverage for work related risks but left the employer to chose the means for fulfilling his obligation. The two recommendations adopted in 1944, reflected the social security which is very much required in the post Great Depression and post war. The Recommendation No:67 which talks about the income security schemes, compulsory social insurance schemes²² was adopted by ILO. The Recommendation No: 69, talks about the medical care which should be provided either by social insurance or through public medical care

²⁰ **Article 8** 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.2. No one shall be held in servitude.3.(a) No one shall be required to perform forced or compulsory labour;(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;(iv) Any work or service which forms part of normal civil obligations.

²¹ Article 6,1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes,policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

²² Paragraphs 1to4

service.²³ In 1952, the Convention No: 102 established the minimum standards for social security. This convention by its name suggests basic standards for social security, nine main kinds of benefits were protected as medical care, and sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivor's benefits. This Convention put the responsibility on the States to provide all these in the minimum level as a part of their socio economic development. In 2001 the International Labour Conference organized a general discussion on this topic, the highlights of the discussion were the extent of social security which is a basic human right and there was no single ideal model of standard social security so only the effective administration is necessary for making it success.

Implementation of ILO standards (mechanisms for supervision and modes for supervision)

The application of the standards and its supervision is the obligation of the Member States under the Constitution and in case of special procedures the decision is in the hands of the Organization's managing bodies. The control or supervision should not be ex post but should be proactive. There are two procedures of supervision general and special. We shall now consider them categorically.

The general supervision is collection of the information regarding the implementation of the obligations by the member states. The source of information is the reports submitted by the member states as submission of reports is mandatory. The representative employers and the workers organizations can add information to the report as they also provided with the copy of the report.²⁴ The governments report must contain four main issues, the measures taken for the implementation of the standards, the effect given to the ratified conventions, the effect given to the ratified conventions in non metropolitan territories, the position of domestic law its consistency with the ratified convention. The provision of providing the copy of the report to the employers, labour unions makes it more supervisory as it is a check from the all sides. The reports and the information provided there under are examined by the expert committees, and comments upon the difficulties of implementation if any, and send it to the government and if necessary publishes it in the report which the committee submits every year to the International Labour Conference.

Complaints and Representation from any workers association or employers organization can be made to the International Labour Office²⁵ regarding the non compliance of the standards of the ratified convention. A tripartite committee of the GB will do the initial examination and presents its report. The GB can invite the member state upon which such complains for expressing its views.

Any member state can complain upon other member state for non compliance of the conventions and even a delegate to the International Labour Conference also can introduce a complaint.

²³ Paragraphs 5,8,19

²⁴ Article 23, para 2 of the Constitution

²⁵ Article 24 and 25 of the Constitution

The special procedures include the complaints for violations of freedom of association. A tripartite body the Committee on Freedom of Association constituted by the GB on so many matters submitted to it. This special procedure does not override the general procedures but it's complimentary.

The credential committee will be constituted at each session consisting one government delegate, one employer's delegate and one worker's delegate. The committee considers and examines the credentials of the delegates and their advisors in accordance to the procedure mentioned on the Conference Standing Orders.²⁶

Difficulties in implementation

As there are no sanctions for non compliance of International Law and the conclusions of the supervisory bodies are not binding on the member states the ILO cannot compel the states for the implementation of the ratified conventions. The role of supervisory bodies are not court rulings and they do not penalize rather recommendatory.

As interpreted by the ICJ the ILO's power to regulate incidentally the activities of the employees, the court would formulate a general rule. Having had some time to reflect and having become aware of the circumstances that organizational documents go beyond the mere contractual.²⁷ So the powers of ILO would be only of contractual not of judicial.

The effective implementation depends upon the conditions of the member state like its economic and social status of the country. So many difficulties faced by the member states could not be cleared by the ILO. This problem is more with respect to the developing countries they enter and ratify so many conventions but implementation of all is a big problem.

Conclusion

The current crises in labour law in the Globalizing world can be roughly categorized into four, firstly, it is precisely expensive in nature because the labour law in the initial days was for factory workers but in the twentieth the labour law was taught as 'industrial law' not as 'labour law', in every country almost the labour laws started with the Factory Act. The scope of labour law has been widened but the informal economy which takes the major part of the economy has not covered by the labour law. Secondly, the new technologies and work patterns are not added. Thirdly, the weak and non effectiveness of domestic law in a globalizing environment effected on the implementation of International Labour Laws. Fourthly, the thoughts of Neo classical group and the birth of neo-liberal groups damaged the international financial institutions.²⁸ The journey of ILO in the International Labour Legislation from its inception to till now in the changing world for

²⁶ Article 26 of the Constitution

²⁷ Jan Klabbbers, 'An Introduction to the International Institutional Law', Second Edition, Cambridge University Press 2009, p.no55.

²⁸ Arturo Bronstein, 'International and Comparative Labour Law-current challenges', Palgrave Macmillan, 2009 pp.no 22 to 29

achieving the goals of social justice is tremendous. It's a big challenge to ILO to achieve the set forth goals, reforms are necessary and they are at the top of the agenda.

References

- ✓ Arturo Bronstein, 'International and Comparative Labour Law-current challenges', Palgrave Macmillan, 2009
- ✓ Jan Klabbers, 'An Introduction to the International Institutional Law', Second Edition, Cambridge University Press 2009.
Jean-Michel Servais, 'International Labour Law', Second Revised Edition, Wolters Kluwer Law&Business,2009
- ✓ Jean-Michel Servais, 'International Labour Organization', Wolters Kluwer Law&Business, 2011
- ✓ Philippe Sands Q.C and Pierre Klein, '*Bowett's Law of International Institutions*', Sixth Edition, Sweet&Maxwell South Asian Edition, 2011.
- ✓ <http://www.britannica.com/EBchecked/topic/290987/International-Labour-Organization-ILO>
- ✓ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232
- ✓ <http://www.ilo.org/global/standards/lang--en/index.htm>
- ✓ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- ✓ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>