

GENERAL PRINCIPLES & CONCEPTS

A – Introduction

Labor – in its limited concept, it refers to physical or mental exertion necessary to produce goods. In its broader concept, it may include the labor force who are employed or those who are able and willing to work but are temporarily or involuntarily unemployed. The term **manpower** as defined in the Code is within the context of labor, that is, the portion of the nation's population which has actual or potential capability to contribute to the production of goods and services.

Labor Law – includes all the rules of law governing the conditions under which persons may work under the control of other persons called employers. The term may also refer to *labor standards* and *labor relations laws* governing hours of work, weekly rest periods, minimum wage rates, unfair labor practices, strikes, and lockouts. These laws are designed to look more on the immediate results of employer-employee relationship. As a concept, it is the body of rules and principles which governs the relation between labor and management in the collective, as distinguished from the principles determining the rights and liabilities consequent to the individual relationship of employer and employees.

Labor standards prescribe the terms and conditions of employment as affecting wages or monetary benefits, hours of work, cost of living allowances, and occupational health, safety and welfare of the workers. On the other hand, **labor relations** is used to denote all matters arising out of employer-employee relationship involving the concerned action on the part of the workers which is usually related with right to self-organization, collective bargaining and negotiation processes. Labor relations is all-embracing to include labor standards benefits which are proper bargaining issues, that is, within the domain of labor relations.

Social Legislation – is a law governing employer-employee relationship while the latter is not “*at work*” due to hazards beyond his control arising from employment which immobilize him from working. It is designed to uplift and protect the welfare of the worker and his family, on account of the effects of employment such as diseases, injuries, disabilities or death.

Retirement Law (R.A. 7641) is a social legislation.

➤ **Taxonomy of Labor Laws** (classifications of labor laws)

- a. **Protective Legislations** – those designed to protect the weaker party in an employment contract such as laws protecting women against discrimination or child –labor laws.
- b. **Welfare or Social Legislations** – those intended to remove or reduce the insecurity of the workers such as laws on social security, employees' compensation or laws that provide benefits to a worker while he is “*not at work*” because of the hazards of employment.
- c. **Diplomatic Legislations** – those designed to settle labor disputes through peaceful modes such as laws providing for conciliation, mediation, grievance machinery or voluntary arbitration.
- d. **Administrative Legislations** – those laws creating labor bodies or agencies for administrative purposes such as DOLE, POEA, NLRC or TESDA.
- e. **Labor Relations Legislations** – those passed concerning employee organization, concerted activities, or collective bargaining or negotiation activities. It includes unfair labor practices committed by the employer or the union.
- f. **Labor Standards Legislations** – those passed prescribing minimum requirements relating to wages, hours of work, cost of living allowances, and other monetary and welfare benefits including occupational, safety and health standards.

➤ **Labor Law and Social Legislation distinguished** **Labor Law Social Legislation**

- a. More direct in its application as it governs the effects of employment such as compensation for injuries and death
affects directly actual employment as compensation for injuries and death
such as wages
- b. Designed to meet the daily needs involves long-range benefits of a worker
- c. Covers employment for profit or gain covers employment for gain or

non-profit

- d. Affects the work of the employee affects the life of the employee
- e. Benefits are paid by the worker' benefits are paid by government employer agencies administering the program such as Employee's Compensation Commission, SSS or GSIS

Due to the impact of labor law upon the society as it affects the greater number or bulk of the population, it may also be considered as a social legislation. Hence, the latter is broader in scope as it even encompasses the concept of labor law.

➤ **Capsule history of Philippine labor and social legislation**

- ❖ Old Civil Code (Articles 1583 to 1587) – regulating the relations between master and domestic servant
- ❖ Code of Commerce (Article 283 to 302) – regulating the relations between employer and employee
- ❖ Earlier part of American regime
 - Act No. 702 – Chinese Registry Act
 - Act No. 1874 – the Employers Liability Act of 1908
 - Act No. 2549 of 1916 – prohibiting compulsory purchase of merchandise by and mere payment by chits or tokens to workers
 - Act No. 3071 – the Woman and Child Labor Law of 1932 promulgated primarily to protect women and children from economic exploitation
 - Act No. 3428 – Workmen's Compensation Act of 1927
 - Act No. 2071 – Anti-Slavery Law
 - Acts 2548 and 3954 – Acts of Payment of Wages

- Act 3957 – Private Employment Agency Law

The assumption of Pres. Manuel Quezon in 1935 freed the laborers from economic bondage. He energetically instituted changes and reforms to nourish the young and developing republic, such as championing the cause of the workingmen with his revolutionary social justice programs culminating in the enactment of the following laws:

- C.A. 213 – creating the Court of Industrial Relations
- C.A. 444 – Eight-Hour Labor Law
- C.A. No. 104 – Industrial Safety Law
- C.A. 213 – Union Registration Act
- C.A. 647 – granting maternity leave to women in the service

- Under the Philippine Republic

Labor legislations law:

- R.A. 602 – Minimum Wage Law
- R.A. 1052 as amended by R.A. 1787 – Termination Pay Law
- R.A. 679 – Woman and Child Labor Law
- R.A. 946 – Blue Sunday Law
- R.A. 875 – Industrial Peace Act
- R.A. 1167 – Peaceful Picketing Law
- R.A. 3600 – Anti-Scab Law

Welfare legislations law:

- R.A. 1161 – The Social Security Law
- R.A. 1169 as amended, Agricultural Tenancy Law
- R.A. 3844 – the Agricultural Land Reform Code

- During the Martial Law

P.D. No. 2 – declaration of the entire Philippines as a land reform area. Such act would meet steel-strong opposition in the legislature as the members are predominantly owners of

vast tracks of land.

- P.D. 27 (Emancipation Decree) – emancipating the tenants from the bondage of the soil
- P.D. 442 (Labor Code of the Philippines) – May 1, 1974; a decree instituting a Labor Code thereby revising and consolidating labor and social laws to afford protection to labor, promote employment and human resources development and insure industrial peace based on social justice; a dynamic instrument of social justice and economic development; bible of the workingmen and their shield at the same time against arbitrary and abusive practices of the management.

- Several amendments of the Labor Code
 - R.A. No. 6715 - New Labor Relations Law
 - R.A. No. 6725 – law prohibiting discrimination against women
 - R.A. No. 6727 – Wage Rationalization Act
 - Acts strengthening the worker’s constitutional right to self-organization
 - ★ E.O. 111
 - ★ R.A. 7641
 - ★ R.A. 7655
 - ★ R.A. 7700
 - ★ R.A. 7730
 - ★ R.A. 9231
 - ★ R.A. 9241
 - ★ R.A. 9262
 - ★ R.A. 9481

Purpose of Labor Legislation – it is a truism that because of the economic superiority of capital, *labor*, as a factor of production, is weak and helpless and finds itself easily in trouble without the necessary succor from the state. The state, in the exercise of its police power which is “*the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and welfare of the society*”, should enact wholesome and reasonable laws to preclude a feeling of discontent which may lead to violent and bloody upheavals among

workers who constitute the bulk population of the state.

Labor legislation is therefore intended to protect the worker from the mighty and to correct the injustices that are inherent in employer-employee relationship. It provides the set of restrictions upon the worker in his relationship with the employer and *vice-versa* in order to maintain industrial peace and harmony; thereby promoting industrial democracy. Ultimately, the primordial purpose of labor legislation is to promote the welfare of the people based on the Latin maxim : *salus populi est suprema lex* – the welfare of the people is the first law.

★ Sources of Labor Law

1. Primary

- a. Philippine Constitution
- b. Legislations passed by Congress
- c. Decisions of the Supreme Court
- d. Implementing Rules and Regulations of DOLE
- e. Decisions of quasi-judicial bodies such as NLRC
- f. ILO conventions

2. Auxiliary

- a. Opinions of the secretaries of Labor and Employment, and Justice
- b. Reports, debates, hearings made and conducted by Congress
- c. Labor law reviews
- d. Labor law and social legislation textbooks
- e. Opinions of legal luminaries
- f. Foreign laws and decisions

➤ Legal Bases of Labor and Social Legislation

1. Police Power of the State
2. Social Justice Clause
3. Protection to Labor Clause
4. Doctrine of Incorporation Clause
5. Social Service Clause
6. Full Employment Clause
7. Freedom from Poverty Clause
8. Freedom of Association Clause
9. Due Process and Equal Protection Clauses, etc.

Police Power – such wholesome and reasonable laws, not repugnant to the Constitution, as it shall judge to be for the good and welfare of the state and its people. It is based on Latin maxims: **(a)** *salus populi est suprema lex* (the welfare of the people is the supreme law); and **(b)** *sic utere tuo ut alienum non laedas* (so use your own as not to injure another's property). Its source is the social common good.

Extent and limits of police power – includes everything essential to the public safety, health, and morals, to justify the destruction or abatement by summary proceedings of whatever may be regarded as a public nuisance.

Conditions to justify the state's exercise of police power:

- a. The interests of the public generally, as distinguished from those of a particular class, require such interference;
- b. The means are reasonably necessary for the accomplishment of the purpose and not widely oppressive upon individuals

The legislature may not under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual or unnecessary restrictions upon lawful occupations.

Social justification of class legislation – “equal conditions must receive equal treatment”. *Legislative discrimination* is therefore allowed and in many cases has been sanctioned provided there is a reasonable basis for classification.

- c. Laws regulating and restricting hours of labor of women are constitutional because they apply only to women and not to men

The theory that they affect an arbitrary classification may, to some extent, be based upon the nature of the employer's business, rather than the character of the employee's work and the fact that they apply only to women employed in specified establishments and occupations does not render them unconstitutional so long as they apply alike to all women who work in any of the establishments or occupations mentioned.

d. Right to a property not a limitation to the exercise

e. The Constitution contains a prohibition against the deprivation of property without due process; **BUT** property right is subject to the limitations imposed by law

f. Property and property rights can be lost through prescription, **BUT** human rights are imprescriptible

Expanding scope of police power – the development of civilization, the rapidly increasing population, the growth of public opinion, with a desire on the part of the masses and of the government to look after and care for the interests of the individuals of the State, have brought within the police power of the State many questions for regulation which formerly were not considered.

- g. **Social Justice Clause** – promotion of social justice is made mandatory under this Constitutional provision. This is a departure from the 1935 Constitution whose provision merely states that it should be the concern of the State.

Section 10, Article 2 of the 1987 Constitution provides: “*The State shall promote social justice in all phases of national development.*”

Social Justice – according to Justice Laurel, is neither communism, nor despotism, nor atomism, nor anarchy, but the humanization of the laws and the equalization of the social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.

It means the promotion of the welfare of the people, the adoption by the Government of measures calculated to insure economic stability of all the component elements of society through the maintenance of proper economic and social equilibrium in the inter-relations of the members of the community; constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers

underlying the existence of all governments, on the time-honored principle of *salus populi est suprema lex*.

h. Social justice, neither communism nor socialism

Communism is an ideology characterized economically by the State's total ownership of all the means of production and distribution, and politically by a rigid dictatorial control of an individual under the so-called dictatorship of the proletariat.

Socialism, on the other hand, is an economic ideology which advocates substantial ownership of the means of production and distribution by the State.

i. Rights guaranteed by social justice

- i.* Equality of opportunity
- ii.* Equality of political rights
- iii.* Equality before the law
- iv.* Equality between values given and received

Equitable sharing of the social and material goods on the basis of efforts exerted in their production as applied to metropolitan centers, specially in relation to housing problems

It is a command to devise ways and means for the elimination of slums, shambles, shacks, and houses that are dilapidated, overcrowded, without ventilation, light and sanitation facilities and for the construction in their places of decent dwellings for the poor and the destitute

- j.* Condemnation of blighted areas bears direct relation to public safety, health and morals, and is legal

Nature of the principle of social justice – asserts that *the well-being and economic security of all the people is the end and justice the means*. However, social justice is not necessary for the well-being and economic security of the higher income groups, because through their own efforts, they can stand even without governmental help.

The object of the social justice clause is the common man; his social and economic uplift is its concern.

In the words of Prof. Thomas Reed Powell, "*He who is less favored in life is more favored in law.*" To attain this, social justice is not

simply adopting governmental measures to promote the people's welfare, but the measures should be actually implemented. Hence, the government should take an activist attitude in implementing this principle, because it has not only the right but the duty to intervene vigorously in the social, economic and political welfare of all the people.

Social justice and full protection to labor guaranteed by the fundamental charter is not some romantic notion, high in rhetoric but low in substance. It should be a living reality and not a mere high level abstraction in the fundamental law of the land.

k. Social justice tramples not the rights of others; Invoking social justice with clean hands

Clarity and social justice cannot be properly resorted to trample upon the rights of others nor to shield wrongdoings or illegal acts prejudicial to the rights of property owners who, under the Constitution are also entitled to protection. Social justice cannot be permitted to be the refuge of scoundrels.

The State is mandated to promote social justice and to maintain adequate social services in all phases of national development. But the State's solicitude for the destitute and the have-nots does not mean that it should tolerate usurpations of property, public or private. Those who invoke social justice may do only if their hands are clean and their motives blameless.

Social justice or any justice for that matter is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. In case of reasonable doubt, courts are called upon to tilt the balance in favor of the poor, to whom the Constitution fittingly extends its sympathy and compassion. But it is never justified to prefer the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.

Compassionate and mercy subordinates to justice for all – before there can be an occasion for compassion, sympathy and mercy, there must be *justice for all*. Otherwise, employees will be encouraged to steal and misappropriate in the expectation that eventually, in the name of *social justice* and *compassion*, they will not be penalized but instead financially rewarded. A contrary ruling will merely encourage lawlessness and dishonesty. These are not the

values the society cherishes; these are the habits it abhors. *Justicia nemini neganda est (justice is to be denied to none)*.

l. Social justice and regulation of property

- m.* Private property does not constitute for anyone an absolute and unconditioned right.
- n.* No one is justified in keeping for his exclusive use what he does not need, when others lack necessities.
- o.* The traditional doctrine found in the Fathers of the Church and great theologians is that the right of property must never be exercised to the detriment of the common good.
- p.* Regulation of wealth and diffusion of wealth are constitutionally decreed to achieve social justice.
- q.* To achieve this is to institute changes in our landholding system, whether the land is agricultural or urban

With socialistic ideas in the Constitution the State can now regulate the size of property one may hold or retain, and the excess may be expropriated by the government for distribution to the needy to give them a decent living.

Social justice and the State as *Parens Patriae* – the Social Service Clause of the Constitution is an extension of the social justice. Its absence, however, will not defeat the very existence of the government. This can still be afforded by the State in its capacity as *Parens Patriae*. Thus, it may bring suit to protect the property rights of the people, enforce charities of a public nature, defend the interests of helpless infants and lunatics, or provide for the confinement of minors in reformatories where they may receive training and education.

The State is thus mandated to establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living, and an improved quality of life for all.

❖ *Concept of LAISSEZ FAIRE not fully embraced; welfare state concept adopted*

- ❖ ***Laissez faire*** is an economic theory based on non-governmental interference in business or economic affairs of the private sector.

The Constitution recognizes the significant role of the private or business sector; however it has not embraced fully the concept of *laissez faire*, or, otherwise, relied on pure market forces to govern the economy.

The differences in the aims of workers and employers are so numerous and basic that a strict *laissez faire* policy on the part of the government is not practical.

With conflicts inescapable and where one of the contestants is markedly weaker than the other, the weaker may be faced with a take it or leave it” choice. Thus, controls are necessary to protect the economically weak.

What the Constitution adopted, in lieu of *laissez faire* theory, is the welfare state concept which is manifested in its provisions such as the principle of social justice and the protection to labor clause.

Social services and education - the State is mandated to concretize programs on education, provide scholarships to deserving students born to less privileged families, enact measures to implement the Constitutional provisions on free public education up to the secondary level, and to establish more state-owned universities and colleges. This is significant for those who cannot acquire education from private and commercialized educational institutions.

Social services and health – the strength of the nation depends on the health of the people constituting it. This is based on the dictum, “*a strong nation depends upon a strong body*”. Thus, promotion of *sound health* policies should be the main concern of the State. The Philhealth, one of the revolutionary programs, extends financial assistance to as many people with the coverage of employees in the public and the private sectors. It should be emphasized, however, that the target of these health programs is the downtrodden for they could hardly avail of the high cost of medical treatment.

❖ ***Social services and housing*** – to guarantee the enjoyment by the people of a decent living, every family should have a house which it can call its own. The State is thus mandated to prioritize programs on low-cost housing for the poor and the destitute.

Squatter families living in dilapidated houses should be relocated to places where they could start a new life. Tenement housing and

“BLISS” projects are commendable programs. But there are instances wherein only the rich and the influential people are accorded these benefits. Safeguards should therefore be instituted so that only the poor and the homeless would benefit. For without the safeguards, the “BLISS” will only benefit the “blessed” people.

Social services and employment – indisputably, unemployment problem is a social and economic disease that must be controlled, if not totally eliminated. This problem may generate into other social problems, such as poverty, upsurge of criminality, juvenile delinquency and others. The State should therefore take an active role in combating this social disease.

Unemployment may trigger off social tension which may ignite revolution or civil war that will eventually eat up the very “bones and meat” of the government. Protection to labor, promotion of full employment and equality in employment are effective antidotes against a revolution caused by such social disease.

Social services and social security – these can be attained through the adoption of measures calculated to insure the economic stability of all the component elements of the society such as the enactment of welfare legislations which provide benefits for the worker and his family while he cannot work for reasons of sickness, disability, old age, death and similar hazards. *Examples:* Social Security Act of 1997; GSIS Act of 1997, and National Health Insurance Act of 1995, as amended by R.A. 9241.

❖ **Protection to Labor Clause** – Section 3, Article XIII of the 1987 Constitution provides:

“The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

“It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

“The State shall promote the principle of shared responsibility

between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

“The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.”

The Supreme Court and labor agencies have relied heavily on the above constitutional mandate. Thus, all doubts in the implementation and interpretation; labor law, rules and regulations are liberally construed in favor of labor. Due to labor’s economic dependence upon the capital, it is considered the weaker factor of production and therefore needs protection from the State. Furthermore, labor is relatively more *perishable* than other economic goods. In order to survive, labor cannot wait. He must immediately sell his labor, or starve, die or perish.

❖ **Right to labor, a property right** – every man has a natural right to the fruits of his own industry. A man who has been employed to undertake certain labor and has put into it his time and effort is entitled to be protected.

- ❖ The right of a person to his labor is deemed to be a *property*, within the mantle of constitutional protection. That is his means of livelihood.
- ❖ He cannot be deprived of his labor or work without due process of law.
- ❖ When a person has no property, his job may possibly be his only possession or means of livelihood for him and his family
- ❖ He should be protected and insulated against any arbitrary and unjust deprivation of his job.
- ❖ Waivers of rights of labor contravene public policy and are null and void.

❖ **Capital and labor are indispensable partners**

When the conflicting interests of labor and capital are weighed on the scales of social justice, the heavier influence of the latter must be counterbalanced by the sympathy and compassion the law must accord the underprivileged worker.

This is only fair if he is to be given opportunity – and the right to assert and defend his cause not as a subordinate but as a peer of management, with which he can negotiate on an even plane. Labor is not a mere employee of capital but its active and equal partner.

- ❖ Employers who are more in an advantageous position than their employees should be more compassionate to their workers' needs for without them, business would cease to operate.

Promotion of Full Employment – the State shall “*promote full employment and equality in employment, ensure work opportunities regardless of sex, race or creed...*” Is a policy which abhors discriminatory practices of the management against workers regarding terms and conditions of work. The practice of the management in fixing in the collective bargaining agreement (CBA) the retirement age for female employees at 30 and for male employees at 40 is held a violation of public policy. Patently, it is discrimination on account of sex.

To curb such pernicious practice, it is a State policy to encourage trade unionism and free collective bargaining within the framework of arbitration, voluntary or mandatory. Those who commit unfair labor practice (ULP) will be criminally prosecuted under the law.

Full Employment – does not mean that everybody is working and the society does not experience involuntary unemployment or deflationary unemployment for in frictional unemployment (*i.e.* unemployment due to workers having the wrong skills or being found in wrong places to get the necessary jobs) full employment still exists.

- ❖ Full employment is also consistent with a situation where people who have the skills refuse to work because they have more than enough to sustain themselves.
- ❖ Full employment means that “*those who want to work at the*

prevailing rates of pay are able to find work without undue difficulty”.

- ❖ It covers a situation under which there are more job openings than there are job applicants.
- ❖ *Unemployment* is involuntary idleness on the part of an employee who is able and willing to work but could hardly find one.

❖ **Significance of full employment**

- a. *It ushers economic gains* – giving social and economic stability to the worker and his family
- b. *It promotes social and economic security* – plays an important role in strengthening the country's economy

It promotes human dignity – with the worker's economic gains, he could enjoy a decent standard of living, *i.e.* acquire basic necessities that add life to human dignity such as a house, nutritious food, clothing, etc.

It is an antidote against revolutionary ideologies – unemployed people could hardly attain human dignity and economic security under existing socio-political-economic order, aggravated by the failure of the system to combat the social ills of the society which may push the people to change the present politico-economic system to another

- c. *It regulates employer's discriminatory practices* – with the scarcity of workers under the state of full employment, the employer may not engage in discriminatory practices because of the difficulty of hiring workers.

- d. **Human and economic costs of unemployment** – the human and economic costs of unemployment cannot be measured in its monetary equivalent.

- e. The consequent loss of wages catapults in a loss of moral which accompanies unemployment triggering uncertainty and destitution.

f. This cost of human sufferings cannot be calculated

In the words of Don D. Lescohier, irregular employment “undermines the physique; deadens the mind; weakens the nerve and will power; creates a tendency to blame others for failures; saps courage; prevents thrift and hope of family advancement; destroys a workman’s feeling that he is taking good care of his family; and sends him to work and underfed; plunges him in debt.”

g. **Constitutional rights of workers**

Right to self-organization – right to form associations or societies for purposes not contrary to law shall not be abridged. This provision enshrined in the 1987 Constitution is strengthened by P.D. 823 which encourages trade unionism and free collective bargaining within the framework of arbitration, voluntary or mandatory.

The reason for the establishment of labor organization is, according to Chief Justice Hughes, “That they were organized out of necessities of the situation, that a single employee was helpless in dealing with an employer, that he was dependent ordinarily on his daily wage for the maintenance of himself and his family; that if the employer refused to pay him the wages he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that a union is essential to give laborers opportunity to deal on equality with their employer.”

Right to collective bargaining – it is through collective bargaining that employees are enabled to obtain a relative equality of bargaining power with the employer, for it compels him to deal with them as a group rather than as isolated individuals. It is through collective bargaining that employees obtain a measure of self-government in their working world. The objective and normal end-result of collective bargaining is the formation of a contract, known as the Collective Bargaining Agreement (CBA).

Right to security of tenure – in cases of regular employment, the employer shall terminate the services of an employee for just causes as provided in the Labor Code or when authorized by existing law.

The term **tenure** may mean permanent or regular status granted a worker usually after a probationary or trial period.

Security of tenure is the right of the worker to be secure or to continue in employment until the same is terminated by authorized or just causes provided by law.

Right to just and humane conditions of work – refers to fair wages and equal remuneration for work of equal value, safe and health working conditions, equal opportunity to promotion and rest, leisure and reasonable limitation of working hours:

- i. The right to regular working hours
- ii. The right to regular working days
- iii. The right to overtime work
- iv. The right to weekly rest periods
- v. The right to additional compensation on scheduled rest day/special holiday
- vi. The right to compensation for holiday work
- vii. The right to hospitalization, etc.

Undue delay in the payment of salaries could be considered a just cause analogous to inhuman or unbearable treatment. Other analogous cases include non-payment of wages, unsanitary, unhygienic working conditions, violation of the terms and conditions of the employment contract. Under such circumstances, the worker may quit his job.

Right to collective negotiations – a new labor concept enshrined in the Constitution applicable to unionism in the government or public sector. It differs from a collective bargaining which applies to union in the private sector. Employees in the government sector cannot collectively bargain on terms and conditions of employment simply because the same are fixed by law and determined by civil service law, rules and regulations.

Right to peaceful concerted activities – concerted activities are designed by the workers to express their collective demands through the machinery of boycott, pickets and strikes. These activities are forms of free expression guaranteed under the Constitution. To be legal, the same must be conducted in a

peaceful manner.

Right to strike – a **strike** is defined as any temporary stoppage of work by the concerted action of employees as a result of any industrial or labor dispute designed to compel the employer to accede to certain demands of the employees. Employers will only pay attention to the workers' demands under threat of economic loss. Thus, the strike is one of the effective weapons in the arsenal of the workers. Under the Constitution, the right to strike must be in accordance with law.

Right to a living wage – living wage is not a mere subsistence wage but one sufficient to enable the worker to live in *reasonable comfort*; a wage that can provide him and his family a decent standard of living. On the other hand, a minimum wage is designed to insure a rock-bottom protection to a wage earner. It may not be a living or just wage.

Right to participate in policy and decision-making processes – R.A. 6715, a law amending the Labor Code, provides: "Any provision of law to the contrary notwithstanding, workers shall have the right subject to such rules and regulations as the Secretary of Labor may promulgate, to participate in policy and decision-making processes of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare. For this purpose, workers and employers may form labor-management councils..."

The right guaranteed is expressed through labor machineries such as collective bargaining, collective negotiations, labor management councils, work councils and through tripartite conferences. In upholding the above rights, the Supreme Court ruled that the company should allow the union to participate in the amendment of the company's Code of Discipline for its provisions have repercussions on the employee's right to security of tenure.

Right to just share in the fruits of production – the Constitution provides: "The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production..." this provision is not self-executory, it needs an enabling law.

Fruits of production cover not only salaries, wages, benefits, but also includes profits. But the workers cannot demand as a matter of right, profit-sharing benefits in the absence of an enabling law, unless the same is granted on account of company policy or practice or collective bargaining.

viii. **Historical Background of Social Justice and Protection to Labor Clauses**

"It should be observed at the outset that our Constitution was adopted in the midst of surging unrest and dissatisfaction resulting from economic and social distress which was threatening the stability of governments the world over. Alike to the social and economic forces at work, the framers of our Constitution boldly met the problems and difficulties which faced them and endeavored to crystallize, with more or less fidelity, the political, social and economic propositions of their age, and this they did, with the consciousness that the political and philosophical aphorism of their generation will, in the language of a great jurist, be doubted by the next and perhaps entirely discarded by the third." (Ang Tibay v. CIR, 69 Phil. 635, Justice Laurel concurring)

Doctrine of Incorporation – this doctrine is clearly enshrined in the 1987 Philippine Constitution, Art. II, Sec. 2: "The Philippines ... adopts the generally accepted principles of international law as part of the law of the land..." These principles are contained in Art. 38 of the Statute of the International Court of Justice, to wit:

- a) International convention, whether general or particular, establishing rules expressly recognized by the contesting states;
- b) International customs, as evidence of a general practice accepted as law;
- c) General principles of law recognized by civilized nations; and
- d) Judicial decisions and teachings of the most highly qualified publicists of the various nations as the subsidiary means for the determination of the rules of law.

Limitations on the enactment of labor legislation

Observance on non-impairment of contracts – there is impairment when the law deprives a party to the contract of the benefits provided therein or changes the terms of the contract by imposing new condition, or dispensing with such conditions.

1. **Observance of non-delegation of legislative power** – the power vested to Congress to make laws cannot be delegated to any other body or authority

Observance of the constitutional provision against involuntary servitude – the purpose of the prohibition is to abolish slavery of whatever name, form, and all its badges; to render impossible any state of bondage; to make labor free by prohibiting the control by which the personal services of one man is disposed of or coerced for another's benefit which is the essence of involuntary servitude

Observance of the equal protection of the law – means that no person or class of persons shall be denied the same protection of the law which is enjoyed by other classes of persons under like circumstances, in their lives, in their liberty, and in their pursuit of happiness. It requires that all persons shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed.

B – Constitutional and Statutory Basis

Promotion of the common good – strengthened by the mandate in the preamble: “in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, *promote the common good*...” Although the preamble is not a necessary part of the Constitution, it can still be consulted in the interpretation of ambiguities that may arise in the provisions affecting labor and social justice.

Protective service clause – “The enjoyment by the people of the blessings of democracy can be attained through the maintenance of peace and order, the protection of life, liberty and property, and promotion of the general welfare.” (*Sec. 5, Art. II, 1987 Constitution*)

Freedom from poverty – the state is mandated to free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all. (*Sec. 9, Art. II, 1987 Constitution*)

Poverty generally means a low status, with little to lose, little to respect, little to be proud of, little to sustain efforts to improve. It generally means bad housing conditions, lack of sanitation in the vicinity, and lack of attractive community institutions. Furthermore, it is a *feeling of missing much in life*, because of the lack of satisfaction of the fundamental wishes. On the basis of this definition, freedom from poverty can be attained only upon full satisfaction of the basic necessities of life brought about by full employment, a rising standard of living and an improved quality of life for all.

Standard of living is defined as a social and economic concept which deals with “what” facilities are needed by an employee necessary to assure himself and his family a life worthy of human dignity.

Cost of living is an economic and social concept which deals with “how much” facilities that an employee could cost in order to maintain his standard of living worthy of human dignity.

Escalator clause in the CBA – in order to adjust the monetary features of the contract to meet inflationary situation which is robbing the employees of the gains they have previously made of any of the fruits of their increasing productivity, the *cost-of-living approach* by the union in a period of rising prices has been formalized by the incorporation of “escalator” clauses in collective bargaining agreements. Under the *escalator clauses*, wage rates rise periodically usually with specific rises in the consumer price index or cost-of-living index, but prohibit a decrease to reflect a drop in the cost-of-living.

Promotion of human dignity – the State values the dignity of every human person and guarantees full respect for human rights (*Sec. 11, Art. II, 1987 Constitution*). Thus, the employee is afforded that protection so that his means of livelihood is not placed at the mercy of management. He is just as much a participant in the industrial process. Constitutional provisions protecting labor are in line with the predominant thing all over the world safeguarding human dignity.

Principle of distributive justice – the State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits (*Sec. 6, Art. II, 1973 Constitution*).

Individuals and private groups, including corporations, cooperatives and similar collective organizations, shall have the right to own, establish and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands (*Sec. 6, Art. XII, 1987 Constitution*).

Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments (*Sec. 1, Art. XIII, 1987 Constitution*).

Freedom of initiative and self-reliance – the promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance (*Sec. 2, Art. XII, 1987 Constitution*).

This mandate imposes upon every citizen the correlative duty and obligation to engage in gainful work to assure himself and his family, a life worthy of human dignity (*Sec. 3, Art. V, 1973 Constitution*).

2. **Right to due process** - “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

Due process of law is synonymous to the phrase “law of the land”. As explained by Mr. Webster in the celebrated *Darmouth College* case, (a) a law which hears before it condemns, (b) which proceeds upon inquiry, and (c) renders judgment only after trial. This definition is based on the Latin maxim: *audie alteram partem* – no man should be condemned unheard.

Due process is not a mere formality that may be dispensed with. It is a constitutional safeguard of the highest order. Dismissal without conducting a formal investigation and inform him of the specific charges against him.

Right to equal protection of the law – means that no person or class of persons shall be denied the same protection of the law which is enjoyed by other classes of persons under like circumstances, in their

lives, in their liberty, and in their pursuit of happiness.

The equal protection clause secured under the Constitution extends only to civil rights. It does not extend to rights which are political or which arise from the form of government and its mode of administration. It was designed as a safeguard against acts of the State and not against the conduct of private individuals or persons; it does not add anything to the rights which a citizen has against another under the Constitution. The right of equal protection is a restraint on all three grand departments of government and on the subordinate instrumentalities and subdivision thereof.

3. **Right to self-organization**

“The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.” (*1987 Constitution*)

“Employees of government corporations established under the Corporation Code shall have the right to organize and to bargain collectively with their respective employers. All other employees in the civil service shall have the right to form associations for purposes not contrary to law.” (*Art. 245, P.D. 442 – Labor Code, as amended by E.O. 111*)

4. **Right to free access to the courts** – the guarantee of equal protection clause will be meaningless if people cannot go to courts for assistance on account of their poverty or lowly station in life.

Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. (*Sec. 11, Art. III, 1987 Constitution*)

To give more meaning to this provision, the following laws were enacted:

- a) R.A. 6033 – which requires courts to give preference to the speedy disposition of cases involving indigent litigants;
- b) R.A. 6034 – provides transportation and other allowances to indigent litigants and their witnesses to enable them to attend the hearing of the criminal cases of which they are parties;
- c) R.A. 6035 – requires court stenographers to give free transcript or notes to low-income litigants upon request by them.
- d) R.A. 9262 – indigent women-victims of physical or sexual abuses

are exempted from payment of docket fees and expenses

5. **Right against involuntary servitude** – No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted (*Sec. 18, Art. III, 1987 Constitution*)

The purpose of prohibition is to abolish slavery of whatever name, form, and all its badges and incidents; to render impossible any state of bondage; to make labor free by prohibiting the control by which the personal service of one man is disposed of or coerced for another's benefit which is the essence of involuntary servitude.

The **exceptions** to the prohibition are the following:

- a) When involuntary servitude is imposed as a punishment for a crime whereof the party shall have been duly convicted;
- b) When the citizens are required to render personal military or civil service;
- c) It does not apply to an ordinary case of restraint of personal liberty, such as the obligation of a child to his parents;
- d) In the exercise of the police regulation of the state or city, citizens may be required to help for the repair of public highways and streets;
- e) It does not apply to exceptional service, such as military or naval enlistment

Forms of involuntary servitude

- a) Servitude – denotes condition of voluntary or compulsory subjection of a person to a master
- b) Slavery – or bondage is the entire subjection of one to another
- c) Peonage – is service of the peon to another on account of an enforced indebtedness, usually arising from advances made by an employer in the form of food, clothing, housing or transportation
- d) Padrone system – is one where the workers are employed through their leader known as the *padroni* who advances transportation charges and supplies food and clothing for them. In return for these services, the worker agrees to serve any employer with whom the *padroni* had contracted to sell a worker's labor.

6. **Right against imprisonment for debt** – No person shall be imprisoned for debt or non-payment of a poll tax (*Sec. 20, Art. III, 1987 Constitution*).

The abolition of imprisonment for debts is brought about by the force of public opinion which looked with abhorrence on the statutory provisions allowing criminal imprisonment for debts, and by people who sought to prevent the use of the power of the state to coerce the payment of debts.

However, conversion of the monetary indemnity imposed as part of criminal liability into subsidiary imprisonment does not violate the prohibition of imprisonment for debt, obligation to indemnity being *ex contractu, not ex-delicto*.

The prohibition against imprisonment for non-payment of a poll tax is a measure dictated by a sense of humanity and sympathy for the plight of the poorer elements of the population who cannot even afford to pay their cedula or poll taxes.

7. **Capital-labor relations impressed with public interest**

Articles 1700 to 1712 of the Civil Code refer to contract of labor which according to the Code Commission is in line with the government's commitment to the principle of social justice.

Labor contracts are not merely contractual because they are impressed with public interest. Thus, all labor contracts must yield to the common good. Such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects. (*Art. 1701, Civil Code*)

8. **Principle of non-oppression**

Article 1702 of the Civil Code provides that "*neither capital nor labor shall act oppressively against the other, or impair the interest or convenience of the public.*"

Where the totality of the evidence is sufficient to warrant the dismissal of the employees, the law warrants their dismissal without making any distinction between a first offender and a habitual delinquent. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer.

The principle of social justice is never meant to oppress the employer. The law provides limits for its exercise in accord with the principle of non-oppression.

9. **Principle of liberal construction in favor of labor**

Article 1702 of the Civil Code provides that *“in case of doubt, all labor legislations and all labor contracts shall be construed in favor of the safety and decent living of the laborer.”*

The rule on construction in favor of the safety and decent living for the laborer is explained thus: *“The public good requires that this presumption be established whenever there is some doubt in any labor law or labor contract. The safety and the decent living of the toiling classes do not affect them alone but are matters of deep and immediate concern to the entire nation. When in any nation, a large section of the inhabitants, are not afforded a safe and decent life, the economic progress of the country is impeded, and the level of general well-being is pulled down”* (Report of the Code Commission, 13-14)

The rule on construction in favor of labor applies only in case of there is doubt.

10. **Laborer’s wages not subject to execution**

Article 1708 of the Civil Code provides that: *“the laborer’s wages shall not be subject to execution or attachment, except for debts incurred for food, shelter, clothing and medical attendance.”*

Earned wages should support the laborer and his family in order to satisfy the basic necessities of life. It is settled that earned salaries of government employees still in the hands of public officers cannot be garnished until they are paid to the employees for to do so otherwise would violate the rule on non-sustainability of the State. However, salaries of employees in the private sector can be subject to garnishment or attachment.

11. **Employer cannot retain laborer’s tools**

Article 1709 of the Civil Code provides that: *“the employer shall neither seize nor retain any tool or other articles belonging to the laborer.”*

The employer is prohibited by law from seizing or retaining tools or articles used by the laborer for the reason that such seizure or retention will mean starvation for that would deprive him of the essentials in earning a living. To strengthen this legal mandate, tools and implements necessarily used by the laborer in his trade or employment are exempted from execution.

12. **Right to dismiss, subject to State regulation**

Article 1710 of the Civil Code provides that: *“dismissal of laborers shall be subject to the supervision of the government, under special laws.”*

The right to hire or dismiss is a management prerogative. However, such management right should be exercised in good faith because an abuse of this right is destructive of industrial peace. Thus, the State in the exercise of its police power has made this right subject to special laws.

Dismissal of employee must be done without abuse of discretion. It is a management prerogative only for just or authorized caused provided by law. But in the exercise of such right, it can adopt valid and equitable grounds as basis for effecting retrenchment or separation from the service of an employee such as the adoption of “LIFO” rule, (last in, first out) that can be agreed upon by the parties in the collective bargaining agreement. In the absence of any provision providing for LIFO rule, the method shall yield to the sound discretion of the management.

THE LABOR CODE OF THE PHILIPPINES (P.D. 442, AS AMENDED)

A DECREE INSTITUTING A LABOR CODE, THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTED EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE.

PRELIMINARY TITLE

ARTICLE 1. Name of Decree. – *This Decree shall be known as the Labor Code of the Philippines.*

13. *The Labor Code*

Presidential Decree No. 442 was promulgated on May 1, 1974, but it formally took effect on November 1, 1974. There was 6 months transition period to enable labor and management to study the law and recommend measures or proposals to the Department of Labor & Employment that may help in crafting the implementing rules and guideline. Furthermore, it provides the period for the Department of Labor to correct the defects of the Code.

The Labor Code is defined as the charter of human rights and a bill of obligations” for every working man. It is designed to be an institution for national development. The enacting clause of the law is reflective of this purpose, “to afford protection to labor, promoted employment and human resources development and insure industrial peace based on social justice.”

Basic reforms and features of the Labor Code – one of the salient features introduced in the Code is the purging of laws with built-in leverages for graft and corruption. Anti-graft provisions are embedded to maintain industrial peace and harmony in the working world. Unworkable and obsolete provisions subversive to the common good were eliminated.

Emancipation of Labor Relations – created in its place was the modern-oriented, faster-moving National Labor Relations Commission which administers speedy labor justice for it is not

governed by the rigid and technical rules of procedure and evidence.

Transformation of Workmen’s Compensation – from employers’ liability to a social security scheme by integrating the same with the Social Security System and the Government Service Insurance System. Under this principle, speedy delivery of benefits to an injured or disabled worker is effected. The delay in settling a simple claim characteristic of the old system is eliminated.

Moreover, the Code integrates maternity benefits into the Social Security (R.A. 8282).

Abolition of the Permit System – the reporting system is introduced in its place to eradicate the breeding place of graft and corruption. To illustrate, business establishments may now open on Sundays without permit in view of the repeal by the Code of the Blue Sunday Law which was scandalously abused by licensing agencies under the old order.

Placing of Government Corporations with original charters under the Civil Service – the scope of the civil service has been expanded to embrace every branch, agency, subdivision and instrumentality of the Government, including government-owned or controlled corporations with original charters. However, employees of government-owned or controlled corporations without original charters are governed by the Labor Code.

Creation of Overseas Employment Development Board and National Seamen Board – to promote the export of manpower. They are tasked to determine and implement policies that protect Overseas Filipino Workers from economic exploitation and oppression. These offices have already been abolished and their functions assumed by the POEA created under E.O. 797 signed on May 1, 1982 reorganizing the Department of Labor & Employment.

a) Incorporation of Agrarian Reform – emphasizing the policy of the State to promote social justice. With the emancipation of the tenants from the bondage of the soil, agrarian uprisings like those of the 1950s may not be repeated.

b) Updating of all Labor and Social Legislations – such as: Woman and Child Labor Law, Apprenticeship Law, Industrial Safety Law,

etc. to harmonize them with national development priorities based on social justice and human dignity.

ARTICLE 2. Date of effectivity. – *This Code shall take effect six (6) months after its promulgation.*

)c) **Effectivity of the Labor Code** – the Labor Code was promulgated on May 1, 1974, and took effect on November 1, 1974 after the lapse of six-month transition period.

ARTICLE 3. Declaration of basic policy. – *The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.*

Purpose of affording protection to labor – the purpose is to place on an equal plane with management with all its power and influence in negotiating for the advancement of his interests and the defense of his rights.

Protection to labor does not signify the promotion of employment alone. What concerns the Constitution more paramountly is that such an employment be above all, decent, just and humane. The policy of the law is to apply it to a greater number of employees.

Extent and limits of the protection – extends upon an employee who is abused either by the employer or by the union leadership or their respective representatives. However, the right is unavailing in the following instances:

-)a) Protection to labor is not a license to condone wrongdoings
-)b) The care and solicitude in the protection and vindication of the rights of workers cannot justify disregard of relevant facts in the construction of the text of application rules in order to arrive at a

disposition in favor of an employee

The rule that there should be concern, sympathy and solicitude for the rights and welfare of the workers, is meet and proper. But to disregard the employer's own rights and interests solely on the basis of concern and solicitude for labor is unjust and unacceptable

-)c) Where both parties have violated the law, neither party is entitled to protection
-)d) The constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers
-)e) The liberal construction in favor of labor must not sacrifice the fundamental principles of due process for the protection of the rich and the poor in order to attain proper justice
-)f) Protection to labor does not mean that every labor dispute will be decided in favor of the workers. The law also recognizes the employer's rights which are entitled to respect and enforcement in the interest of fair play.
-)g) In affording full protection to labor, the State must ensure equal work opportunities to all employees regardless of sex, race or creed.

ARTICLE 4. Construction in favor of labor. – *All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations shall be resolved in favor of labor.*

)h) **Affirmance of the Civil Code provision**