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CONSTITUTION AND LABOUR LAWS

THIS CHAPTER INCLUDES

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| <ul style="list-style-type: none">• Constitutional bearing on Industrial Laws and Industrial Relations;• Social Justice and Industrial Laws;• Constitutional Remedies;• Constitutional framework of Fundamental Rights and Industrial Relations; | <ul style="list-style-type: none">• Labour Laws with reference to Directive Principles of State Policy;• Social Security Provisions;• Working Conditions;• Living Wage;• Workers Participation in management |
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Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



Objective



Short Notes



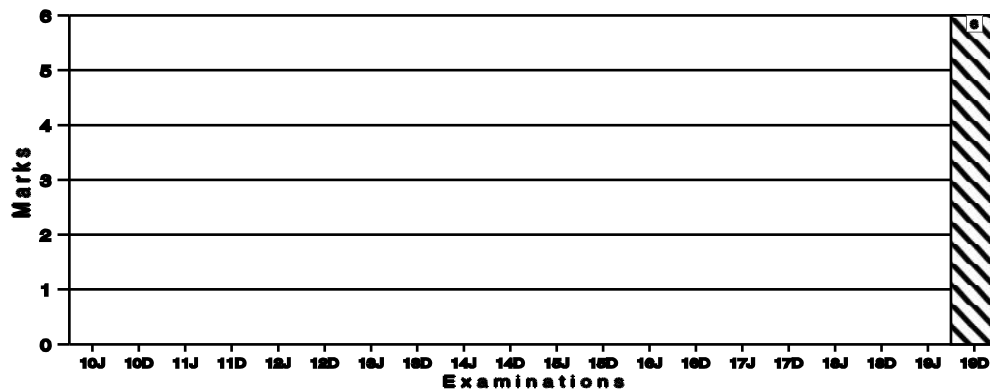
Distinguish



Descriptive



Practical



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CHAPTER AT A GLANCE

Constitution and Labour Laws

- The basic document containing fundamental law of the land and which acts as a guiding book for the Government is called the Constitution.
- The Constitution is the supreme law of the country and it contains laws concerning the government and its relationships with the people.
- As per the Indian Constitution, Labour is a subject in the Concurrent List.
- Concurrent List of the constitution refers to those sets of matters wherein both the Central and the State Governments are competent to enact legislations.
- Labour welfare connotes a condition of well-being, happiness, satisfaction, conservation and development of human resource.

Constitution and Labour Rights

Fundamental Rights	Article 14	Equality before Law
	Article 16	Equality of opportunity
	Article 19	Right to form associations or union
	Article 21	Right to Life
	Article 23	Prohibition of trafficking and forced labour
	Article 24	Prohibition of child labour under the age of 14 years

Directive Principles of State Policy	Article 38	State shall strive to promote the welfare of the people
	Article 39	Equal pay for equal work
	Article 41	Right to work
	Article 42	Provision for just and humane conditions of work
	Article 43	Right to a living wage
	Article 43A	Participation of workers in management

Fundamental Rights and Labour Laws

- **Article 14 (Equality before Law)**
 - Equality before law prohibits discrimination.
 - The concept of ‘equal protection of the laws’ requires the State to give special treatment to persons in different situations in order to establish equality amongst all.
- **Article 16 (Equality of opportunity)**
 - Equality of opportunity provides equality in matters of public employment
 - Prevents the State from any sort of discrimination
- **Article 19 (Right to form associations or union)**
 - Gives right to citizen to form associations and unions.
- **Article 21 (Right to Life)**
 - Article 21 assures every person right to life and personal liberty.
 - It means something more than mere survival and mere existence or animal existence.
- **Article 23 (Prohibition of trafficking and forced labour)**
 - Prohibits three unsocial practices: beggar; traffic in human beings and forced labour
- **Article 24 (Prohibition of child labour under the age of 14 years)**
 - Prohibits employment of children below the age of 14 years in any factory.

Directive Principles and Labour Laws

- **Article 38 (Promote the welfare of the people)**
 - Directs State to secure a social order for the promotion of welfare of the people.
 - Various labour laws enacted have been based on this foundation stone itself.
- **Article 39 (Equal pay for equal work)**
 - Provides that the State should direct its policy towards securing all citizens,

- irrespective of sex, right to an adequate means of livelihood
- It is the result of these Directive Principles that laws such as Equal Remuneration , Minimum Wages , Child Labour (Regulation and Abolition) Act were passed.
 - **Article 41 (Right to work, to education and to public assistance in certain cases)**
 - Provides that the State should direct its policy to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
 - The Employees' State Insurance Act, 1948 , The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Maternity Benefit Act , Payment of Gratuity Act, 1972 ,The Apprentices Act, 1961 ,The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1969 were enacted keeping in mind this very Directive Principle of the Constitution.
 - **Article 42 (Provision for just and humane conditions of work)**
 - Requires the state to make provision for securing just and humane conditions of work and for maternity relief.
 - Provisions contained in Factories Act, 1948 and Contract Labour (Regulation and Abolition) Act of 1970 have been made in line with facilitation of provisions of Article 42.
 - **Article 43 (Living wage, etc, for workers)**
 - Imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work.
 - Minimum Wages, Payment of Bonus are means of attaining goals enshrined in Article 43.
 - **Article 43A (Participation of workers in management)**
 - Provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments.
 - Industrial Disputes Act, 1947 (containing dual provisions of prevention and settlement of industrial disputes) and The Industrial Policy Resolution, 1948 advocated Workers Participation in Management by suggesting that labour should be in all matters concerning industrial production.

DESCRIPTIVE QUESTIONS

2019 - Dec [3] (a) State the specific directions issued by Supreme Court to the State Government in case of *Bandhua Mukti Morcha Versus Union of India*. (6 marks)

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATIONS

DESCRIPTIVE QUESTIONS

Q.1 List the various Articles of the Constitution having a bearing on the Labour rights enjoyed by the citizens of India.

Answer:

Following are the Articles under Fundamental Rights and Directive Principles of State Policy of the Constitution that impact the Labour rights:

Fundamental Rights	Article 14	Equality before Law
	Article 16	Equality of opportunity
	Article 19	Right to form associations or union
	Article 21	Right to Life
	Article 23	Prohibition of trafficking and forced labour
	Article 24	Prohibition of child labour under the age of 14 years
Directive Principles of State Policy	Article 38	State shall strive to promote the welfare of the people
	Article 39	Equal pay for equal work
	Article 41	Right to work
	Article 42	Provision for just and humane conditions of work
	Article 43	Right to a living wage
	Article 43A	Participation of workers in management

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Q.2 Industrial laws are socio-economic justice oriented Comment.

Answer:

- The Preamble to the constitution of India spells “SOCIAL ECONOMIC JUSTICE “ as one of the prime objective of the State.
- Article 38 of the Constitution provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, social order in which justice, social, economic and political shall inform all institutions of the national life.
- Article 39 states that it shall be the duty of the State to apply certain principles of social justice in making laws.
- In the economic sphere, social justice means opportunities in greater measure to the poor and the needy for the betterment of their social and economic conditions.

- It does not mean making rich man poor in order to make poor men rich. It does not mean that all wealth should be shared equally provision of basic minimum to all in response to life and living facilities for promoting one’s own values and manner worth are the essential contents of social justice.
- As a result, the Industrial Laws are framed on the foundation of social economic justice.
- The laws strive to remove social economic disparities and inequalities of birth and competing claims (especially between employers and workers) by provide just, fair and equitable solution to human relation problem in order to maintain peace and accelerate growth of the country.

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Q.3 What will be the outcome in case labour laws enacted to enforce Directive Principles infringes Fundamental Rights?

Answer:

- The Fundamental Rights are not an end in themselves but are the means to an end. The end is specified in Directive Principles.
- Also, the goals set out in Directive Principles are to be achieved without abrogating the Fundamental Rights.
- Thus, Fundamental Rights and Directive Principles should go hand in hand and together constitute the core of our constitution .
- Directive Principles have mostly been used to broaden, and to give depth to some Fundamental Rights and to imply more rights to the general masses over and above what are expressly stated in the Fundamental Rights.

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Q.4 What does PIL and SAL stands for and how are they useful in enforcing labour rights?

Answer:

- PIL is the acronym for Public Interest Litigation while SAL stands for Social Action Litigation
- The general law in India is that legal process can be initiated in a court of law at the instance of an aggrieved person.
- A third party generally does not have the capacity to initiate proceedings against others.
- However, the Court now permits Public Interest Litigation (PIL) or Social Action Litigation (SAL) at the instance of 'public spirited citizens' for the enforcement of Constitutional and other legal rights.
- PIL is enabled to be initiated by a third party for any person /group of persons who were not in a position to approach Court because of their socially or economically disadvantaged status.
- Public Interest Litigation is part of the process of participative justice.
- Once the fundamental rights of labourers are infringed they can approach the Court for relief under Article 32 and if any other legal right is also infringed for relief under Article 226.

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Q.5 What are the Principles of State Policy as per Article 39 of the Constitution?

Answer:

- Article 39 of the constitution provides that the State should direct its policy towards securing:
 - That all citizens, irrespective of sex, equally have the right to an adequate means of livelihood.
 - That the ownership and control of the material resources of the community are so distributed as best to subserve the common good
 - That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
 - That there is equal work for both men and women
 - That the health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
 - That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

9.6.8

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- It is the result of these Directive Principles that laws such as Equal Remuneration, Minimum Wages, Child Labour (Regulation and Abolition) Act were passed.

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Q.6 What are Social security related provisions contained in Article 41 of the Constitution and which all labour laws help in accomplishing the same?

Answer:

- Article 41 of the Constitution provides that the State should direct its policy:
- To make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
- Social security is guaranteed in our Constitution under Articles 39, 41 and 43.
- The Employees' State Insurance Act, 1948 is a pioneering piece of legislation in the field of social insurance.
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 aims at providing substantial security and timely monetary assistance to industrial employees and their families.
- The Maternity Benefit Act provides maternity leave with full wages and security of employment.
- The object of the Payment of Gratuity Act, 1972 is to provide a scheme for the payment of gratuity to employees.
- The Apprentices Act, 1961 was enacted to supplement the programme of institutional training by on-the-job training and to regulate the training arrangements in industry.
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1969 has made it obligatory on the employers to notify vacancies occurring in their establishments to the prescribed employment exchanges before they are filled.

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Q.7 Explain the concept of 'living wage' and how does it differentiate from 'minimum wage' and 'fair wage'?

Answer:

- A 'living wage' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.
- A 'minimum wage', on the other hand, is just enough to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay..

- A 'fair wage' is a mean between 'living wage' and 'minimum wage'. 'Living' and 'fair' wages have to be fixed keeping in view the capacity of the industry to pay.
- _____ Space to write important points for revision _____

Q.8 What is meant by Workers Participation in Management?

Answer:

- Workers' participation in management implies mental and emotional involvement of workers in the management of any enterprise.
 - It is process by which subordinate employees, either individually or collectively, become involved in one or more aspects of organizational decision making within the enterprises in which they work.
 - ILO has been encouraging member nations to promote the scheme of Workers' Participation in Management.
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Q.9 List the ways of Workers Participation in Management prevalent in India.

Answer:

The various forms of Workers Participation in Management prevalent in India are as follows:

- Suggestion Schemes
- Works Committee
- Joint Management council
- Work directors
- Co-partnership
- Joint Councils
- Shop Councils

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Q.10 Narrate the impact of various Fundamental Rights on industrial laws and industrial relations.

Answer:

Below is the impact of various Fundamental Rights on industrial laws and industrial relations:

9.6.10**Scanner CSPP M-III Paper-9.6 (2017 Syllabus)**

Article	Heading	Impact on Labour Laws
Article 14	Equality before Law	<ul style="list-style-type: none">- Equality before law prohibits discrimination.- The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situations in order to establish equality amongst all.
Article 16	E q u a l i t y o f opportunity	<ul style="list-style-type: none">- Equality of opportunity provides equality in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them.- Also provides the autonomy to the State to grant special provisions for the backward classes, under- represented States, SC & ST for posts under the State.
Article 19	Right to form associations or union	<ul style="list-style-type: none">- Article 19 (1) (c) gives right to citizen to form associations and unions.- It thus includes the right to form companies, societies, partnership, trade union and political parties.- The right guaranteed is not merely the right to form association but also to continue with the association as such.- The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.
Article 21	Right to Life	<ul style="list-style-type: none">- Article 21 assures every person right to life and personal liberty.- The right to life enshrined in Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence.- It therefore includes all those aspects of

		<p>life which go to make a man's life meaningful, complete and worth living.</p> <ul style="list-style-type: none"> - Article 21 facilitated the enacted of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on December 9, 2013 which seeks to protect women from sexual harassment at their place of work.
Article 23	Prohibition of trafficking and forced labour	<ul style="list-style-type: none"> - Article 23(1) prohibits three unsocial practices: <ul style="list-style-type: none"> • beggar • traffic in human beings • forced labour - The term 'begar' means compulsory work without any payment. Begar is labour or service which a person is forced to give without receiving any remuneration for it. Withholding of pay of a government employee as a punishment has been held to be invalid and is prohibited. - The term 'trafficking in human beings,' refers to the buying and selling of human beings, the same has been constitutionally abolished. - Forced labour violates human dignity and is contrary to the basic human values. Article 23 intends to abolish every form of forced labour even if it has origin in a contract.
Article 24	Prohibition of child labour under the age of 14 years	<ul style="list-style-type: none"> - Article 24 provides for prohibition against the employment of children below the age of fourteen years in any factory or mine or any other hazardous employment. - This is also in consonance with Articles 39(e) and (f) of the Constitution which emphasizes the need to protect the health and strength of workers, and also to protect children against exploitation.

9.6.12

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		<ul style="list-style-type: none">- The Child Labour (Prohibition and Regulation) Act, 1986 was enacted as a result of this underlying Fundamental right and prohibits the employment of children in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.
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Q.11 Narrate in detail various Directive Principles which have bearing on industrial laws and industrial relations.

Answer:

Below are the set of Directive Principles having a bearing on industrial laws and industrial relations:

Article	Heading	Impact on Labour Laws
Article 38	Promote the welfare of the people	<ul style="list-style-type: none">- Article 38 of the constitution directs State to secure a social order for the promotion of welfare of the people- The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life- The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations- Various labour laws enacted have been based on this foundation stone itself.
Article 39	Equal pay for equal work	<ul style="list-style-type: none">- Article 39 of the constitution provides that the State should direct its policy towards

		<p>securing:</p> <ul style="list-style-type: none"> • That all citizens, irrespective of sex, equally have the right to an adequate means of livelihood • That the ownership and control of the material resources of the community are so distributed as best to subserve the common good • That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment • That there is equal work for both men and women • That the health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength • That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. <p>- It is the result of these Directive Principles that laws such as Equal Remuneration , Minimum Wages , Child Labour (Regulation and Abolition) Act were passed.</p>
<p>Article 41</p>	<p>Right to work, to education and to public assistance in certain cases</p>	<p>- Article 41 of the constitution provides that the State should direct its policy:</p> <p>- To make effective provision for securing the right to work, to education and to</p>

9.6.14

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		<p>public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.</p> <ul style="list-style-type: none">- The Employees' State Insurance Act, 1948, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Maternity Benefit Act Payment of Gratuity Act, 1972, The Apprentices Act, 1961, The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1969 were enacted keeping in mind this very Directive Principle of the Constitution.
Article 42	Provision for just and humane conditions of work	<ul style="list-style-type: none">- Requires the state to make provision for securing just and humane conditions of work and for maternity relief.- "Right to live with human dignity" was included in Article 21 as a result of Article 42.- Provisions contained in Factories Act, 1948 and Contract Labour (Regulation and Abolition) Act of 1970 have been made in line with facilitation of provisions of Article 42.
Article 43	Living wage, etc, for workers	<ul style="list-style-type: none">- Article 43 imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work.- A 'living wage' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.

		<ul style="list-style-type: none"> - A 'minimum wage', on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. - Minimum Wages, Payment of Bonus are means of attaining goals enshrined in Article 43.
Article 43A	Participation of workers in management	<ul style="list-style-type: none"> - Article 43-A provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments. - Industrial Disputes Act, 1947 (containing dual provisions of prevention and settlement of industrial disputes) and The Industrial Policy Resolution, 1948 advocated Workers Participation in Management by suggesting that labour should be in all matters concerning industrial production. - The First Five-Year Plan and the successive plans emphasised the need for workers' participation in management.

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Q.12 Discuss briefly forms of Workers Participation in Management in India.

Answer:

⇒ Various forms of workers' participation in management prevalent in India are:

▶ **Suggestion schemes:**

- Participation of workers can take place through suggestion scheme.
- Under this method workers are invited and encouraged to offer suggestions for improving the working of the enterprise.
- A suggestion box is installed and any worker can write his suggestions and drop them in the box.
- Periodically all the suggestions are scrutinized by the suggestion committee or suggestion screening committee.

- The committee is constituted by equal representation from the management and the workers.
- The committee screens various suggestions received from the workers. Good suggestions are accepted for implementation and suitable awards are given to the concerned workers.
- Suggestion schemes encourage workers' interest in the functioning of an enterprise.
- ▶ **Works Committee:**
 - Under the Industrial Disputes Act, 1947, every establishment employing 100 or more workers is required to constitute a works committee.
 - Such a committee consists of equal number of representatives from the employer and the employees.
 - The main purpose of this committee is to provide measures for securing and preserving amity and good relations between the employer and the employees.
- ▶ **Joint Management Councils:**
 - Under this system Joint Management Councils are constituted at the plant level.
 - These councils consist of equal number of representatives of the employers and employees, not exceeding 12 at the plant level.
 - The plant should employ at least 500 workers.
 - The council discusses various matters relating to the working of the industry like welfare measures, supervision of safety and health schemes, scheduling of working hours, rewards for suggestions etc.
- ▶ **Work directors:**
 - Under this method, one or two representatives of workers are nominated or elected to the Board of Directors.
 - This is the full-edged and highest form of workers' participation in management.
- ▶ **Co-partnership:**
 - Co-partnership involves employees' participation in the share capital of a company in which they are employed. By virtue of their being shareholders, they have the right to participate in the management of the company.
 - Shares of the company can be acquired by workers making cash payment or by way of stock options scheme.
 - The basic objective of stock options is not to pass on control in the hands of employees but providing better financial incentives for industrial productivity. But in developed countries, WPM through co-partnership is

limited.

- ▶ **Joint Councils:**
 - The joint councils are constituted where 500 or more workers are employed in an industrial unit
- ▶ **Shop councils:**
 - Shop Council is constituted in every Industrial establishment employing 500 or more workmen.
 - Shop council represents each department or a shop in a unit.
 - Each shop council consists of an equal number of representatives from both employer and employees.
 - Shop Council aim to assist management in achieving monthly production targets, improving production, productivity and efficiency and also to enable proper flow of communication between employer and employees.