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# **UNFAIR LABOUR PRACTICES IN LABOUR LAW: CONCEPT, REGULATIONS AND REMEDIES**

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## INTRODUCTION –

### MEANING AND IMPORTANCE OF FAIR LABOUR PRACTICES -

The fair labour practices promote equity, equality, and dignity in employment relations. They force employers to treat workers in an open and non-discriminatory and human way. The workplace is not only an economic place but also a social institution in the contemporary industrial society where the basic human rights have to be respected. Such practices as decent wages, equality, and reasonable working conditions establish a feeling of security of workers, and reinforce mutual confidence between labour and management.<sup>1</sup>

The significance of fair labour practices is in the fact that it ensures industrial peace. Employees are motivated and will perform well when they feel respected and safe, which brings about organisational stability. Quite to the contrary, the victimisation, discrimination and coercion are introduced that leads to dissatisfaction, strikes, and industrial unrest. Accordingly, fair labour practices play crucial roles in safeguarding the workers as well as maintaining economic efficiency and social justice in the industrial relations.<sup>2</sup>

### EVOLUTION OF LABOUR LAW IN INDIA -

The Indian labour law is an indication of a transformation of colonial domination to constitutional wellbeing. The labour laws enacted during the British times like the Factories Act 1881 were primarily made to serve the interests of the industry and not the workers. These initial laws were restricted in protection and were mostly aimed at controlling the working hours and child labour, and did not deal with the broader questions of dignity and equality at work.<sup>3</sup>

India pursued the labour laws after independence through a social justice platform. The industrial Disputes Act, 1947 and Minimum Wages Act, 1948 were the laws that sought to ensure that the workers were not exploited and that collective bargaining was encouraged. Articles 14, 19(1)(c), and 21 of the Constitution also enhanced rights of labour and the State was guided by the Directive Principles towards ensuring fair and human conditions of work.<sup>4</sup> This constitutional vision provided a background on how unfair labour practices would be

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<sup>1</sup> O.P. Malhotra, *The Law of Industrial Disputes* 45–47 (7th ed. 2014).

<sup>2</sup> Int'l Labour Org., *Declaration on Social Justice for a Fair Globalization* (2008).

<sup>3</sup> B.K. Mathew, *Labour and Industrial Laws* 12–14 (3d ed. 2012).

<sup>4</sup> *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 S.C.C. 545 (India).

recognised and regulated.

### **NEED FOR REGULATING UNFAIR LABOUR PRACTICES -**

The industrial relations in India are still characterized by the power abuse by both employers and trade unions in spite of the strong legal framework. Employees are usually victimised because of joining unions, denied promotions or unfair terminations. Meanwhile, the employers are at times coerced by the unions through illegitimate strikes and intimidation. This kind of behaviour disrupts the equilibrium of power in the industrial relation and causes instability.<sup>5</sup>

There was a need to regulate the unfair labour practices in order to contain these issues at their source. Simple dispute-resolution mechanisms were not found to be sufficient unless prejudice conduct itself was banned. This saw the legalization of unfair labour practices especially through the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 that spells out clearly what is forbidden and offer remedies that are effective.<sup>6</sup> Regulation therefore brings about the concept of industrial democracy where the rights and duties of all stakeholders are taken care of.

### **OBJECTIVES AND SCOPE OF THE STUDY –**

This paper focuses mainly on describing the meaning of unfair labour practices and discussing their effects on the nature of industrial relations. It also seeks to discuss the legal system of governing such practices and the redress that may be taken by the victims. Additionally, the research aims at learning how the judiciary has dealt with unfair labour practices and the role played by courts in influencing this aspect of labour law.

The study is largely limited to study of the Indian legal system, and briefly international labour standards that are stipulated by ILO. It addresses any unfair labour practices by employers, by trade unions, and by workmen, and addresses both the substantive measures and the enforcement measures. The report also tries to propose modifications that will enhance compliance and make the labour law administration effective in India.

### **CONCEPT OF UNFAIR LABOUR PRACTICES –**

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<sup>5</sup> K.D. Srivastava, *Industrial Relations and Labour Laws* 289–90 (6th ed. 2018).

<sup>6</sup> Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. 1 of 1972 (India).

## **DEFINITION OF UNFAIR LABOUR PRACTICES -**

Unfair labour practices are described as unethical, illegal and unfair practices embraced by employers, workers or trade unions that infringe the set labour rights and disrupt industrial peace. The practices are a contradiction of the fairness, equality, and good faith principles which constitute a good industrial relation. Many of them are usually caused by a power imbalance in which one side aims to take advantage of the other side or bully them with its superiority and lack of contentment and insecurity in the workplace.<sup>7</sup>

In India, unfair labour practices have been given statutory recognition in the form of the Fifth Schedule in Section 2(ra) of the Industrial Disputes Act, 1947 which states that it is any practice listed in the Fifth Schedule to the Act. This Schedule lists in detail some of the forbidden employer and worker conduct such as victimising a trade union member, the refusal to collectively bargain, and violence or intimidation<sup>8</sup>, which has long been regarded as a moral infraction, but which has now been put under the law, making it a legal affront with remedial and penal implications.

## **ILO PERSPECTIVE ON UNFAIR LABOUR PRACTICES -**

On the global scale, the international labour organisation (ILO) has constantly denounced the practice of unfair labour as a betrayal of the basic labour rights. Freedom of association and the rights to collective bargaining are also vital in ensuring healthy and democratic industrial relations as states by the ILO. Such practices like anti-union discrimination, interference with trade union activities by the employer and retaliation of the employees who engage in lawful trade union activities are viewed as severe threats to labour freedom.<sup>9</sup>

These ideals are authoritatively articulated as ILO Convention No. 98 (1949) on the Right to Organise and Collective Bargaining. Member States must also ensure that workers are not subjected to anti-union discrimination and that workers and employers organisations can operate freely without interference<sup>10</sup>, even though Convention 98 has not formally been ratified by India, the Convention has frequently been used by Indian courts in the interpretation of domestic labour legislation to enforce the applicability of international standards in developing

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<sup>7</sup> K.D. Srivastava, *Industrial Relations and Labour Laws* 287–89 (6th ed. 2018).

<sup>8</sup> Industrial Disputes Act, No. 14 of 1947, § 2(ra), Fifth Schedule (India).

<sup>9</sup> Int'l Labour Org., *Freedom of Association and Collective Bargaining: General Survey* 34–36 (2012).

<sup>10</sup> Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98), adopted July 1, 1949, 96 U.N.T.S. 257.

the concept of unfair labour practices.

### **ESSENTIAL ELEMENTS OF UNFAIR LABOUR PRACTICES -**

Abuse of authority is one of the fundamental aspects of unfair labour practices whereby the management or the trade unions abuse their power to oppress the other party. Using the disciplinary control, employers can victimise the leaders of unions, and using the coercive method, unions can make employers accept their demands. This kind of abuse perverts the power relations in the industry and substitutes the conversation with the domination.<sup>11</sup>

Discrimination and coercion is another factor that should be taken into consideration especially when the workers are not treated equally on the grounds of their membership or involvement in union or any other collective activity. Meanings like denouncing, intimidating or coercing workers to drop their union membership, is coercion. Such practices are mostly coupled with bad faith, particularly when the collective bargaining is concerned, where one party bargains dishonestly without the actual intention of developing an agreement. All these factors indicate that unfair labour practices are not a single occurrence but rather a larger trend of unreasonable behaviour that undermines trust and fairness in relations at work.<sup>12</sup>

### **DIFFERENCE BETWEEN UNFIAR LABOUR PRACTICES AND UNFIAR TRADE PRACTICES -**

Unfair labour practices and unfair trade practices exist in different legal fields, as both of them are aimed to prevent exploitation and provide fairness. Unfair labour practices are associated with employment and industrial relations which concentrate on the rights protection of workers, freedom of association, and fair treatment in the working place. Labour laws including the Industrial Disputes Act, 1947 and the special acts such as the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 predominately regulate them.<sup>13</sup>

Unjust trade practices on the other hand deal with consumer protection and fairness in the market. They include misleading adverts, false representations and deceptive business practices that impact on consumers and competition. The laws that govern these practices include the Consumer Protection Act, 2019. Whereas unfair labour practices are meant to safeguard the

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<sup>11</sup> O.P. Malhotra, *The Law of Industrial Disputes* 1123–25 (7th ed. 2014).

<sup>12</sup> B.K. Mathew, *Labour and Industrial Laws* 301–03 (3d ed. 2012).

<sup>13</sup> Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. 1 of 1972 (India).

workers against exploitation in the employment market, unfair trade practices are meant to safeguard the consumers against exploitation in the market. Therefore, in spite of the fact that both notions develop fairness, their purposes, beneficiaries, and laws are too divergent.<sup>14</sup>

## **TYPES OF UNFAIR LABOUR PRACTICES –**

Employers, trade unions and workmen may engage in unfair labour practices. Indian labour law acknowledges the fact that industrial injustice is not an issue of one side only; but an outcome of exercising power in an abusive manner by any side in the industrial relations. Such practices are categorized under the Fifth Schedule of the industrial dispute act, 1947 and the Maharashtra recognition of trade union and prevention of unfair labour practices act, 1971.<sup>15</sup>

### **UNFAIR LABOUR PRACTICES BY EMPLOYERS -**

Unfair labour practices are determined by employers abusing their managerial powers to undermine the rights of the workers or the trade union. Some of the common practices are victimising workers to join unions, threatening employees to lose their jobs due to engaging in legal strikes, failure to bargain in groups and later favouring some workers over the others to undermine the unity of the union. This kind of behavior generates fear and insecurity and does not motivate workers to exercise their statutory rights.<sup>16</sup>

An example of this is a typical scenario in real life when management either transfers or lays off a head of the union on the basis of administrative reasons to overcome collective resistance. Such behaviour has continually been criticised in courts. In *Hindustan Lever Ltd. v. Ashok Vishnu Kate*, the Supreme Court considered that victimisation of employees as the trade union members constitutes unfair labour practice and strikes as the foundations of industrial democracy.<sup>17</sup>

Common examples -

- Firing or sacking employees due to trade union membership.
- Declining to adopt wage contracts that are legally resolved.
- Selective promotions to undermine collective bargaining.

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<sup>14</sup> Consumer Protection Act, No. 35 of 2019, §§ 2(47), 2(49) (India).

<sup>15</sup> Industrial Disputes Act, No. 14 of 1947, Fifth Schedule (India); Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. 1 of 1972 (India).

<sup>16</sup> K.D. Srivastava, *Industrial Relations and Labour Laws* 292–95 (6th ed. 2018).

<sup>17</sup> *Hindustan Lever Ltd. v. Ashok Vishnu Kate*, (1995) 6 S.C.C. 326 (India).

- Using intimidation to compel employees to agree to unreasonable terms by threatening to close or retrench them.

### **UNFAIR LABOUR PRACTICES BY TRADE UNIONS -**

The unions are crucial in ensuring that the interests of workers are not misused; however, when collective power is abused, it may lead to unfair labour practices. Unions can use coercive measures like coercing employees to become members of a given union, declaring strike illegally, or intimidating those employees who do not wish to be involved in the union practices. This is detrimental to the freedom of choice of workers and disruptive to industrial peace.<sup>18</sup>

As an example, forcing employees to go on a strike or forcing those who are ready to work physically out of the workplace is an unfair labour practice. In *Crompton Greaves Ltd. v. Workmen*, the Supreme Court noted that though the right to strike is crucial, it should be provided under the scope of the law and may not be used as an excuse to coerce or sometimes use violence.<sup>19</sup>

Common examples –

- Coercing employees to be members of a certain trade union.
- Arranging strikes or gheraos that are illegal.
- Mauling on the non-strikes.
- Hampering legitimate managerial operations.

The individuals or groups of workmen may also engage in unfair labour practices when they engage in an act that leads to breach of discipline and legal authority. These are practices like wilful insubordination, machinery sabotage, propagation of false rumours or even violence in the workplace. Such activities are damaging not only to the employer but also to other workers who are disturbed by the working environment.<sup>20</sup>

An example is the intentional slackness of the workers in increasing the output (go-slow) to put management on its toes (negotiate). Such tactics, though not as evident as strikes, are also

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<sup>18</sup> O.P. Malhotra, *The Law of Industrial Disputes* 1130–32 (7th ed. 2014).

<sup>19</sup> *Crompton Greaves Ltd. v. Workmen*, (1978) 3 S.C.C. 155 (India).

<sup>20</sup> B.K. Mathew, *Labour and Industrial Laws* 305–07 (3d ed. 2012).

detrimental. In *Bharat Iron Works v. The Supreme Court* ruled that go-slow is a grave malpractice and is an unfair labour practice in that it jeopardizes industrial discipline.<sup>21</sup>

Common examples –

- Willful destruction of company property.
- Levelling false accusations on the management.
- Slow and slackened inefficiency.
- threatening managers or colleagues.

### **COMMON EXAMPLES AND REAL – LIFE ILLUSTRATIONS –**

Unfair labour practices are usually practiced indirectly in the real life world of industries. To serve as an illustration, a factory administration can refuse to grant overtime or promotion exclusively to the employees who are active union members but not the ones who do not say anything. On the same note, a strong union can coerce fresh workers into joining it by threatening social ostracism or isolation in the workplace. These practices can be non-violence practices, which are, however, based on fear and favouritism and pressure tactics.

The second real-life scenario is observed in case of contract labour where employees are maintained on temporary roll over years to deprive them of permanency and benefits. Such practices have been considered to be unfair and exploitative by the courts. In *Maharashtra SRTC v. Casteribe Rajya Parivahan Karmachari Sanghatana*, the Supreme Court standing realised that one of the unfair labour practices is to keep workers as temporaries over prolonged periods to save benefits.<sup>22</sup>

## **LEGAL FRAMEWORK REGULATING UNFAIR LABOUR PRACTICES –**

### **CONSTITUTIONAL BASIS –**

The regulation of the unfair labour practices in India is well entrenched in the Constitution of India which acknowledges the basic rights that are needed to ensure fairness in employment relations. Article 14 guarantees equality under the law, as well as, it does not permit arbitrary or discriminatory treatment of employees. Any act of victimising employees who affiliate

<sup>21</sup> *Bharat Iron Works v. Bhagubhai Patel*, (1976) 1 S.C.C. 518 (India).

<sup>22</sup> *Maharashtra SRTC v. Casteribe Rajya Parivahan Karmachari Sanghatana*, (2009) 8 S.C.C. 556 (India).

themselves to unions or denying them equal opportunity contravenes this constitutional requirement of equality.<sup>23</sup>

Article 19(1)(c) ensures the right to association and trade unions which is the core of the collective bargaining. This right is directly violated by practices like interference by employers into unions or coercion to avoid membership to unions. In addition, Article 21 which safeguards life and personal liberty has been interpreted judicially to entail the right to livelihood and to dignified working conditions<sup>24</sup> and these provisions have provided a constitutional environment, which deplores unfair labour practices and compels the State to promote justice in industrial relations.

### **INDUSTRIAL DISPUTES ACT, 1947 -**

Industrial Disputes Act, 1947 (IDA) is the main law governing unfair labour practice in the country. The idea was formally contained in the Act by the 1976 Amendment, which added Section 2(ra) which declared unfair labour practices as those contained in Fifth Schedule. This Schedule includes extended examples of unacceptable behaviour on the part of employers, trade unions, and workmen, such as victimisation, refusal to negotiate collectively, acts of violence or intimidation.<sup>25</sup>

Even though the IDA identifies and outlines unfair labour practices, it lacks an independent and substantive enforcement mechanism. Rather, industrial dispute resolution forums like Labour Courts and Industrial Tribunals are usually used to resolve the dispute issues surrounding such practices. Although this is a limitation, the consideration of unfair labour practices in the framework of the IDA is an important move towards understanding that unfair practices are illegal and should be avoided in order to maintain the harmony in the industrial environment.<sup>26</sup>

### **MAHARASHTRA RECOGNITION OF TRADE UNIONS AND PREVENTION OF UNFAIR LABOUR PRACTICES ACT, 1971 –**

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,

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<sup>23</sup> E.P. Royappa v. State of T.N., (1974) 4 S.C.C. 3 (India).

<sup>24</sup> Olga Tellis v. Bombay Mun. Corp., (1985) 3 S.C.C. 545 (India).

<sup>25</sup> Industrial Disputes Act, No. 14 of 1947, § 2(ra), Fifth Schedule (India).

<sup>26</sup> O.P. Malhotra, *The Law of Industrial Disputes* 1120–23 (7th ed. 2014).

1971 (MRTU & PULP Act) present a more comprehensive and a better statutory framework. The Act is said to be a breakthrough in the Indian labour law in the sense that it does not only outline unfair labour practices but has also provided a specialised machinery to prevent and redress such practices. The Act has divided unfair labour practices into distinct schedules against employers, unions as well as employees to make it clear and to be specific in implementation.<sup>27</sup>

The Act gives powers to the Labour Courts and Industrial Courts to investigate unfair labour practice related complaints and provide effective remedies in terms of cease-and-desist order, reinstatement, and compensation. The Maharashtra Act has enhanced the combat against unfair labour practices greatly by offering quick and targeted solutions and in many ways has been emulated by other States in fighting industrial injustice.<sup>28</sup>

### **ROLE OF ILO CONVENTIONS -**

The international labour organization (ILO) is at the forefront in the formulation of norms against unfair labour practice at the international level. Anti-union discrimination, employer interference, and retaliation of workers are the kind of practices, which are considered serious violations of freedom of association and collective bargaining by ILO. Such principles are mostly echoed in the ILO Convention No. 98 (1949) on the Right to Organise and Collective Bargaining and Convention No. 87 (1948) on the Freedom of Association.<sup>29</sup>

Despite the fact that India is yet to ratify these conventions, ILO standards have often been useful in the interpretation of domestic labour laws in India by the Indian courts. It has been affirmed by the Supreme Court several times, that international labour norms can be applied in order to interpret constitutional and statutory provisions so long as they do not go against municipal law.<sup>30</sup> ILO conventions, therefore, still impact the formation of Indian labour jurisprudence, and strengthen the law against unfair labour practices.

### **JUDICIAL INTERPRETATION AND EVOLUTION -**

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<sup>27</sup> Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. 1 of 1972 (India).

<sup>28</sup> K.D. Srivastava, *Industrial Relations and Labour Laws* 298–301 (6th ed. 2018).

<sup>29</sup> Convention Concerning Freedom of Association and Protection of the Right to Organise (No. 87), adopted July 9, 1948, 68 U.N.T.S. 17; Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98), adopted July 1, 1949, 96 U.N.T.S. 257.

<sup>30</sup> *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

The judiciary has been very instrumental in the growth and reinforcement of the notion of unfair labour practices in India. Courts have always stressed that the industrial relations should be not only controlled by the technical legality, but the principles of fairness, equity, and good conscience. In *Hindustan Lever Ltd. v. Ashok Vishnu Kate*, the Supreme Court said that an act of victimizing workers in a union related activity is a fatal blow to industrial democracy and constituted an unfair labour practice.<sup>31</sup>

Also, in *Maharashtra SRTC v. Casteribe Rajya Parivahan Karmachari Sanghatana*, By such rulings, the Court condemned the practice of having workers as temporary employees over a period of years to deprive them of permanency, and benefits, and made it an unfair labour practice, making labour law a dynamically effective tool in the name of social justice.<sup>32</sup>

### **ADJUDICATORY MECHANISM AND AUTHORITIES – ROLE OF LABOUR COURTS –**

Labour Courts are important in the settlement of disputes that affect unfair labour practice especially against individual workmen. Having been established under the Industrial Disputes Act, 1947, Labor Courts are in charge of wrongful dismissal, discharge, retrenchment and interpretation of standing orders. In cases of unfair labour practices, the Labour Courts will look at whether the acts of employer or workman are against statutory or constitutional principles of fairness.<sup>33</sup>

It is anticipated that Labour Courts are supposed to adhere to natural justice and be less technical than the civil courts. They have the authority to provide remedies including reinstatement, back wages and continuity of service. Under State legislation such as the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, Labour Courts, too, may give a cease-and-desist order to stop an unfair practice.<sup>34</sup>

### **INDUSTRIAL TRIBUNALS -**

The Industrial Tribunals are established so as to decide on the disputes of larger nature that involve groups of workmen or an intricate industrial matter. Industrial Tribunals that are

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<sup>31</sup> *Hindustan Lever Ltd. v. Ashok Vishnu Kate*, (1995) 6 S.C.C. 326 (India).

<sup>32</sup> *Maharashtra SRTC v. Casteribe Rajya Parivahan Karmachari Sanghatana*, (2009) 8 S.C.C. 556 (India).

<sup>33</sup> Industrial Disputes Act, No. 14 of 1947, § 7 (India).

<sup>34</sup> Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. 1 of 1972, §§ 7–30 (India).

established under the Industrial Disputes Act, address issues such as wages, allowances, hours of work and conditions of service, with many of them being directly related to claims of unfair labour practices.<sup>35</sup>

The industrial tribunals in ensuring industrial harmony majorly strike a balance among the interests of the labour and the management. They have a mandate to determine whether the managerial practices like mass retrenchment or alterations in terms of services are done in good faith or constitute unfair labour practices. Their awards are enforceable and binding, helping in the stability and equity in the industrial relations.<sup>36</sup>

### **NATIONAL INDUSTRIAL TRIBUNAL -**

The Central Government constitutes the National Industrial Tribunal (NIT) to decide industrial disputes that bring questions of national interest or disputes touching on establishments in more than one State. Considering the complexity that is being experienced in the industrial relations in a globalised economy, the NIT is critical in resolving large scale conflicts that can undergo unfair labour practices in more than one jurisdiction.<sup>37</sup>

The rulings of National Industrial Tribunal are also very much weighty because they are supposed to provide standardization in deciding cases related to industry in the entire country. The NIT assists in avoiding unequal interpretations of the labour law by settling disputes with national implications and enhances the general legal construct against unfair labour practices.<sup>38</sup>

### **LABOUR COMMISSIONER AND OTHER AUTHORITIES -**

Labour Commissioner and other related labour authorities play critical administrative and supervisory roles in prevention and resolution of unfair labour practices. These are the bodies that are involved in the process of conciliation, inspection, enforcement of labour laws, and verification of the statutory obligations. Labour Commissioners through conciliation proceedings seek to settle any disputes amicably before it can progress to a formal adjudication.<sup>39</sup>

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<sup>35</sup> Industrial Disputes Act, No. 14 of 1947, § 7A (India).

<sup>36</sup> O.P. Malhotra, *The Law of Industrial Disputes* 1205–08 (7th ed. 2014).

<sup>37</sup> Industrial Disputes Act, No. 14 of 1947, § 7B (India).

<sup>38</sup> K.D. Srivastava, *Industrial Relations and Labour Laws* 305–07 (6th ed. 2018).

<sup>39</sup> Industrial Disputes Act, No. 14 of 1947, §§ 4–12 (India).

Besides conciliation, the labour authorities have the right to inspect and investigate so that they can identify unfair practices like illegal retrenchment or non-payment of wages. Their active presence minimizes litigation and encourages informal adherence to labour standards.<sup>40</sup>

### **PROCEDURE FOR COMPLAINT AND INQUIRY -**

The process of dealing with unfair labour practices mostly starts with the lodging of a complaint to the relevant body, which is either Labour Court or an Industrial Court, depending on the dispute. The complaint should articulately describe the purported unfair practice as well as produce the facts and evidence to indicate the practice in question. When the adjudicating authority receives the complaint, he or she gives notice to the other party and makes an investigation as per the principles of natural justice.<sup>41</sup>

In the investigation, the two parties are accorded the right to provide evidence, interrogate witnesses and submit their submissions. Having considered the material on record, the authority can make the corresponding orders, such as reinstatement, compensation, or orders to terminate unfair practices. The appeal or judicial review can be situated before the superior tribunals, which make the process of adjudication more accountable and fair.<sup>42</sup>

### **REMEDIES AGAINST UNFAIR LABOUR PRACTICES –**

#### **PREVENTIVE REMEDIES –**

Preventive solutions are aimed at preventing the incidence or persistence of unfair labour practices, at a very early stage before they can produce irreparable damage. Labour Courts and Industrial Courts can impose cease-and-desist orders, authorizing individuals to prevent employers, trade unions or workmen from committing some outlawed act. The purpose of such remedies is to ensure the industrial peace by ensuring that no escalation of the disputes is achieved at the initial stage.<sup>43</sup>

Conciliations carried out by Labour Commissioners and other authorities also fall under the category of preventative measures by the Industrial Disputes Act, 1947. These powers are

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<sup>40</sup> B.K. Mathew, *Labour and Industrial Laws* 312–14 (3d ed. 2012).

<sup>41</sup> Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. 1 of 1972, §§ 28–30 (India).

<sup>42</sup> Harjinder Singh v. Punjab State Warehousing Corp., (2010) 3 S.C.C. 192 (India).

<sup>43</sup> Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. 1 of 1972, §§ 30–32 (India).

trying to settle disagreements through dialogue and mediation and not incurring the cost of litigation which keeps industrial relations smooth.<sup>44</sup>

### **CURATIVE REMEDIES -**

Curative remedies emphasize on the remedy of the consequences of unfair labour practices that have already taken place. These remedies aim at putting the injured party back to the position he or she would occupy but would not because of the unfair practice. In good faith, Labour Courts may command employers to remove discriminatory practices, acknowledge trade unions or restart collective bargaining.<sup>45</sup>

These remedies put more stress on restoration, as opposed to punishment, an aspect that is welfare-oriented in labour law. The curative remedies can restore credibility between the labour and the management and enhance long term stability of the industry by rectifying illegal activity and restoring with legal practices.<sup>46</sup>

### **PENAL CONSEQUENCES -**

Besides the civil remedial part, the labour laws also provide penalties with regard to the use of unfair labour practices. Some of the laws, especially the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, stipulate fines and imprisonment in case of non-compliance of court orders in willful manner or in case of violation of the law in a recurrent manner. The sanctions serve to discourage a continued unjust behaviour.<sup>47</sup>

The gravity of the law to unfair labour practices is indicated by the penal provisions. They make sure that parties do not consider conformity as only optional and promote the idea that the industrial fairness is not a matter of preference, but a legal requirement.<sup>48</sup>

### **COMPENSATION AND REINSTATEMENT -**

One of the greatest solutions to victims of unfair labour practices is compensation and reinstatement. The reinstatement puts the worker in the same job he or she had before and

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<sup>44</sup> Industrial Disputes Act, No. 14 of 1947, §§ 4–12 (India).

<sup>45</sup> O.P. Malhotra, *The Law of Industrial Disputes* 1250–52 (7th ed. 2014).

<sup>46</sup> K.D. Srivastava, *Industrial Relations and Labour Laws* 310–12 (6th ed. 2018).

<sup>47</sup> Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. 1 of 1972, § 48 (India).

<sup>48</sup> B.K. Mathew, *Labour and Industrial Laws* 318–20 (3d ed. 2012).

service and back wages may be continued. It has always been the case as courts have found that reinstatement is the general principle in wrongful dismissal cases based on unfair labour practices unless there are exceptional circumstances.<sup>49</sup>

When reinstatement is neither practical nor just, the court can order monetary damages instead of reinstatement. This has a dual advantage of balancing the interests of both sides and judicial recognition of shifting realities of the industry yet safeguarding justice to the aggrieved worker.<sup>50</sup>

### **INTERIM RELIEFS -**

The interim reliefs are essential in safeguarding parties until proceedings are concluded. Labour Courts and Industrial Courts can provide temporary reliefs like stoppage of termination, payment of subsistence allowance or injunction over coercive measures. These actions do not permit irreparable damage and maintain the status quo until the very end of the dispute ruling.<sup>51</sup>

Interim relief is granted under the principles of prima facie case, balance of convenience and irreparable injury. Interim reliefs are necessary because they offer protection in immediate terms, the adjudicatory process will not be rendered an illusion by the delays.<sup>52</sup>

## **JUDICIAL APPROACH AND CASE LAW –**

### **LANDMARK SUPREME COURT JUDGEMENTS –**

The Supreme Court of India has taken a proactive position in influencing the law of unfair labour practices by interpreting the labour laws in the context of the constitutional values and social justice. In the case of Hindustan Lever Ltd. v. Ashok Vishnu Kate the Court said victimisation of workmen to join trade union activities is an unfair labour practice and it forms a core of industrial democracy. The Court underlined that labour legislation should guard workers against indirect and unspoken exploitation, and not only against the illegality.<sup>53</sup>

Equally, in Maharashtra SRTC v. Casteribe Rajya Parivahan Karmachari Sanghatana, The Supreme Court criticized the tendency of keeping workers in temporary or casual position in

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<sup>49</sup> Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 S.C.C. 324 (India).

<sup>50</sup> Jagbir Singh v. Haryana State Agric. Mktg. Bd., (2009) 15 S.C.C. 327 (India).

<sup>51</sup> Maharashtra SRTC v. Casteribe Rajya Parivahan Karmachari Sanghatana, (2009) 8 S.C.C. 556 (India).

<sup>52</sup> Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, (1980) 2 S.C.C. 593 (India).

<sup>53</sup> Hindustan Lever Ltd. v. Ashok Vishnu Kate, (1995) 6 S.C.C. 326 (India).

several years to deprive them of permanency and statutory benefits. The Court held that this acts as an unfair labour practice and ordered regularisation, which strengthened the principle that nullifying labour welfare laws with artificial means is not possible by employers.<sup>54</sup>

### **IMPORTANT HIGH COURT DECISIONS -**

High Courts have also played a major part in shaping jurisprudence on unfair labour practices by interpreting statutory statements in relation to the practical situations in the industrial setting. Under the MRTU and PULP Act, 1971, the Bombay High Court, especially has made some of the most influential rulings, in which the act has been seen as a potent means towards precluding exploitation and enforcing industrial fairness.

In *Bharatiya Kamgar Sena v. Bajaj Auto Ltd.* The Bombay High Court's opinion that non-negotiation with a recognised union is an unfair labour practice. The Court emphasized collective bargaining should be made in good faith and any effort to weaken the established unions contravene not only statutory provisions but also constitutional provisions as well.<sup>55</sup> The decisions on the case have reinforced the idea of workers rights in the region, and will supplement Supreme Court jurisprudence.

### **PRINCIPLES EVOLVED BY THE JUDICIARY -**

Courts have over time developed some principles that govern unfair labour practices through a nonstop process of judicial interpretation of the law. Among the most important principles is the fact that the substance supersedes the form, when courts consider the actions of an employer, they do not look at the reasons given by the employer, but rather consider what the real motive is behind the actions. Even where a deed seems legal in its form but it is done on anti-union grounds or discrimination ground, it can be deemed an unfair labour practice.

The other key principle is that of the focus on equity, fairness, and good conscience of industrial relations. It has been reiterated in courts that labour laws should be construed in a liberal manner in favour of the workers, who are deemed the weaker party in employment relations. Through this, it is ensured that labour legislation will fulfil its goal of welfare but not a formal procedure.<sup>56</sup>

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<sup>54</sup> *Maharashtra SRTC v. Casteribe Rajya Parivahan Karmachari Sanghatana*, (2009) 8 S.C.C. 556 (India).

<sup>55</sup> *Bharatiya Kamgar Sena v. Bajaj Auto Ltd.*, 2004 (2) L.L.J. 1127 (Bom.) (India).

<sup>56</sup> *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*, (1980) 2 S.C.C. 593 (India).

## **TRENDS IN JUDICIAL INTERPRETATION -**

One trend in judicial interpretation that stands out is the decision over time to move towards the purposive and rights based approach as opposed to the formalistic adjudication. In making decisions made concerning unfair labour practices, courts are fast turning to constitutional values and the international labour standards. This tendency is associated with the acknowledgement of a judiciary that the industrial relations are directly related to the human dignity and the social justice.

Meanwhile, the courts have also tried to attempt a balance between the freedom of the managers and the rights of the workers. Although unfair labour practices are condemned, the judiciary has recognised that an employer is justified to administer bona fide disciplinary and administrative measures. Therefore, the modern judicial interpretation is concerned with keeping industrial harmony in there by means of a balanced and reasonable intervention, as opposed to over judicial intervention.<sup>57</sup>

## **CHALLENGES IN REGULATION OF UNFAIR LABOUR PRACTICES**

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### **LACK OF AWARENESS AMONG WORKERS –**

Another critical challenge in the control of unfair labour practice is the ignorance of the workers on their rights and remedial measures. Most employees, especially those in low income and informal employment, do not know what entails unfair labour practices in the labour laws. This lack of knowledge means they cannot report abuses or redress so that exploitative actions are perpetrated with impunity.<sup>58</sup>

Poor literacy rates, lack of legal education, and poor trade unions contribute to the problem. Lack of awareness and proper guidance, workers tend to be afraid of being retaliated or even lose their jobs once they stand up against unfair behaviour hence nullifying the efficacy of protective labour laws.

### **WEAK ENFORCEMENT MACHINERY -**

Although there are elaborate labour laws, they have poor implementation and enforcement.

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<sup>57</sup> Harjinder Singh v. Punjab State Warehousing Corp., (2010) 3 S.C.C. 192 (India).

<sup>58</sup> K.D. Srivastava, *Industrial Relations and Labour Laws* 318–20 (6th ed. 2018).

The labour departments are often poorly staffed, ill-equipped, and do not have effective monitoring measures. Consequently, inspections are not regular, and breaches are not detected or punished frequently.<sup>59</sup>

Also, people in charge of enforcement can be not independent, in some cases, they may be politically or economically dependent. This lessens the preventing impact of labour laws and allows employers to practise unfair labour laws without facing any significant penalty.

### **DELAY IN JUSTICE DELIVERY -**

Another severe problem in the regulation of unfair labour practices is the delay in adjudication. The practice of proceeding in Labour Courts and Industrial Tribunals can be quite time consuming and therefore it frustrates the aim of a fast and efficient justice. Delays like these deter the workers to seek redress through legal means and extend the effects of unethical actions.<sup>60</sup>

Though the labour laws are set to offer faster dispute resolution rather than the civil courts, due to the procedural complexity and the number of cases that are awaiting resolution, litigation has taken long. This undermines the confidence of the workers on the labour justice system and the rule of law in the industrial relations.

### **PROBLEMS IN THE UNORGANIZED SECTOR -**

Unfair labour noted in the unorganized sector is one of the areas that the regulation is very challenging considering that it employs vast number of people in India. Employees in this industry tend to have no written contracts, job security, and no trade unions, and thus they are very susceptible to exploitation.<sup>61</sup>

The unorganized sector often remains unnoticed because of the poor enforcement and weak legal coverage of the unfair labour practice. Even though legislative acts have been enacted to provide protection to unorganized workers, the issue has not been fully put into practice.

### **POLITICAL AND ECONOMIC PRESSEURES -**

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<sup>59</sup> O.P. Malhotra, *The Law of Industrial Disputes* 1301–03 (7th ed. 2014).

<sup>60</sup> Harjinder Singh v. Punjab State Warehousing Corp., (2010) 3 S.C.C. 192 (India).

<sup>61</sup> Nat'l Comm'n for Enters. in the Unorganised Sector, *Report on Conditions of Work* (2007).

Effective regulation is also challenged by political and economic pressures. Governments that are interested in the fast industrialization process can place investment and formality of doing business on a higher priority than the labour law implementation. This may lead to undermining of labour standards and discrimination on law enforcement.<sup>62</sup>

Also, the neutrality and fairness are usually undermined by political interference in the functioning of the trade unions and labour administration. Political interests in labour relations undermine the credibility of the enforcement mechanisms and it becomes hard to check the unfair labour practices.

## **COMPARATIVE PERSPECTIVES –**

### **POSITION IN THE UNITED KINGDOM –**

The law of unfair labour practices in the United Kingdom has a well established employment and labour relations law to deal with these practices. Unfair dismissal, trade union recognition, and anti-union discrimination protection are among the issues that are regulated by the Trade Union and Labour Relations (Consolidation) Act, 1992 (TULRCA). The collective labour rights are safeguarded by ensuring that employers cannot dismiss/ victimize employees on trade union membership or legal activities of trade unions.<sup>63</sup>

In the UK, specialised adjudicatory organs like Employment Tribunals have been set up that offer fast and convenient solution to the workers. These tribunals operate in a less formal way and focus on settlement and fairness thus enforcement is more effective. The case of the UK shows that unfair labour practices can be effectively reduced by specialised institutions and clear statutory protection.

### **POSITION IN THE UNITED STATES -**

In the USA, unfair labour practice is mostly controlled according to the National Labor Relations Act, 1935 (NLRA). The Act specifies the unfair labour practices by employers and trade unions and includes the interference with the right to organise and coerced related to collectively bargaining and retaliation of workers.<sup>64</sup>

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<sup>62</sup> Surya Deva, *Labour Rights and Economic Development in India*, 22 COMP. LAB. L. & POL'Y J. 1 (2010).

<sup>63</sup> Trade Union and Labour Relations (Consolidation) Act 1992, c. 52 (UK).

<sup>64</sup> National Labor Relations Act, 29 U.S.C. §§ 151–169 (1935).

Application of NLRA is vested in the National Labor Relations Board (NLRB) which is an independent federal agency that has both investigatory and adjudicatory authority. The power of the NLRB to make binding orders and remedies including reinstatement and back pay has made the U.S. system fairly successful in addressing unfair labour practices.

### **INTERNATIONAL BEST PRACTICES -**

The international best practices in regulating unfair labour practices are mostly dictated by the principles set by the International Labour Organization (ILO). Important principles are the freedom of association, collective bargaining, protection against discrimination and access to effective remedies. The nations that have robust labour protection systems focus on the use of independent enforcement agencies, rapid resolutions of disputes, and worker awareness initiatives.<sup>65</sup>

A lot of jurisdictions emphasize prevention like mandatory collective bargaining, redressal system of grievances at the workplace and imposing severe punishment to not follow it. Through these measures, the need to support proactive enforcement over reactive adjudication in ensuring that unfair labour practices do not occur is emphasised.

### **LESSONS FOR INDIA -**

The comparative experience is also important in India in the light of strengthening the institutional mechanisms and faster dispute resolution. Enforcement efficiency can be enhanced by the introduction of specialised labour tribunals who have the single responsibility of dealing with unfair labour practices like in the UK and USA.

Additionally, India ought to improve awareness of workers, take a more transparent statutory definition, and independence of enforcers. A more explicit incorporation of international labour standards into domestic legislation would aid harmonisation of Indian labour jurisprudence with international best practice and bring about increased protection against unfair labour practice.<sup>66</sup>

## **SUGGESTIONS AND LAW REFORMS –**

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<sup>65</sup> Int'l Labour Org., *Freedom of Association and Collective Bargaining: General Survey* (2012).

<sup>66</sup> *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

### **NEED FOR UNIFORM CENTRAL LEGISLATION –**

Currently, unfair labour practices regulation in India is divided and only in some states is it detailed in terms of statutory recognition, most significantly Maharashtra, via the MRTU & PULP Act, 1971. Although the unfair labour practices are identified in the industrial Disputes Act, 1947, there is no other enforcing mechanism that is uniform and applicable to the whole nation. This inconsistency creates disparity in varieties of protection and remedies that workers receive in various states.

A strong demand is the standardized central law that will deal exclusively with unfair labour practices and specify the outlawed actions, career of complaint, and reprimand. This kind of legislation would grant equal protection to every worker, and minimize ambiguity, as well as foster industrial harmony on the national level.

### **STRENGTHENING ENFORCEMENT AGENCIES -**

The weak implementation of machinery is one of the biggest gaps of regulating unfair labour practices. Labour departments are usually characterised by lack of human resources, training and administrative inefficiency, which obstructs proper execution of labour laws. Even properly drafted laws with a weak enforcement mechanism are useless.

The reforms that should be carried out are directed at capacity building of the labour enforcement agencies, providing proper staffing, frequent inspection as well as proper autonomy. Special training programs to be initiated to provide labour officers with legal, technological, and investigative skills to enable them handle the contemporary challenges in the work place.

### **AWARENESS AND TRAINING PROGRAMS -**

This is because worker awareness is important in the prevention of unfair labour practices. Most of the workers do not know their rights, remedies and how they can get redressal and this leads to poor reporting of violations. Small and medium enterprises in particular, may not be aware in terms of their legal obligations.

Awareness campaigns and training programs should also be done regularly through the government, trade unions, and civil society organizations. The initiatives must aim at training workers on their rights, ethical labour practices by employers, and a discussion between the

management and labour to avert disputes.

### **ROLE OF TECHNOLOGY IN COMPLIANCE -**

Technology can be used as an instrument in enhancing enforcement of labour laws and compliance. Online registration of complaints, case tracking and monitoring of inspections can be conducted via digital platforms thus enhancing transparency and accountability. E-governance projects minimize delays caused by bureaucracies and make the justice administration system more open to employees.

Moreover, data analytics and online reporting tools can be utilised to assist authorities to locate industries or regions that have high rates of unfair labour practices. The introduction of technology into the labour administration would not only increase efficiency, but also instil confidence in the regulatory institutions, as well as advance fair labour standards.

### **CONCLUSION –**

#### **SUMMARY OF FINDINGS –**

The analysis of unfair labour practices can help to identify that it is a very serious threat to industrial tranquility, social fairness, and the labor dignity. The unfair labour practices have lately remained unchecked by the lacklustre enforcement and the sporadic statutory recognition in the states that have enacted specialised legislation despite the presence of statutory recognition in the Industrial Disputes Act, 1947. The role of judicial intervention in the interpretation and broadening of the protection and scope is important, but the fundamental problems related to the imperfect regulation remain.

The comparative study with other international jurisdiction shows that well defined statutory definitions, autonomous enforcement agencies, and fast dispute resolution systems are far more effective in compliance. The paper also outlines that the process of curbing unfair labour practices by the use of prevention measures, institutional fortification and preventive education programs are vital and sufficient to achieve a balanced industrial relations.

#### **IMPORTANCE OF A FAIR LABOUR ENVIRONMENT –**

Fair labour environment is essential towards industrial harmony, economic stability and sustainable development. Fair labour practices foster employer-employee trusts, minimise

industrial conflicts, and increase productivity. They also protect the constitutional rights of workers to equality, dignity and livelihood, which strengthen the values of social justice in the Constitution of India.

Additionally, a fair labour environment helps to promote inclusive growth since it safeguards the vulnerable groups in the labor force and promotes ethical corporate conduct. It intensifies democratic participation in work places and the economic advancement is not achieved at the expense of labour abuse.

### **WAY FORWARD –**

Going forward, India should implement a coherent and all-inclusive way of controlling the unfair labour practices. Implementation of a central law that solely deals with unfair labour practices, enhancing the enforcement authorities and provision of a prompt adjudication is very important. Another aspect that is also very important is the necessity to improve the awareness of workers, providing education and training sessions and using technology as the means to monitor and ensure compliance effectively.

The solution is to create a balance between labour protection and economic development. India can enhance a fair, equitable, and resilient labour environment with high institutional accountability by aligning domestic labour laws with international ones and ensuring stronger institutional accountability to encourage industrial peace as well as social justice.

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