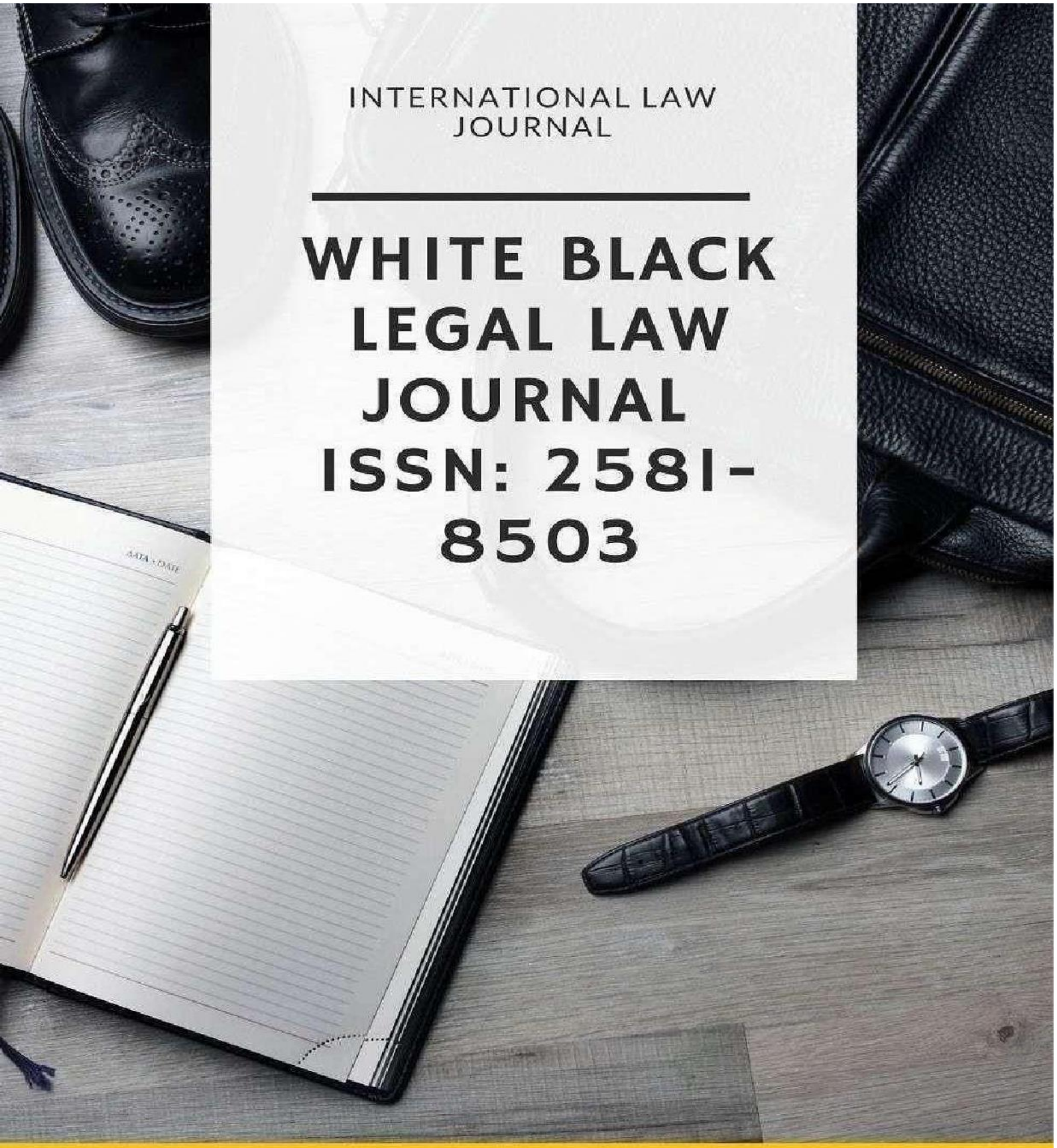


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# UNFAIR LABOUR PRACTICES IN INDIA: EFFECTIVENESS OF THE EXISTING LEGAL FRAMEWORK

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## Introduction

Labour is one of the most fundamental pillars of economic and social development, playing a critical role in the growth of industries, businesses and the overall economy of the country. However, the employment relationship between the employer and employee is not always equal and symmetric. Employers dominate employers in terms of recruitment, fixing and regulating wages, working conditions, promotion and termination of employment. Such asymmetry results in the occurrence of unfair labour practices, where employees are subject to discrimination, victimisation, interference with trade union activities, arbitrary dismissal and other unlawful procedures. [1]The prevention of such practices poses an important question in Indian labour law to preserve legal rights and opportunities for workers. Unfair labour practices are typically understood as unjustified actions on the part of employers or trade unions, which seek to restrict the rights of workers or disturb industrial relations. For instance, employers could employ various forms of pressure against employees who participate in union activities. On the other hand, trade unions could be guilty of discriminatory practices against employers or other workers. The unlawful nature of such conduct can undermine the position of employees, disturbing their legitimate interests and creating an inhospitable working environment. Thus, legal protection on the basis of appropriate legislation is required to prevent the occurrence of unfair labour practices. Indian laws have been formed to secure the rights of employees and regulate the key aspects of employment relationships. Historically, the unfair labour practices in India have been addressed through The Industrial Disputes Act, 1947, which included relevant sections, notably 25T, 25U and the Fifth Schedule. However, Industrial Relation Code, 2020 was passed with the purpose of consolidating and amending key industrial law acts and regulations. In particular, this act includes important sections which address the question of unfair labour practices. The date of commencement and application of the Code, along with its relevant rules and provisions should be taken into account when considering

[1] *The Industrial Relations Code*, No. 35 of 2020, § 84 & Second Schedule (India).

current legislation. At the same time, the Constitution of India plays an important role in terms of legal protection of workers and employees, defining their rights and freedoms on the basis of equality, freedom of association and social justice principles. However, the presence of relevant laws does not necessarily guarantee that workers' interests will be adequately protected. The issue of unfair labour practices raises a number of questions in terms of legal protection of employees. In spite of the fact that workers are formally entitled to claim their rights and seek redress in court, there are a number of factors which prevent them from doing so. The lack of access to justice, financial risks, delays in litigation, limitations of evidence and protection against employer's revenge are some of the obstacles which employees face when claiming unfair labour practices. Meanwhile, contractual, temporary and informal workers are particularly vulnerable in terms of such practices. The central question of this research is to what extent the existing legal framework is effective to prevent unfair labour practices, ensuring employees' rights and holding employers and trade unions accountable for such violations. This paper aims to address this question by analysing the key provisions of Indian Constitution and Industrial Disputes Act, 1947 and examine how they are applied in practice. Particular attention will be paid to workers' opportunities for seeking justice and protecting their rights. Furthermore, this paper will explore the practical functioning of the system, including such aspects as impediments of access to courts and tribunals competent to hear disputes, the effectiveness of redress and remedies provided by the law, workers' awareness of their rights and the role of social and political factors in this context. On the basis of this analysis, it will be possible to conclude whether the current legal system adequately protects workers from unfair labour practices and to propose recommendations as to how it could be improved.

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## Research Methodology

The present research will follow a doctrinal method of legal research to study unfair labour practices in India and analyse the effectiveness of its legal framework. Doctrinal research involves studying and evaluating legal rules, statutory provisions and judicial decisions, among others, to understand the functioning of the law. This method is relevant for the present study since its objective is to understand the legal protection of workers and the shortcomings of the legal system. An analytical approach is also adopted through reviewing whether the law provides with effective protection from unfair labour practices. The nature of the study shall consist of both descriptive and analytical sections. Even though the descriptive part will depict

the essence of unfair labour practices, its categories and legal recognition in India, it will characterize also the rights of workers, the responsibilities of employers, and the role of trade unions. The analytical section of the study will assess the adequacy of the protection provided by statutes, analyse courts interpretation and application of laws, and comment on the level of protection of workers' rights. It will show how much the legal protection of workers differs from the practice. It is anticipated that the study will rely on secondary sources of data. They include statutes, court decisions, books, scholarly articles, research reports, government publications, and other resources on Indian labour law and industrial relations.[2]

Primary sources of information will comprise the Constitution of India, Industrial Relations Code, 2020, and Industrial Disputes Act, 1947, which will be used to trace the development of legislation on unfair labour practices. In particular, the relevant parts of the above-mentioned legal acts will be analysed in detail in accordance with their current status and legal force. Apart from that, the Supreme Court and High Court decisions on disputes concerning unfair labour practices, victimization, and trade union rights will be examined. In addition, the study will involve the analysis of books and scholarly articles authored by labour law experts and published in reputable journals. They will be used to identify diverse arguments and approaches to the problem. Norms of law, as well as statistical data on workers' rights violations, will be collected from official websites, India Code, and publications of the International Labour Organization.[3] Notably, online resources, including legal databases, will be used to identify cases and scholarly literature on the topic. The collected data will be subject to statutory interpretation, case-law analysis, and critical evaluation. All relevant statutes will be assessed to identify prohibited unfair labour practices, remedies, and penalties. Moreover, the case-law on the topic will be examined to isolate and evaluate the principles established by courts in relation to unfair labour practices. Particular attention will be paid to such matters as the sluggishness of dispute resolution, workers' lack of legal literacy, challenges in presenting evidence, and difficulties in proving alleged violations. The study will conclude with recommendations on how to overcome these issues. The scope of the study will be focused on Indian Labour Law, with the accent on legal protection of workers against unfair labour practices. Apart from statutory and case-law resources, international legal standards will also be included in the analysis for comparative purposes. However, the study will not follow an

[2] MIKE MCCONVILLE & WING HONG CHUI EDS., *RESEARCH METHODS FOR LAW* (2d ed. 2017).
[3] *The Industrial Relations Code*, No. 35 of 2020 (India); *The Industrial Disputes Act*, No. 14 of 1947 (India); INDIA CONST.; International Labour Organization, *NORMLEX: Information System on International Labour Standards*

entirely empirical approach since it will not involve extensive qualitative and quantitative research. Instead, it will rely on published scholarly articles and books, as well as government reports and publications. Another limitation of the study is linked to the possibility of legislative changes, judicial reinterpretation, and variations in practice over time. Therefore, it is anticipated that the current status of the law and its implementation at the moment of submission of the study will be identified. Nevertheless, the study will offer an in-depth legal analysis of the existing framework and suggest how it could be improved to ensure more effective protection of workers.

## Meaning and Types of Unfair Labour Practices

Unfair labour practices are those prohibited acts to be done by employers including the employers' organizations or trade unions which have adverse impact upon the rights of workers or employers. It may consist of discrimination, victimization, interference with union activities, unfair dismissal, etc. The concept of such practices is aimed at securing and protecting the interests of the workmen and the employers.[4]

The notion of unfair labour practice in India is recognized in the Industrial Disputes Act, 1947. Specifically, Section 2(ra) of the statute defines the expression "unfair labour practice", Section 25T prohibits unfair labour practices while Section 25U provides the penal provisions for such practices and the Fifth Schedule specifies the various unfair labour practices. In the Industrial Relations Code, 2020, there is a Second Schedule which deals with unfair labour practices. Thus, it is essential to refer to the particular statute to know the position in law.

It is necessary for the law to protect the workers from unfair labour practices since an employer possesses greater economic power as compared to that of an individual worker. The employer also has the authority to decide whether to continue or terminate an employment contract. Consequently, the workers are not in a position to raise an objection against unfair labour practices, not making any payment in respect of a wage due to the employee, or, a threat of termination of the employee on the ground of such refusal. In this regard, it is essential to provide legal protection to the workers and balance of power between the employer and the employee.

Unfair labour practices may be categorized into those done by employers and trade unions

A. Unfair Labour Practices by Employers

An employer can be guilty of an unfair labour practice if it does any prohibited act interfering

[4] *The Industrial Relations Code*, No. 35 of 2020, § 84 & Second Schedule (India).

with any rights of the workers.

1. Interference with Trade Union Activities: It consists of threatening or coercing workers not to join a trade union or any other unlawful conduct.[5]
2. Victimisation of Workers: This refers to victimizing trade union leaders or any other workers who participate in the lawful activities of the union or refuse to participate in unlawful activities.
3. Discrimination against Employees: The employer may indulge in discriminatory practices against employees who participate in trade union activities or any other lawful activities. Such conduct can be considered as an unfair labour practice if the statute specifically prohibits doing so.
4. Unfair Dismissal and Disciplinary Action: Dismissal or other disciplinary action against the employees would amount to an unfair labour practice if such action is harsh, unjust or unreasonable and undertaken in bad faith, or, is a means of revenge or does not accord with a statute.
5. Refusal to Bargain Collectively: The employer refusing to bargain collectively would amount to an unfair labour practice if the statute specifically prohibits such refusal.

In the same way, the trade unions are under an obligation to respect the rights of employers to manage their business without any interference.

1. Coercion of Workers: It consists of compelling or forcing workers to join a union or to refrain from joining or remaining in a particular union.
2. Interference with Workers' Freedom: A trade union indulges in an unfair labour practice when it intimidates workers who do not participate in its activities.
3. Unlawful Industrial Action: Such action could be done by going on strike in contravention of the provisions of the statute. However, every strike does not amount to an unfair labour practice, thus, the illegality of the action would be judged depending upon the provisions of the law.

Unfair labour practices have an adverse impact upon the workers since it destroys the confidence of the workmen in the trade union and causes industrial disputes. Moreover, due to such practices, workmen may become reluctant to enter into an employment contract. Consequently, it reduces the productivity of the workmen and weakens the industrial relations. From the constitutional angle, a number of fundamental rights have been enumerated in Part III of the Constitution of India. In particular, Articles 14 and 19(1)(c) deal with the right to

[5] *The Industrial Relations Code*, No. 35 of 2020, § 84 & Second Schedule, cl. I(1)(a)–(b) (India).

equality and freedom of association. Similarly, Articles 38, 42 and 43 provide for the social and economic rights. These provisions would have to be read in conjunction with the various laws relating to unfair labour practices.

Thus, the unfair labour practices should be eliminated since it undermines the rights of the workers. Moreover, despite the existence of various laws, it is vital to ensure that remedies are provided and the laws relating to unfair labour practices are enforced effectively and the workers are empowered to assert their legal rights.

## Development of Labour Law in India: Historical Overview Essay

It is known that Indian Labour Law has evolved to protect workers from being exploited and to ensure their justice in their relations with employees. It was difficult for factory workers to get their justice at the initial stages of industrialization when they worked long working hours for low pay in appalling conditions. Moreover, if they tried to go to court, their problems would not be taken seriously as their subordinate position. Social movements, trade unions, industrial disputes, as well as the principles enshrined in the Constitution, contributed to the development of laws regulating employment relations. [6]However, the historical context of the emergence of these laws can help to better comprehend their current state and evaluate whether they are suitable to stop unfair labour practices.

Development of Labour Laws started with the beginning of industrialization during British rule. Factories, mills, and other industrial sites urgently needed workers, but their working conditions were set in a way that protected the interests of industrialists and not the rights of workers. The first step in regulating employment relations was the Factories Act of 1881 that set up specific rules for factory work, such as restrictions on working hours for children.

Legislation on trade unions also emerged, namely, the Trade Unions Act of 1926. This act established the conditions for registering trade unions and enshrined certain protections for their functioning. Although the rights of the working class were not absolute and the state did not have the tools to stop exploitation, the appearance of the first laws indicated a step towards social justice. However, the oppression of workers still remained a severe problem as well as disputes between employees and employers[7]. Thus, new laws were needed to regulate relations between these parties.

The Industrial Disputes Act of 1947 was an important step towards the protection and

[6] S.C. Srivastava, *Industrial Relations and Labour Laws* (Vikas Publishing House).
[7] *The Trade Unions Act*, No. 16 of 1926, §§ 3–5, 13, 17–18 (India).

promotion of workers' rights. Firstly, this act established the framework for managing industrial disputes and created the state apparatus for their consideration, such as labour courts and industrial tribunals. Moreover, this act explicitly mentions unfair labour practices, thereby establishing a list of actions prohibited for employers, employers' associations, employees, and trade unions of employees. Section 2(ra) of the Industrial Disputes Act of 1947 defines unfair labour practice, Section 25T states that such practice shall be prohibited, and Section 25U establishes responsibility for committing it.

The Fifth Schedule of the Industrial Disputes Act of 1947 explicitly lists the types of unfair labour practices, thereby clarifying the concept of this term and indicating the areas where the state will protect workers. In particular, this section lists prohibited actions of employers, employers' associations, employees, and trade unions of employees. For example, Section 25AA of the Schedule states that the employer shall not obstruct or damage the trade union of employees. At the same time, Section 25AA also points out that employees shall not impede trade union officials. The appearance of such laws demonstrated that some employer practices required special regulation, and the state saw its role in this.[8]

The Constitution of India, which came into force on January 26, 1950, enshrined social justice and protection of workers as fundamental values. Firstly, this is stipulated in Articles 14 and 19(1)(c) of the Constitution, which provide for equality before the law and the right to freedom of association, respectively. Forced labour is prohibited by Article 23, and the employment of children in harmful work is regulated by Article 24[9]. In addition, the Constitution provides in its Directive Principles for the protection of women and children, as well as the provision of a living wage. Although the principles enshrined in the Constitution were not immediately enforced, they guided the development of laws regulating employment relations. It is noteworthy that although the Constitution does not explicitly mention the right to work, the right to freedom of association allows groups of people to unite and advocate for their rights.

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act of 1971 was another step towards social justice. This act came into force in Maharashtra and aimed to regulate trade union relations and stop unfair labour practices. In addition, this act provided for the establishment of special courts competent to consider disputes on this subject and take measures to protect workers. The relevance of this act is reflected in the present dissertation, as it shows that prohibiting unfair labour practices was a priority for the

[8] *The Industrial Disputes Act*, No. 14 of 1947, § 25T & Fifth Schedule (India).
[9] INDIA CONST. arts. 14, 19(1)(c), 23–24. INDIA CONST. arts. 39(e)–(f), 41–43, 43A.

Maharashtra state authorities. At the same time, it should be noted that this act, like most of the laws mentioned above, focuses on the protection of workers' rights and their interests.

At the moment, India is in the process of consolidating laws regulating various aspects of the work of enterprises and employees. Thus, the Industrial Relations Code of 2020, which regulates trade union relations, unfair labour practices, and industrial disputes, was adopted. Moreover, the Second Schedule of this code explicitly lists the actions that fall under the definition of unfair labour practices. It is necessary to approach with caution to this project of legislation, which, in its way, is an attempt to consolidate dozens of acts that previously regulated relations between employees and employers. In particular, to find out whether this code is advantageous for workers, one needs to study not only the text of the law itself but also the documents regulating its application, which came into force together with it.

A historical overview of India's Labour Laws shows that they have come along a long way from minimum regulations to a comprehensive system that covers almost all aspects of the work of enterprises and employees. At the moment, employees are protected not only by laws regulating industrial disputes but also by laws protecting them from unfair labour practices. However, even though India has made great strides in protecting the rights of workers, it is hard to talk about complete social protection. In other words, despite the fact that the creation of such laws indicates the strength of democratic society, they still do not solve all the problems of the working class. Thus, the presence of laws banning unfair labour practices and protecting the rights of trade unions is not enough for employees to be able to freely exercise these rights and use the corresponding remedies.[10]

## **Legal Framework Governing Unfair Labour Practices in** India

The existence of a legal framework governing unfair labour practices presents us with a broad field of protection of workers against being exploited, victimised and having their employment rights interfered with and setting up a framework of fair dealings between employers and employees. Such legal framework incorporates constitutional provisions, labour legislation, judicial decisions and mechanisms for the resolution of industrial disputes. In addition to this we must acknowledge the importance of the actual implementation and enforceability of any given legal framework.

The Constitution of India lays the basis for India's legal framework which seeks to protect and

[10] Industrial Disputes Act, No. 14 of 1947, §§ 25T–25U, Fifth Schedule (India); Industrial Relations Code, No. 35 of 2020 (India); INDIA CONST. art. 19(1)(c).

empower its workers. The Articles and the Directive Principles of State Policy provide significant rights and principles for social justice, reducing the economic inequality and protecting the rights of workers.

The Articles 14, 19(1)(c), 21, 23 and 24 and the Directive Principles of State Policy provide significant rights and principles. Article 14 provides for equality before the law and uniformity of laws which is pertinent to the consideration of arbitrary state action and employment-related discrimination where the state action is discriminatory, directly or indirectly, or involve constitutional obligations. Article 19(1)(c) provides for the right to form associations and unions which are subject to the reasonable restrictions as provided in the Constitution. This article is particularly significant as the workers can make collective decisions and negotiate with their employers. Article 21 provides for the right to life and liberty which may be relevant to employment related issues that involve dignity and other protected interests. The article 23 of the Constitution forbids forced labour and article 24 forbids employment of children in hazardous occupations and processes.

The directive principles make it the responsibility of the state to secure social justice (article 38) and to solve social and economic problems (article 39).

Articles 42, 43 and 43A provide for such measures as just and humane working conditions and maternity relief, a living wage and decent working conditions, as well as workers' participation in management.

While the Directive Principles cannot be judicially enforced as the Fundamental Rights can they serve as important guidelines for legislation and policy.

The Industrial Disputes Act, 1947, was a significant legislation addressing unfair labour practices. In addition to providing a framework for settling industrial disputes, the Industrial Disputes Act, 1947, prohibited unfair labour practices and outlined the penalties for such unfair labour practices. In addition to other applicable provisions, the provisions of the Industrial Disputes Act, 1947, include the definitions and penalties associated with unfair labour practices. Specifically, Section 2(ra) of the Industrial Disputes Act, 1947, defines unfair labour practices. Section 25T of the Industrial Disputes Act, 1947, prohibits unfair labour practices. And Section 25U of the Industrial Disputes Act, 1947, defines the penalties applicable in this regard. The prohibited conduct by employers and trade unions is outlined in the Fifth Schedule of the Industrial Disputes Act, 1947.

Other practices that the Industrial Disputes Act, 1947, set out included interference with trade union activities and victimisation and other conduct detrimental to fair industrial relations. Furthermore, dispute resolution mechanisms for the resolution of workplace disputes through

labour courts and industrial tribunals are provided. As a key legislation, the Industrial Disputes Act, 1947, provides an important historical perspective of the need to prohibit and address certain unfair labour practices, adopting specific legal measures.

The Industrial Relations Code consolidates important laws relating to trade unions, industrial disputes and conditions of employment in industrial establishments. The Code's Second Schedule includes a list of unfair labour practices while the Code itself provides for the relevant prohibitions and penalties in this regard.

The Industrial Relations Code marks a new development in relation to India's industrial relations law framework. However, in order to evaluate the status quo, it is necessary to consider the commencement notifications, rules and operative provisions which apply to the Code.

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 is an example of a specialised piece of legislation which addresses specific issues in a particular state. The Act covers trade union recognition and prevention of unfair labour practices within the state of Maharashtra. It has played a significant role in the development of legal frameworks for the protection of workers, particularly in respect of procedures for filing complaints and adjudication. However, it is not for this Act to govern labour relations in all of India.

India's legal framework provides for a comprehensive set of constitutional principles, statutes and dispute resolution mechanisms for addressing unfair labour practices. However, it is important to acknowledge the limitations of such legal measures and consider the impact of the challenges of access to justice and remedies. As a result, in analysing the effectiveness of the existing framework, one must consider not only the existence of legal provisions but also their implementation and enforcement.

## Supporting Theories

1. Marxist Theory

Marxist theory aims to explain the relationship between workers and employers in a capitalistic economy, where the two parties are equal but subordinate to each other. Usually, in a capitalist economy, the employer is the one controlling the production means and terms of employment, whereas the worker sells their labour and expects to receive wages in exchange for their services. Thus, the exploitation of labour is an intrinsic part of the employer-worker relationship in a capitalist economy. Marxist theory can be applied to explain the current

situation, as it helps to understand the fundamental difference between workers and employers, as well as provide justification for legal intervention in labour matters. However, it should be noted that when it comes to defining unfair labor practices, the law should be interpreted depending on the context of exploitation.[11]

2. Labour Process Theory

Labour process theory focuses on the ways by which the employer can organize and manage workers' labour to maximize production. Subordinating workers is an integral part of any productive labour process, which means that employers use oppressive measures to ensure that employees adhere to their expectations. In other words, workers are subject to demotions, termination, and denial of benefits, such as unions. Modern labour process theories can be applied to current affairs, as they explain how new technologies can be used to rate, manipulate, and terminate employees' work accounts. Labour process theories are critical to the current study, as they can help identify the legal aspects of workers' labour and analyse the application of labour laws in practice. For example, the theories can explain the difficulties that workers encounter when trying to take legal action against their employers by analysing the exploitation methods used by the latter.[12]

3. Employment Relationship Theory

Employment relationship theory aims to focus on worker welfare and the rule of law as a way to regulate employment relationships. This theory is concerned with workers' status, within the framework of employment relationships, and the extent to which employment terms can affect labor laws, including workers' compensation. Employment relationship theory can be used to address current affairs, as it can highlight different aspects of workers' compensation, such as the impact of workers' employment status on labour laws. In addition, the theory can help the current study identify the difficulties that employees encounter when determining their status, within the framework of an employment relationship, before taking legal action. Although the current theory is concerned with workers' welfare and rule of law, it should be noted that in most cases, the employment status of the workers should be determined individually, by

[11] KARL MARX, *CAPITAL: A CRITIQUE OF POLITICAL ECONOMY*, VOL. 1 (Ben Fowkes trans., Penguin Books 1976); INDIA CONST. arts. 14, 21, 23; Industrial Relations Code, No. 35 of 2020 (India).
[12] HARRY BRAVERMAN, *LABOR AND MONOPOLY CAPITAL: THE DEGRADATION OF WORK IN THE TWENTIETH CENTURY* (Monthly Review Press 1974); Industrial Relations Code, No. 35 of 2020 (India); Code on Social Security, No. 36 of 2020 (India).

considering the particular circumstances of the case.[13]

4. Rule of Law Theory

Rule of law theory focuses on the rights and responsibilities of employers and employees, within the framework of society, emphasizing the necessity of following the existing rules and the importance of legal power. According to the rule of law, employers have to follow the minimum standards of employment relationships, whereas employees have to comply with the terms and conditions of employment, established by their employers, while also protecting their rights. Although rule of law theory emphasizes the importance of legal power, it can be applied to employment law, in order to address the current situation and explain how labour laws can actually be enforced. For instance, explaining the role of legal power, compliance, and remedies, is essential in most labour law cases, as simply establishing labour laws is not enough, for ensuring fair labour practices.[14]

## Judicial Approach to Unfair Labour Practices in India

The role of the judiciary in protecting workers' rights is particularly important since they interpret and analyse the statutes, assess the conduct of the employers, and ensure that all the dismissals and disciplinary actions are legitimate and fair. In addition, it should be noted that the court decisions help achieve equity between the management and the staff. At the same time, it is essential to make a difference between the cases related to the unfair labour practices and more broad industrial relations issues.

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1. Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha (1980)

Facts: A dispute broke out between the management of Gujarat Steel Tubes Ltd. and the workers. After several dismissals, which occurred during industrial unrest, the dispute was taken to the Supreme Court.

Issue: The main issue concerned the legality of the dismissals and whether the action of the management was victimisation or disciplinary proceedings.

Held: In its judgment, the Supreme Court evaluated the circumstances under which the dismissals occurred and elaborated on the importance of determining what the disciplinary

[13] Simon Deakin & Frank Wilkinson, *The Law of the Labour Market: Industrialization, Employment, and Legal Evolution* (Oxford Univ. Press 2005); Code on Social Security, No. 36 of 2020, §§ 2(35), 2(60) (India); *Balwant Rai Saluja v. Air India Ltd.*, (2014) 9 SCC 407 (India).

[14] A.V. DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* (8th ed. 1915); INDIA CONST. arts. 14, 19(1)(c), 21; Industrial Relations Code, No. 35 of 2020 (India).

action was aimed at.

Legal principle: It was noted that in no case could the disciplinary action be considered legitimate only because it was stipulated as such by the employer.

Relevance: The case is utilised to evaluate the nature of victimisation, which is why it is relevant to the topic of unfair labour practices, although it should not be generalised to all of the statutes that stipulate unfair practices.[15]

2. Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management (1973)

Facts: A dispute broke out concerning the nature of the punishment of a workman and the right of the industrial tribunal to review the details of the domestic enquiry conducted.

Issue: The main issue raised in the case concerned the extent to which the industrial tribunal was entitled to go into the details of the domestic enquiry and punishment imposed by the employers.

Held: The Supreme Court specified the general law concerning domestic enquiries and the mandate of the Industrial Disputes Act, 1947.

Legal principle: In accordance with the judgment, an employer's punishment could be reviewed by an industrial tribunal according to the law.

Relevance: In accordance with the case, it is possible to evaluate the extent to which disciplinary actions are subject to scrutiny. Hence, it is useful in the context of unfair labour practices, although it does not stipulate a universal rule that any form of unfair dismissal constitutes an unfair labour practice.[16]

3. Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd. (1950)

Facts: The dispute between employees and the Bharat Bank Ltd. was concerned with the jurisdiction of industrial tribunals.

Issue: In the case, the Supreme Court had to determine whether the industrial tribunals acted as courts of judicature when dealing with industrial disputes.

Held: In its turn, the Supreme Court elucidated the nature of the adjudicative function performed by the industrial tribunals in accordance with the Industrial Disputes Act, 1947.

Legal principle: The adjudicative function performed by the industrial tribunals and the manner in which they resolved disputes were legitimate and consonant with the law.

[15] *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*, (1980) 2 SCC 593 (India).
[16] *Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management*, (1973) 1 SCC 813 (India).

Relevance: The case is useful in determining the scope of the powers of the industrial adjudication and tribunals, which is why it is relevant to the topic of unfair labour practices, although it does not directly stipulate the meaning of such practices.

The discussed cases demonstrate that the judiciary plays a important role in balancing the relationship between the employers and the employees. First of all, a close scrutiny of disciplinary actions is applied by the courts in order to ensure that they do not contain any covert form of employee victimisation. Secondly, the workers' right to an effective adjudication is of particular importance, as it safeguards their protection under the law. Finally, industrial adjudication and tribunals are legitimate means of resolving disputes, which are directly related to the implementation of labour legislation.[17]

Nevertheless, the judiciary's involvement does not guarantee the absence of unfair labour practices. In many cases, the workers' rights are violated, although they are not safeguarded due to a number of issues, including the inability to resort to the help of the state. Although such practices are considered illegitimate, they should not be viewed in isolation from the general issues that industrial relations face.[18]

A strong judiciary is essential in ensuring workers' rights as it provides interpretations of the labour legislation, scrutinizes employers' actions and adjudicates disputes between the said parties. Yet, the effectiveness of the judicial system in terms of unfair labour practices requires further inspection, which concerns both the legislative acts and their practical implementation.

## Unfair Labour Practices in the Modern Workplace

The modern workplace is characterized by such phenomena as technologisation, globalisation, and new forms of employment. Indian labour law faces new challenges in the context of an increasing number of workers who are employed not directly by the establishment but through various contractors, works councils, and new digital platforms. Such forms of employment may involve elements of flexibility for both sides, however, they also tend to lead to a complex determination of responsibility for ensuring and protecting workers' rights. [19]Thus, the question of the adequacy of the Indian legal framework in relation to new unfair labour practices emerges.

Labour laws define contract labour as a type of labour performed by contract workers under

[17]*Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.*, 1950 SCR 459 (India).
[18] Industrial Relations Code, No. 35 of 2020 (India); INDIA CONST. arts. 14, 19(1)(c), 21.
[19] Industrial Relations Code, No. 35 of 2020 (India); Code on Social Security, No. 36 of 2020, §§ 2(35), 2(60) (India).

the supervision of a contractor. Contract mode as the basis for relations may be expedient for both sides if the terms of work are properly defined and workers' rights are protected. Nevertheless, there are situations in which the contract method is abused by the main employer. The Indian legal framework considers discrimination, victimisation, and other forms of harassment by the main employer as unfair labour practices. The use of contract labour may also lead to difficulties in clarifying responsibility for various violations of workers' rights. In this case, special attention should be paid to the norms of law that apply to specific situations and the details of the contract itself. It is necessary to consider the issue of responsibility in each case separately. The ability to claim compensation for damages should be based on an analysis of the correspondence of the norm to the situation.

Gig workers are usually engaged in situational or sporadic work through digital platforms that provide such workers with job opportunities. In particular, such workers are hired based on the principles of the rating system, which implies the possibility of a change in the worker's status due to a decrease in the rating for no apparent reason. In addition, the worker rarely has the opportunity to control income since the platform takes a significant part of it. Nevertheless, the abovementioned situations should not be interpreted as unfair labour practices unless specific legislation on gig workers is applied. In particular, the Code on Social Security, 2020, which covers various forms of dependent work, including platform work, came into force recently.[20] Nevertheless, social security and protection from unfair labour practices are two separate issues. The problem of the right of gig workers to compensation for damages will depend on whether such workers are considered employees and what legal framework applies to them.

Many companies are engaged in the development of software for monitoring working time, working conditions, and evaluating workers' performance. Such technologies are helpful for both employers and employees since they allow the former to determine the employees' performance and identify shortcomings. At the same time, an algorithm may contain defects or be programmed in such a way that the worker receives fewer bonuses than expected. In such situations, the worker may not have the opportunity to protect his rights since the decisions of the algorithm are almost inaccessible for analysis. The analysis of whether a particular action of the company is an unfair labour practice should be based on legislation and a detailed analysis of the situation.

The modern workplace and new forms of employment present India with complex challenges

[20] Code on Social Security, No. 36 of 2020, §§ 2(35), 2(60), 113 (India); *Indian Federation of App-Based Transport Workers v. Union of India*, W.P. (C) No. 1068 of 2021 (India).

in terms of protecting workers from unfair labour practices. Workers may not have knowledge of their rights or fear loss of employment when protecting these rights. In addition, new forms of employment such as contract labour, works councils, and digital platforms aggravate the situation since they often imply a lack of rights and a difficult search for responsibility for violations. India needs effective enforcement of existing laws, effective complaint mechanisms, and awareness of workers' rights. Labour laws need to be re-examined and consolidated to ensure that workers can continue to enjoy the protection provided to them. Particular attention should be paid to the issue of new forms of employment and the need for special measures to protect workers. Unfair labour practices in the modern workplace should be considered in the context of new forms of employment and technological innovations. Contract workers, gig workers, and workers' councils are subject to specific challenges in terms of protecting their rights. The effectiveness of protection from these practices will be ensured by an adequate analysis of the situation and an assessment of workers' rights. Particular attention should be paid to the ability of workers to challenge decisions that violate their rights and the opportunity for redress. This issue is especially relevant for India, where legal practice in this area is developing intensively and may lead to the erosion of workers' rights.

## Findings and Recommendations

The findings of the current study pertain to unlawful labour practices (ULPs) in India, interpreted from the perspective of applicable laws and court decisions. The findings were formulated in accordance with the six research questions posed by the study. The findings indicate that in general, ULPs imply prohibited activities of employers or trade unions, which cause adverse effects for workers or undermine their rights, both collectively and individually. Particular cases are defined by the extent of statutory provisions prohibiting individual types of ULPs. Thus, identifying situations which may be qualified as ULPs requires the revision of the relevant law. For example, victimization, interference with trade union activities, and discrimination may have different implications depending on specific situations. Constitutional conventions, statutes, and related case law contribute to the current state of ULPs in India. Indeed, the Industrial Disputes Act, 1947 addressed the issue of unfair labour practices through Sections 25T, 25U, and the Fifth Schedule (Industrial Relations Code, 2020). On the other hand, the Constitution's Articles 14, 19(1)(c), 38, 42, 43, and other instruments provide the basis for the concepts of equality, freedom of association, and rights to appoint trade unions, as well as the responsibilities of the state towards workers. Notably, the Statute of Industrial

Disputes Act, 1947, and Industrial Relations Code, 2020, have different commencement dates. Therefore, the application of ULPs provisions should be determined in accordance with the applicable law, as well as the accompanying rules and notifications. Available legal remedies and protective measures embody the basic principles of the legal framework governing ULPs. However, such remedies are sufficient only if they are accessible to workers or effectively enforced by competent authorities. Even though statutory law provides the necessary basis for controlling ULPs, its implementation may be complicated by various factors such as workers' financial capability, access to legal advice, or the fear of unemployment. Courts and labour authorities play an important role in controlling ULPs by interpreting statutory provisions and passing binding decisions. At the same time, the effectiveness of such measures depends on the ability of workers to approach courts directly or utilise their decisions for claiming restitution and compensation. Delays in hearing cases or the absence of efficient enforcement mechanisms may affect the actual impact of judicial intervention and workers' abilities to exercise their rights. Workers face numerous challenges while trying to protect their rights from ULPs. Firstly, gathering evidence and proving the violation may be complicated by the lack of necessary skills or legal expertise. Secondly, filing a claim and attending hearings may be associated with expenses such as legal counsel fees or time spent on presenting evidence. Thirdly, the status of a worker under a contract or working through online platforms may raise questions about liability and responsibilities.

The findings also highlight the need for legal reforms aimed at improving the system of controlling ULPs. Statutory law provides the basis for protecting workers by banning ULPs and establishing remedies. However, such measures may be ineffective if workers do not have enough access to legal resources or if the courts do not handle cases promptly. Moreover, the workers' awareness of their rights and employers' awareness of their responsibilities under the law are no less important for ensuring sufficient ULP control. Based on the findings, this study recommends a number of improvements in controlling ULPs in India. Firstly, competent authorities should ensure effective enforcement of laws and regulations. Secondly, the state should facilitate access to justice for workers by providing them with the required knowledge about filing claims and seeking remedies. Thirdly, the state should simplify the existing procedures for hearing ULP-related cases and reduce delays in hearings. Fourthly, the government should ensure that trade union activities and other protected actions undertaken by workers are not penalised. The fifth and final recommendation refers to the need for legal literacy among workers, employers, and government agencies. In this regard, this study recommends that the state develop training courses and informative materials on ULPs for the

targeted audience. Addressing workers' concerns and doubts can help them understand their rights and hold employers accountable. The state should also ensure that the current laws govern the growing trends of online platform work and provide adequate protection for such workers. This study sought to identify the role of Indian law in preventing ULPs. The findings indicate the need to focus on not only the provisions of statutes and their enforcement but also the workers' access to justice, legal remedies, and efficiency of existing measures. Moreover, the study demonstrates the importance of legal literacy among workers and their representatives, as well as employers and state authorities. Finally, the study shows that the government should monitor emerging trends such as platform-based employment and update the statutory framework to ensure sufficient ULP control.[21]

## Conclusion

Unfair labour practices pose a significant challenge to India due to the implications on workers' rights, job security, workplace environment and employee-employer relationship. The current research aims to identify the meaning and types of unfair labour practices, labour law evolution, constitutional inclusion, case precedents and legal provisions to understand the nuances and effectiveness of legal remedies. The research result concludes that protecting workers from exploitation and achieving social justice require not only appropriate laws but their effective enforcement and accessibility.

Labour law evolution signifies the importance of protecting workers from exploitation and achieving social justice, which has been prioritized in the Indian Constitution. Industrial workers during British rule suffered from poor working conditions, which prompted the enactment of the Industrial Disputes Act, 1947, prohibiting unfair labour practices through Sections 25T and 25U and the Fifth Schedule. Similarly, the Industrial Relations Code, 2020, includes provisions addressing unfair labour practices, but its commencement notifications, rules and statutory provisions need to be considered for determining the current legal position. In addition, the efficacy of judicial interventions in addressing unfair labour practices and protecting workers needs to be emphasized. Labour law judicial precedents concerning disciplinary actions, dismissals and industrial adjudications interpret legislation, establish employers' liability and elucidate the adjudicatory authority's scope of control. Nonetheless, judicial interventions are not sufficient to deter employers from exercising unfair labour

[21] Industrial Relations Code, No. 35 of 2020, §§ 53–59, Second Schedule (India); Legal Services Authorities Act, No. 39 of 1987 (India); INDIA CONST. art. 19(1)(c); Code on Social Security, No. 36 of 2020, § 113 (India).

practices, but timely judicial remedies, effective enforcement of legal provisions and accessible legal remedies are more likely to promote worker protection.

Furthermore, addressing violations of workers' right to fair labour practices requires effective dispute resolution mechanisms, accessible legal remedies and timely judicial redress. Overcoming obstacles in accessing legal remedies is paramount to promoting worker protection, which requires enhancing legal literacy, eliminating the threat of employer retaliation, providing financial support and reducing evidentiary and procedural hurdles. In addition, the legal framework should address the portability of social security and consider gig/platform workers' unique nature of employment to ensure their inclusion in the existing social security ecosystem. The research result indicates that legal provisions, guidelines and judicial interventions need to be re-examined to ensure effective remedies accessible to all workers despite the evolution of employment relationships.

Accordingly, the study recommends improving legal frameworks, enforcing protective legislation, enhancing legal literacy and reducing procedural delays in adjudicating workers' claims. Effective implementation of safeguards against victimization and providing legal aid to vulnerable workers and trade unions are also essential for achieving effective worker protection. The policymakers need to review existing legislation to ensure that it addresses new employment relationships emerging in the formal sector, and if not, consider amending protective legislation and implementing new measures if legislative gaps exist.

Overall, the study concludes that the effectiveness of India's legal framework in combating unfair labour practices is closely related to the interplay between legal protection and its effective enforcement and accessibility to redress individual violations of workers' rights. While legislative measures and judicial interventions create the framework for worker protection, its effectiveness depends on whether it is effectively enforced and accessible to all employees. Accordingly, policymakers, legislature and judiciary need to collaborate to ensure that adjudicating unfair labor practices is expeditious and that workers are aware of their rights and legal remedies. This way, India can improve its industrial relations framework, ensure worker protection and create an enabling environment for sustainable development and economic growth.