

IS YOUR COLLAR IN? A CRITICAL ANALYSIS ON THE INDIAN LAWS ON LABOR...!!

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Abstract

From perspectives of the Indian laws of labor, the term labor to the present scenario needs redefinition. The labor classification in various categories follows: Black Collar- mine / oil industry; Blue Collar-manual labor; Gold Collar-knowledge contributor / earning for conspicuous luxury; Gray Collar-do both white and blue collar jobs; Green Collar-environmental sectors; Pink Collar-sectors originally meant for women; Scarlet Collar-pornography; White Collars-salaried professionals and Open Collar-works from home, Biserai P. (2011).

Ever since, the realization started for the welfare, safety and security of labors, labor laws had undergone a series of amendments. However, the coverage of the laws for total labor kind is ambiguous. Does it cover all those who exert either muscle or mind? Taxmann. A. (2015).

The labors involved in the emerging sectors are really considered as labors? Do they really have the concerns of legal protection? This paper attempts to find answers to these questions with its pivotal focus on Indian labor laws.

Key Words : Labour Laws, Worker, Black, Blue, Gold, Gray, Green, Light Blue, Orange, Pink, Red, Scarlet, White and Open Collar Workers

Introduction

Historically, the classification of labor was just based on their uniform colors. Gradually it became a factor for identification of the working community. It helped therein to understand who's who from distance (The Manpower Group, 2014)²⁴.

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Color of the Collar of Labor Market

So far the life of labors was all about blue and white collars, but now the scenario has changed. It is debatable whether the effort put in to select employees belonging to different categories of skills sets and identifying them in terms of collar colors is matched with equal zeal as far as health, safety and welfare matters are concerned.

Because of the increasingly diversified workforce, the academicians and researchers are inclined to define them within a spectrum of colors (Padayachee, R. (2014)¹⁷, US Legal (2016)²⁸ and Biseria, P. (2011)¹⁹ as follows:

S.No.	COLOR OF THE COLLAR	SECTOR / NATURE OF THE JOB THEY REPRESENT
1.	Black Collar Workers	Mining or the oil industry and Black Marketing / Secretive activities like Army and Navy
2.	Blue Collar Workers	Skilled / Unskilled labor and earning wages on hourly basis
3.	Gold Collar Workers	R&D, Scientists, Business Partners or those who invest in conspicuous luxury
4.	Grey Collar Workers	Do not fall either in the category of white or blue collar but expected to possess the specific skills required from White and Blue Collar jobs such as Fire Fighters, Police Officers, Fishing, Forestry, Forms of Agribusiness, Personal Service Sector, Food Preparation, Catering Industry, High Tech Technicians, Skilled Trades, Technicians, Typists, Stenographers, and Paralegals
5.	Green Collar Workers	Environment concerned sectors
6.	Light Blue Collar Workers	Prison Administration Services
7.	Orange Collar Workers	Healthcare services
8.	Pink Collar Workers	Sectors originally meant for women and is often low-paid
9.	Red Collar Workers	Underworld activity
10.	Scarlet Collar Workers	Pornography industry, which includes the women entrepreneurs, i.e., Professional Sex Workers (PSW) who are active on internet pornography
11.	White Collar Workers	Salaried professionals and clerks
12.	Open Collar Workers	Work-from-home services using internet

Source: Padayachee, R. (2014)¹⁷, US Legal (2016)²⁸ and Biseria, P. (2011)¹⁹
Denotes the sectors that are not considered for the paper

²⁴ NDTV. (2013, 25 August), "HPCL Refinery Fire: Chandrababu Naidu demands high level probe", retrieved from <http://www.ndtv.com/south/hpcl-refinery-fire-chandrababu-naidu-demands-high-level-probe-532669>

¹⁷ Padayachee, R. (2014, December). "Grey-Collar Workers Will Lead The New Industrial Revolution", Business Day Live retrieved from www.businessdaylive.com

²⁸ US Legal Forms. (2015, 12 January) "Legal Definitions", retrieved from <http://www.definitions.uslegal.com>

¹⁹ Biserai P. (2011), "Learn what you need to learn", retrieved from Personal Blog Cited in Encyclopedia Britannica. <http://www.britannica.com/topic/modernization/Modern-society-and-world-society>

Constitution of India: A Motherly Legal Embrace for All

The Constitution of India, as the authentic source of any law guarantees the inclusion of such health, welfare, safety and working condition needs of all kinds of labors. Again, laws as the by-product of any country's constitution should have a natural thrust for the embracing all categories of employees. However, in India, the touch of Constitution in laws is bare minimum. Probing into such ideas, some of the observations are presented in this article from the Indian Constitution. Distinction between workers based on the sector in which they are employed, persisted in the Indian job markets. This distinction becomes authentic in terms of the applications of various Indian laws and accordingly their rights are limited (Constitution of India, Article-37). According to Article 14, everyone should be equal before the law; Article 19(1c) ensures the right to form associations or unions; Article 38(1) promotes welfare of the people by securing and protecting as effectively as social order in justice, social, economic and political spheres. Article 38(2) emphasizes the minimization of inequalities in income and Article 42 ensures the provisions for securing just and human conditions of work and for maternity relief. Article 43A creates a constitutional right to participate in the management of undertakings (Srivastava, M. 2011)⁷.

This article examines whether the common Indian **citizen as emphasized by our Constitution**, be extended to labors also? In addition, it examines whether the great intentions of legal and social thinkers are limited to words alone? (Srivastava, M. 2011)⁷.

The year 1818 was the milestone in the journey towards the prevention of exploitation and protection of labors. The formulation of the first law of factories was the beginning of labor voice being heard louder at a finer protection. Though the laws had undergone a series of amendments, the doubt on the coverage of the total labor kind is ambiguous.

Does the term “labor” covers all those who use either muscle or mind? Labor is labor. The term labor, in terms of the application of the Law of Factories (1948), in Sec-2(1) defines “worker” as the one who is employed directly or through any agency

7.Srivastava, M. (2011, January). “Why India is rethinking its Labor Laws”, *Bloomberg Business Week OL*.

(including a contractor) with or without the knowledge of the principal employer whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing process. Looking at the definition, it sounds that those who are exhausting their energy or labor in manufacturing process, machine-cleaning process are alone are labors. Others are not.

In fact, the factories consists of not only manufacturing technicians and machine cleaners (blue collars) but also consultants, scientists, business executives, administrative staff, knowledge workers, service staff, calling staff, security staff, maintenance staff, sales staff, marketing staff, HR staff, etc. and the value or protection they deserve for their contribution to any business becomes essential to be taken care of.

The composition of the labor involved in the service sector, trading, care taking, entertainment and knowledge based business, technology bound business is not limited to blue collar. There are more categories of labor other than these two classes. The legal concerns of welfare, safety and health protection and conditions of working provided in the existing laws are extended to the so-called blessed collar categories (Blue Collars) and have no real concern for the other categories (Non-Blue Collars).

Content Analysis shown in the Table No.2 recalls the term “worker” as defined under 15 Indian laws are similar addressing only the health, safety welfare and working condition concerns of a few set of labors ignoring the natural claims of all other categories.

TABLE NO.2 – COVERAGE OF WORKFORCE UNDER VARIOUS LAWS

S.No.	NAME, CHAPTER & SECTION OF THE LAW	DEFINITION / CRITERIA	COLLAR (WORKFORCE) COVERAGE	COLLAR (WORKFORCE) NON-COVERAGE
1.	The Workmen's Compensation Act 1923, Chapter-I, Section 1(3)	<ul style="list-style-type: none"> All workers irrespective of their status or salaries either directly or through contractor or a person recruited to work abroad. (Exemption criteria for compensation are not included here) 	Blue, Black, Gray, Green, Light Blue, Orange, Pink and White Collar Workers	Gold and Open Collar Workers
2.	Industrial Establishment (Standing Orders) Act, 1946, Chapter-I, Section 2(1)	<ul style="list-style-type: none"> To anyone who is subject to the Army Act, 1950 / the Air Force Act, 1950 / the Navy Act, 1957 In police service, prison admin. Others those who are in managerial capacity & Whose wage is more than Rs.1000/- (amended as Rs.10.000/- in 1982) 	Blue, Green, Orange, Pink, White and Open Collar Workers	Black, Gold, Gray, Light Blue, Collar Workers
3.	The Industrial Disputes Act, 1947, Chapter-I, Section 2s	<ul style="list-style-type: none"> Apprentice Skilled, unskilled, manual, supervisory, technical, operational or clerical work Retrenched or discharged Whose dismissal, discharge or retrenchment has led to that dispute 	Blue, Pink and White Collar Workers	Black, Gold, Gray, Green, Light Blue, Orange, and Open Collar Workers
4.	The Employees' State Insurance Act, 1948, Chapter-I, Section 9	<ul style="list-style-type: none"> Employees drawing wages up to Rs.10,000/ - p/m Engaged either directly or thru' Contractor 	Black, Blue, Gray, Green, Orange and Pink Collar Workers	Gold, Light Blue, Scarlet, White and Open Collar Workers
5.	The Factories Act, 1948, Chapter-I, Section 2(1)	<ul style="list-style-type: none"> Any premises whereon 10 or more persons with the aid of power or 20 or more workers are/were without aid of power working on any day preceding 12 months, wherein Manufacturing 	Blue Collar Workers	Black, Gold, Gray, Green, Light Blue, Orange, Pink, Red, Scarlet, White and Open Collar Workers

6.	The Employees' State Insurance Act, 1948, Chapter-I, Section 9	<ul style="list-style-type: none"> • Employees drawing wages up to Rs.10,000/ - p/m • Engaged either directly or thru' Contractor 	Black, Blue, Gray, Green, Orange and Pink Collar Workers	Gold, Light Blue, Scarlet, White and Open Collar Workers
7.	The Factories Act, 1948, Chapter-I, Section 2(l)	<ul style="list-style-type: none"> • Any premises whereon 10 or more persons with the aid of power or 20 or more workers are/were without aid of power working on any day preceding 12 months, wherein Manufacturing process is being carried on. 	Blue Collar Workers	Black, Gold, Gray, Green, Light Blue, Orange, Pink, Red, Scarlet, White and Open Collar Workers
8.	The Minimum Wages Act, 1948, Chapter-I, Section 2(i)	<ul style="list-style-type: none"> • Any employed • Skilled or unskilled, • Manual or clerical, • In a scheduled employment • An out -worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out -worker or in some other premises not being premises under the control and management of that other person and • Employee declared to be an employee by the appropriate Government • Does not include any member of the Armed Forces 	Black, Blue, Gold, Gray, Green, Light Blue, Orange and Pink Collar Workers	Red and Open Collar Workers

9.	The Payment of Wages Act, 1948, Chapter-I, Sections 3(ib), 4, 5, 6, 7 & 8	<ul style="list-style-type: none"> • A factory as defined in clause (m) of section 2 of the Factories Act, 1948 • Industrial or other establishment meaning tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward; air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India , dock, wharf or jetty • Inland vessel, mechanically propelled, Mine, quarry or oilfield, Plantation • Workshop or other establishment in which articles are produced, adapted or manufactured with a view to their use, transport or sale • Establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, • Operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on • Any other establishment or class of establishments which the Central Government or a State Government 	Black, Blue, Gold, Gray, Green, Light Blue, Orange, Pink, Red Collar Workers	Open Collar Workers
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	The Employees Provident Fund & Miscellaneous Provisions Act, 1952, Chapter -I, Section 1(4)	<ul style="list-style-type: none"> • Any factory having business as specified in Schedule 1 and in which 20 or more persons are employed • Any other establishment employing 20 or more persons as notified by the Central Government • Any establishment employing even less than 20 persons can be covered voluntarily 	Black, Blue, Gray, Green, Orange, Pink, White Collar Workers	Gold, Scarlet and Open Collar Workers
10.	The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, Chapter -I, Section 3	<p>NOT APPLICABLE TO...</p> <ul style="list-style-type: none"> • Any employment in agriculture, horticulture etc. • Any employment in domestic service. • Any employment, the total duration of which is less than three months. • Any employment to do unskilled office work. • Any employment connected with the staff of Parliament. 	Blue, Pink and White Collar Workers	Black, Gold, Gray, Green, Light Blue, and Open Collar Workers
11.	The Payment of Bonus Act, 1961, Chapter-I, Sections 2, 12 & 32	<ul style="list-style-type: none"> • Every factory where in 10 or more persons are employed with the aid of power • An establishment / department / undertaking in which 20 or more persons are employed without the aid of power on any day during an accounting year • Employees drawing wages up to Rs.3500 per month or less. For calculation purposes Rs.2500 per month maximum will be taken even if an employee is drawing up to Rs.3500 per month. <p>NOT APPLICABLE TO...</p> <ul style="list-style-type: none"> • Employees of LIC, General Insurance, Dock Yards, Red Cross, Universities & Educational • Institutions, Chambers of Commerce, Social Welfare Institutions and Building Contractors 	Blue Collar Workers	Black, Gold, Gray, Green, Light Blue, Orange, Pink, White and Open Collar Workers

12.	The Maternity Benefit Act, 1961, Chapter-I, Section 2	<ul style="list-style-type: none"> • Factory, • Mine • Plantation • Any belonging to Government • Every shop or establishment having 10+ • On any day of the preceding twelve months 	<ul style="list-style-type: none"> • Black, Blue, Gray, Green, Light Blue, Orange, Pink and White Collar Workers 	Open Collar Workers
13.	The Contract Labour (Regulation & Abolition) Act, 1970, Chapter - 2, Section 1	<ul style="list-style-type: none"> • 20+ workmen on any day of the preceding 12 months as contract labor • Every contractor who employs or who employed on any day of the preceding twelve months 20+ workmen 	Black, Blue, Gray, Green, Light Blue, Orange & Pink Collar Workers	Gold, White and Open Collar Workers
14.	The Payment of Gratuity Act, 1972, Chapter-I, Sections 1 & 2e	<ul style="list-style-type: none"> • Every factory, mine, oil field, plantation, port, railways, company, shop, establishment or educational institutions employing 10 or more employees • All employees irrespective of status or salary 	Blue, Gray, Green, Light Blue, Orange, Pink and White Collar Workers	Gold and Open Collar Workers
15.	The Sales Promotion Employees (Conditions of Service) Act, 1976, Chapter-I, Section 2(d)	<ul style="list-style-type: none"> • Sales promotion employee by whatever name called (including an apprentice) employed or engaged in any establishment to do any work relating to promotion of sales or business, or both <p>NOT APPLICABLE TO...</p> <ul style="list-style-type: none"> • Employed or engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per month • Employed or engaged mainly in a managerial or 	Orange and Pink Collar Workers	Black, Blue, Gold, Gray Green, White and Open Collar Workers

In this background, the author puts forth certain facts as follows: first, pretentiously encouraging the growth in IT sector (Pink Collar Workers) few legal waivers were which seriously jeopardized by including provisions such as, operating 24 hours a day, employing women during the prohibited hours of works under any law and adding staff uncaring the provisions of layoff. It may further noted that India's IT companies, such as Tata Consultancy Services and Infosys, employs as many as 2.7 million (Srivastava, M. 2011)⁷.

Second, white collar workers are become vulnerable to exploitation and abuse (Chawla, P. 2015)⁴, just because they are not protected under any legislation. As a result, the legal relationship between them and the employers is governed only by the employment contracts upon which they have no bargaining power and they are solely it is left at the mercy of their employer.

Third, the informal sectors comprising of green collar workers (farmers), and Gold Collar workers (creative professionals such as arts, architecture, designers and software developers) whose contribution amount to 60 percentage of GDP scantily has any protection (Deshinker, P. (2009)¹⁰ and (Sassen, S. 2012)⁵.

Fourth, The National Sample Survey of Employment and Unemployment (2009)¹² revealed that 393 of 422 million labors are informal workers in the informal sectors. It includes those who are in Mining and Quarrying, Manufacturing, Electricity, Gas and Water Supply, Construction, Repair of Motor Vehicles, Motor Cycles and Household Goods, Transport and Storage, Financial Intermediation, Real Estate, Renting and Business Activities (Blue Collar Workers), Communications, Hotels and Restaurants, Wholesale and Retail Trades, Education, Health and Social Work and Other Community, Social and Personal Service Activities (Pink Collar Workers). Amongst the 29 million are informal workers in the formal sectors of large construction firms, manufacturing companies and export houses, etc. who are protected under the umbrella of Corporates.

7. Srivastava, M. (2011, January). "Why India is rethinking its Labor Laws", *Bloomberg Business Week* OL.

4. Chawla, P. (2015, February). "How India exploits Millions of White-Collar Workers", *Quartz India* OL.

10. Deshinker, P. (2009, November). "Extending Labor inspections to Informal Sector and Agriculture", *Chronic Poverty Research Centre* OL.

5. Sassen, S. (2000). Cited in David, W. (2012, March). "Jobs Giant: How Matt Barried build a Global Empire", *The Age* OL.

12. National Sample Survey - Rounds 55, (2009, March). *Employment and Unemployment Survey (1999-2000)*. Labor Commissinerate OL.

Fifth, the law is totally silent when its addressing the needs of construction workers (Blue Collar Workers) who are around 30 million. They are neither enforced nor monitored and the statistics reveals that the Indian construction workers are the world's highest accident victims (International Labor Organization, 2009)¹¹.

Sixth, in addition to all the above, the present era of socio-economic background had caused the emergence of new class of labor with solid growth potentials known as Grey Collar workers that includes the post retirement services, contractual services or less paid jobs in the markets of all those Black, Blue, Gold, Green, Light Blue, Orange, Pink, Red and White Collar Jobs. They are the more skilled and less technologically advanced set of labors (Britt, F. 2014)⁹ referred working beyond 60s, because they can't afford to retire, or to an underemployed white collar worker, such as someone with a bachelor's degree in literature working as a sales executive. According to Indian government's estimate around 2% are the skilled (Julka, H. & Srivastava, A. 2015)¹⁶.

Seventh, India's 78.6 percent Pink Collar Workers is uncared and overlooked. At the same time, the media hauls on safety and security of Indian White Collar working women who constitute only 20.4 percent (Sriram, S. 2014)¹⁵.

A case of working hours in an MNC Woman Staff reported on Lawyers Club India (2013)²¹ along with the response by Lawyer goes as follows:

“Employee: I am a professional working in an MNC, I work with full of my dedication and devotion with my full skillset and hardwork when I am at work. But due to less manpower as compared to the project need I am unable to get time for my family. I wanted to know the Laws and my Rights under our constitution”.

11. International Labor Organization. (2009, November). Cited in Deshinker, P. (2012), “Extending Labor inspections to Informal Sector and Agriculture”, Chronic Poverty Research Centre OL.

9. Britt, F. (2014, October). “The ‘Grey Collar’ career challenge”, The Hill OL

16. Julka, H. & Srivastava, A. (2015, 28 January). “E-Commerce transforms life of Blue Collar Workers, earning as much as their White Collar counterparts”, Economic Times retrieved from www.economicstimesonline.com

15. Sriram, S. (2014, May). “Hidden Harassment: The challenges of India's Pink-Collar Workers”, The Women International Perspective OL

1. Lawyers Club India. (2013, 11 December). “Labor laws for people working in private companies”, retrieved from <http://www.lawyersclubindia.com/forum/Labour-laws-for-people-working-in-private-companies>

“Lawyer: The employers in general and MNCs always designate and make your job profile in a manner that you fall outside the definition of Workman under the Industrial Disputes Act. However, the Honorable Supreme Court has stood with the employee when the employers tried to exclude the employee outside the ambit of workman. The problem is that if you show your employer the Industrial Disputed Act they will show you the door on some pretext or the other. And can you wait for several years for the Honorable Supreme Court to decide in your favor”?

Eighth, London Business School and Deloitte (2014)²² have revealed the results of a survey wherein a global audience of executives, entrepreneurs and business academics believe that at least half of the workforce will work remote (Open Collar Workers) by 2020.

The Plight of Prevalent Enforcements

Those who are engaged in Oil and Refineries and Mines are the Black Collar Workers. Though Mines Act and the Oil Industries Act are in force, are they really in full enforcement? If yes, what happened to those who died in HPCL Refineries on August 22, 2013?

The news on NDTV (2013)²⁴ follows: Chandrababu Naidu today demanded a high-level probe into the fire at state-run Hindustan Petroleum (HPCL) refinery complex in Visakhapatnam in which eight persons killed. "A high-level expert committee should probe into the mishap," Mr Naidu said after visiting the site. "The HPCL authorities should be held responsible for the mishap for failing to put in place effective management system. It seems the management has not learnt any lessons from the past," Naidu alleged. According to a report on “Working conditions of the contract workers in Petroleum Refineries and Oil fields” by Labour Bureau (2011)²⁰ of Chandigarh, the Contractors made less payment to contract workers by showing

22. London Business School and Deloitte (2014, 21 July). Cited in Smith, J. (2016, 12 February). "The Top 25 Companies For Work-From-Home Jobs", retrieved from <http://www.businessinsider.in/The-Top-25-Companies-For-Work-From-Home-Jobs/articleshow/38812987.cms>

24. NDTV. (2013, 25 August), "HPCL Refinery Fire: Chandrababu Naidu demands high level probe", retrieved from <http://www.ndtv.com/south/hpcl-refinery-fire-chandrababu-naidu-demands-high-level-probe-532669>

20. Labor Bureau. (2016, 02 February), "Report on working conditions of the Contract Workers in Petroleum Refineries and Oil Fields", retrieved from http://labourbureau.nic.in/CL_WC_Pet_Ref.pdf

7. Unnikrishnan. (2014, 14 August), "Watch where you spit! How India labor laws strangle growth", Bloomberg

the number of days worked less than actual so as to show on paper that compliance of the Minimum Wages Act is being ensured.

According to Unnikrishnan (2014)⁸, around 94 percent of Indian labors are in the categories of informal sectors as per the Government's description. Those informal sectors constitute of Black, Grey, Gold, Green, Orange, Pink, Scarlet and Open Collar Workers.

As observed in Table No.2, most of the labors of these categories belong to farming, home based activities, and environment concerned activities, work from home categories, construction services, etc. for whom Indian labor laws don't apply. As they are not the defined categories of workforce as per majority of the Indian laws discussed in the Table No.2, around millions of labors are left over with little or no protection.

Deshingkar P. (2009)¹⁰ believes little effort has been made to prosecute employers and agents who violate labor laws because of, “entrenched attitudes among the middle and upper classes in Indian society towards the poor.” She adds that the government is caught between trying to protect workers' rights and liberalizing the labor market. “So the government approach appears to be to pass labor laws but not actually do anything at the field level,” she concludes.

Conclusion

Apparently, the intent of the present government is to redefine the existing labor laws bringing in changes which empower the state governments to amend their own laws in tune with the socio-economic realities of their respective states. It is time that the intelligentsia and the society at large contribute to the evolution of comprehensive framework that would bring in a fine balance between the need to reward the contributions of the different collars and the ability of the economy to do so.

10 Deshinker, P. (2009, November). "Extending Labor inspections to Informal Sector and Agriculture", Chronic Poverty Research Centre OL.