

INTRODUCTION.

Today, labour has captured an important and recognised place in our society. No government nor any institution could afford to neglect the dynamic role that labour is playing in a country. At international level, the International Labour Organisation takes effective measures to set international standards known as Conventions and Recommendations for the recognition and promotion of the welfare of labour. The Malayan Government, at national level, enacts labour laws to provide for conditions of labour that would bring dignity and satisfaction to that class. In this noble task, the government is guided by international standards set by highly qualified, experienced and interested men of the International Labour Organisation.

This introductory chapter will set out the aim of this academic exercise and its scope and limitations. It will also state the methodology adopted in preparing this exercise. After having presented a broad picture of the structure of this exercise, we shall in this same chapter mould a framework for this study in the form of chapters, each chapter dealing with a particular area of labour rights and privileges.

OBJECTIVE OF STUDY.

The aim of this academic exercise will be to make a comparative study of the conventions of the International Labour Organisation and the Malayan labour laws and to note, from the Organisations' point of view, how much of its obligatory standards and guides have been followed in the enactment of the Malayan labour laws. While the World Organisation is not unaware of differences of social, cultural and economic nature of its various members, it legitimately expects its general standards of labour regulations to be implemented by its members. The Organisation does not fail to make inquiries in cases of violation of, or an attitude of indifference to the conventions.

This would require the study of the conventions of the World Organisation. But this study of the conventions is to serve the purpose of a basis of comparison for the Malayan labour laws. With the conventions in mind, the Malayan labour laws will be analysed to note for their adherence or violations of the international standards of labour or conventions. One may, therefore, say that the objective of the study is to present the sources of the Malayan labour laws which are the conventions and to critically analyse the practical application of the conventions as found in the Malayan labour laws.

SCOPE AND LIMITATIONS.

Having thus outlined, in broad terms, what this study hopes to achieve, we could now proceed to set up the scope of the study and its limitations.

Since its foundation in 1919, the International Labour Organisation has passed in its annual Conferences over a hundred conventions. (1)

This appears to be too wide a range of period to be studied. Hence the study will be focused only on two categories of conventions: those conventions which have been formally ratified by Malaya; (2) and those which are unratified but which have been borne in mind as a norm by the Malayan Labour legislators in the formulation of the national labour laws. The difference in the two categories which arises from the ratification or non-ratification of the conventions demand a difference in their treatment. The Malayan Labour laws which are based on the ratified conventions of the first category could be more closely and critically analysed as member states of the International Labour Organisation are required to follow as closely as possible the conventions they have ratified in the formulation of the national labour laws. The obligatory nature of the ratified conventions permits us to pin-point failures of the national labour laws to adhere to the provisions of the conventions.

But the Malayan Labour laws which have the second category of unratified conventions as their basis cannot be studied employing the same principle we used in the first category. This is because unratified conventions, even though they have influenced the national labour laws do not impose any obligation on member states to follow the provisions of the conventions. This implies that member states (Malaya for example) could arbitrarily give practical effect in the national labour laws to certain selected provisions of the unratified conventions and ignore some other provisions of the conventions. This freedom of choice of provisions arise from the non-obligatory nature of the unratified conventions. When studying conventions of this category and the Malayan labour laws based on them some caution will be exercised in passing criticisms or judgement on the Malayan Labour laws on their adherence or failure of adherence to the conventions. We could merely point out where the provisions of the conventions have been ignored but the Malayan labour laws cannot be criticised for this fact.

(1) - To be exact at the end of 1966, the Organisation has passed 126 conventions.

(2) - The ratified conventions number eleven.

In other words, while the divergence of the Malayan Labour laws from the international standards of labour could be mentioned, these national labour laws could not be criticised for failing to follow the international labour standards.

Besides these two categories of international labour standards, a third group of such standards called Recommendations of the International Labour Organisation will also be studied. Generally speaking, Recommendations are considered outside the scope of this exercise. But where no conventions (either ratified or otherwise) exist on any of the areas of labour rights and privileges, resort will be made to the Recommendations on these fields. This final resort to Recommendations is made so to evaluate the Malayan Labour laws on the basis of the International labour standards. One could summarise the treatment of conventions and Recommendations, thus: First a search is made for ratified conventions to be compared with the Malayan Labour laws; in the absence of ratified conventions on any particular section of labour rights and privileges, the unratified conventions shall form the basis of comparison; where no conventions (either ratified or otherwise) exist a final resort is made to the Recommendations of the world body. An instance where the Recommendations are studied in the absence of conventions is found in the section of Industrial Safety. In Malaya, the Machinery Ordinance of 1953 provides for the guarantee of industrial safety. But no conventions exist which could have been the basis of this Ordinance. Hence the Recommendations (Industrial Accidents Recommendations 1929 and Power-Driven Machinery Recommendations 1929) are analysed to be compared with the Machinery Ordinance of 1939.

Thus far, we have outlined the scope and limitations of the conventions and Recommendations. We shall now set out the same for the Malayan Labour laws. Only those labour laws which have been enacted between 1947 and 1964 are considered in this exercise. No attempt is made to study these laws in their evolutionary stages, but rather the final stage they have reached by 1964. It must be stated right at the beginning that the Malayan Labour laws are not analysed individually taken one by one. If a particular Malayan Labour law has been wholly influenced by a single convention or Recommendation, then that law will be fully analysed and compared with the convention or Recommendation immediately after setting forth the convention or Recommendation. For example under the Section entitled General Conditions of Labour: Recommendations, the Minimum Wage fixing machinery convention 1923, has been the sole basis for the formulation of the Malayan Wages Councils Ordinance 1947. Thus, the Wages Councils Ordinance will be studied fully in this section of Remuneration.

But there are cases where more than one convention or Recommendation have influenced the enactment of a particular Malayan Labour law. For

instance, the Rights of Association (Agriculture) Convention 1921, Maternity Protection Convention 1919 Night Work (Women) Convention 1948 and Underground Work (Women) Convention 1935 have influenced the enactment of the Employment Ordinance of 1955. But these three conventions come under two separate sections; the Rights of Association (Agriculture) Convention comes under the Industrial Relations section while the other two conventions fall under Industrial Welfare section. In such cases labour ordinances will not and cannot be fully treated in one section. Only the relevant clauses of the Ordinances (the Employment Ordinance in this case) relating to the conventions under the section, will be treated. Section eight of the Employment Ordinance will only be analysed when the Ordinance is studied under Industrial Relation Section. Similarly, maternity leave and allowances, hours and places of work of women as stipulated in the Employment Ordinance will be treated when considering the Industrial Welfare of Women. In other words, the treatment of labour laws of such nature will be spread over several sections.

Besides the adoption of conventions and Recommendations (which is termed the standard setting function) the International Labour Organisation has an additional function of giving technical assistance and helping in the creation of favourable institutions to give practical effect to labour legislation. This second function is referred to as operational activities. It may be necessary to mention at the outset that this study will concern itself only with the standard setting function of the World Organisation. The operational activities of the Organisation is beyond the scope of this study for it is almost a specialised area that requires detailed study in itself.

Several publications in the field of labour laws in Malaya exist. But these publications are more limited in scope than the present study. "Trade Unionism in Malaya" by Alex Jasey, for example deals only with the labour laws relating to the formation of trade unions in Malaya. Another publication in the same field is the "Labour Laws in Malaya" by Charles Gambar which gives a more comprehensive analysis of the labour laws in this country than the first publication referred to. But neither of these make any mention of the International Labour Conventions. The present study, however, mentions both the conventions and the Malayan Labour laws and attempts to study them on a comparative basis.

METHODOLOGY.

The Conventions and recommendations form the basis of our study. Hence the first task is to search for the Conventions and Recommendations adopted by the International Labour Organisation since 1919. Several publications of the conventions and recommendations are available but the one that serves our purpose best is the "International Labour Standards

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Code ". It contained a comprehensive list of Conventions and Recommendations. It had an additional advantage in that these conventions and Recommendations were presented under categorized classifications. Examples of such classifications are:- Industrial Safety, Hours of Work, Industrial Relations and General Conditions of Employment. The Conventions and Recommendations which are to be analysed under each classification are then studied.

This is followed by listing out the Malayan Labour laws and classifying them on a basis similar to the manner in which the Conventions and Recommendations are classified.

We now have the entire field of study i.e., categorized in classifications containing Conventions and Recommendations on the one hand and the relevant Malayan Labour laws on the other. Then a comparative study of the international standards of labour and the national labour laws is made.

The constitution of the International Labour Organisation (1) requires that each member of the organisation submit to the International Labour Office an annual report on the measures it has taken to give effect to the conventions. These annual reports are studied by the Committee of Experts on the application of Conventions and Recommendations which may ask for classification or make queries on these annual reports. Member states then reply to these queries. The annual reports and replies to the queries by the member states are published annually in a volume entitled " Summary of Ratified Conventions." Report III, Part I of this publication is the relevant volume for our study. The annual reports and replies of member states are published under the relevant conventions which are listed in the order of adoption. However the annual reports and replies could only be found for ratified conventions. As an illustration, Malaya has ratified the Workmen's Compensation (Accidents) Convention 1925. Therefore, if one works at the convention mentioned, one may note a summary of the annual report and replies of Malaya for this particular convention for that particular year. Similarly annual reports and replies of Malaya are sought for, for each of the ratified conventions for each of the years since the date of ratification. Reference to this publication of course, requires a list of conventions ratified by Malaya which could be obtained from the Ministry of Labour. With the help of this list of ratified conventions, search is made for the Governments Annual Reports and replies for each of the ratified conventions for each of the years since its ratifications. Since Malaya became a member of the International Labour Organisation only in 1957 the report of the " Summary of Ratified Conventions " only since that year is referred to.

(1) Article 2 - Constitution of the International Labour Organisation

Besides the Malayan Labour Ordinances, we can obtain additional information on the practical application of the Ordinances from the annual reports of the Ministry of Labour. For illustration, the Industrial Courts Ordinance of 1948 provide for the establishment of an Industrial Court to settle trade disputes and make awards as it deems fit. The annual reports of the Ministry of Labour would give a list of arbitration awards made for each of the years. The annual reports of the Ministry of Labour also provides us with statistical data on labour issues. While the Trade Union Ordinance 1959 and Employment Ordinance 1955 provide for the freedom of Association, one could only ascertain the practical significance of this provision by reference to the statistical data on trade unions given in the annual reports of the Ministry of Labour.

Thus the Conventions and Recommendations, National Labour laws, summary of annual reports of each member state on ratified conventions and annual reports of the Ministry of Labour form the sources of this study.

Having broadly defined the field of this study, it will benefit us to spell out in greater preciseness the method of treatment of the subject matter.

The entire field of study will be broken up into six chapters, excluding the present introductory chapter. Chapter II will give a broad outline of the events leading to the formation of the International Labour Organisation and its structure and functions. It is only appropriate to introduce this study with a background on the World Organisation.

This will be followed by Chapter III which attempts to set out in detail the procedure employed in the adoption of conventions and the general pattern of the conventions. An understanding of the conventions is important as they form the basis of our study.

We then immediately plunge into the labour laws proper in Chapter IV. This chapter entitled Industrial Relations will analyse conventions and Malayan Labour laws relating to the basic freedom of Association of trade unions and the manner in which the instruments of conciliation and arbitration are used to settle labour disputes.

Chapter V will introduce conventions and Malayan labour laws relating to General Conditions of Labour. Wages of labour and hours of work are the two areas that will be treated in this chapter.

This is followed by an important area of labour welfare called Industrial Safety, Security and Welfare. This broad area of labour welfare treated in Chapter VI deals with the welfare of children and

women, the security of workers, their safety and compensation for industrial accident.

Chapter VII will give a concluding note to the study and bring out the salient points raised during the study.

With this brief introduction to this study we shall now look into the background that gave rise to the International Labour Organisation, the structure and workings of the Organisation, its attempts to formulate international labour standards as a guide to the member states in the formulation of their national labour laws.