International Journal of Law, Justice and Jurisprudence

**E-ISSN:** 2790-0681
**P-ISSN:** 2790-0673
IJLJJ 2021; 1(2): 107-109
Received: 20-05-2021
Accepted: 22-06-2021

**Dr. Rajiv Kumar Singh**
National Law University,
Nh-65, Nagour Road,
Mandore, Jodhpur, Rajasthan,
India

**Correspondence**
**Dr. Rajiv Kumar Singh**
National Law University,
Nh-65, Nagour Road,
Mandore, Jodhpur, Rajasthan,
India

# A critical analysis of unfair labour practices and victimization in the context of industrial relation laws

## Dr. Rajiv Kumar Singh

**Abstract**
The study primarily focuses on India's industrial relations laws, determining if the rules need to be changed and identifying gaps in the regulations that may promote unfair labour practices and labour persecution in the hands of employees. "The study examines the Industrial Disputes Act 1947, the Trade Unions Act 1926, and the Industrial Employment (Standing Orders) Act, 1946, the study tries to identify the relevant sections which provide the necessary safeguards for the interests of the employees. It discusses a framework of changes that are needed to be made in labor laws in India to be aligned with the contemporary global and Indian economic realities." The paper goes on to examine the influence of the epidemic on legislation relating to labour relations, if reform is required, and the role of the state in bringing about these changes. It also discusses the role of trade unions in safeguarding employees' rights and preventing unfair labour practices. For the sake of research, the researcher has relied upon the secondary source of data. The research has been conducted through the doctrinal method.

**Keywords:** Unfair, labour, industrial relations, pandemic, trade unions

## Introduction
India's industrial relations institutional framework is largely based on the colonial model of industrial relations [1]. "Three important labour legislation, the Trade Unions Act of 1926 (hereafter TUA), the Industrial Employment Act of 1946, and the Industrial Disputes Act of 1947 have substantially defined it (Hereafter IDA)." India pursued a statist, import-substitution economic policy after independence.

In the present day, the "Industrial Relations in India is primarily governed by the IDA. The legislation has its root in the Rule 81-A of the Defense of Indian Rules that was promulgated by the Colonial government in the year of 1942, the primary purpose behind this was to control the unrest in the country as during that time Britain was pre-occupied with the second world war and could not afford a curve of industrial disputes, shortly before the independence in 1947 the rue was changed into a full-fledged Act, which envisages rules in regard of conciliation, arbitration, adjudication model of industrial dispute resolution. Furthermore, the act provides a dispute prevention mechanism in the form of work committees, conciliation officers, board of conciliation and court of inquiry [2]."

Only disputes sponsored by trade unions or a significant number of people were considered industrial disputes in the early years of the Act. The IDA was then amended to include procedures for the resolution of individual termination issues, thereby recognizing some individual conflicts as industrial disputes.

Following a 2010 amendment to the IDA, it became common to practice for parties to approach labour courts in the event of individual disputes, with no need for a referral. Furthermore, under the provisions of "S- 12(3) [3] of the Act, there is a provision for entering into a conciliated settlement, which has a broader application on all current and future workers of the organization until the settlement is in effect. Furthermore, under the provisions of S- 18 [4], parties can enter into a voluntary settlement."

Another important change that is to be noted in IDA with the inclusion of "S.11-A [5], this was done on the behest of trade union leadership which claimed rampant victimization of the workmen by the employers, this made the labor courts a Court of appeals in regards of the termination cases, in such cases the labor courts could alter the punishment even if the workman is found guilty of misconduct." This clause is sometimes viewed as contributing to inflexibility and obstructing worker discipline because it can exonerate delinquent employees or reduce their punishment even if they are guilty of misconduct. S. 9A [6] of the IDA requires employers to provide workers 21 days' notice before making any modifications to their working circumstances.

This provision is also seen as contributing to inflexibility, with the industry arguing that it is difficult to respond to the needs of the current business environment because workers can file a labour dispute once the notice is given, thus limiting the employer's flexibility.

The provisions which dictate the rules in regards to strikes are included in "S. 22 [7] to S. 25 [8] of the IDA, the workers need to give a notice at least 14 days before going on a strike but this is only limited to public utility services there are no such provisions in the case of non-public utilities, this gives the workers there to go on an instantaneous strike if they desired"

Another issue with Indian laws is that there is a provision for conducting a strike [9] ballot among workers, so even a small group of workers can call for a strike. "It is important to note that the IDA's S. 36 [10] bans the presence of lawyers in conciliation proceedings and further restricts the presence of lawyers before adjudicatory bodies, but a lawyer could be allowed if the other party consents."

After studying the provisions of the IDA, the author believes that the current Act is to the workers' advantage; however, whether this is indeed the case will be determined in the following chapters.

**Industrial Relations and Unfair Labour**

Any of the practices listed in the Fifth Schedule are considered unfair labour practices. In India, "the State of Maharashtra enacted the M.R.T.U. & P.U.L.P. Act, 1971, which addresses unfair labour practices in great detail. Using Maharashtra's decade of experience, the Amendment Act of 1982 identified Unfair Practices in the Fifth Schedule and declared them illegal and criminal offenses under S.25T and S.25U of the IDA [11]. However, unlike the Maharashtra Act, the Central Act did not make any provision for the effective prevention/stoppage/rectification of the unfair practices. This rule is unique in that it prohibits unfair labor practices by workmen as well [12]."

Given the seasonal nature of agricultural labour, an employer's publication of a circular preventing new workers from working for more than 240 days would not be considered an unfair labour practice [13]. Laborers who are not engaged in agricultural operations may not be fired in order to avoid fulfilling the 240-day requirement. Unfair labour practices might be deemed if such workers were fired [14]. Furthermore, under "Section 30(1)(b) of the MRTU and PULP Act, the Industrial and Labour Courts have broad powers to direct the employer to take affirmative action in a case of unfair labour practice, including the power to order regularization or permanency [15]."

In the changing times especially during this time of the pandemic, the definition of Unfair Labor Practices must also be understood in a current context. An act must contain characteristics of arbitrariness and unreasonableness to be considered unfair labour practice; if this is demonstrated, it will invoke the fundamental right guaranteed under Article 14 of the Indian Constitution. "In the case of *Durgapur Casual Workers Union v. Food Corporation of India* [16] The dispute, in this case, involved regularisation workers who had previously worked on a contractual basis in the Corporation's Modern Rice Mill in Durgapur and were directly hired by the Corporation in June 1991 as casual employees on a daily salary basis at the Food Storage Depot at Durgapur Corporation after the Rice Mill closed. The Central Industrial Dispute Tribunal held that continuous casualization of workmen's employment is an unfair labour practice and that the social equity principle requires an order of absorption, and therefore instructed the Food Corporation Management to absorb 49 casual workers. judgment was upheld by a single-judge bench of the Calcutta High Court but was later overturned by the Division Bench due to backdoor nominations and violations of Articles 14 and 16 of the Constitution." It should also be highlighted that in the absence of any unfair labour practice, Labor Courts cannot provide regularisation relief just because a worker has worked as a "daily-wage worker, ad hoc worker, or a temporary worker for a number of years."

We may deduce from the study of these cases and statutes that there is an effective method for resolving grievances in the event of a dispute. Let us now consider how to approach such a redressal.

**Role of Trade Union**

In India, trade unions play a crucial role in safeguarding workers' interests. The TUA, 1926, governs trade unions in India. It contains provisions for registration, formation, and other aspects of the legislation relating to registered trade unions [17].

Every worker in India has the right to create a union or refuse to join one. Not all workers' organizations, however, are classified as trade unions. "For example, the Madras High Court held that an association of sub-magistrates of the judiciary, tahsildars, and other government officials is not a trade union because its members perform sovereign and regal functions."

The members of the union do have some rights these rights become their means in being protected from Unfair labor practices, In the case of "*All India Bank Employees' Association v. N.I. Tribunal* [18], some of these rights were highlighted these rights" are –

1. "The right of the members of the union to meet."
2. "The right of the members to move from place to place."
3. "The right to discuss their problems and propagate their views."
4. "The right of the members to hold property"

It should be noted, however, that the case went on to say that Art. 19 does not cover a right to the accomplishment of all the goals for which trade unions are created [19]. It should be highlighted that an unregistered trade union or one whose registration has been revoked is ineligible to receive any of the TUA or IDA advantages [20].

In India, trade unions play a significant role in terms of industrial relations because trade unions are where collective bargaining takes place. The Hon'ble Supreme Court has defined collective bargaining as "*the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion. It is to be noted that refusing to bargain with employer collectively is regarded as unfair labor practice* [21]*."*

Furthermore, if both parties are unable to establish a collective bargaining agreement, the union has the option to strike, in "*B.R Singh v. Union of India* [22], the court has recognized strike as a mode of redress for resolving the grievances of workers. This step however has some problems involved as there is an underlying assumption made by the SC was that a recognized union represents all the workmen in the industrial undertaking or the industry,

Thus if there are some workers who are not interested to be participant in the strike are still forced to be a part of the strike."

"After the strike the conciliation process begins, the proceedings began after the conciliation officer receives the notice of strike, the state government may appoint a conciliation officer to investigate the disputes, mediate and promote settlement during the cooling-off, further a board of conciliation may also be appointed in equal numbers on the recommendation of both the parties, it is to be noted that no strikes shall be conducted in this period., the process is concluded with one of the following experience I) Settlement ii) No Settlement iii) reference to labor court or industrial tribunal" [23].

The IDA's "Section 7A [24] establishes a labour court or an industrial tribunal inside each state government, consisting of one person selected to resolve labour issues."

**Impact of the Pandemic**

The pandemic has had serious consequences for workers in India; many of them who had moved in quest of work have had their livelihoods shattered; the imposition of lockdown has become a brutal punishment for these workers. Many workers have already lost their jobs, and many more have had their pay reduced as a result of the pandemic. In light of this, many states have relaxed labour laws in their jurisdictions to create more job opportunities and generate revenue for the industries that were primarily closed as a result of the pandemic.

The question is whether this relaxation is advantageous to labourers or whether it will lead to unfair labour practices and worker victimization. Before we speculate, let us first learn what changes have been made by the states and which states have made these adjustments. "Many labor laws in Uttar Pradesh (UP) have been granted temporary exemption; these provisions stand suspended for nearly three years, including significant acts such as the IDA and TUA [25]. Furthermore, Madhya Pradesh (MP) has approved the Labor Amendment Act, which exempts key elements of the IDA, which is one of the most important safeguards for workers from exploitation. Additionally, the working shift has been raised from 8 to 112 hours, with 72-hour overtime authorized [26]. Rajasthan, Punjab, and Haryana, for example, have expanded working hours from 8 to 12 hours per day [27]."

When we evaluate these measures, it is clear that in order to provide more job opportunities and attract more investment to the state, the governments have created an atmosphere that will primarily lead to the exploitation of the state's workers. The labourer may be forced to work in inhumane conditions for a poor wage, with no way of redressing their problems.

According to the author, the government is attempting to achieve short-term goals while ignoring long-term goals. If these policies are maintained, workers will most likely receive salaries that are not commensurate with their skills, resulting in a decrease in demand that would severely harm the economy.

**Conclusion**

After going through all the detailed provisions for the workers the author believes that in India all is enough but there is a problem at the implementation level without the proper implementation it is a very difficult task to achieve the spirit of the legislation. India also provides an alternative dispute resolution mechanism through which employees can get justice very soon because proper redressal mechanisms provided speedy justice. After all, it is immune from the complex procedure of the law. But this is not the ultimate solution for the workers there is a need for improvement in the redressal mechanism. The government should recognize this and take measures that are helpful to workers. This would aid in reaching long-term goals rather than short-term gains.

**References**


1. K.R. ShyamSundar, Institutional Framework of Industrial Relations in India: Still & Muddy Waters, 50 IJLR 2014;195:195-203.
2. Debi S. Saini, Indian Industrial Relations Law: Case for Reform, 50 IJLR 118, 118-132
3. Industrial Disputes Act, 1947, § 12, No.14, Acts of Parliament, 1947 (India).
4. Supra note 3, § 1.
5. Supra note 3, § 11.
6. Supra note 3, § 9.
7. Supra note 3, § 22.
8. Supra note 3, § 25.
9. Supra note 5, at 122.
10. Supra note 3, § 36.
11. Avatar Singh, Introduction to Labour And Industrial Law 302 (Lexis Nexis 2016)
12. Ibid.
13. Supra note 11
14. Ibid.
15. *Maharashtra State Road Transport Corporation v Casteribe Rajya Parivahan Karmchari Sanghatana*, (2009) 8 S.C.C. 55
16. (2015) 5 S.C. 786
17. Sodhi JS. Trade Unions in India: Changing Role & Perspective, 49 IJLR 2013;172:169-184.
18. AIR 1962 SC 171
19. Id.
20. B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association", 11 SCC 2006, 731(2).
21. *Karol Leather Karamchari Sangathan v. Liberty Footwear Company*, (1989) 4 SCC 448.
22. (1989) 4 S.C.C. 710
23. Supra note 3, § 20
24. Supra note 3, § 7
25. Raj Dev Singh, Shrusti Jena Maharathy & Pathik Choudhury, India: State wise relaxation of Labor Legislation Amidst COVID-19.
26. Ibid.
27. Ibid.