The Dynamic Role of Indian Judiciary to Safeguard Workers Right and Dignity under Factories Act, 1948

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❖ Introduction

Judiciary is one of the three important pillars of Indian democracy. Power of judicial review is a best weapon by which arbitrary power can be curtailed. Indian Judiciary spreads the wings of justice throughout the country. Our Constitution guarantees social, economic and political justice in its preamble. While social justice removes social imbalances, it provides power to raise the voice against injustice and in favour of one's rights, claims and needs. And it also raises sensitivity towards fundamental rights and directive principles of state policy to achieve the goal of welfare society. In other side, economic justice guarantees the banishment of poverty through equal distribution of national resources and socio-economic harmonisation. The Constitution has entrusted the responsibility of nation building on Indian People through increase in agricultural and industrial production. Thus Indian labourer has significant contribution towards the overall development of the country.

The industrial jurisprudence is concerned with rights, duties and liabilities of the workers and commercial sectors (industries, factories and offices). It's also provides the adjudication parameter along with the conciseness about enforcement of right against duties of industrial concerned. After independence, the voice of Indian legislature and its concern for value of sweat and tears of Indian labourer has given birth to fresh breath of rights. The Factories Act is a fruit of sacrifice and tears of workers, against Industrial atrocities in British era, it is a voice of industrial revolution for basic rights, women's right and break the inhuman practice of bonded labour. After 1947, the Factories Act, 1948 consolidating and amending the law relating to labour in factories, was passed by the Constituent Assembly on 28th August, 1948 and come into force on 1st April, 1949.

The paper highlights the dynamic performance of judiciary to protect Indian workers' right and dignity, through the verdicts of courts. It safeguards multiple rights like, right to safety, livelihood, regularisation of service and women's right regarding the aforesaid Act.

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❖ Right to safety:

Where, the statutory mandates provided by the section 41-H of "Right to workers to warn about imminent danger, where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector,[2] and also provides that it is duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the nearest Inspector.[3]

While on the other hand, the dynamic role of judiciary regarding the safety measures, judiciary protect human life against greedy profit of industrialist. The verdict of English court applies to Indian prospect, where judiciary pronounced that a machine is dangerous if it is a possible cause of injury to anybody acting in a way in which a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur.[4] And it also dangerous if in the ordinary course of human affairs, danger may be reasonably anticipated from its use if unfenced, not only to the prudent or alert but also to the careless or inattentive worker whose inadvertent conduct may expose him to risk of injury from the unguarded part.[5] If someone else had removed the safeguard without the knowledge consent or connivance of the occupier or manager does not provide a defence to him.[6]

In the matter of protection of eyes, in the case of ***Finch V. Telegraph Construction and Maintenance Co. Ltd,*** The Supreme Court was held that hanging of goggles in the office room is not enough, but the workers must be informed of their whereabouts, only then the requirements of section 35 of the Factories Act can be said to have been complied with.[7]

❖ Women's Rights:

- **Securities of Women:**

In ***B.N. Gamadia v. Emperor,*** the Bombay High Court observed that the provisions of the Section are not complied with if there is a door made in a partition between the two portions of the room and if it can be opened by a woman employed although the door is shut, yet it is not locked nor other effective means are taken to prevent its being opened by a woman. This shows that both legislature and judiciary have shown concern about the security of women workers and every precaution is being taken to protect them against the risks of employment.[8]

[2] See, section 41-H of Factories Act, 1948
[3]See, section 41-H(1) of Factories Act, 1948.
[4]Walker V. BletechleyFlettans Ltd., (1973) 1 All ER 170.
[5] Mitchell V. North British Rubber Co. Ltd., (1954) SCJ 73.
[6]State of Gujarat V. Jethalal, AIR 1964, SC 779.
[7](1949) All ER 452.
[8]AJR 1926 Bom. 57.

Female workers could been engaged, the claim of the petitioners that section 66(1)(b) of the act affects the employment opportunity of women workers is untenable. Them a in object of section 66(1)(b) of the Factories Act, 1948is to protect the female workers from exploitation and it is for their interest and safety. it is a special provision ..... among the individual and group of people to secure adequate means of livelihood which is the foundation for stability of political democracy.

- **Restriction on Night Work:**

In ***Triveni K.S. and Others v. Union of India and others,*** the Constitutionality of Section 66 (1) (b) was challenged being discriminatory on the basis of sex. The High Court held that women should not be employed during night for their own safety and welfare was a philosophy of a bygone age out of tune with modern claims of equality, especially between sexes. With regard to exception given to fish currying and canning industry, it was observed that it looked an absurd argument that women would be safe in such industries but not safe in the textile industry. Consequently Section 66(1)(b) of the Act was struck down an Unconstitutional by the High Court and declared that the same safeguard as provided women in fish industry should be given to women workers in others industries during night time.[9]

However, the Division Bench of Kerala High Court in ***Leela v. State of Kerala***[10] took a contrary view and held that the contention of the petitioners that the said Section violates Articles 14, 15 and 16 of Constitution as it discriminates against them on grounds only of sex as not tenable and as such said Section providing special protection to women did not suffer from the vice of discrimination. However, the Union Government has decided to amend the provision to provide for women working in late night shift in I.T. industries, call centres etc. But flexible work timings for women should not be allowed unless adequate safeguards in factory as regards to occupational safety and health, equal opportunity for women workers, adequate protection for dignity, honour, and safety and their transportation from the factory premises to the nearest point of their residence are made. Where, the women candidates were excluded for the internal examination leading to absorption on a regular basis for the only reason that they were women, the Supreme Court held that in the case of ***Omana Oomen and Others V. F.A.C.T. Ltd,***[11]women candidates could be accommodated to work in shifts between 5 a.m. to 10 p.m. but the company did not move the State Govt. to obtain such permission. Therefore, the exclusion of women candidates on the ground of sex was violative of Article 14 and 15 of the Indian Constitution. If other women trainees were regularly absorbed in employment which involves working in shifts, there is no reason to eliminate the petitioners.

Things came full circle in August, 2005 when Parliament passed an amendment to the Factories Act, 1948 allowing women to work the night shift in factories. The reversal of the ban on night work for women perhaps reflects the course that the struggle for women's rights has charted. Early impulses that attempted to shield or save women from, for instance, unsafe

[9] 2002 Lab IC 1714 (AP)
[10]2004 (102) FLR 207, 2004 (2) KLT 220.
[11] (1991) II L.L.J. 541 (Kerala)

or "dishonourable" occupations, have given way to claims that demand freedoms and opportunities of all manner, consistent with full citizenship and human rights. That being said, there is an entire system of support structures and redress mechanism that must swing into motion to enable women to enjoy those rights, given that we live in a society still dived by inequalities.[12]

❖ Child Rights and Welfare:

In ***M.C. Mehta V. State of Tamil Nadu,***[13]the court has held that the employment of children in the match factories directly connected with the manufacturing process up to final production of match sticks or fireworks should not at all be permitted. The court held further that children can be employed in the process of packing but packing should be done in area away from the place of manufacture. The minimum wages for child labour should be fixed. It is necessary that special facilities for providing the equality of life of children should be provided. This would require facility for education, scope for recreation as also providing opportunity for socialisation. Facility for general education as also job oriented education should be available and the school time should be so adjusted that employment is not affected. Children must be provided basic diet during working period. The court has observed that under the Factories Act there is a statutory requirement for providing facilities for recreation and medical attention. The State was directed to enforce these provisions. The employment in match factories is hazardous employment and therefore the employees must be compulsorily insured and premium must be paid be the employer as a condition of service. The court has also held that children below the age of 14 years cannot be employed in any hazardous industry or mines or other work.[14]

❖ Statutory Maintainability of Canteen:

Section 46 of the Factories Act provides a statutory provision regarding statutory canteens of any specified factory where more than two hundred and fifty workers are ordinarily employed a canteen or canteen shall be provided and maintained by the occupier for the use workers. The employees of a canteen run in compliance to statutory duty are workmen of the establishment running the canteen for the purpose of the factories Act, 1948 only.[15]

A canteen was run by co-operative society as required by section 46 of the Factories Act and the employees of the canteen claimed to be treated as employees of the factory. In the case of ***Workmen of Ashok Leyland Ltd. And Ashok Leyland Coop. Canteen Ltd. V. Ashok Leyland Ltd. & Others***[16] the Supreme Court held that it is true that the company is bound to provide and maintain a canteen under section 46 of Factories Act but when the canteen is run by a co-operative society as a separate entity and it becomes defunct, the occupier of the factory does not become the employer of the workmen employed in the canteen rather than the employees of the workmen are to be treated as employees of the factory. In another

[12]Economic and political weekly October 14, 2006 vol. XLI No. 41 p. 4304.
[13] AIR 1996, SC 41
[14]M.C. Mehta V. State of Tamil Nadu, AIR 1999, SC 41.
[15]Elangovan M. and Others V. Madras Refineries Ltd.,(2005), II L.L.J. 653 (Mad)
[16] (1991) II L.L.J 12(Madras)

case[17], a canteen was run by A.P. Dairy Development Co-op Federation and the office establishment under the Supervision of the welfare officer, it was held that once a canteen is established u/s 46 of the Factories Act, the employees of the canteen would become employees of the occupier. The workers of the statutory canteens, the minimum and maximum age as on the date of initial appointment has to be looked into and the maximum age will not mean age of superannuation.[18] A canteen was run by the petitioner establishment in discharge of its statutory duty u/s- 46 of the Factories Act, 1948. It was held that if a canteen was set up by an establishment in discharge of statutory mandate, the employees of the canteen do not necessarily become employees of the establishment. It would depend on how the obligation was discharged by the establishment. In this case the canteen was set up in the discharge of its statutory duty u/s- 46 of the Factories Act, 1948[19] The workers in canteen were engaged through a contractor and the canteen is a statutory canteen and were not performing any work incidental to the manufacturing activities of the appellant was not sustainable. The claim of workers for regularisation was sustainable.[20]

❖ Right to Drinking Water:

Section 18 of the Factories Act, provides the provisions relating to arrangements for drinking water in factories, and such arrangements shall be made provide and maintain at suitable points conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.[21] The legibly marked “drinking water” in a language understood by a majority of the workers employed in the factory and no such point shall be situated within six meters of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination unless a shorter distance is approved in writing by the chief Inspector.[22] In the case of ***The State Vs. Alisaheb Kashim Tamboli***[23]dunking water pot in the office was not marked as 'drinking water' in any language, and by doing so the accused had contravened the provisions of, section 18(2), factories act, 1948, as subsequently amended. The complaint ended by.....the manager, had contravened, the provisions of rule 37 read with section 18(4), factories act, 1948, as subsequentlyamended.it was also alleged that the total amount of drinking water available at the time was only 13 1/2 gallons and by not keeping sufficient amount of drinking water the accused had contravened the provisions of rule 35 read with section 18(4), factories act, 1948, as subsequently amended. It has also alleged that the.....reciting that the accused had thereby committed an offence under the said sections.[24]

[17]A.P. Dairy Development Co-op Federation Ltd. V ShivadasPillay and Others, (1992) I L.L.J. 153 (AP).
[18] Indian Petrochemicals Co. Ltd and Another V. ShramikSena and Others, (2001) I L.L.J. 1040 (SC)
[19]Ferro Alloys Corporation Limited and Others V. Government of Andhra Pradesh and others, (2002) III L.L.J. 392 A.P.
[20]National Thermal Power Corporation V. Karri Pothuraju and Others, (2003) III L.L.J 567.
[21]See, Section 18(1) of Factories Act, 1948.
[22]See, Section 18(2) of Factories Act, 1948.
[23] AIR1955Bom209; (1955)57BOMLR135
[24] https://www.legalcrystal.com/cases/search/name:factories-act-1948-section-18-drinking-water

❖ Right to Recess of Work:

The Indian Legislature also measures about weekly holiday in the First day of week, where section 52 of the factories Act, provides that no adult worker shall be required or allowed to work in a factory on the first day of the week. For the maintainability of promise of Indian Legislature, In the case of ***John V. State of West Bengal,***[25]the Supreme Court held that the opening words of section 52(1) indicate a prohibition from requiring or permitting an adult worker to work in a factory on the first day of week. The prohibition is, however, lifted if steps are taken under cl. (a) and (b) of Section. A perusal of cl (b) makes it abundantly clear that what is required to be done thereunder, that is to say, to give and display a notice is only for the purpose of securing an exemption from the prohibition contained in the opening parts of section 52 of the Act.

❖ Right to Leave:

Right to leave is of the rights of workers and this right has also sound principle of the Factories Act as well as Constitutional rights. This right has also enumerated in ILO convention. Section 79 of the Factories Act, provides Annual leave with wages.—1. Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of—

(i) For an adult – one day for every twenty days of work performed by him during previous calendar year.
(ii) For a child – one day for every 15 days of work performed by him during the previous calendar year.

Explanation 1 – For the purpose of this sub-section—

(a) any days of lay off, by agreement or contract or as permissible under the standing orders;
(b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and
(c) the leave earned in the year prior to that in which the leave is enjoyed, shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days.

Section 79(1) does not purport to standardise annual leave with wages. When section 79(1) provides that every worker shall be allowed leave as prescribed, the provision prima facie sounds like a provision for the minimum rather than for the maximum leave which may be awarded to the worker.[26] Standardisation of conditions of service in industrial adjudication generally does not recognise or permit exceptions, section 78 however, recognises exceptions

[25]AIR 1965, SC 1341.
[26] Alembic Chemical Works V. Workmen, AIR 1961, SC 647.

to the leave prescribed by section 79(1). Section 78(1) clearly negatives the theory that section 79(1) provides for standardisation of annual leave with wages.[27]

The expression '***total full time earning***'can only mean the earning of worker earns in a day by working full time on that day, the full time to be in accordance with the period of time given in the notice displayed in the factory for a particular day. This is further apparent from the fact that any payment for overtime or bonus is not included in computing the total full time earnings.[28]

In the case of ***B.Y.Kshatriya (P) Ltd. V. Union of India,***[29]the Supreme Court observed 'right to leave' with wages arises in favour of a worker or deemed worker u/s-79 only if he worked during the full period of factory employment for the prescribed number of days in the previous year because by the use of the expression 'days' in section 79 working for the full period of work displayed in factory under the appropriate section of the Factories Act is contemplated. Work for a period less than the period displayed will not, in computing the number of days, be taken into account as a day within the meaning of Section 79.

❖ Conclusion:

The Indian labour empowerment is not only crucial for the life span of Indian industries, but also it maintains socio-economic development. It is universally known that without labour, production and wealth distribution becomes impossible. To maintain the balance between the workers right and the socio economic development, Indian legislature promises some measures under the Factories Act. So the legislature has indirectly maintained the balances between the right of workers, development and the progress of the economy. In the intrinsic sense, the Indian Legislature protects the Human Rights and dignity through the enforcement of the Factories Act. But due to lack of enforcement system, legislature withdraws his steps, Indian Judiciary takes the dynamic lead role in maintaining the rights and keeping up the legislative promises. Through its verdict, the Indian judiciary has shown new dimensions toward the rights of workers and it also belled the clear message 'without man-power and labours, to think about 'Nation Building' is just like day dreaming huge earning while laying on ripped cloth.'

- ***Reference:***

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2. *Dr.KailashRai, "Constitutional Law of India", Central Law Publication, Allahabad, 11th Edition, 2013*

- ***Footnotes:***

1. *See, section 41-H of Factories Act, 1948.*
2. *See, section 41-H(1) of Factories Act, 1948.*

[27] Ibid.
[28]Shankar Balaji V. State of Maharashtra, AIR 1962, SC 517.
[29]AIR 1963, SC 1591.

3. *Walker V. BletechleyFlettans Ltd., (1973) 1 All ER 170.*
4. *Mitchell V. North British Rubber Co. Ltd., (1954) SCJ 73.*
5. *State of Gujarat V. Jethalal, AIR 1964, SC 779.*
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12. *M.C. Mehta V. State of Tamil Nadu, AIR 1996, SC 41.*
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21. *The State V. AlisahebKashimTamboli, AIR1955Bom209; (1955)57BOMLR135.*
22. *Legal Crystal, Judgment Search Available at>https://www.legalcrystal.com/cases/search/name:factories-act-1948-section-18-drinking-water*
23. *John V. State of West Bengal, AIR 1965, SC 1341.*
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