

**THE ROLE OF INTERNATIONAL LABOUR ORGANISATION IN ENSURING
SOCIAL SECURITY: AN ASSESSMENT**

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ABSTRACT

International Labour Organisation (ILO) as a specialised agency of the United Nations has since its inception a bestowed responsibility of ensuring social security and an environment conducive to the working class across countries. Established post the Treaty of Versailles, the organisation touched a milestone by the Declaration of Philadelphia in 1944. Alongside providing for a descriptive and normative framework, social security was for the first instance recognised by the organisation in 1944 through its Declaration in Philadelphia which was elaborated and deliberated upon by the recommendations and conventions. This organisation is often considered as the source for the new branch of international law under the nomenclature of International Social Security Law. It has to its credit flagship conventions and declarations which have not only defined social security and its minimum standards but also explained through its organs the responsibility on individual countries to promote and protect the rights of the human beings as social beings entitled to basic minimum security for their existence. The working of the organisation is maintained in multitude by the conventions and recommendations of the organisation. While the recommendations pave way for structural developments, the conventions provide a concrete structure to the working of the organisation and also govern its major working organs- International Labour Office, International Labour Conference and the Governing body. This paper analyses the functioning and establishment of the ILO. It also discusses as to how the Organisation has promoted flexible security measures after the Declaration of the Philadelphia in 1944 and allowed a secured framework for the working class in the countries by application of uniform recommendations and conventions with liberty to each country to modify the same as per convenience and for optimum application. The organs of the organisation and the intricacies of the recommendations and the conventions are also discussed in depth to understand the mechanism for the realisation of the goal of social security.

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1. INTRODUCTION

Post world war developments led to the creation of specialised agencies by the United Nations. International Labour Organisation (ILO) is one such specialised agency which was established for the welfare of the working class and has been successful since its origin. The regulation of labour issues originally emerged in Europe with laws generally written to serve the interests of the elite rather than to protect labour.¹ However, with the onset of the industrial revolution, social activists began advocating labour protection, which might mitigate the more unruly aspects of industrialisation. The working hours were long spent in bad conditions, falling wages, women and children exposed to vulnerable working conditions. Under these conditions, workers sought some mechanism to protect them and naturally were led to combine into trade unions, realising that the collective action could protect their position in a situation where individual action was largely hopeless.²

This paper considers as to how the International Labour Organisation was established by the Treaty of Versailles; the way in which it made a head start towards its motto of ensuring social security through the Declaration of Philadelphia (1944), which was the cornerstone of the recognition of rights to social security ensured by the organisation through its conventions and recommendations. The three major organs of the ILO, i.e., International Labour Office functioning under the Director General, International Labour Conference (World Industrial Parliament) and the Governing body, have promoted flexible social security measures which can be adopted and adapted in all the countries across the globe without bending the economic rules or degree of dependence while the labour standards are incorporated. It has put in efforts to universalise the labour standards and ease the tension of countries in dealing with situations of unrest.

2. EVENTS LEADING TO THE ESTABLISHMENT OF INTERNATIONAL LABOUR ORGANISATION:

Nations, after the World War I, realised the need of international cooperation. The concept of cooperation in the given scenario could only find a firm basis through an organisation structured on the outlines of the society which could deal with the anomalies and

¹ Bob Hepple, *Labour Laws and Global Trade* 27 (Hart Publishing Oxford and Portland, Oregon, 2005).

² Bruce E. Kaufman, *The Global Evolution of Industrial Relations* 30 (ILO, Geneva, 2004).

shortcomings of the society. Thus, the International Labour Organisation was created in 1919.³ As an organisation it was then expected to very well present the mirage of the belief that universal peace could be attained through social justice. The Labour Commission drafted its Constitution at the Peace Conference, which was composed of representatives from nine countries. The coming together of these countries led to the formation of a tripartite organisation, which brought together representatives of governments, employers and the working class and pursued allegiance to the principles of the organisation and ensured peace and social justice unanimously. It was primarily set up on the ideas of International Association for Labour Organisation⁴ and its qualities specifically were security, humanitarian, political and economic considerations. The preamble of the institution clearly emphasises its role of providing, regulating and protecting the working class, the vulnerable groups of old-age, sick, diseased, young persons, women and children and their empowerment and equal treatment.

The League of Nations founded as per the Paris Peace Treaty in 1919, was determined to protect territorial integrity, independence of states, promotion of diplomacy to settle disputes in between countries and improve the condition of the workers. Out of these core principles, the objectives were primarily two fold. . One was to establish universal peace and the other was to ensure that such peace could be established only if it was based upon social justice⁵. Hence, ILO was built on the belief that peace and justice go hand in hand. For this reason, ILO was initially an agency of League of Nations which aimed to achieve peace globally.

3. ESTABLISHMENT OF INTERNATIONAL LABOUR ORGANISATION:

Established on the basis of Peace Treaty, commonly called the Treaty of Versailles, the organisation was an effort of the United Nations to secure lasting peace through the pursuit of social justice.⁶ Two important tasks were entrusted to ILO,⁷ the first was to

³ It was a part of the Treaty of Versailles, which ended the World War I, and was one of the main specialised agencies of the United Nations.

⁴ The ILO's Constitution laid down the rationale of the Organisation, spelled out its aims and purposes as well as its detailed design and also identified certain "*methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit*" which are of "*special and urgent importance*".

⁵ Section 1 of part XIII of the Treaty of Peace of Versailles.

⁶ Article XIII of the Peace Treaty provided for the establishment of ILO. According to the International Training Centre of the ILO, "*the ILO Constitution, incorporated into Part XIII of the Treaty of Versailles, for the first*

establish everywhere humane conditions of labour and second was to institute and apply a system of International Labour Legislation, subject to reservations imposed by the sovereignty of each state and conditions prevailing therein. Originally ILO had 44 member countries from Europe, Asia, Africa and Latin America.⁸ The motive behind the creation of the ILO was to provide for a considerably more powerful instrument than had hitherto existed to expand and enforce a range of international labour standards and to establish a social framework for economic exchange so as to create a foundation for an equitable world trading system.

3.1. OBJECTIVES:

The International Labour Organisation is a multilateral system. It works for the sustainable development of the economy through organised agencies and conventions. There are certain principles considered as core principles which are also known as enabling standards (respecting them is a precondition for the application of ILO norms); four conventions of the ILO are known as priority instruments, which encourage member states to ratify them because of their importance and are also termed as governance conventions covering tripartism, employment policy and labour inspection.

The Constitution of ILO provides for four means of governance. They are tripartism, the representatives of workers and employers and governments. The representatives of workers and employers get equal status with that of governments. The ILO differs from other intergovernmental organisations in two basic respects. The first of these is tripartism. The second, less well known even to many international lawyers, lies in the particular ways in which international labour standards are adopted, ratified and supervised.

The ILO is the only intergovernmental institution in which governments do not have the exclusive voting power in setting standards and policies. Employers and workers have an equal voice with governments in their decision-making processes. This concept is known as

time established a link between peace and social justice, stating that universal and lasting peace can be established only if it is based upon social justice”.

⁷ Part XIII of the Treaty of Peace of Versailles.

⁸ Available at the <http://www.ilo.org> Last accessed on 27.06.2016.

“*tripartism*”.⁹ The General Conference, which meets once in a year, is a meeting of the entire membership that adopts the ILO’s instruments and approves its works.

3.2. The Declaration of Philadelphia 1944

Since inception, ILO has been involved in deals and events with varied degrees of interference and success. In the first international labour conference (1919), public job creation was advocated. It was considered to be an effective cure to the disease caused due to economic depression and unemployment.

The purpose of ILO 1944 Declaration was to establish everywhere humane conditions of work. The Conference was held in Philadelphia from April 20 to May 12, 1944. The outcome of the Conference was the Declaration of Philadelphia. The inclusion of human rights at the centre of the Philadelphia Declaration was significant. In that labour standards were an indelible part of political democracy, bound up with a growing post-war emphasis on human rights and the pursuit of industrial prosperity¹⁰. Some of the basic principles of the 1944 Declaration are: Lasting peace cannot be achieved unless it is based on social justice; grounded in freedom, dignity, economic security and equal opportunity; labour should not be regarded as a commodity or an article of commerce; freedom of association, for both workers and employers, along with freedom of expression, and the right to collective bargaining. These principles are fully applicable to all human beings, irrespective of their race, creed or sex.¹¹

The Declaration had a set of objectives which were further promoted by the organisation amongst its member nations with the aim of promoting social justice. One of the major highlights of this Declaration is the unanimous resolution on social provisions in the peace settlement which suggested that the “*Declaration of Philadelphia*” be reaffirmed in

⁹ It is based on Article 3(1) of the ILO Constitution, which states that: “*The General Conference shall be composed of four representatives of each of the Members, of whom two shall be government delegates and the two others shall be delegates representing, respectively, the employers and the workers of each of the Members.*”

¹⁰ See, Ernst Hass, *Beyond the Nation State: Functionalism and International Organization* (Stanford University Press, California, 1964).

¹¹ The Declaration further affirmed in Clause I(c) that “*Poverty anywhere constitutes a danger to prosperity everywhere, and must be addressed through both national and international action*”. Freedom of Association and Rights of the workers have been recognised by the ILO through specific conventions. James Clancy, *The Hidden Human Rights deficit: Freedom of Association*, International Union Rights, Vol. 12, No. 2, Giant retailers and trade Union rights (2005) pp. 18-19 available at <http://www.jstor.org/stable/41937365> last accessed on 17.05.2016

any treaty of the United Nations. This practice would provide a formal acceptance to the norms as well as subtly but effectively ensure compliance. The ILO constitution emphasises on freedom of association as one of the building principles of ILO. The Declaration insists on the role of the ILO for implementation of the necessary programmes with a view to ensuring effective application of the right to collective bargaining.

3.3. BRIEF ACCOUNT OF THE INTERNATIONAL LABOUR ORGANISATIONS' ORGANS AND THEIR FUNCTIONS:

The three agencies which are set up by the ILO as mentioned earlier are: International Labour Office, International Labour Conference and the Governing Body which is the executive Council of the organisation. International Labour Office is known as the Permanent Secretariat of the International labour Organisation. It monitors the overall activities such as reports and recommendations of the Governing body and the technical experts committee. The Director General as the leader of the office makes decisions and undertakes responsibilities of the office. This office has its own research and documentation centre which updates the office of the economic development in the countries which have been parties of the organisation through the process of ratification of the core principles.

International Labour Conference is another agency within the organisation and sets International Labour standards and emphasises on the broad policies of ILO. It is mainly considered as a forum for discussion of key social and labour questions and situations in between member countries.

The Governing Body is the Executive Council of the ILO that meets three times a year at Geneva and takes decisions on ILO policy and establishes the programme and the budget, which is subsequently submitted to the conference for adoption.

4. KALEIDOSCOPE VIEWPOINT OF THE INTERNATIONAL LABOUR ORGANISATION ON SOCIAL SECURITY:

Social security protection is defined in the ILO conventions as the protection that a society provides to individuals and households to ensure access to healthcare and the

guarantee of income security, particularly in cases of old age, sickness, unemployment, invalidity, work injury, maternity or loss of a breadwinner. Informal economies of the developing world face the problem of lack of social security coverage and with globalisation the problem has accelerated to new heights. While social security provides cohesion and overall growth in the living standards, lack of it or deficiency cripples and adversely affects all levels of the society. Social Security was recognised as a basic human right by the Declaration of Philadelphia and its Income Security Recommendation which was subsequently upheld by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

Recognition and importance associated to the Labour standards of the ILO has led to the international and regional developments of the social security strategy of the countries. Coherence and integrity are characteristics of the organisation. The contribution of ILO to certify social security objectives are unmatched. It is constructive with features in the international and the national policy. The opportunity for useful and regular employment under fair conditions, raising the living standards, establishment of minimum standards of employment, provision for child welfare and for a regular income of those unable to work, freedom of association and of collective bargaining, and provision for the training and transfer of labour are some of the measures the ILO preaches to attain social security through recommendations and conventions.¹² The International Labour Organisation's conventions and recommendations find relevance and are ensured through social security extension policies.¹³

Social Security (Minimum Standards) Convention¹⁴ 1952 is one of the social security extension policies of the ILO. Though it does not provide a single definition of social¹⁵ security; the definition can be construed from various parts of the Convention. To ratify this Convention, ILO member state is obliged to comply (at the time of ratification) with at least

¹² John Price, *International Labour Organisation*, International Affairs (Royal institute of International Affairs 1944-), Vol. 21, No. 1 (Jan., 1945), pp. 30-39.

¹³ The Social Security (Minimum Standards) Convention, 1952 (No. 152); The Equality of Treatment (Social Security) Convention, 1962 (No. 118); Invalidity, Old Age and Survivors' Benefits Convention, 1967; The Medical Care and Sickness Benefits Convention, 1969; The Maintenance of Social Security Rights Convention, 1982; The Employment Promotion and Protection against Unemployment Convention, 1988; the Job Creation in Small and Medium-sized Enterprises Recommendation, 1998 and Maternity Protection Convention(Revised) 2000.

¹⁴ Convention No.102 of ILO.

¹⁵ Social Security: International Labour Organisation and India.

three of the following parts of the convention,¹⁶ medical care, sickness benefits, unemployment benefits, old age benefits, workers' compensation, family disability, maternity and survivors' benefits and at least one among three must be a provision concerning unemployment, old age, workers' compensation, disability or survivors benefits.

Social Security assured by this Convention through ratification by states provides flexibility according to the financial status of the respective states. This Convention paved the way for adoption of several specific conventions subsequently. Invalidity, Old Age and Survivors Benefits Convention, 1967 and Medical Care and Sickness Benefits Convention, 1969 aimed at raising the requirements for the categories of protected persons and the level of protection provided by national social security schemes covering these risks. Since the beginning of 1990s, the ILO's social security division has been given a mandate by the International Labour Conference to search for solutions that can include 'other workers' in a social protection scheme. Naturally, the ILO used the principles of social security as a human right to govern its work.¹⁷

Social Security was recognised as a basic human right by the Declaration of Philadelphia and its Income Security Recommendation which was subsequently upheld by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights¹⁸. Social assistance broadly described as 'Social security' has its own safeguards due to its extensive scope of application and, therefore, the organisation ensured minimum and immediate content of right¹⁹ to social security with a useful framework being made available to financial institutions, donors, human right agencies and NGO's (working in the field) as a guiding principle. The contents of the principle are:

- (i) *The model*: Social security as a human right and not as a commodity, relies on collective funding. This can be of different types: public, professional or

¹⁶ See Law Mantra Think Beyond Others (International Monthly Journal, I.S.S.N 2321 6417) Last accessed on 17.05.2016.

¹⁷ See Wouter Van Ginneken, "Social Security for the Informal Sector: Issues Option and tasks Ahead", ILO, Geneva 1996. Available on www.ilo.org/public/english/110secsoc/techmeet/wouter2.htm, Last Accessed on 24th September, 2007.

¹⁸ Universal Declaration of Human Rights and the International Covenant on Economic and Social and Cultural Rights furthered the major highlights of the Philadelphia Declaration and outlined the steps towards ensuring Social Justice.

¹⁹ The Conference concluded that the essentials of social security to be provided to all are: provision of benefits to households and individuals; Through public or collective arrangements; aimed at protecting against low or declining living standard and that arises from basic risks and needs.

community. In all these cases, it is a basic and minimal requirement of the right that it be supervised by an independent, participatory and regulatory body.

(ii) *Contribution and Benefits*: The benefits must be defined in advance, along with contributions that do not exceed a reasonable percentage of available income (whatever its source) how small or minimal the benefit is.

(iii) *Risks*: As per the principle of inter-dependence of all human rights, implementation of the right to social security and ensuring the right to an adequate standard of living in Article II of ICESCR has its related risks such as those in connection with health care, sickness benefits, survivor's benefits and maternity benefits. These risks in sensitive issues must be given priority.

(iv) *Coverage*: States are to undertake negotiations with civil society aimed at guaranteeing social security for all, including the self-employed, rural workers and workers in the informal sector. Provision must be made for periods of time when the insured person, family or group is not able to contribute to the system. In all cases, social security programmes should be subject by law to such requirement.

It was largely believed that labour issues overwhelmingly fall within the domestic field of law,²⁰ characterised by a unique blend of particular rules negotiated by parties to an employment relationship and general legislative imperatives enacted for the protection of workers.²¹ Labour laws were almost entirely national, established by sovereign states. Like many domestic legal fields, it also has had an international counterpart in a set of conventions and declarations that detail rights and obligations with which states, as a subject of international law, must comply with. Even then, it was mainly the domestic law that played an important role. Two dramatic trends that emerged in the recent past are increasingly challenging the traditional capacity of domestic labour law to promote justice in the world of work. While the *first* relates to the introduction of flexible forms of production, which are supplementing and in some cases supplanting traditional forms of mass production dependent on routinised labour with hierarchically structured detailed rules and responsibilities.²² Facilitated in part by new developments in computer and information technology, these

²⁰ Patrick Macklem, "Labour Law Beyond Borders" 5 (3) *JIEL* 1 (2002).

²¹ *Ibid.*

²² *Ibid.*

flexible forms of production rely on an increasingly versatile labour force, motivated by the spirit of cooperation and generalism, to produce customised products just in time to meet the ever-shifting consumer demand. The *second* relates to the onset of economic globalisation, manifest in many bilateral, regional and international agreements, especially those supervised by the World Trade Organisation, promoting trade liberalisation. By gradually introducing reciprocal tariff reductions and eliminating non-tariff import barriers, these agreements represent the legal superstructure of a new international economic order, where capitalism increasingly operates on a global scale and possesses the capacity to move relatively freely across national boundaries.²³ The International Labour Conference in 2001 having observed the changing trends adopted the Resolution and conclusions concerning social security.

5. LEGAL EFFECT OF THE CONVENTIONS AND RECOMMENDATIONS OF THE INTERNATIONAL LABOUR ORGANISATION:

International Labour Organisation, like any other specialised agency of the United Nations, has its own unique features. This agency has constituted model laws. This has placed the organisation on the productive and constitutional path.²⁴ The ILO as an organisation cannot achieve its goals without the support from other bodies and governments. The objects have to be delivered through efforts and the interest of the ILO has shifted from enforcing its standards to avoidance of harmful policies and promotion of those which the organisation considers important. To ensure maximum adherence to its objectives and attainment of social justice, ILO functions through an organised supervisory system. This system other than reporting obligations on governments also suggest adversarial '*special procedures*' as and when required. International labour standards are laid down to either promote productive work conditions or decent terms of freedom, dignity and security of the working class. Such standards are put to practice either through conventions, recommendations or protocols of the organisation. While the conventions have binding effect on the countries, the effect of recommendations is more persuasive in nature.

²³ Also see Articles 3, 22, 23 and 25 of the Universal Declaration of Human Rights, Article 34 of Charter of Fundamental Rights of European Union and Articles 6 and 9 of the International Covenant on Economic and Social and Cultural Rights.

²⁴ Brian Langille, *The Future of ILO Law, and the ILO*, Proceedings of the Annual Meeting (American Society of International Law), Vol. 101 (March 28- 31, 2007), pp. 394-396 available at <http://www.jstor.org/stable/25660227> last accessed on 17.05.2016.

The supervisory function is primarily to ensure compliance with the conventions. Conventions are legally binding in nature. ILO has adopted, revised and withdrawn many conventions to adapt itself to the changing nature of the industrial developments of the global economy. Once adopted, convention has to be ratified by a minimum number of countries and then the norms contained therein are to be complied with. ILO till its 90th year of being in existence has had 189 Conventions and 202 recommendations. The Governing Body however has identified of eight conventions as core conventions as they covered subjects considered as fundamental principles and rights at work. These eight core principles have been ratified by more than 150 countries. These Conventions are classified according to the importance attached to them by the organisation²⁵. The conventions once ratified have a binding effect on the countries which ratify them. These conventions are drafted by the Independent technical body of the organ and are ratified by the countries. The core principles and rights expressed therein are covered in the ILO Declaration on fundamental principles and Rights at Work of 1998 include: the right to establish free and independent workers' and employers' organisations; right to organise, effective recognition of right to collective bargaining, elimination of all forms of compulsory and forced labour; abolition of child labour; equal remuneration to men and women and elimination of discrimination in respect of employment and occupation. Viewed as enabling standards, application of ILO norms are guided through them. These conventions are adopted by the countries but it is also subject to the review process from the countries. There are reports which form basis of dialogue for improvement of the compliance standards by these countries.

Recommendations by the Organ are not as binding as conventions and more voluntary with the option for acceptance and practice by the countries ratifying the principles of the organisation. These recommendations are usually in the areas of work of the organisation's multilateral cooperation, global economic recovery and job creation and promotion of international labour standards. Usually in case of recommendations, member country should report to the Director General of the International Labour Office. The report provides position

²⁵ In case of Convention adopted by the ILO a member state shall enforce a convention in question irrespective of the fact whether a member has ratified or not in good faith. In order to become a convention effective in International Law must always be communicated by the Head of the State or Prime Minister or Minister responsible for foreign affairs or Labour to the Director- General of ILO. If this is not done, it may be that a Convention is regarded by a State as "*ratified*" in its internal legal system, but this will be of no effect in the international legal system.

of law and practice of the federation and the state practices. The office may also like to understand the extent to which the practices and suggestions have been given effect to. These requests sought by the International Labour Office can be based on representations preferred by any employers or workers' organisations alleging non observation of the standards of the organisation despite the country, in which such organisations are based, having ratified the Conventions and accepted the recommendations.

6. CONCLUSION:

The conventions of the International Labour Organisation have had a legal and binding effect while the recommendations have a persuasive effect on the countries. However, there has been an evolving and paradigm shift in the nature of social security which a class of individuals or a particular country looks forward to. The labour standards in a developed country may or may not suit the requirements of the least developed country and vice versa. The rate of development varies and so does the economic dependence on other nations. Ratification being an important content, the labour standards of the ILO cannot be protracted for everyone as a uniform yardstick for strict adherence. However, some social theorists are also of the opinion that ILO, as a specialised agency of the United Nations, has reached a point of saturation wherein the process of law making is diminishing and the rate of ratification by the countries is also decreasing. Reporting rates of the countries has decreased and the effectiveness of the conventions and recommendations are limited to the extent of being operable.²⁶

Be that as it may, as one of the most successful specialised agencies of the United Nations, ILO has adapted itself by providing for flexible labour standards for the countries depending on their capacity to enforce. However, as the economic aspect of such countries are continuously changing with globalisation, liberalisation as if a kaleidoscope, it imposes an indirect responsibility on the organisation to evolve itself in terms of functioning principles with time in a more cost-effective manner especially on issues related to social security. Therefore, it would be apt to mention that what has been achieved by the organisation in the field of social security is appreciated but what has not been addressed in the process of

²⁶ Daniel Blackburn, *ILO Social Justice Declaration*, International Union Rights, Vol. 15 No.3 Focus on Strategic Corporate Campaigns: IUR brings together international perspectives on an innovative tactic developed by US trade unions (2008), pp. 24- 25 available at <http://www.jstor.org/stable/41937489> last accessed on 17.05.2016.

evolution and due to its newness as a concern of the organisation has to be attained at a galloping speed because drawbacks of social security²⁷ cannot be given a leeway at the cost of development of a country.

²⁷ Social security has its own share of positive and negative effects. While it helps the vulnerable with opportunity to earn an income and increase their potential, it also discourages people from working and saving, affects the creation of employment and encourages people to withdraw prematurely with the expectation of being secured through provisions.