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INTERNALIZING INTERNATIONAL LABOUR LAW: A COMPARATIVE STUDY OF NEPAL AND INDIA

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ABSTRACT

The International Labour Organization (hereafter referred to as, ILO) is a specialized agency of the United Nations (hereafter referred to as, UN) from 1948, focused on advancing social justice and promoting decent work worldwide. Established in 1919 as an autonomous organization of the League of Nations, the ILO sets international labour standards and fosters social dialogue to improve working conditions, employment opportunities, and workers' rights globally through international labour instruments including, Declarations, Conventions, Protocols, and Recommendations that are adopted under its auspices. Additionally, the ILO provides technical assistance and expertise to help implement these instruments at the national level. The gravity of the contribution made by the ILO worldwide since its establishment to enhance labour rights cannot be measured in magnitude. Currently, 187 States are members of this organization. However, there varies in the number of States' party in its Conventions and other binding instruments. For this paper, a glance at ILO's instruments and the sufficiency and systematization of the coordination of the monitoring mechanisms for ratifying instruments are discussed. Effectively implementing international labour law within a national framework involves aligning domestic laws with international standards, ensuring compliance, and establishing robust mechanisms for enforcement and dispute

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resolution. In such context, the author followed the exploratory and descriptive method under the doctrinal methodology for revealing the effectiveness of the monitoring system in measuring the implementation of international labour law instruments, particularly developed under the regime of ILO. Secondly, dealt with the concept of international labour law, international labour standards, and ILO's governance mechanism. Finally, as a reference, it dealt with the internalizing or domestication mechanism of international labour law in the Nepalese and Indian contexts. Thus, the scope of this article is limited to the domestication of international labour laws, an overview of the major organs of ILO and its monitoring and supervisory systems.

Key Words: Labour rights, Labour standards, Monitoring mechanism, Governance, Tripartism.

INTRODUCTION

Labour law is one of the branches of law. It is also known as the law relating to employment or labour relations and encompasses the legal principles and regulations governing the relationship between employers and employees. The primary objectives of labour law are to ensure fair treatment, protect workers' rights, maintain employer-employee relationships, and balance a framework for economic and social justice in the economic relation. The labour law may vary across jurisdictions but commonly covers fundamental issues like; employment contracts, collective bargaining, discrimination, occupational health and safety, and decent or conducive working environment.

In the same way, international labour law is a subdivision of international law that regulates the relationships between nations, employers, and workers in the global workforce. The discipline is governed by various international treaties, Conventions, and Declarations, including those established by ILO and others developed under the UN system. The ILO as an institution emanates laws in the sector of labor for the workforce are the primary source of international labour law, and that is embodied in its Conventions and Recommendations and the documents that emanate from the supervisory mechanism responsible for the application of those international labour standards¹. It sets out principles

¹ International Labor Organization (Dec. 25, 2023, 08:08AM), <https://www.ilo.org/inform/online-information-resources/research-guides/labour-law/lang—en/index.htm>.

and standards to ensure the protection of workers' rights on an international level. International labour law seeks to establish a harmonized framework that promotes fair labour practices, social justice, a decent working environment, and the well-being of workers worldwide.

For the growth and development of international labour law and labour jurisprudence, several human rights instruments and international organizations have played a pivotal role for a long time back. International human rights instruments like; the Universal Declaration of Human Rights (UDHR), 1948 while non-binding, serve as the foundational document for all subsequent human rights treaties developed since 1948 onwards. The UDHR prohibits slavery and servitude². Article 23 grants everyone the right to work and the freedom to choose employment under just and favourable conditions without discrimination. It additionally ensures the right to receive equal pay for equal work. Furthermore, the articles provide for the right to form and join trade unions. Article 24 safeguards the right to rest and leisure, encompassing reasonable restrictions on working hours and scheduled paid holidays. In addition to the UDHR, there are the twin covenants, the International Covenant on Civil and Political Rights³ (ICCPR), 1966, and the International Covenant on Economic, Social and Cultural Rights⁴ (ICESCR), 1966 have equally recognized labour rights.

In addition to the human rights instruments and other UN human rights governing mechanisms⁵, the ILO, a specialized agency of the UN⁶ is the main international organization, focusing on advancing social justice and promoting decent work⁷, and internationally recognized labour rights.

² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR) Art. 4.

³ The International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art. 8.

⁴ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 1453 (ICESCR) art. 6, 7, 8 and 9; *recognizes* right to work in the same spirit of UDHR (1948) Art. 4.

⁵ The UN Committee on Economic, Social and Cultural Rights (the CtESCR) was established in 1985 under ECOSOC Resolution 1985/17, and the other is the General Comment No.16 of the UN Committee on the Rights of the Child (the CtRC) adopted in 2013.

⁶ In 1946, the ILO became the specialized agency of the UN, (Jan. 1, 2024, 08:10AM), <https://www.ilo.org/global/about-the-ilo/history/lang-en/index.htm>.

⁷ International Labour Organization, (Jan. 15, 2024, 08:15 AM), <https://www.ilo.org/global/about-the-ilo/history/lang-en/index.htm>.

The ILO was established in 1919 as a part of the Treaty of Versailles⁸. Now functioning as the only tripartite UN agency, the ILO has convened governments, employers, and workers from 187 member States to establish labour standards and formulate policies to create fair and humane working conditions globally as well as to address work-related issues for individuals, regardless of gender⁹. It is worth mentioning that since its establishment, the ILO has been active in producing labour standards through various legal instruments. As of January 2024, there are 191 Conventions¹⁰, 208 Recommendations,¹¹ and 6 Protocols¹² covering wider range of labour issues across multiple jurisdictions. Among these instruments, the ILO has also articulated a set of “core” labour rights outlined in the Declaration of Fundamental Principles and Rights at Work of 1998 (ILO, 1998a). All ILO member States are committed to upholding these principles and rights, regardless of whether they have ratified the corresponding “core” ILO Conventions¹³. However, Conventions are instruments that create legal obligations after ratification by a State. Whereas, Recommendations are not open to ratification, but consider as guidance to policy, legislation, and practice to a member State. Whatever the features of instruments whether Convention or Recommendation, the State abides by international labour standards as an obligation. Labour standards encompass universal respect for fundamental human rights in the workplace as defined in seven ‘core’ Conventions¹⁴: freedom of association and collective bargaining (1948, No 87 and 1949, No 98), forced labour (1930, No 29 and 1957, No 105), nondiscrimination (1951, No 100 and 1958, No 111) and the minimum age in employment (1973, No 138). Henceforth,

⁸ *Ibid.*

⁹ International Labour Organization, About the ILO (Jan. 15, 2024, 08:15 AM), <https://www.ilo.org/global/about-the-ilo/lang-en/index.htm>.

¹⁰ NORMLEX, International System on Labour Standard, Up-To-Date Conventions and Recommendations, (Jan. 15, 2024, 08:15 AM), <[https://www.ilo.org/dyn/normlex/en/f?p=1000:12020:::":](https://www.ilo.org/dyn/normlex/en/f?p=1000:12020:::)>.

¹¹ *Ibid.*

¹² NORMLEX, International System on Labour Standard, Protocols (Jan. 15, 2024, 08:15 AM), [https://www.ilo.org/dyn/normlex/en/f?p=1000:12020:::":](https://www.ilo.org/dyn/normlex/en/f?p=1000:12020:::)>.

¹³ International Labour Organization, Conventions, Protocols and Recommendations (Jan. 15, 2024, 08:15 AM), www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm.

¹⁴ Bob Hepple, New Approaches to International Labour Regulation, 26 *INDUS. L.J.* 359 (1997).

international labour standards are guidelines established by the ILO to promote basic rights and conditions for workers globally. The fundamental standards of the decent working environment are as *erga omnes* for ensuring the fundamental rights of labours elsewhere. These standards cover areas such as freedom of association, collective bargaining, elimination of forced labour, abolition of child labour, and non-discrimination in employment. The main purpose of the setup of these standards by the ILO is to create a common framework that respects fundamental human rights in the workplace, fostering fair and decent working conditions on a global scale. Countries voluntarily adopt these standards, contributing to the creation of a more equitable and humane global working environment. The genesis behind this development is that from 1944 towards the end of the Second World War, the ILO adopted the Declaration of Philadelphia to reflect its philosophy and fundamental principles, as well as to broaden its aims and purposes. The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that¹⁵:

- (a) labour is not a commodity;
- (b) freedom of expression and of association are essential to sustained progress;
- (c) poverty anywhere constitutes a danger to prosperity everywhere;
- (d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

The contribution made by the ILO since its establishment for the protection and promotion of labour rights globally cannot be measured in magnitude. But it is often said as a “toothless tiger¹⁶” as it lacks legal

¹⁵ International Labour Organization, ILO Declaration of Philadelphia, (Jan. 20, 2024, 08:15 AM), <https://www.ilo.org/static/english/inwork/cb-policy-guide/declarationofPhiladelphia1944.pdf>.

¹⁶ Nikita Lyutov, The ILO System of International Labour Standards and Monitoring Procedures: Too Complicated to Be Effective, 64 ZBORNIK PFZ 255 (2014).

sanction against whether a member State or a ratifying State. The ILO is merely functioning as a good office or forum for the discussion of international labour issues. There might be several contingent factors rooted in the ILO itself that impede the effective application of its international labour standards. The intricate dynamic of the growth of the economic relation on labour and business relation and its alignment with the development approach towards developed and developing states demand the necessity-based approach. Also, the complexity of the ILO system of international labour standards and the procedure of controlling and monitoring mechanisms can be major factors that challenge the effective application of ILO instruments or international labour standards.

GOVERNANCE OF INTERNATIONAL LABOUR LAWS

International Labour law governance encompasses the regulation and coordination of labour standards on a global scale. For this very purpose, one of the major key entities, is the ILO, that sets and promotes international labour standards, Conventions, Declarations, and Recommendations addressing workers' rights, social protection, and employment conditions. The application of international labour standards is enforced by ILO Supervisory mechanisms established under various articles of the ILO Constitution¹⁷. Additionally, regional agreements and national laws shape the governance framework for international labour law. Among all, the ILO is the specialized UN agency, established particularly for the protection and promotion of labour rights which was established after the First World War¹⁸ and is still in existence.

International Encyclopedia for Labour Law and Industrial Relations (1994), paras 17-27, mentions that the ILO has other, important objectives in the contribution to peace, social justice, social and human objectives of development, international movement of workers and goods, and the source of inspiration for national action¹⁹. The effectiveness of

¹⁷ International Labour Organization, Research and Publications, (Dec. 26, 2023, 07:50 AM), < [https://www.ilo.org/inform/online-information-resources/research-guides/labour-law/lang—en/index.htm](https://www.ilo.org/inform/online-information-resources/research-guides/labour-law/lang-en/index.htm).

¹⁸ *Supra* Note no.5.

¹⁹ *Supra* Note 13, no. p. 356.

the ILO's contribution depends on the smooth functioning of its major organs and the efficiency of supervisory and monitoring systems for the proper execution of international labour law. Continuous engagement, dialogue, and the commitment of member States are key factors in realizing the ILO's mission of advancing social justice and decent work globally. These responsibilities have to be performed by the respective body/authority of the ILO which are discussed in detail in the following paragraphs.

Major Governing Organs of the ILO

Article 2 of the ILO Constitution affirmed the major governing organs of the ILO which are as mentioned below;

- (a) *a General Conference of representatives of the Members;*
- (b) *a Governing Body composed as described in Article 7; and*
- (c) *an International Labour Office controlled by the Governing Body.*

a) General Conference/International Labour Conference: Though, the Constitution of ILO explicitly affirmed the General Conference²⁰ as one of the main organs. However, the terms General Conference and International Labour Conference (hereafter referred to as, ILC) are interchangeably used in various literature²¹. The ILC is the highest authority or the supreme organ of the organization. It consists of representatives (i.e. governments, employers, and employees at a time) of 187 States, which are at present member States of the ILO. It serves as the principal legislative and policy-making body. It sets minimum international labour standards and defines the broad policies of the Organization. Also, the ILC elects the Governing Body of the ILO. Every two years, the Conference adopts the ILO's biennial work programme and budget, that is financed by member States. The ILC also provides an international forum for the discussion of world labour and social problems. In ILC each member State has four representatives²² i.e. Two Government representatives, One Worker

²⁰ ILO Constitution, Art. 2(a).

²¹ Alfred Wisskirchen, *The Standard-Setting and Monitoring Activity of the ILO: Legal Questions and Practical Experience*, 144 (253) INT'L LAB. REV. 4 (2005).

²² ILO Constitution, Art. 3.

representative, and One Employer representative. Its tripartite structure is one of the significant features of United Nations systems, involving governments, employers, and workers facilitating consensus-building, ensuring that diverse perspectives are considered in the development of Conventions and Recommendations. Tripartism thus emphasizes the concept of “social partnership” between them, in the interests of every ILO member State which are the keys to social progress²³.

- b) Governing Body:** The Governing Body is the executive council of the ILO that establishes the strategic objectives and policies. The Governing Body meets three times a year and makes decisions on ILO policy and establishes the programme and budget, which it subsequently submits to the Conference for adoption. The agenda for all meetings of the Conference is settled by the Governing Body, which shall consider any suggestion as to the agenda that may be made by the government of any of the Members or by any representative organization, or by any public international organization. The Governing Body also elects the Director-General for a five-year renewable term. In total, this Body consists of fifty-six persons²⁴ including; twenty-eight representing governments, fourteen representing the employers, and fourteen representing the workers. Of the twenty-eight persons representing governments, ten shall be appointed by the members of chief industrial importance, and eighteen shall be appointed by the Members selected for that purpose by the Government delegates to the Conference, excluding the delegates of the ten Members mentioned above²⁵. The period of office of the incumbent governing body is for three years²⁶. The Governing Body regulates its procedure and fixes its times of meeting. However, a special meeting can be held if a written request to that effect is made by at least sixteen of the representatives of the Governing Body²⁷.

²³ International Labour Organization, (Jan. 2, 2024, 07:20 AM), https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-director-general/statements-and-speeches/WCMS_720980/lang-en/index.htm.

²⁴ ILO Constitution, Art. 7(1).

²⁵ ILO Constitution, Art. 7(2).

²⁶ ILO Constitution, Art. 7(5).

²⁷ ILO Constitution, Art. 7(8).

- c) **International Labour Office:** The International Labour Office²⁸ is the Organization's secretariat, headed by the Director in General, and also acts as its operational headquarters, research center, and publishing house. It implements activities related to the objectives and policies emanating from the Governing Body's decisions. Administration and management are decentralized to regional offices for the Americas, Africa, Asia, Europe, and the Arab States, and through subregional and/or country offices within each region. Including the regular official work, the Office also acts as a research and documentation center; as a publishing house, it produces a wide range of specialized studies, reports, and periodical reports. It is interesting to note that only this organ of the ILO is not tripartite. The officials are appointed by the Director-General and are exclusively international and they should not seek or receive any instructions from any governments or any other authority external to the Organization²⁹. The women's seats are also specifically reserved, though not explicitly mentioned in numbers³⁰. Besides, the regular functions, powers, and duties of the officials may be assigned to it by the Conference or by the Governing Body³¹.

Monitoring and Supervisory System

Broadly, the application of international labour law or standards employs two major measures³² i.e. (a) Regular Supervision and (b) Special Procedures. Under these measures, various monitoring and supervisory systems are in existence to assess and promote adherence to international labour standards. The monitoring and supervisory systems collectively contribute to the ILO's mission of promoting social justice and decent work globally. Key mechanisms are discussed in the following paragraphs.

- a) **Supervisory System:** The regular supervision of reports by the Committee of Experts on the Application of Conventions and Recommendations³³ submitted by member states on the implementation

²⁸ *Supra* Note no. 9.

²⁹ ILO Constitution, Art. 9(4).

³⁰ ILO Constitution, Art. 9(3).

³¹ ILO Constitution, Art. 10.

³² International Labour Organization, (Jan. 16, 2024, 08:45 AM), <https://guide-supervision.ilo.org/defending/recourse-to-preliminary-contacts-direct-contacts-or-tripartite-missions-may-be-had/>.

³³ ILO Constitution, Art. 19 and Art. 22.

of ratified Conventions. It provides assessments and recommendations. The format and content should be as the request of the Governing Body³⁴. Additionally, the ILO's supervisory mechanisms include the Committee on Freedom of Association and the Committee on the Application of Standards, which examine specific cases and recommend actions to address non-compliance³⁵. The recommendations and observations offered by this system help to address challenges and improve adherence to international labour standards. In addition, the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the 2008 ILO Declaration on Social Justice for a Fair Globalization promotes the implementation of principles underlying international labour standards and, in case of ratification, their application by member states³⁶.

- b) Regular reports: Member states are required to submit regular reports to the International Labour Office on their compliance with ratified Conventions³⁷. These reports are scrutinized, and recommendations may be made to address any shortcomings. For instance, the Right to Organize and Collective Bargaining Convention, 1949(No.98), ratified in 1996 by Nepal, submitted a report, received observation remarks on specific provisions and practices³⁸.
- c) Commission of Inquiry: Any of the Members have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member state is securing the effective observance of any Convention which both have ratified following the ILO's Constitution³⁹. In such a context, the Governing Body may appoint a Commission of Inquiry. The concerned states must cooperate with the Commission of Inquiry on the subject matter of the complaint⁴⁰. As of due process,

³⁴ ILO Constitution, Art. 22.

³⁵ ILO Constitution, Art. 24 and Art. 26.

³⁶ United Nations, Audio-video Library, (Jan. 1, 2024, 08:00 AM), https://legal.un.org/avl/ls/Trebilcock_ILL_video_2.html.

³⁷ ILO Constitution, Art. 22.

³⁸ International Labour Organization, Observation (CEACR) - adopted 2022, published 111st ILC session (2023), (July. 1, 2024, 07:00 AM), https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4315214,103197:NO.

³⁹ ILO Constitution, Art. 26.

⁴⁰ ILO Constitution, Art. 27.

the Commission of Inquiry prepares a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as necessary for action⁴¹. The Director-General of the International Labour Office communicates the report of the Commission of Inquiry to the Governing Body and each of the governments concerned in the complaint. Within three months, concerned states inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission or refers the complaint to the International Court of Justice⁴².

- d) Direct Contact Mission: In cases of persistent non-compliance, the ILO may conduct a Direct-Contacts Mission, which involves sending a mission to the country in question to engage in direct dialogue and find solutions to issues related to labour standards. The special procedures under the ILO Constitution enable the Governing Body to recourse to preliminary contact, direct contact or tripartite contacts. However, necessary to get prior approval from the Chair of Committee on Freedom of Association⁴³.
- e) Technical Assistance: The ILO provides technical assistance to member states, offering expertise and resources to help them comply with international Labour Standards. This system enhances its effectiveness by assisting member states in implementing and meeting international labour standards. This support contributes to capacity building and sustainable improvements in labour practices. Also, the International Labour Conference can appoint technical experts to any committees without the power to vote⁴⁴.
- f) Tripartite involvement: Among three, two major organs⁴⁵ of ILO encompass the tripartite principle and also can be called one of the significant features of the organization. The involvement of governments, employers, and workers from the structure to the due

⁴¹ ILO Constitution, Art. 28.

⁴² ILO Constitution, Art. 29.

⁴³ *Ibid.*

⁴⁴ ILO Constitution, Art. 18.

⁴⁵ ILO Constitution, Art. 3 and 7

process of the monitoring and supervisory systems ensures a comprehensive and inclusive approach to addressing labour issues. The tripartite principle is considered the principle of group autonomy⁴⁶. The autonomy of the tripartite mechanism is enlisted in the provisions on Employers' and Workers' representatives in the Governing Body⁴⁷ and in numerous articles of the Standing Orders of the International Labour Conference regarding the Officers of the Conference, the composition of committees (apart from the Finance Committee which consists solely of Government representatives), the officers of committees and voting rules⁴⁸. Overall, the ILO Constitution succeeded in incorporating fundamental components of the economic world throughout the system of ILO.

- g) NORMLEX: It is the database system that brings convened information on International Labour Standards (such as ratification information, reporting requirements, comments of the ILO's supervisory bodies, and so on.) as well as national labour and social security laws. It also includes the NATLEX database as well as the information that was previously contained in the IOLEX, APPLIS, and LIBSYND databases.

In all UN Human Rights machinery, whether specialized agencies or others are quite eager to make recommendations regardless of how actionable they are. A developing country is often inundated with too many reports and recommendations numbering in the hundreds if not thousands from these UN human rights agencies.⁴⁹ ILO, as a specialized agency of the UN is not far behind it. As per the ILO Constitution, under Article 19 the Member States are required to report at appropriate intervals, as requested by the Governing Body, on non-ratified Conventions and on Recommendations, indicating in their reports the extent to which effect has been given or is proposed to be given to those instruments⁵⁰. Similarly,

⁴⁶ *Supra* Note no. 21.

⁴⁷ ILO Constitution, Art. 7, Paragraph 4.

⁴⁸ *Supra* Note no. 21.

⁴⁹ Surya Prasad Subedi, *The Effectiveness of the UN Human Rights System Reform and the Judicialization of Human Rights*, Human Rights and International Law, Taylor and Francis Group, Routledge 4 (2017).

⁵⁰ International Labour Law, Article 19 and 22 report forms, (Jan. 20, 2024, 11:00AM), <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:14002:0::NO::>>.

under Article 22, reports are periodically requested from States which have ratified ILO Conventions. The report form to which each State is to conform its reports is approved by the Governing Body⁵¹. As an example, Nepal also has submitted more than 200 reports following Article 22 of the ILO Constitution⁵².

Nepal's Mechanism for Internalization/Domestication of International Labour Laws

The Vienna Convention on the Law of Treaty (VCLT), 1969 is an international instrument, that guides from the conclusion of the treaty to the internalization or domestication of international agreements done between and among states. Nepal is also one of the signatory states of VCLT, 1969⁵³. In compliance with the customary international norms and VCLT, 1969, Nepal also has legislative measures, including the Constitution (2015), The Treaty Act, of 1990 prevails as the specific law governing international treaties and agreements. The Constitution affirms that the State shall pursue the foreign policy of Nepal based on the principles of the Charter of the United Nations, non-alignment, the principles of *Panchseel*, international law, and the norms of world peace. Furthermore, the State must effectively implement the provision of the international treaties to which Nepal is a party⁵⁴. According to Article 126(1) of the Constitution of Nepal (2015), all courts and other judicial bodies are empowered to exercise authority related to justice under the constitutional provisions, other laws, and the recognized principles of justice. Moreover, Article 128 of the Constitution stipulates that any interpretation of the law or legal principles established by the Supreme Court during a lawsuit is binding on the Government of Nepal, all offices, and courts. As a result, the Supreme Court of Nepal holds the authority to assess the compatibility and compliance of international treaties and

⁵¹ *Ibid.*

⁵² International Labour Law, Observation (CEACR) - adopted 2022, published 111st ILC session (2023), (Jan. 20, 2024, 11:00AM), https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4315214,103197:NO.

⁵³ United Nations Treaty Collection, (Jan. 21, 2024, 11:30AM), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtsg_no=XXIII-1&chapter=23&Temp=mtmsg3&clang=en.

⁵⁴ Article of 51 (m) of Constitution of Nepal, 2072 (2015).

agreements in align with national laws to ensure justice for all individuals under its jurisdiction.

The Nepal Treaty Act 1990 is the specific legislation governing the substantive and procedural jurisdiction of treaties and Conventions. Section 9 is the key to applying international treaties and agreements in Nepal. Section 9(1) of the Act allows for superseding any domestic law inconsistent with the treaty and applies directly within the domestic sphere. Section 9(2) of the Act states that appropriate measures should be taken to enact the legislation to enforce the treaty. Hence, Nepal applies both monism and dualism approaches for internalizing international agreements and treaties. However, if a state party signs and ratifies an international treaty, it usually becomes legally bound⁵⁵ to fulfill certain obligations. Concerning labour rights instruments, as of January 2024, there are 191 Conventions⁵⁶, 208 Recommendations,⁵⁷ and 6 Protocols⁵⁸. Of which, Nepal has signed and ratified seven core international human rights instruments⁵⁹ and eleven out of one hundred and ninety-one Conventions⁶⁰. These data replicate that Nepal needs to catch up or be more interested in the labour instruments endorsed by the ILO.

India's Mechanism for Internalization/Domestication of International Labour Laws

India has a developed multifaceted mechanism for the incorporation or domestication of international labor laws into national system. These mechanisms include a combination of legislative measures, executive actions, judicial interventions, and policy frameworks. India is also a party⁶¹ to the Vienna Convention on the Law of Treaties which is

⁵⁵ United Nations, Treaties Collection, Vienna Convention on the Law of Treaties, 1155 UNTS (Jan. 21, 2024, 11:30AM), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&msgidsg_no=XXIII-1&chapter=23&Temp=midsg3&clang=_en.

⁵⁶ NORMLEX, International System on Labour Standard, Up-To-Date Conventions and Recommendations, (Jan. 28, 2024, 11:30AM), <https://www.ilo.org/dyn/normlex/en/f?p=1000:12020>.

⁵⁷ *Ibid.*

⁵⁸ NORMLEX, International System on Labour Standard, Protocols, (Jan. 28, 2024, 11:30AM), <https://www.ilo.org/dyn/normlex/en/f?p=1000:12020>.

⁵⁹ 'Ratification Status for Nepal', (Jan. 26, 2024, 10:30AM), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=en.

⁶⁰ 'Ratification Status for Nepal', (Jan. 28, 2024, 11:30AM), www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103197.

⁶¹ India ratified the Vienna Convention on the Law of Treaties on January 10, 1977.

an international treaty that defines the rules and procedures concerning the making and interpretation of treaties between states. As a member, India is bound by the provisions of the Convention in its international treaty practices. The influence of international labour conventions on the development of Indian labour laws have been very significant. Here are some key aspects of how India incorporates international labor standards into its domestic legal system:

- i. Ratification of International Conventions: India has been a founding member of the International Labour Organization (ILO) since its inception and is a party to many ILO conventions related to labor rights, covering areas such as minimum wage, child labor, forced labor, discrimination, health-related aspects and reducing poverty.⁶² In the words of Shri V.V. Giri, former President of India and a veteran trade union leader about the role of ILO in influencing the national standards in India, “The Organization helps in providing a common platform for men engaged in the field of industrial relations to study and understand the norms of social justice and social equity applied to labour matters in different countries and adapt them intelligently in their respective countries, with due regard to the national economy. Most of the labour legislation in India is based on this principle”⁶³. Article 246⁶⁴ of the Indian Constitution, along with its related entries under Seventh Schedule, indicates that Parliament has the authority to legislate on various matters, including treaty-making, which is not solely under the Executive’s domain. According to Article 73, the Executive power of the Union extends to matters within Parliament’s legislative power unless there is existing parliamentary legislation. Currently, there is no law in India which regulates the procedure for entering into treaties or their implementation. As a result, treaty-making is entirely managed by the Executive, which can determine the implementation of treaties unless parliamentary legislation is required.

⁶² Shreya Saxena & Gunjan Maji, *International Labour Standards and Its Application in India: The Analysis*, 19 SUPREMO AMICUS 512 (2020).

⁶³ E. A. Landy, *The Influence of International Labour Standards: Possibilities and Performance*, 101 INT’L LAB. REV. 555 (1970).

⁶⁴ Art. 246(1) provides: “... Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).”

Though Parliament can theoretically disapprove a treaty entered into by the Executive, making it ineffective, it rarely happens due to practical difficulties and international obligations. Additionally, any treaty or agreement that contravenes the Constitutional provisions would be invalid. By virtue of Article 253⁶⁵, Parliament can also legislate on state matters for implementing international treaties and agreements, overriding the usual division of legislative powers between the Centre and the States outlined in Article 246 and the Seventh Schedule. This provision ensures that Parliament can fulfill international commitments without being constrained by the typical distribution of legislative powers.⁶⁶

- ii. **Legislative Measures:** The labour laws in India fundamentally flow from the Constitution, specific legislations in relation to the subject matter both at the central and state level along with administrative rulings and regulations.⁶⁷ India incorporates the principles enshrined in international labor standards into its domestic legislation by adoption in its legislations following Constitutional process. For example, the Factories Act, 1948, the Minimum Wages Act, 1948, the Child Labour (Prohibition and Regulation) Act, 1986, and the Bonded Labour System (Abolition) Act, 1976, are some of the key legislative instruments that reflect India's commitment to international labor standards.
- iii. **The role of Judiciary:** The Supreme Court of India has consistently held in numerous cases, including *Aban Loyd Chiles Offshore v. UOI*⁶⁸, that in the absence of municipal law on a particular subject, treaties can be referenced, provided they do not conflict with the existing

⁶⁵ Art. 253 reads as "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, associated or other body."

⁶⁶ National Commission to Review the working of the Constitution, A Consultation Paper on treaty-making power under our constitution (Vigyan Bhavan Annexe, New Delhi – 110 011, January 8, 2001), (July, 22, 2024, 07:30AM), <https://legalaffairs.gov.in/sites/default/files/Treaty-making%20power%20under%20our%20Constitution.pdf>.

⁶⁷ Sayani Das & Sohom Nandi, Labour Laws: Examining through the Glass Doors of International & Indian Standards, 3 INT'L J.L. MGMT. & HUMAN 1297 (2020).

⁶⁸ (2008) 11 SCC 439.

municipal law. In *Vishaka v. State of Rajasthan*⁶⁹; available here) and *National Legal Services Authority v. Union of India*⁷⁰; the Supreme Court have applied international law even when there was no existing municipal law governing the specific area. Likewise, Indian courts often refer to international labor standards and conventions while interpreting domestic labor laws and have been sensitive in upholding the workers cause and concern as per ILO mandate.⁷¹ The judiciary plays a crucial role in ensuring that the principles of international labor laws are upheld which also results in domestication of international law.

India periodically amends its labour laws to align them with evolving international standards and practices adopted by ILO. The codification of twenty-nine labour laws into four labour codes for protecting the interest of workers and also for the purpose of ease of doing business exemplifies India's commitment of implementation of international labour law⁷². Recent labour reforms have aimed at simplifying regulations, enhancing flexibility, and promoting decent work opportunities for all⁷³. India's mechanism for internalizing or domesticating international labour laws is characterized by a combination of legal, institutional, and policy measures aimed at promoting social justice, labour rights, and inclusive development.

CONCLUSION

The effective governance of international labour law relies on the commitment of governments, employers, and workers to uphold and respect international labour standards, fostering fair and human working conditions. As mentioned in the preamble of the ILO Constitution, promoting social justice can ensure universal and lasting peace, which is also the core foundation of the ILO. The ILO is the fundamental entity

⁶⁹ (1997) 6 SCC 241.

⁷⁰ (2014) 5 SCC 438.

⁷¹ Uday Shankar & R. Venkat Prabhat, *Indian Judiciary on Industrial Relations in Post-Liberalization Era*, 5 GNLU J.L. DEV. & POL 1 (2015).

⁷² New Labour Code for New India, (Feb. 6, 2024, 07:45AM), https://labour.gov.in/sites/default/files/labour_code_eng.pdf.

⁷³ Tanya Chaudhary & Babu Remesh, *Changing Scenario of Indian Labour and New Labour Codes: A Critical Analysis*, 10 CHRIST U. L.J. 1 (2021).

and the instruments developed under its system are important source for the application of international labour standards. The successful implementation relies on collaborative efforts among states, businesses, and organizations for compliance and enforcement. The regular monitoring, transparent reporting mechanisms, and robust enforcement mechanisms are key components in the successful execution of international labour standards. However, the complex and hundreds or inundation of report submissions for developing countries make them more reluctant to be a state party in more Conventions or other instruments that are one of the major deficiencies for effectuating the international labour standards. As we can observe, Nepal is the State party to only eleven instruments, out of one hundred and ninety-one instruments, endorse by the ILO. Submissions of reports, technical assistance, or regular dialogue cannot fulfill the needs of the intricate dynamic of labour issues in developing countries like India and Nepal. The flow of potential human resources to a transborder country in search of a decent working environment is an alarming question about surplus labour rather than the stagnant development activities in the country. It is prime time for a developing country like Nepal to think and make an environment to enable the consumption of human resources within the country for its sustainable development or to rely on remittance and index its economic growth for graduating to a developed country. The same kind of situation exists in India which also is required to take measures to control multiple causative factors behind the great brain drain of the skilled workforce from the country. In this context, the implementation of international labour law replicates the dynamic prosperity of the economic relation. Ultimately, a collective dedication is required to uphold these issues is essential for labour rights that are universally respected and upheld.

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