

# CONTEMPORARY ISSUES IN LABOUR LAW

## Contemporary Issues in Labour Law

Modern concerns in Labour Law have transcended the traditional focus on industrial and trade union laws. As the National Sample Survey Organisation (NSSO) estimates indicate, the vast majority (369 millions) out of the total workforce of 397 million in India are employed in the informal sector or the unorganised sector - comprising of units operating at low level of organisation, having limited capital and having flexible relationships of employment - from their purview. Yet, most of the industrial and labour legislation excludes the informal sector. Therefore, current policy-makers and labour rights advocates are looking beyond industrial laws and engaging with informal sector regulation as a core concern. The transition in focus is reflected in the enactment of the Unorganized Workers Social Security Act 2008 which supplements the social security legislation of older vintage. This legislation also exemplifies the increasing significance of social security – accentuated by calls by policy-makers and judges for a more flexible regime on the employers’ right to hire and fire. This Course seeks to examine the growing informalisation of labour and the key issues in regulation of the informal sector.

The next generation of labour lawyers, policy makers and academics must also grapple with the impact of globalization and the consequent changes in employment relations. The spectre of a regulatory race to bottom, the growing affinity between the discourse on labour standards and the international human rights movement and the interface between trade law and labour are some of the concerns that would be addressed in this Course.

## Objectives of the Course

1. Introduce students to the distinction between informal and formal sector
2. Examine the key legislations governing the unorganized sector and discuss the regulatory concerns in certain types of informal work.
3. Discuss the major features of the legislations dealing with social security in India
4. Study the various ways in which globalization is likely to impact labour law.
5. Examine the key issues surrounding the linkage between trade and labour, and
6. Introduce students to the debate on labour rights as human rights.

## Proposed Evaluation Scheme

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|------------------------------------|----------|
| 1. Research Paper and Presentation | 40 Marks |
| 2. Take Home Exam                  | 25 Marks |
| 3. End-Semester (Open-Book)        | 30 Marks |
| 4. Class Participation             | 05 Marks |

## Course Content

### Module 1: Regulating Informal Labour - An Introduction 4 classes

1. Definitional Issues: Distinction between Organized and Unorganized Sector
2. Regulatory Requirement for the Unorganized Sector: Key Issues
  - a. Feminisation of Labour
  - b. Unionisation in Informal Sector

#### Readings

1. Dipak Mazumdar, *Dissecting India's Unorganised Sector*, Economic & Political Weekly 27 (February 9, 2008)
2. Sheila Bhalla, *Definitional and Statistical Issues Relating Workers in Informal Employment*, National Commission for Enterprises in the Unorganized Sector (NCEUS) Working Paper No.3, 2009, pp.1-10
3. Jayati Ghosh, *Uncovering Women's Work*, Infochange Agenda, September 2007
4. Ministry of Labour, *Informal Sector in India: Approaches for Social Security* in KEY TEXTS ON SOCIAL JUSTICE IN INDIA [Sanam Roohi & Ranabir Samaddar (ed.)], [SAGE 2009], 540

#### Audio-Visual Materials

1. *Ye Kaisi Azaadi Hai*, Directed by Pravin Mishra (2007)
2. *Unprinted*, Directed by Vishal Baldwake (2007)

#### Recommended Readings:

1. Kiran Moghe, *Understanding the Unorganised Sector*, Infochange Agenda, September 2007, available at [http://infochangeindia.org/index2.php?option=com\\_content&do\\_pdf=1&id=6491](http://infochangeindia.org/index2.php?option=com_content&do_pdf=1&id=6491)
2. NCEUS, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector* (2007)

### Module 2: Issues and Gaps in Unorganized Sector Regulation 12 Classes

1. Major Legislations governing the Unorganized Sector

- a. Bonded Labour System ( Abolition ) Act, 1976,
  - b. Contract Labour ( Regulation & Abolition) Act 1970
  - c. Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
2. Gaps in Regulation - Specific Examples
    - a. Domestic Workers
    - b. Manual Scavenging
    - c. Home-based Workers
    - d. Agricultural Labour
    - e. Child Labour

### Readings

1. NCEUS, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, 154-171, 195-213
2. Kamala Sankaran, Bonded Labour and the Courts, in INDIA'S UNFREE WORKFORCE: OF BONDAGE, OLD AND NEW 2 (Bremen, Guerin and Prakash ed., OUP 2009)
3. GURDEEP SINGH, MIGRANT WORKMEN AND THE LAW, (Deep and Deep, New Delhi: 2002), 1-37
4. FRANZISKA HUMBERT, THE CHALLENGE OF CHILD LABOUR IN INTERNATIONAL LAW (Cambridge: 2009) 14-34
5. Archana Mehendale, Realities of Child Labour and Contextualizing the Legal Strategy: A Case Study of India in SMALL HANDS IN SOUTH ASIA: CHILD LABOUR IN PERSPECTIVE (G.K. Lieter, Srivastava and Thorat ed., Manohar, New Delhi: 2004) 245-268
6. Rakesh Ganguli, *On a Slim Scaffolding*, Infochange Agenda, September 2007
7. Rasika Dhavse, *Organising Inside the Home*, India Together, April 2004
8. Kalpana Sharma, *In the Name of Servitude*, India Together, September 2003

9. WaterAid India, *Burden of Inheritance*, October 2009, available at [http://www.wateraid.org/documents/plugin\\_documents/burden\\_of\\_inheritance.pdf](http://www.wateraid.org/documents/plugin_documents/burden_of_inheritance.pdf)
10. Shalini Sinha, *Government Policies for Home-Based Workers*, Labour File, August 2006
11. Suresh C. Srivastava, Unorganised Rural Labour and the Law, in LAW AND POVERTY, (U. Baxi ed., Tripathy: Bombay 1988), 192-229

#### Further Readings

1. PUDDR, *Violation of Workers' Rights at the Commonwealth Games Construction Site*, 43 (24) Economic & Political Weekly 10 (July 13, 2009)
2. Teresa Barat, *The Dark Side of Indian Homes*, India Together, November 2004
3. Mari Marcel Thakaekara, *Victory for Tamil Nadu's Scavengers*, Infochange India, July 2009, available at [http://infochangeindia.org/index2.php?option=com\\_content&do\\_pdf=1&id=7835](http://infochangeindia.org/index2.php?option=com_content&do_pdf=1&id=7835)
4. Annie Zaidi, *India's Shame*, Frontline (Volume 23 Issue 18), September 22, 2006, available at <http://www.hinduonnet.com/fline/fl2318/stories/20060922005900400.htm>
5. Kathyayini Chamraj, *Minimised by the Law*, India Together, February 6, 2006 available at < <http://www.indiatogether.org/2006/feb/hrt-minimum.htm> >

#### Audio-Visual Materials

1. *Scavengers*, Directed by Karthik Palani (2009)
2. *The Garbage Trap*, Directed by Atul Pethe (2007)
3. *The Invisible Children*, Directed by RR Srinivasan (2003)
4. *Child Labour: A Day in the Life*, Directed by Internews for ILO (2007)
5. *Azad Nagar and Gulam Nagar*, Directed by Pravin Mishra (2007)

#### **Module 3: Social Security: A Conceptual Background (3 classes)**

1. Social Security: Meaning and Significance
2. Typology of Social Security

### 3. International Law and Social Security

#### Readings

1. Kwang Leung Tang and James Midgley, *The Origins and Features of Social Security in SOCIAL SECURITY, THE ECONOMY AND DEVELOPMENT* (James Midgley and Kwang Leung Tang ed., Palgrave Macmillan, 2008) 17
2. Ravi Duggal, *Need to Universalise Social Security*, *Economic and Political Weekly*, Vol.XLI, No. 32, 2006

#### **Module 4: Social Security for the Unorganized Workers Social Security Act (6 classes)**

1. National Commission on Enterprises in the Unorganized Sector(NCEUS) Recommendations
2. Unorganized Workers Social Security Act 2008
3. The Case for Universal Social Security?

#### Readings

1. Paromita Goswami, *A Critique of the Unorganised Workers Social Security Act*, 43 (11) *Economic & Political Weekly* 17 (March 14, 2009)
2. TS Sankaran, *Can the Best be the Enemy of the Good, If the Good is not Good Enough?* 41 (32) *Economic & Political Weekly* 3491 (Aug. 12 2006)
3. T.S. Sankaran, *The Unorganised Workers' Social Security Act, 2008-- A Critique*, *Lawyers Collective Magazine*, December 2008, available at <http://www.lawyerscollective.org/magazine/dec2008-jan2009/feature-5>.
4. Indira Hirway, *Unorganised Sector Workers' Social Security Bill, 2005 –Let Us Not Go Backwards!*, *Economic and Political Weekly* Vol.XLI, No. 5, 2006

#### Further Readings:

1. VM Rao, D Rajasekhar and Suchitra JY, *Putting the Cart Before a Non-Existent Horse*, 32 *Economic & Political Weekly* 3488 (Aug.12, 2006)

2. Report of the National Commission on Enterprises in the Unorganized Sector(NCEUS), 2006, pp. 172-213 available at [http://nceus.gov.in/Report\\_Bill\\_July\\_2007.htm](http://nceus.gov.in/Report_Bill_July_2007.htm)
3. Pritam Ghosh, *Unorganized Workers' Social Security Act, 2008-A Critical Analysis*, JurisOnline.in, August 28 2009 , available at <http://jurisonline.in/2009/08/unorganized-workers'-social-security-act-2008-a-critical-analysis/>
4. Neetha N, '*Invisibility Continues*'? *Social Security and Unpaid Women Workers*, 32 Economic & Political Weekly 3497 (Aug. 12, 2006)
5. Phillip O'Keffe and Robert Palacios, *Evaluating NCEUS Proposals in the Light of International Experience*, Economic and Political Weekly, Vol.XLI, No. 32, 2006

#### **Module 5: Laws on Employment related Injuries and Illness**

**8 classes**

1. Workmen Compensation Act, 1923
2. Employers State Insurance Act
3. Occupational Health Issues

#### Cases

##### Workmen Compensation Act

1. *General Manager, B.E.S.T. Undertaking v Mrs. Agnes* AIR 1964 SC 193
2. *Saurashtra Salt Mfg. Co. v. Bai Valu Raju* AIR 1958 SC 881
3. *Mackinnon Mackenzie and Co. (P) Ltd. v. Ibrahim Mahmmmed Issak* (1969) 2 SCC 607

##### ESI Act

4. *Regional Director, E.S.I. Corporation v Francis D'Costa* 1993 SCC Supl. (4) 100
5. *Kirloskar Brothers Ltd. v. E.S.I. Corpn.* (1996) 2 SCC 682
6. *Royal Talkies v E.S.I.Corpn.* (1978) 4 SCC 204
7. *Hyderabad Asbestos Cement Products Ltd. v Employees' Insurance Court* AIR 1978 sC

8. *A. Trehan v Associated Electrical Agencies* (1996) 4 SCC 255

9. *Western India Plywoods v P Asokan* (1997) 7 SCC 638

### Occupational Health

10. *Consumer Education and Research Center v. Union of India* AIR 1995 SC 922

11. *Anand Bihari v. Rajasthan State Road Transport Corporation* AIR 1991 SC 1003

## **Module 6: Protection of Women and Children** **(4 classes)**

1. Maternity Relief Act
2. Equal Remuneration Act
3. Law Relating to Sexual Harassment

### Readings

ALOK BHASIN, LAW RELATING TO SEXUAL HARASSMENT AT WORK, (1<sup>st</sup> ed., Eastern Book Co., Lucknow, 2007)

### Cases

1. *Mackinnon Mackenzie v Audrey D' Costa* (1987) 2 SCC 469
2. *Air India v Nergesh Meerza* (1981) 4 SCC 335
3. *Air India Cabin Crew Association v Yeshawinee Merchant* AIR 2004 SC 187

## **Module 7: Labour Law and Globalization** **(8 classes)**

1. Globalization and Labour Standards
  - a. Race to Bottom
  - b. Informalisation of Labour
2. Trade and Labour Standards
  - a. Havana Charter
  - b. Article XX (e) of GATT
  - c. Regional Trade Agreements
    - i. The 1994 North American Agreement on Labour Cooperation (NAALC)

- d. WTO Social Clause
- e. Unilateral State Measures
- f. Preferential Trade Agreements

### Readings

1. Kalyan Sanyal and Rajesh Bhattacharyya, *Beyond the Factory: Globalisation, Informalisation of the Production and the New Locations of Labour*, 43 (22) *Economic & Political Weekly* 35 (May 2009)
2. KIMBERLY ANN ELLIOTT & RICHARD FREEMAN, CAN LABOR STANDARDS IMPROVE UNDER GLOBALIZATION (Institute for International Economics, Washington: 2003) 7-25
3. REDDY, SANJAY B. & GARRY CHIRSTAIN, INTERNATIONAL TRADE AND LABOUR STANDARDS: A PROPOSAL FOR LINKAGE (Columbia University Press, 2008), 3-22
4. BOB HEPPLE, LABOUR LAWS AND GLOBAL TRADE (Oxford, 2005), 1-13, 89-150
5. Raj Bhala, *Clarifying the Trade-Labor Link*, 37 *Colum. J. Transnat'l L.* 11 (1998)
6. Andrew Guzman, *Trade, Labor, Legitimacy*, 91 *Cal. L. Rev.* 885 (2003)
7. Kevin Kolben, *The New Politics of Linkage: India's Opposition to the Workers' Rights Clause*, 13 *IND. J. GLOBAL LEGAL STUD.* 225 (2006);

### Further Readings

1. Alston, Philip, *Linking Trade and Human Rights*, 23 *GERMAN YEARBOOK OF INTERNATIONAL LAW* 126
2. Erika De Wet, *Labor Standards in the Globalized Economy: The Inclusion of a Social Clause in the General Agreement on Tariff and Trade/World Trade Organization*, 17 *Human Rights Quarterly* 443 (1995)
3. Elissa Alben, *GATT and the Fair Wage: A Historical Perspective on the Labor-Trade Link*, 101 *Colum. L. Rev.* 1410 (2001)
4. Roman Grynberg, *Labour Standards in US and EU Preferential Trade Arrangements*, 40 *J. World Trade* 619 (2006)

5. Sungjoon Choo, *Linkage of Free Trade and Social Regulation: Moving Beyond the Entropic Dilemma*, 5 CHIJIL 625 (2005)
6. Chaterjee, Mihir, *Re-negotiating Trade and Labour Standards in a Post Hong-Kong Scenario*, 2 ASIAN JOURNAL OF WTO & INTERNATIONAL HEALTH LAW AND POLICY, 473-500 (2007).
7. McCrudden, Christopher & Anne Davies, *A Perspective on Trade and Labor Rights*, 3 J. Int'l Econ. L. 43 (2000)
8. Daniel A. Zaheer, *Breaking the Deadlock: Why and How Developing Countries Should Accept Labor Standards in the WTO*, 9 STAN. J.L. BUS. & FIN. 69 (2003)
9. Chaulia, Sreeram, *Social Clause in WTO*, 37(7) Economic and Political Weekly, 2002
10. Chisti, Sumita, *World Trade & Labour*, 35(30) Economic and Political Weekly, 2000
11. Chantal Thomas, *Should the WTO Incorporate Labor and Environmental Standards?* 61 WASH. & LEE L. REV. 347 (2004)

### **Module 8: Labour Rights as Human Rights**

**(4 Classes)**

1. Transition to Labour Rights as Human Rights
2. Criticisms of the 'Labour Rights as Human Rights' Discourse
3. Constitutional Right to Work
4. National Rural Employment Guarantee Act

### **Readings:**

1. Philip Alston, *Labour Rights as Human Rights: The Not So Happy State of the Art*, in *LABOUR RIGHTS AS HUMAN RIGHT* (Philip Alston, ed., Oxford University Press, 2005)
2. Kevin Kolben, *Labor Rights as Human Rights?*, *Virginia Journal of International Law*, 50 (2) *Virginia Journal of International Law* 449 (2010)

3. V. Hemlata Devi, Sayed Maswood and B. Yuvakumar Reddy, Right to Work as Fundamental Right: Illusion or Reality?, *Journal of Indian Law Institute*, Vol 44 , no 2,2002, , pg 269
4. V M Dandekar, *Making Right to Work Fundamental*, Economic and Political Weekly, Vol. XXVI No 11 and 12, pp 697-708