

Critical Analysis on Unfair Labour Practices: An International Perspective

Neya Dharshini S¹, Anupamaa S²

^{1,2}Student, Sastra Deemed To Be University

ABSTRACT

Unfair labor practices are defined generally as acts of an employer or higher official that violate the rights of the employees given under the Labor Law. In a general view, unfair labor practices include misusing human power, treating employees as slaves, domination, and control over the employees, monopoly of the workers..., etc. There is no doubt that every country is facing and practicing unfair labor practices. Therefore, in this article, we are going to investigate most of the fields of the labor market where laborers are being treated unequally and disrespectfully and where they are denied their rights and liberties.

In this research, many provisions relating to labor law and labor protection will be dealt with. How the laws relating to a particular field get regulated in a foreign country and those will be compared with the Indian position. By the analysis we get, some suggestions will be made to improve the standards in our labor market in relevance with which field the analysis was made. The facts of the research will be taken from the International Labor Organization. Since ILO has many members, it will be easy to know about the labor markets of other countries. Therefore, the article will contain the situations of unfair labor practices in the Indian Labor Market compared with the Labor Markets of other countries and suggestions will be made to improve the standards in India.

Keyword: Unfair Labor Practices, Workmen, Employer, Employee, Suspension, Labor Laws, Legislations

INTRODUCTION

When we talk about employment, it will eventually lead to consider employers and employees. An industry will run smoothly and production happens at its full capacity when the employees are working without any disputes. Employers and employees should have a healthy and fiduciary relationship to achieve the production target of the industry. Labor relations can have both regional and international character in nature. Labor practices are being raised from such relationships. Labor relations are mainly concerned with salary, wages, remuneration, working conditions in the workplace, social security, promotions, job security, satisfying minimum wages, and fair working time. We have many laws and legislation to regulate the field of industry and to regulate and formulate the rights and duties of employers and employees. Marx was saying that the ruling class was suppressing and exercising their dominance over the working class. To address the problem stated by Marx and his followers, labor legislation was brought up and therefore we can say that because of the Marxists' contentions, legislation was made and it is still protecting the working-class people in India. In this article, we are going to address some of the important provisions relating to unfair labor practices in India and in some foreign countries.

PROVISIONS RELATING TO UNFAIR LABOR PRACTICES

SECTION 25-T¹ OF THE INDUSTRIAL DISPUTE ACT

This section states that no employer or workman or a trade union, whether registered under the Trade Union Act or not, shall not commit any unfair labor practice.

REGIONAL MANAGER, SBI VS RAJA RAM²

In this case, the court dealt with unfair labor practices relating to the employment of badlis, casuals, or temporary workmen. Here, the respondent has been appointed as a temporary employee for a period of 3 months approximately. The respondent was appointed in the place of S after the cessation period of S who had been working in the same employment cadre. After the cessation of the respondent's employment term, R was appointed. Respondent sued that replacing him with new employee R is an unfair labor practice. However, the Labor Court held that **Section 25-T** of the Industrial Disputes Act cannot be applied in this case by seeing the circumstances. Also, the court held that, if the replacement of the respondent with R is an unfair labor practice, then replacement of S with the respondent is also an unfair labor practice. Therefore, the court held that, in this case, the employees were appointed on a temporary basis and the artificial breaks are incidental to their temporary services and there is no intention of depriving them of the status and privileges of permanent workmen.

GANGADHAR PILLAI VS SIEMENS³

In this case, the Supreme Court held that, when an employee is filing suit against an employer for the reason of committing unfair labor practice under section 25-T of the Industrial Dispute Act, the burden of proof lies on the workman to prove that the unfair labor practice mentioned in the suit is true and it was done by the employer on whom he has raised the case.

ONGC VS PETROLEUM COAL LABOR UNION⁴

In this case, the Supreme Court spoke about the rights and powers of the Labor Court and the High Court regarding the labor dispute matters. In this case, the court held that if the Labor Court/High Court is clear about the case from the pleadings of facts by both parties, the court can pass on the verdict based on the facts pleaded in the suit and based on the report given by the Conciliation Officer for whom the Industrial Disputes Act confers rights and powers to deal with such matters under section 4. The verdict can be passed even without pleading by both parties if the commission of unfair labor practice is ex-facie from the facts pleaded by both parties in the case suit.

SECTION 25-U⁵ OF THE INDUSTRIAL DISPUTE ACT

This section deals with the penalty for committing unfair labor practices. It states that any person who commits unfair labor practices shall be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to rupees one thousand or both.

¹ Industrial Disputes Act, 1947

² (2004) 8 SCC 164

³ (2007) 1 SCC (L&S) 346

⁴ (2015) 6 SCC 494

⁵ Industrial Disputes Act, 1947

COLOR CHEMICALS LIMITED VS AL ALASPURKAR⁶

In this case, Respondents 3 and 4 were working in the night shift. When the Supervisor came for rounds, they both were found sleeping. The machine was running continuously and there were some raw materials inserted. This act was considered a major misconduct and they both were dismissed. Their dismissal happened by including their past misconduct records in which respondent 3's record states that he had already played cards and got caught and warned. Records of Respondent 4 state that he was warned only once during his employment. The court held that if the punishment given to the workman is shockingly disproportionate to the delinquent act committed by him and considering the past records, such an act will be considered an unfair labor practice. So, this case strongly restricts the employer or the industry from granting disproportionate punishment even if the misconduct of the employee or employees is a major one. This case was sort of a turning point and many cases started using this as a precedent after the verdict of the case was passed.

HARINANDHAN PRASAD VS FOOD CORPORATION OF INDIA⁷

This case emphasizes the relief that should be granted in the cases of unfair labor practice. The Industrial Disputes Act has empowered the authorities under this act to give relief to the workmen who are being abused with unfair labor practices as reinstatement for being dismissed or discharged wrongfully which opposes the nature of Common Law and which may be a violation of the contract signed between the employer and the employee before stepping into the employment. This should be done to keep the employers on track, preventing them from committing unfair labor practices, securing the policy of collective bargaining of the employees employed in the industry, and promoting industrial peace. Penalties are being given to employers practicing unfair labor practices to maintain fair play and justice in the Labor Law.

SCHEDULE V OF INDUSTRIAL DISPUTE ACT

Section 2(ra) of the Industrial Disputes Act states that unfair labor practices mean any of the practices mentioned or specified under Schedule V of the Industrial Disputes Act.

SCHEDULE V divides these unfair labor practices under two headings namely,

1. On the part of employers and the trade unions of employers
2. On the part of workmen and the trade unions of workmen

Based on these headings, they list the activities that will be considered unfair labor practices and if any employer violates this act and does any act mentioned under this, he will be punished under Section 25-U of the Industrial Dispute Act.

NATIONAL LABOR RELATIONS ACT⁸

This National Labor Relations Act (NLRA) which is also known as **Wagner Act**, is a sort of policy initiated by America by **UNITED STATES CONGRESS** in 1935. This policy was enacted as an act for its effective enforcement in the States, to eradicate the causes of labor disputes which are burdening and being a hurdle to the employees to work and this will ultimately affect the quantity of production and

⁶ (1998) 3 SCC 192

⁷ (2014) 7 SCC 190

⁸ <https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act>

commerce. It mainly focuses on ensuring an ensured and definite positive environment and working conditions for the employees and designation of representing themselves without any fear. This act also ensures the employees have the full right to form associations and collective bargaining. It also gives full power to the employees to make collective decisions like strikes. When the rights conferred to the employees to exercise under section 7 of the National Labor Relations Act are violated or interfered or disturbed by the employers or any union, the affected employee can file a complaint in the National Labor Relations Board and that board has the right to enquire the case dispute and to pass verdict which is conferred by the National Labor Relations Act. The NLRA divides unfair labor practices into two categories based on who does unfair labor practices.

1. If an unfair labor practice is committed by an employer to an employee, he can be challenged under section 8(a) of the NLRA.
2. If an unfair labor practice is committed by a union to an employee, he can be challenged under section 8(b) of the NLRA.

J.I CASE & CO VS NATIONAL LABOR RELATIONS BOARD⁹

The petitioner J. I Case Company, in one of their plant branches, offered individual contracts of employment to all the employees. The terms were definite and the employment tenure is one year. The contract contains details regarding wages, and position of employment and agrees to have medical and hospital facilities. Almost all the employees agreed to the contract offered to them individually and joined into the employment. But, in fact, the signing of the contract they offered is not compulsory. So, the status of employees in the employment will not be affected by signing the contract or not signing the contract. This immoral practice of the company was not found by the employees. After some days, the CIO Union gave a petition to the Board to certify and declare them as the exclusive bargaining representative of the production and maintenance of the employees. When the company management came to know about the petition filing of the union, the company showed the individual contracts as a bar to representation proceedings. Amidst this, the Board conducted the election and the Union won and they were declared as the exclusive bargaining representative of the production and maintenance of the employees. The union asked the company and the employers to come to bargain. But they refused by saying that they are not supposed to deal with the union regarding the matters that are getting affected under the individual contracts that are in effect and the company said that they would negotiate once the contract period gets over.

The Union sued the Company for refusing to bargain which affects **section 8(5)** and the company offered and made the employees sign individual contracts to stop and impede the employees from exercising their rights given under **section 7** of the NLRA. Therefore, the Board held that the company has committed unfair labor practices as given under section 8(1) of the NLRA and ordered the company to negotiate with the union regarding bargain matters.¹⁰

INTERNATIONAL LABOR ORGANISATION ON UNFAIR LABOR PRACTICES

The International Labor Organization has international labor standards that are used as keys and those keys are the primary tools for the government to stabilize the labor market by preventing disputes from arising and solving the disputes that arise. ILO sets labor standards for the enrichment in conditions of the

⁹ 321 U.S. 332

¹⁰ <https://www.law.cornell.edu/supremecourt/text/321/332>

employees by consulting and confirming with both employers and employees to make those standards effective on both sides.

ILO has taken many conventions relating to labor standards in the workplace places and these initiatives were taken to evict discrimination, and unfair labor practices and to promote the standards of labor. It also suggests some punishments to prevent the employers from suppressing the employees which is considered as unfair labor practices. ILO prescribes some remedies for employees who have been subjected to unfair labor practices by employers. They include

1. Injunctive or interim injunctive relief
2. Paying back the wages and bonus
3. Reinstatement to employees' former position
4. Monetary damages
5. Expungement of an employee record for ill-treatment or for wrongful termination

THE DIVISIONAL FOREST MANAGER VS SHRI VINAYAK KURNE¹¹

In this case, the court held that the termination of the employment services of the respondents was against industrial and labor protection and held that the petitioners committed unfair labor practices. Also, the court held some points where the termination of the employment service will not amount to unfair labor practice. They are

1. When the employees are employed on a term that is temporary and its nature is apparent in the contract, termination of the employment service of such a workman will not amount to unfair labor practice.
2. When the employees are employed, not apparently for a temporary period but for some work which is required in a particular season, then termination of such employment service of the workman will not amount to unfair labor practice as the termination is incidental when the season ends.

Let us discuss and analyze the labor standards and conditions in some foreign countries and their impact on the livelihood of the employees.

LABOR LAWS IN AUSTRALIA

In Australia, the government gives some grounds which are considered valid grounds to suspend or dismiss the employee from his/her employment. They are,

- a) If the employee is incapable of fulfilling the requirements of the role that has been given to him/her in the course of his/her employment.
- b) Poor efficiency in work performance.
- c) Lack of skill, care, and due diligence.
- d) Misbehavior, misconduct, or inappropriate acts at the workplace.
- e) The suspension or dismissal from the work is allowed when the employee reaches the stage of **Redundancy** which means he/she is no longer needed in the operation of the business or his/her part got over while running the business.

¹¹ WRIT PETITION NOS.3208 OF 2011 & 3213 OF 2011

In Australia, if they find out that an unfair dismissal or any unfair practice has happened, the maximum compensation that would be given to the aggrieved employee is about the wages of continuous 26 weeks.¹²

LABOR LAWS IN QUEENSLAND

Queensland is known for its magnificent work in its CIVIL LAWS. The civil laws in Queensland are widely contained with numerous ranges of legal issues. There is a tribunal in Queensland named

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL which is shortly known as QCAT. This QCAT was formed to deal with some matters like minor debt recovery disputes and consumer, industrial, and trade disputes in which the amount involved in the dispute is less than \$25000. Queensland also has a Human Rights Commission through which the govt addresses many problems and it is providing importance to the disputes of the laborers and employees too.

LABOR LAWS IN SWITZERLAND

In Switzerland, protection against discrimination and prevention of discrimination is the general and fundamental duty of the employer towards the employees as getting protection against discrimination from the employer is a powerful right of the employee. Mostly unfair labor practices would happen due to gender discrimination. To figure out this problem, Switzerland bought an act named **FEDERAL GENDER EQUALITY ACT** which provides procedural and substantial rules that should be followed by the employers to protect the dignity of the employees and the decorum of the industrial field. Switzerland has signed many international agreements with the European Union on the free movement of persons and equal treatment of persons who are considered as their national contracting parties. Such parties should not be treated unequally by other persons based on their nationality as related to the conditions of employment and working conditions.

They also have an act named the **FEDERAL DISABLED EQUALITY ACT** that directs employers to protect their employees from the federal government and these persons are protected within the framework of the general protection of their rights of personality.

Unfair labor practices include many unethical, immoral, and socially unacceptable exercises of power by employers upon the employees. One of the major unfair labor practices is gender discrimination. In Switzerland, there is an act named **GENDER EQUALITY ACT** that is specially legislated to prevent discrimination based on gender and other stuff like civil and economic status in the society. This act also gives protection against bad working conditions in the industries, inappropriate and unjust wages, and even sexual harassment in the workplace.

The statutory itself provides that maternity leave for women should be given for the full 14 weeks and it should be a paid leave. They call this leave **14 weeks of paid statutory maternity leave** and women are right and royally entitled to this leave.

LABOR LAWS IN THE NETHERLANDS

The Netherlands approaches unfair labor practices mainly by emphasizing labor exploitation. They say that coercion, violence, undue influence, threat, black mile, deception, and labor exploitation also lead to

¹²https://www.google.com/search?sca_esv

unfair labor practices along with arbitrary suspension or dismissal from employment and ill-treatment of the employees. The Netherlands Govt even provides a dial number when an employee is anticipating some danger to his livelihood or is in acute danger. They ensure the employees, always have good living conditions. Even after their termination of employment, the employees are enabled to receive benefits from the Dutch Govt. They enjoy the same benefits from the Dutch Govt even if they move out of the country to find more employment opportunities.

The Dutch Govt, they have a provisional clause called **the non-competition clause**¹³ in the employment contract. If an employee signs a contract that has this clause, that employee's position in the labor market will be affected. Because, if this clause is being agreed upon by an employee in this employment contract, he should not do any other business which is a sort of a competition business and he should not become a competitor of the employer, after the termination of the employment contract. However, this restriction would last about 6 months to 2 years. Any contract of employment made by an employer in which such non-competition clause describes fixed term restriction, such contracts are void and such employer would be considered as practicing unfair labor practices.

CONCLUSION

Seeing the analysis of labor laws regarding unfair labor practices in India as well as in different foreign countries, we can see the efficiency of the labor laws across the world. We can say that, verdicts and judgments given by the judges regarding the disputes also have the same effect as the legislative provisions as they are still being used as precedents in many running cases. Comparing the labor laws and legislations in India with those of foreign countries, we can make similar laws and legislations that would favor the conditions of our country which are very effective and impactful in those countries.

In **Australia**, they clearly defined the acts that would lead to unfair labor practices. If any laborer is treated in a bad way and dismissed or suspended from the course of employment arbitrarily, the employer should pay the workman, the whole wages of 26 weeks. Such stringent laws would threaten the employers to exercise their power upon their employees arbitrarily and it would be better if all countries give monetary punishment to the employers who are exploiting the rights of the laborers in the industries and their livelihood.

In **Queensland**, the Human Rights Commission gives more importance to labor issues and industrial disputes. So, we should make our Human Rights Commission too to work more efficiently on labor disputes as in Queensland.

In **Switzerland**, they have specific acts for most of the categories of labor disputes such as the Federal Gender Equality Act, Federal Disabled Equality Act, Gender Equality Act, and so on. They have specific acts to restrain the ill-treatment of disabled workmen in the industry and to restrain the practice of gender inequality. They also provide the statutory right for 14 weeks of maternity leave for women by considering the pain they go through after giving birth to the child. But, in India, we are still unable to abolish gender discrimination especially in the labor field and in the labor market. India should make maternity leave for women, a statutory right as already done by the Switzerland Govt. Because, in India, still women are losing their jobs once they leave jobs for maternity purposes. The women are compelled by their employers to rejoin and resume their job or else they will be fired from the employment.

¹³ <https://www.nl labour authority.nl/topics/report/reporting-unfair-unsafe-unhealthy-working-conditions-or-labour-exploitation#:~:text=Force%2C%20violence%2C%20threats%2C%20extortion,0800%205151>

In the **Netherlands**, the Dutch Govt always looks for better living conditions and standards for the laborers. They provide many dial numbers to ask about the grievances of the workmen side and they provide solutions to the disputes. They give awareness about the non-competition clause to the employees before signing the contract which would constrain the workmen to do competitive business once their employment is terminated. In India, we do not have such a non-competition clause in practice. So, we can ensure that the conditions of employees doing business after termination of service are safe.

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