



ILE

LEX SPECULUM

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



ILE LEX SPECULUM

APIS – 3920 – 0036 | ISBN – 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – <https://ls.iledu.in/>

Journal's Editorial Page – <https://ls.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://ls.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

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RESEARCH PAPER ON NEED FOR THE PROTECTION AND PROMOTION OF INTERNATIONAL LABOUR STANDARDS IN THE WTO ERA: A LEGAL STUDY

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BEST CITATION – SANJANA KHANJIRE, RESEARCH PAPER ON NEED FOR THE PROTECTION AND PROMOTION OF INTERNATIONAL LABOUR STANDARDS IN THE WTO ERA: A LEGAL STUDY, *ILE LEX SPECULUM (ILE LS)*, 1 (1) OF 2023, PG. 517-522, APIS – 3920 – 0036 | ISBN – 978-81-964391-3-2.

Abstract

This paper reviews the key issues in the debate in India in particular and in the developing countries in general, on the linkage between international labour standards and international trade. The discussion is located within the context of the role of the WTO and the ILO Declaration on Fundamental Principles (1998). There are suspicions about the role of WTO in this regard, but consensus about ILO's competence to deal with the subject. However, in actual practice, as yet, both the WTO and the ILO have had limited effective say. In contrast, international initiatives at the sectorial level through social labelling and consumer boycotts are having significant influence in ensuring compliance with core labour standards covering right to unionise and collective bargaining, prohibit child labour and forced labour, and ending discrimination. The perspectives of the social partners in developed and developing countries have been discussed.

Keywords:

International Labour Standards, International Labour Organisation, Globalisation, Employment,

Introduction:

Starting with the International Labour Standards (ILS), it was established by International Labour Organisation which was most concerned with private initiatives being undermined. The literal meaning of International Labour Standards is "labour standard" means the condition of "work" and specifies fundamental working rights and basic social rights. But then there has been a shift from public to private regulation that has created interdependence between several parties which is crucial for the existing ILS regulation. Therefore, the future success and efficiency of ILS depend mainly on how this interdependence works.

Functions of International Labour Standards:

The basic role of International Labour Standards is to minimize the systemic problems which

arises between the particular characteristics of labour and labour relations such as knowing the fundamental power between the workers and the employers and executing it, security and promotion are main functions that can be summarized as:

- To prevent disruptive competition through the defence of particular workers' groups and setting minimum wage and working conditions;
- To promote constructive competition through guaranteed collective rights, for example, involvement in decision-making, improvements in productivity and motivation of workers, increasing aggregate demand, and promoting the creation of jobs, active labour market policies and ways of adjusting socially desirable measures.

Benefits of International Labour Standards:

1. Provides Productive Employment:

The creation of people as human beings is the key priority of international labour standards. The international community acknowledged in the Declaration of Philadelphia (1944) that “work is not a commodity.” Labour is not an inanimate commodity, such as an apple or TV set, negotiable at the highest benefit or the lowest expense. Employment is part of daily life and essential to the dignity, health and growth of an individual as a human being. Growth of the economy should involve creating employment and working conditions where people can work in democracy, protection and dignity. Briefly, it is not economic growth for itself that is being done but to better people’s lives. There are international labour standards to ensure that it remains focused on enhancing men and women’s lives and dignity.

Decent education restores people’s hopes for jobs. It brings together access to meaningful, well-paying jobs, occupational safety and family social security, greater opportunities for personal growth and social inclusion, independence for individuals to identify their claims and to organize and engage in life-impact decision-making and equal opportunities and justice for men and women.

Decent research is not just an aim, it is a way to meet the special goals of the current International Sustainable Development Program. Decent work and four pillars of the Decent Work Program – job development, social security, human rights and social dialogue – were essential to the United Nations General Assesmbly in September 2015. Objective 8, of the 2030 Agenda, calls for sustainable economic development, complete and meaningful jobs and decent work for everyone to be promoted. Furthermore, a large number of the 16 UN objectives, new development vision, broadly include the main components of decent work.

2. Equality of Play:

A universal social contract legal system means that the global economy has the same area of practice. It helps governments and employers prevent the temptation to reduce labour standards in the expectation that they can benefit from greater competitive advantages in national trade. Over the long term, nobody profits from these activities. Shrinking labour standards can encourage the spread of low salary, low profile and high-turnover industries while at the same time slowing trade partners’ growth and preventing a country from developing more stable highly skilled jobs. Since the international labour standards of governments and social partners are minimum standards, it is in the interest of everyone to see such laws being applied in their entirety so that those who do not follow them do not weaken the efforts of those who do so.

3. A way to boost Financial Results:

Global labour regulations were often seen as expensive, hampering economic growth. However, a growing research force has shown that adherence to international labour standards is often followed by efficiency and economic performance changes. Minimum salaries and working hours and fair opportunity will result in increased workplace satisfaction and efficiency and decreased staff revenue. Training investment can lead to a better-trained workforce and higher levels of employment. Safety standards can reduce expensive accidents and healthcare expenses. Security of jobs can foster risk and creativity amongst employees. Social protection, such as unemployment and active labour market policy, can facilitate flexibility in the labour market, sustainable and acceptable to the public, economic liberalisation, and privatization. Free association and collective bargaining will lead to better negotiations with and collaboration on labour management and thus improve working conditions, decrease expensive labour disputes and improve social stability.

International investors should not ignore the positive impact of labour standards. Research has shown that foreign investors rate labour quality and political and social stability above low labour costs in their selection criteria for countries where to invest. At the same time, there is no evidence of further competition in the global economy in countries which do not follow labour standards. Global labour regulations not only tackle improvements in the workplace climate for protecting workers but also take fair business needs into account.

4. A Defence net during an Economic downturn:

Also rapidly growing economies with highly trained employees will suffer unexpected financial recessions. The Asian financial crisis in 1997, the 2000 dot-com blast and the 2008 financial and economic crisis revealed how dramatic depreciation in currencies or falling market prices can undo decades of economic growth. For example, in many of the countries concerned, during the Asian crisis of 1997 as well as the 2008 crisis, unemployment rose significantly. The devastating impact on employees of these crises was compounded by the fact that social security programs were scarcely enforced in many of these nations, including unemployment, health care, progressive labour market policies and social dialogue. A macroeconomic and job-related strategy can contribute to addressing these problems while taking account of social impacts.

5. A Poverty Reduction Policy:

It was always the acceptance of rules that depended on economic development. Legislation and functioning legal bodies guarantee property rights, contract enforcement, substantive compliance and defence against crime—all basic elements of good government that no economy can run without. A fair collection of rules and institutions market is more effective and benefits

everybody. There is no other labour market. The healthy and stable labour market for employees and employers is guaranteed by fair work practices set by international labour standards and enforced by means of national legislation. A significant proportion of the population is active in the informal economy in many developed and transition economies. However, these countries are also incapable of delivering meaningful social justice. But in these situations, International labour standards can also be effective tools. Both staff, and not just those who work under structured labour contracts, are protected by most ILO requirements. Certain standards such as the standards dealing in certain fields of the informal economy with host workers, immigrants and rural workers, indigenous or tribal peoples, etc.

Enhancing freedom of association, expanding social protection, improving workplace safety and health, developing vocational training and other actions required by International Labor Standards have proved effective strategies for poverty reduction and the incorporation of workers into the formal economy. In addition, the creation of institutions and mechanisms capable of enforcing labour rights demands international standards of employment. Together with a number of established rights and rules, operating legal bodies that help to formalize the economy and establish an environment of trust and order that is important to economic growth and development.

6. The amount of Foreign knowledge and experience:

In collaboration with experts from all over Europe, universal labour standards are a result of consultations between governments, employers and employees. They represent the international consensus on how to address a specific labour problem globally and reflect expertise and experience from around the world. Governments, employers and workers' unions, international agencies, multinational

corporations and non-governmental organisations, through their strategies, organizational goals and day by day activities, will take advantage of this information. The legal existence of the principles ensures that they can be used in legal structures and governments at a national level and in an international law framework that will contribute to greater international community integration.

Challenges of International Labour Law:

The most challenging elements of International Labour Law are as following:

- **Atypical employment:**
Part-time work, fixed-term employment, extended probation terms, on-call work and temporary work are examples of atypical forms of employment. Generally, the status of atypical workers in the standard employment relationship is unfavourable as atypical work tends to be associated with precarious work, although this is not always the case.
- **Scope and application of labour law:**
Whether de facto or de jure, labour law is not applied within the informal economy. The informal economy's share in the overall labour market worldwide is increasing, thus proportionally reducing the scope of application of labour laws. Self-employment and other categories of non-subordinated albeit economically dependent work are on the rise, and very few workers who fall under such patterns of work can claim labour law protection.
- **Decentralization:**
Decentralization is a new phenomenon in the workplace where noncore activities are outsourced to external suppliers. In a decentralized organization, a parent company does not assume the responsibilities and risks of the employer in relation to its subsidiaries or contractors.

- **Effectiveness of state action:**

In the current climate of globalization, the effectiveness of national law is decreasing. Apart from some exceptions, national labour law is applicable only within the political boundaries of a given state; however, with the opening of international trade, capital and technology tend to “jump” national borders, whereas labour laws do not and cannot.

- **Ideological challenge:**

Neoclassical thought has challenged the welfare state approach. The ideology advocates for the market's capacity for self-regulation and suggests that labour law should be limited to the setting up of a threshold of basic rules. State protection of the worker through labour law is compromised as neoclassical thought sees “labour rights” as “labour costs”, workers are regarded as human resources rather than as human beings and labour law is called “labour market regulation”, despite the fact that labour is not a commodity.

Impact of International Labour Standards on Labours:

ILS are addressed to governments. Nevertheless, they are also relevant to business in the following ways:

- Business is affected by ILS through national legislation. When a country ratifies a Convention, this instrument sets the framework for national law and practice on a certain subject. If existing national law or practice does not comply with the Convention, new labour laws, amendments of existing laws, or new implementation directives may result. As a consequence, business may be required to change its labour practices, which can involve significant administrative measures and costs.

- Even if ILS are not taken up by national law, the contents of collective agreements may be inspired by them.
- ILS can be a relevant source of practical guidance for business in areas not covered by national law or collective agreements. Many companies operating internationally have considered ILS, or the 1998 ILO Declaration, in developing their codes of conduct or other responsible business conduct initiatives. Global initiatives for voluntary business engagement, such as the UN Global Compact, draw on these sources in their labour principles and the Global Compact business stakeholders engage to work towards their realisation in their business strategies and day-to-day operations. International Framework Agreements (IFAs) negotiated between Global Union Federations (GUFs) and multinational enterprises usually make specific references to the ILO's fundamental Conventions.

Given the above, employers must play a key role in the ILO and at national level in formulating, implementing and supervising ILS, and in ensuring that due account is taken of the business perspective, including the needs of enterprises of all sizes operating in different geographical areas, economic sectors and social frameworks. Together with governments and workers, employers are responsible for making ILS and their implementation balanced, realistic and meaningful.

International Labour Standards in Developing International Labour Laws:

In promoting international labour standards, the International Labor Organization played an important role. India is an ILO founding member and has helped codify the standards. It also helped to develop its own legal and institutional framework in the areas of social and labour. In recent years attempts have been made to connect standards to foreign trade through

means of a social clause by the World Trade Organisation, with the same goal being accomplished by way of social labelling through the product codes and consumer boycotts.

To harmonize globalisation, attempts are being made to align foreign trade with a social clause mechanism to prevent developed countries from benefiting from trade liberalization on the basis of comparatively low labour cost. Universal labour standards are well established. The debate deals with the means of implementation, and in particular with the arguments about the attempts to link certain core labour standards with international standards. Therefore, the problem does not lie in the need to enforce universal labour standards. The question remains whether any kind of link with trade should be punished for countries and companies which continue to achieve competitive advantage through the violation of fundamental rights.

Employers in various developed countries and unions, government agencies and employers in various countries in development have resisted any formal connection between labour and trade standards. While producers in developed countries appear in an attempt to take advantage of cheap labour in developing countries, developed-country workers feel it could affect employers' jobs in the developed-countries if they enjoy the comparative advantage of cheap labour. The social partners in developing countries, therefore, perceive the relation between the social clause and trade as the attempt of governments and employees in developed countries to take away this advantage from the developing countries.

Conclusion:

Considering the efficiency of international labour norms, it should also be remembered that ILO regulatory actions include voluntary adoption of global labour standards which creates binding obligations for States in turn.

This approach was preferred to the approach initially intended by founders of the ILO who would have given the International Labor Conference the power, subject to the right to “opt-off” within certain time limits, to adopt binding international labour legislation directly. The retained solution is a realistic approach to labour legislation, but it means that actions related to standard ILO depend in large measure on Member States’ willingness and capacity to meet standard commitments. As Member States experience economic crises, successful enforcement of the universal labour standards can be affected. Generally speaking, globalization has affected the willingness of States to assume their position under the ILO Constitution under the pressure of international competition.

It is a priority for ILO in these circumstances to ensure that it has the institutional capacity to: establish substantive standards; retain them up-to-date, including adaptation to evolving needs, expectations, activities and technical conditions as appropriate; use all the diverse and complementary mechanisms available in its Constitution in line with their effectiveness, and ensure that they are effective. In the framework of the Social Justice Declaration, the governing board is currently discussing a process for updating standards to reinvigorate and reinforce the ILO body of standards, ensuring that they adequately protect all workers in today’s workplace, suggesting an efficient implementation. That method, if implemented, would provide the Office as a whole with an ongoing work plan with respect to standards.

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