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A STUDY OF THE UNFAIR LABOUR PRACTICES IN INDIA

Authored by,

Shruti Sanjay Ganguli,

5th Year, BBA LLB.,
Symbiosis Law School, Hyderabad,
Symbiosis International (Deemed University), Pune,

Contact: +91-9284782091

Email: shruti.ganguly@slsh.edu.in
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1. INTRODUCTION

The term ‘Unfair Labour Practices’ is incapable of being encapsulated in a set definition due to the wide ambit of activities that it is envisaged to include. Specifically, in India, unfair labour practices extend to a number of practices on the part of the employer, on the part of the trade unions of employers, on the part of the trade unions of employees and on the part of the workmen as well. Although the bulk of Indian legislation and judicial interpretation in this regard is complex and intricate, at the root of the design lies one sole objective. The sole objective is to protect the legitimate rights of the workmen, the trade unions and the employer, and to ensure that any dispute is resolved without prejudice to the rights and interests of either party. Thus, it includes a number of activities which the employers, workmen or their respective trade unions are forbidden from engaging into.

It is interesting to note that although India imbibed the principles involving the prohibition of unfair labour practices from the United States of America (hereinafter, ‘USA’) and various International Labour Organization (hereinafter, ‘ILO’) Conventions, the law as it stands in India is wider in ambit as compared to these. While the foreign counterparts placed reliance and emphasized upon the need for demarcating unfair labour practices solely in relation to easing the process of collective bargaining, India also advocated for the cause of the sole workman, independent of any involvement in Union activities. Item No. I (5) in the Fifth Schedule to the Industrial Disputes Act, 1947 (hereinafter, ‘IDA’) covers the wrongful dismissal, termination etc. of a workman, irrespective of the involvement in trade union related activities. Thus, although the roots of the law relating to unfair labour practices in India lie in the foreign legislations, the Indian adaptation of the same has a wider ambit and a greater scope of application.

In India, the State Legislations elucidated the need for inclusion of prohibition on unfair labour practices on a national level. The Madhya Pradesh Industrial Relations Act, 1960 (hereinafter, ‘MPIRA’) and the Bombay Industrial Relations Act, 1946 (hereinafter, ‘BIRA’) laid the foundations for the inclusion of the prohibition on unfair labour practices. Subsequently, a number of Committees were formed on the State and National Levels in order to examine the need and applications of such provisions. While on the international stage, emphasis was placed on mandating collective bargaining, in India, the provisions for judicial intervention continued to gain momentum. In 1968, the Maharashtra Government appointed a Tripartite Committee in order to assess the need, application and implementation of provisions relating to unfair labour practices. Subsequently, the Maharashtra Recognition
of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter, ‘MRTU & PULP Act’) was brought into effect. This was the first legislation in India which recognized unfair labour practices on part of the employer and trade unions vide Schedule II and Schedule III respectively, while Schedule IV enumerated general unfair labour practices on part of the employer. Furthermore, Chapter VI of the MRTU & PULP Act also laid down the procedure to make and address a complaint in this regard. The rich bulk of judicial interpretation as it exists today is based upon the MRTU & PULP Act.

Subsequent to the enactment of State Legislations to this effect, the Parliament by way of Amendment in 1982, added Chapter V-C to the IDA thereby, inserting Sec. 25T, Sec. 25U and Schedule V. Sec. 2 (ra) of the IDA defines unfair labour practice as any practice specified under Schedule V. Although the provisions relating to unfair labour practices in India have a wider ambit than the international enactments and conventions, the lack of a mandate in relation to collective bargaining continues to be a source of criticism. The present study aims to elucidate the historical development of the provisions relating to Unfair Labour Practices, the impact of international Conventions and State Legislations upon the development of the law in this regard. It further seeks to examine the current position of the law in this regard, the judicial precedents and the interpretation given by the Courts. It further aims to examine the shortcomings of the law as it stands today.

2. RESEARCH METHODOLOGY

The present study shall adhere to the Doctrinal Mode of Research. It shall adhere to the Qualitative Method of research. The Non-empirical method of research shall be adopted with extensive reliance placed on research articles, international conventions, judgments of the Courts and opinions of jurists. The descriptive mode of research shall be adhered to in order to examine the history and development of the legislation relating unfair labour practices. The exploratory mode of research shall be adopted in order to elucidate the current judicial position of the law in this regard and thereby, examine the shortcomings of the current legislation. The present study shall follow the APA format of citations.
3. LITERATURE REVIEW AND JURISTIC OPINION

Langille and Macklem (2007)\(^1\), while relying upon the precedent laid down in *Hadley v. Baxendale*\(^2\), emphasized upon the impact of labour law upon the power of dismissal exercised by the employer. Although the employer has the power to dismiss or otherwise terminate the services of a workman, the rights of the workman gain precedence. The crux of the law relating to unfair labour practices relies upon the Court adjudging each matter on a case to case basis, wherein it is dutybound to inquire into examination of the cause, delivery of notice, opportunity to be heard and other fundamental principles of labour law, in order to adjudge the validity or otherwise of the dismissal.

Similar views were emphasized by Collins and Mantouvalou (2013)\(^3\) while analyzing the judgment of the European Court of Human Rights (ECHR) in *Redfearn v. UK*\(^4\). It was reinstated that it is the Court’s duty to investigate into the cause of the dismissal or the act so complained of, and ‘lift the veil’ in case of the employer wherever necessary. Bercusson (2008)\(^5\) traced the development of the unfair labour practices on the international platform. Starting from its genesis in the USA, to the compliance mandated by the ILO, the author opines that at the base of these enactment lies the need to promote and mandate collective bargaining. The author places reliance upon the relevant judgments of the European Court of Justice in order to elucidate the need for collective bargaining in the light of the protection afforded by the prohibition of unfair labour practices.

Pandey (2010)\(^6\) and Sundar (2012)\(^7\) examined the Indian Legislations and opined that the escapist approach of the employer, by hire and fire approach, has been curtailed by the amendment of 1982. However, in comparison to the ILO approach, Indian legislations provide a wider scope of application and afford a greater protection to the workman.

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\(^{2}\) (1854), 156 E.R., 145 at 151 (C.A.).


\(^{4}\) Redfearn v. UK, Application No. 47335/06 on 06/11/2012.


4. DISCUSSION

The present study shall explore the historical development which led to the enactment of the 1982 Amendment to the IDA for the inclusion of Chapter V-C and Schedule-V. It shall further elucidate the juristic and judicial position of the current legislation while examining its shortcomings, thereby elucidating the scope of enhancement.

1. HISTORY AND DEVELOPMENT OF THE LEGISLATION RELATING TO UNFAIR LABOUR PRACTICES IN INDIA

The enactment of the 1982 Amendment to the IDA was a result of two parallel developments. First, the international developments in this regard, with special emphasis on the USA and the ILO Conventions. Second, the initiatives of the State Governments, through the formation of various committees for this purpose. In a nutshell, these may be traced as follows:

**International Developments**

The genesis of the concept of Unfair Labour Practices lies in the USA, wherein the first set of reforms were brought in through the Railway Labour Act, 1926. The concept of collective bargaining was introduced with a legislative framework in this enactment. Thereafter, this was enhanced by the National Labour Relations Act, 1935, by restricting industrial malpractices and promoting collective bargaining. With the enactment of the Labour Management Relations Act, 1947, collective bargaining was made into a mandate. The current legislation in India is structurally similar to the 1947 Act, in terms of demarcating unfair labour practices on part of employer, workman and trade unions.8 The approach of the ILO in this regard has been multi-fold. It has developed the law through a number of conventions, starting from the Right to Organize and Collective Bargaining Convention, 1949. For the very first time, this Convention empowered the workmen and the trade unions with the sole aim of ensuring that they are heard. The rights of the workmen and the trade unions were given a legal recognition, the interference by the employers in industrial establishments was limited. Thereafter, the workmen’s rights were protected, in terms of unfair dismissal or other punitive actions of the employer to discourage the union related activities, through the Workers’ Representatives Convention, 1971. These protections

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now form the Grundnorm for all laws relating to unfair labour practices. Subsequent enactments, such as the Labour Relations (Public Service) Convention, 1978, the Termination of Employment Convention, 1982 etc., expanded the applicability of the implementation of these laws.

**Indian Adaptation**

While the development in the USA, from 1926, and the ILO, from 1949, was gaining momentum, the States in India recognized the need for reforms in the labour legislations. Although the Trade Unions Act was enacted in India in 1926, the true implementation of the same through collective bargaining lacked momentum in India. The Report of the Royal Commission on Labour, 1931\(^9\) found that the Trade Unions were unsuccessful in their attempts to engage in fruitful collective bargaining efforts with the employers. The reason for the same was that the employers engaged in unfair labour practices to undermine and hinder the union’s efforts. It was around this time, that the BIRA was brought into effect. However, it was applicable to only to certain establishments.\(^1\)

Later, efforts were made to include prohibitions on unfair labour practices within the Trade Unions Act, 1926 itself. This proposed Amendment of 1947, which sought to include unfair practices on part of employers and trade unions, was never brought into effect in India. While the efforts to make collective bargaining mandatory through the Trade Unions Bill, 1950 and Labour Relations Bill, 1950 continued, the political and social upheavals of the time prevented these reforms from being enacted. However, the void in the law remained.

In order to rectify this void in the National Legislation, the States began to enact their own legislations to fill the gaps. The MPIRA, BIRA, MRTU & PULP Act etc. stand testament to the need for effective measures to promote collective bargaining, give adequate protection to the employers and workmen alike, and ensure that the dispute resolution methods do not fail due to unfair practices on either side. Recognizing the need for reforms and taking cue from the State Legislations, the Parliament of India enacted the Industrial Disputes (Amendment) Act, 1982 brought into effect from 21st August, 1984 throughout India.

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\(^10\) Report of the Royal Commission on Labour in India, (1931), pg. 323.

2. **CURRENT POSITION OF THE LAW AND JUDICIAL INTERPRETATION**

The current position of the law with regards to prohibition of unfair labour practices has been greatly influenced by the bulk of judicial interpretation and precedents laid down in the process of interpreting the State enactments, namely, the MPIRA, BIRA and most importantly, MRTU & PULP Act. While MPIRA and BIRA had their own limitations in application and implementation, the MRTU & PULP Act is continued to be relied upon despite the enactment of the Amendment of 1982 to the IDA. Therefore, it is necessary to examine the impact of the State Legislations upon the IDA Amendment of 1982 and thereby, explore the plethora of judicial precedents in this regard.

**a) State Legislations vis-à-vis IDA**

The most prominent and the most important legislation in this regard is the MRTU & PULP Act. It enlisted the Unfair Labour Practices through the Second, Third and Fourth Schedule. It recognizes unfair labour practices on the employer’s part, the trade unions’ part and certain general unfair labour practices followed by the employer. In addition to the same, the Act, vide Chapter VI, laid down the procedure to make a complaint by the workmen, trade union, employer or the investigating officer. It further laid down the procedure to be followed by the investigating officer and the Court while addressing such complaint. This enactment continues to be at the base of the development of the judicial opinion in terms of the interpretation to be given to the IDA Amendment of 1982 as well.

Similarly, the MPIRA, vide Sec. 83, also recognizes the Unfair Labour Practices on part of the employer. Although the application and implementation of this provision is not as wide as that of the MRTU & PULP Act, the MPIRA did have certain influence upon the enactment and interpretation of the IDA Amendment of 1982. The BIRA too, vide its provisions such as Sec. 27, Sec. 98 and Sec. 101 etc., envisaged the recognition and prohibition of certain actions of the employer and trade unions as well. However, there were certain limitations to this enactment as well due to limited applicability in terms of territorial location and nature of establishment.

Thus, in the absence of an Act of the Central Legislature for defining and prohibiting Unfair Labour Practices, the State Legislatures enacted certain provisions in order to further the cause of collective bargaining and lawful representation by Trade Unions and workmen. ¹² Even today, these enactments continue to be significant in the respective States.

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Ambit of the Fifth Schedule to the IDA

The Fifth Schedule of the IDA, as amended by the Amendment of 1982, provides for the unfair labour practices on part of the employers, on part of the workmen and on part of their trade unions as well. Firstly, on part of the employer and their trade unions, it extends to the acts which discourage or threaten the workmen’s trade union activities. This includes restraining the workmen from forming trade unions by a number of means, influencing the workmen’s trade unions by financial domination, establishing employer sponsored trade unions to inhibit the cause of the workmen, to encourage the membership of certain trade unions or discourage the membership of certain trade unions by *mala fide* dismissal, discharge or refusal to promote etc. In addition to the same, Item No. 1 (5) in Part I of the Fifth Schedule entails the general wrongful dismissal or discharge of a workman by the employer, whether or not in connection to trade union activities. The subsequent items ranging from Item No. 1 (6) to Item No. 1 (16) entail the general unfair labour practices on part of the employer, relating to promotions, recruitment, discharge, favoritism etc. These may be applied in connection to trade union activities or independently as well.

Secondly, on the part of the workmen and their trade unions, Part-II of the Fifth Schedule extends to activities in relation to instigating or indulging in illegal strike, threatening other workmen by picketing or by use of force, refusal to engage in collective bargaining, indulging in coercive activities to vitiate the cause taken forward by collective bargaining, engaging in violent or riotous demonstrations, demonstrations being conducted at the residence of the employers, preventing other workmen from attending work, engaging in certain kinds of strikes such as ‘go slow’ strike etc. Thus, any activity which is beyond the scope of the legal strike under IDA shall be within the ambit envisaged by Part II of the Fifth Schedule.

Thus, the *intentia legis* of the Fifth Schedule is seen to be three-fold:

b) To restrict the activities of the employers or the workmen which hinder or otherwise inhibit the collective bargaining process.

c) To prohibit the employers, workmen and their respective trade unions from doing any act which affects the rights of the other workmen or the employer.

d) To ensure that the employers, workmen and their respective trade unions do not refuse to bargain collectively in the interest of all parties involved.
Judicial Interpretation

1. In Murlidhar Wani v. Dharangaon Nagarpalika\textsuperscript{13} the Bombay HC, while adjudging a case brought under the MRTU & PULP Act, held that the acts of the employer must be judged in order to ascertain whether such act is \textit{bona fide} or otherwise. Where the employer refused to grant permanent status to a driver on certain technical grounds, the HC held that it is the duty of the court to adjudge the case on its merits rather than refusing the substantive right of the workmen on the ground of technicalities.

2. In Ratnagar Ramchandra Patil v. Municipal Corporation of Greater Bombay\textsuperscript{14} the court reinstated that promotion is the legal right of a workman. Where the employer fails to consider a workman for promotion and due to some \textit{mala fide} act or omission of the employer, this legal right of the workman is infringed, such workman has the right to access the court for effective judicial remedy.

3. It is necessary to establish the employer-employee relationship in order to claim the protection afforded by the Fifth Schedule, as held in CIPLA v. Maharashtra General Kamgar Union\textsuperscript{15} and Vividh Kamgar Sabha v. Kalyani Steel Ltd.\textsuperscript{16}

4. In Haryana State Agricultural Marketing Board v. Subhash Chand\textsuperscript{17}, the SC brought to the fore an important aspect to be considered while adjudging cases revolving around unfair labour practices. The concept of ‘status’ and ‘privilege’ must be derived from the statute. Thus, only if the workman derives his ‘status’ and ‘privilege’ to continue in service from the statute, the enforcement of the said legal right may be ordered by the Court. When the same is not envisaged by the statute, there is no base for claiming enforcement.

5. It must be noted that, as held in Gangadhar Pillai v. Siemens Ltd.\textsuperscript{18}, the burden of proof lies on the workman to prove that the employer has indulged in unfair labour practices.

6. An interesting application of the law was found in Siemens Ltd. v. Siemens Employees Union.\textsuperscript{19} The Court held that fundamentally, the role of the trade union is limited to representing the rights of the workmen. Inter alia, it cannot force or coerce or otherwise pressurize a particular workman or a group of workmen to forego their promotions in order to remain a part of the trade union. In other words, a workman cannot be

\textsuperscript{13} 2008 (1) CLR 825.
\textsuperscript{14} 2008 (1) CLR 923.
\textsuperscript{15} (2001) 3 SCC 101.
\textsuperscript{16} (2001) 2 SCC 381.
\textsuperscript{17} (2006) 2 SCC 794.
\textsuperscript{18} (2007) 1 SCC 533.
\textsuperscript{19} (2011) 9 SCC 775.
pressurized to remain a workman perpetually by the trade union in order to retain the membership of the trade union. This is an interesting development since traditionally, only the employer was seen as restricting the promotion of the workmen. In this case, the trade unions of the workmen too were restrained from adversely affecting the promotions of the workmen.

7. In *Sudarshan Rajpoot v. UPSRTC*\(^{20}\), it was held that where an employer extracts work of permanent nature from a workman employed through contract labour, for more than three years, the employer is indulging in an unfair labour practice which is prohibited by law and punishable under the IDA.

8. In *Bharat Bank Ltd. v. its Employees*\(^{21}\), it was held that in exercising the powers under the IDA, the Court is not confined solely to the bounds of administration of law and may confer other rights and privileges upon either party which it deems reasonable, fit and proper, in the interest of justice.

9. In *Tata Engineering & Locomotive Co. Ltd. v. S. C. Prasad*\(^{22}\), the Supreme Court held that the termination of employment of a workman must be accompanied with valid and justifiable reasons. Such reasons must not be in the nature of “termination simpliciter”, in the colourable exercise of the powers of the employer. Similarly, in a number of cases\(^{23}\), the Supreme Court reinstated that the true reason of termination of employment of the workman must be investigated by the Court.\(^ {24}\) Where it is found that the termination was wrongful, with a view to threaten or coerce the workmen, the reinstatement of the worker along with back-wages may be ordered by the labour court or the civil court, as the case may be.\(^ {25}\)

10. In *Workmen of M/s. Williamson Magor & Co. Ltd. v. M/s. Williamson Magor & Co. Ltd.*\(^ {26}\) the SC adjudged upon the meaning of ‘victimization’ under the Fifth Schedule of IDA and held that where a number of conflicting meanings are attributed, the meaning which is in favour of workmen must be accepted in order to safeguard their rights as the poorer section of the society.\(^ {27}\)

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\(^{21}\) (1950) 1 LLJ 921.

\(^{22}\) 1969 II LLJ 779 (SC).


\(^{24}\) Gujarat Steel Tubes v. Gujarat Steel Tubes Mazdoor Sangh. AIR 1980 SC 1896.

\(^{25}\) Sanjiv P. Jathan v. Larsen & Tuobro Ltd. 1989 II LLJ 194 (Bom. HC).

\(^{26}\) 1982 I LLJ 33 (SC).

\(^{27}\) *See also*, KCP Employees’ Asso. v. Management of KCP Ltd. (1997 I LLJ 332).
3. SHORT-COMINGS OF THE CURRENT BODY OF LEGISLATION

The enactment of the Amendment of 1982 took cue from the foreign legislations, especially the originator State i.e., USA, the ILO Conventions and the State Legislations. However, despite the reliance placed upon the aforesaid, one of the core ingredients of these laws have not been applied in India. The *intentio legis* of enacting the body of legislation and Conventions involving the prohibition on unfair labour practices was with the sole aim of promoting collective bargaining as a mandate. However, till date, collective bargaining is not mandatory in India.\(^{28}\)

Partly, this is influenced by the reluctance of the Parliament to forego the judicial process or the access to expeditious judicial recourse for either party. This may be inferred from the lack of enforcement of the provisions relating to Recognition of Trade Unions. The Trade Unions (Amendment) Act, 1947 sought to insert Chapter III-A containing Sec. 28A to Sec.28I providing recognition to trade unions. This ensures that an employer is obligated to enter into bargaining efforts with a recognized trade union. However, this legislation was never brought into effect and subsequently, it lapsed. Thus, even today, collective bargaining with a trade union is not a mandate for any employer. Similarly, an employer may choose to recognize more than one trade union for the same establishment. This lacuna was sought to be rectified by the 1947 Amendment, however, with the lapse of the same, the need for legislative action still remains.\(^{29}\)

Since the purpose behind enactment of the prohibition on unfair labour practices has been to ensure that the efforts of the trade unions are fruitful, it is necessary that the body of legislation in India today recognizes trade unions as bargaining agents and mandates collective bargaining for the employers. The reluctance of the Legislature in doing so has been reflected in the erstwhile Labour Minister, Mr. Jagjivan Ram’s statement, ‘… in providing for compulsory adjudication, our intention is not to minimize the methods of voluntary settlement of disputes.’\(^{30}\)

Although in his term as Labour Minister, Mr. V. V. Giri sought to drastically reduce judicial interference at the early stages in industrial disputes, thereby promoting collective bargaining, the same was never brought into effect. Subsequently, Labour Minister Mr. K. Desai emphasized upon the importance of judicial adjudication as a ‘weapon in the armory of the State’. Despite these developments, the fact

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\(^{30}\) Legislative Assembly Debates, 1\(^{a}\) November, 1946, pg. 404.
still remains that the power of trade union for effective settlement of disputes continues to be undermined. In the lack of a mandate for collective bargaining, the recourse to judiciary or tribunal continues to be the adopted method.

5. CONCLUSIONS/RECOMMENDATIONS

The enactment of the provisions relating to unfair labour practices in India was not only beneficial for the trade unions, but also for the employers. The Amendment of 1982 seeks to address the claims of workmen and employees, while also protecting the rights of the employer, which is required for the smooth resolution of disputes. It further seeks to enumerate the rights and obligations of the workmen, the employees, Trade Unions and employers, in order to ensure that the trade disputes do not result in infringement and violation of the rights of the workmen, while also protecting the legal rights of the employer. Thus, throughout the scheme of the enactment, balancing of the rights and obligations of the employer, trade union and workmen are evident.

These provisions have been incorporated while placing reliance upon the international conventions, foreign legislations and State legislations such as MPIRA, BIRA, MRTU & PULP Act etc. However, the core element, the mandate for collective bargaining, has not been incorporated in the amendment. As a result, the lacuna felt in the law before the introduction of the Trade Unions (Amendment) Act, 1947, continues to be felt today. Although judicial intervention and recourse to judicial remedies is necessary for effective implementation of labour rights, the significance and importance of creating a mandate for collective bargaining cannot be overlooked.

In this light, the present study makes the following recommendations:

1. The need for Mandatory Collective Bargaining in India cannot be overlooked. It is therefore recommended that the provisions for making it mandatory for the employer to engage in collective bargaining with a trade union be included in the legislative framework. This may be made compulsory for the initial stages of the dispute. However, if such efforts fail, the recourse to judiciary or tribunals continues to be a possibility in the subsequent stages.

2. For ensuring that the collective bargaining efforts are fruitful, the Recognition for Trade Unions is required. In India, since there is no bar on the number of trade unions which the workmen of a particular establishment may create or be a part of, it is required that only certain trade unions be recognized. The employers shall be mandated only to engage
in collective bargaining efforts with the recognized trade unions, in order to combat the practical challenges to the process.

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