

Labour and Employment Laws of India

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The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". Industrial law in this country is of recent vintage and has developed in respect to the vastly increased awakening of the workers of their rights, particularly after the advent of Independence. Industrial relations embrace a complex of relationships between the workers, employers and government, basically concerned with the determination of the terms of employment and conditions of labour of the workers. Escalating expectations of the workers, the hopes extended by Welfare State, uncertainties caused by tremendous structural developments in industry, the decline of authority, the waning attraction of the work ethics and political activism in the industrial field, all seem to have played some role.

Historical Background

The history of labour legislation in India is naturally interwoven with the history of British colonialism. The industrial/labour legislations enacted by the British were primarily intended to protect the interests of the British employers. Considerations of British political economy were naturally paramount in shaping some of these early laws. The earliest Indian statute to regulate the relationship between employer and his workmen was the Trade Dispute Act, 1929 (Act 7 of 1929). Provisions were made in this Act for restraining the rights of strike and lock out but no machinery was provided to take care of disputes.

The original colonial legislation underwent substantial modifications in the post-colonial era because independent India called for a clear partnership between labour and capital. The content of this partnership was unanimously approved in a tripartite conference in December 1947 in which it was agreed that labour would be given a fair wage and fair working conditions and in return capital would receive the fullest co-operation of labour for uninterrupted production and higher productivity as part of the strategy for national economic development and that all concerned would observe a truce period of three years free from strikes and lockouts. Ultimately the Industrial Disputes Act (the Act) brought into force on 01.04.1947 repealing the Trade Disputes Act 1929 has since remained on statute book.

Object of the Act

The Industrial Disputes Act, 1947, is, therefore, the matrix, the charter, as it were, to the industrial law. The Act and other analogous State statutes provide the machinery for regulating the rights of the employers and employees for investigation and settlement of industrial disputes in peaceful and harmonious atmosphere by providing

scope for collective bargaining by negotiations and mediation and, failing that, by voluntary arbitration or compulsory adjudication by the authorities created under these statutes with the active participation of the trade unions. With the aid of this machinery, industrial law covers a comprehensive canvas of state intervention of social control through law to protect directly the claims of workers to wages, bonus, retiral benefits such as gratuity, provident fund and pension, claims, social security measures such as workmen's compensation, insurance, maternity benefits, safety welfare and protection of minimum of economic well-being. Job security has been particularly protected by providing industrial adjudication of unfair discharges and dismissals and ensuring reinstatement of illegally discharged or dismissed workmen. Protection has gone still further by laying down conditions of service in specified industries and establishments and limiting the hours of work. By and large, all these subjects are "connected with employment or non-employment or terms of employment or with the conditions of labour" of industrial employees. In other words, these matters are the subject matter of industrial disputes, which can be investigated and settled with the aid of the machinery provided under the Act or analogous State statutes.

Mechanism of Disputes Settlement

The principal techniques of dispute settlement provided in the I.D. Act are collective bargaining, mediation and conciliation, investigation, arbitration, adjudication and other purposes.

Collective bargaining

Collective bargaining is a technique by which disputes of employment are resolved amicably, peacefully and voluntarily by settlement between labour unions and managements. The method of collective bargaining in resolving the Industrial dispute, while maintaining industrial peace has been recognized as the bed rock of the Act. Under the provision of the Act, the settlement arrived at by process of collective bargaining with the employer has been given a statutory recognition under Section 18 of the Act. Under the Act two types of settlement have been recognised:

1. Settlement arrived in the course of conciliation proceeding before the authority. Such settlements not only bind the member of the signatory union but also non-members as well as all the present and future employees of the management.
2. Settlement not arrived in the course of conciliation proceedings but signed independently by the parties to the settlement binds only such members who are signatory or party to the settlement.

Section 19 of the Act prescribes the period of operation inter alia of such a settlement and envisage the continuation of the validity of such a settlement unless the same is

not replaced by another set of settlement, while Section 29 prescribes the penalty for the breach of such a settlement.

Mediation and Conciliation -

Under the Act, an effective conciliation machinery has been provided which can take cognizance of the existing as well as apprehended dispute, either on its own or on being approached by either of the parties to the dispute. The Act further makes conciliation compulsory in majority of disputes.

Investigation

Section 6 of the Act empowers the government to constitute a court of inquiry, for inquiring into any matter pertaining to an Industrial Dispute. The procedure of the court of inquiry has also been prescribed by Section 11. While the report of the court is not binding on the parties, many time it paves the way for an agreement.

Arbitration

Voluntary arbitration is a part of the infrastructure of resolving the Industrial Dispute in the Industrial adjudication. Section 10 of the Act provides for the provision for resolving the Industrial Dispute by way of arbitration, which leads to a final and binding award. However, in India arbitration is not a preferred way of resolving Industrial Disputes.

Adjudication

Adjudication means a mandatory settlement of Industrial Disputes by labour courts, Industrial Tribunals or National Tribunals under the Act or by any other corresponding authorities under the analogous state statutes. By and large, the ultimate remedy of unsettled dispute is by way of reference by the appropriate government to the adjudicatory machinery for adjudication. The adjudicatory authority resolves the Industrial Dispute referred to it by passing an award, which is binding on the parties to such reference. There is no provision for appeal against such awards and the same can only be challenged by way of writ under Articles 226 and 227 of the Constitution of India before the concerned High Court or before the Supreme Court by way of appeal under special leave under Article 136 of the Constitution of India.

However before the provisions of the Act, 1947 may become applicable certain pre-requisite conditions must exist.

1. The dispute must relate to an 'Industry';

2. Section 2(j) of the Industrial Dispute Act gives a comprehensive definition of 'industry'. The definition of industry in this clause is both exhaustive and inclusive and is quite comprehensive in its scope. It is in two parts, the first part says that 'it means any business, trade, undertaking, manufacture or calling of employees and then goes on to say that it, includes any calling, services employment, handicraft or industrial occupation or avocation or workmen. Thus one part of the definition defines it from the standpoint of the employer; the other from the standpoint of the employees.

This definition has undergone variegated judicial interpretation. In case of Bangalore Water Supply and Sewage Board Vs. A. Rajagappa [(1978) 1 LLJ 349] a 7 judges bench of the Supreme Court has given the widest possible meaning of the term 'industry' which virtually covers almost all organized activities under the ambit of the term 'industry'. After the decision of the Supreme Court in Bangalore Water Supply and Sewage Board case the question to be asked is not what is an industry, but what is not an industry. Further, even after the Bangalore Water Supply and Sewage Board decision there is much left to be desired with the interpretation of industry and the need for legislative reforms has been accentuated by all concerned. A very sensible and pragmatic definition of the term 'industry' has been attempted in the Industrial Relations Bill of 1978. With the dissolution of the Parliament in 1979 the Bill lapsed.

The definition has been amended by the Parliament in the Industrial Disputes (Amendment) Act, 1982 with new definition of industry in Section 2(j). However the amendment has yet to be brought into force. There is an urgent need for a comprehensive and practical definition of the 'industry'.

3. Under this Act an Industrial Dispute can be raised only by 'workman' employed in an 'industry'. Section 2(s) of the Act defines 'workman', which means any person employed including an apprentice, in any industry to do any skilled, unskilled, manual, clerical, supervisory or technical work for hire or reward, whether the terms of employment be expressed or implied. The definition of workman under the Act also includes any person who has been dismissed, discharged or retrenched in connection with or as a consequence of any dispute. However, it excludes inter alia any person who has been employed mostly in managerial or administrative capacity or in supervisory capacity drawing wages exceeding 1600/- per month or exercises either by the nature of the duty attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. However, in this regard it is not the nomenclature or designation of the employee but the actual nature of duties performed by him/her that will determine the status of such employees. Furthermore, before an Industrial Dispute can be referred for adjudication, it is necessary that there exists a relationship of employer and employee between the workman and the management.

One of the short-comings of the present definition of the workman, as the experience has shown is its over emphasis on the criteria of nature of duties performed by an employee irrespective of the status, position and wage of such an employee in the

hierarchy of the management in determining whether such employee will come under the category of workman. For example, in India even the Pilots and Engineers of aircraft have been covered under the definition of workman although in terms of their salary and wages and authority they exercise, by no stretch of imagination, they can be equated with labour and working force of the industry. In some cases, even doctors have been recognized as workman as they perform technical or skilled job. This area of the definition of workman requires an urgent legislative modification. Stressing the need for recasting the definition of workman, the Second National Labour Commission recommended as follows :

"Relatively better off section of employees categorized as workmen like Airlines Pilots, etc, do not merely carry out instructions from superior authority but are also required and empowered to take various kinds of on the spot decisions in various situations and particularly in exigencies. Their functions therefore, cannot merely be categorized as those of ordinary workmen. We, therefore, recommend that Government may lay down a list of such highly paid jobs who are presently deemed as workmen category as being outside the purview of the laws relating to workmen and included in the proposed law for the protection of non workmen. Another alternative is that the Government fix a cut off limit of remuneration, which is substantially high enough, in the present context, such as Rs. 25,000/-p.m. beyond which employees will not be treated as ordinary 'workman'."

4. The dispute must be an 'Industrial Dispute'. Section 2(k) of the Act defines 'Industrial Dispute' and only disputes covered under the definition can be referred for conciliation or adjudication under the Act. The definition of 'Industrial Dispute' in section 2(k), can be divided into two parts viz :

1. Dispute or difference

- i. between employer and employers
- ii. Between Employer and workman
- iii. Between Workman and workman

2. Subject matter of dispute.

- i. Connected with the employment or non-employment
- ii. The terms of employment
- iii. With the condition of labour.

Space does not allow a detailed discussion of all the provisions of the Act, but provisions that deal with job losses must be noted. Under the present law any Industrial Establishment employing more than 100 workers must make an application to the Government seeking permission before resorting to lay-off, retrenchment, or closure of undertaking. Employers resorting to any of the said forms of creating job

losses without seeking prior permission as aforesaid act illegally and workers are entitled to receive wages for the period of illegality. However, an Industrial Establishment employing less than 100 workers can retrench its surplus employees in accordance with the provisions provided under Section 25F, 25G & 25H of the Act without seeking the permission of the appropriate government. Under Section 25 F of the Act the retrenchment compensation to be offered to a retrenched workman has to be 15 days salary for every completed year of service and an amount equivalent to one month salary. However, it has been felt that the present retrenchment compensation provided under the Act is wholly inadequate and there is an urgent need for enhancing the compensation to a realistic standard.

However, the service of an employee can be terminated by an order of discharge simplicitor without complying with the provisions contained in Section 25 F of the Act if such an employee has been appointed for a fixed period under the contract of fixed term appointment and his/her services is terminated either on the ground of expiry of the fixed period or in stipulation of the provision contained therein.

The Reserve Bank of India commissioned a study into the causes of sickness in Indian industry and they reported cryptically, 'Sickness in India is a profitable business'. This chapter (V-B) in the Act, which has been identified as offering high rigidity in the area of labour redundancy, has been targeted for change under globalisation and liberalisation.

A feature of the Act is the stipulation that existing service conditions cannot be unilaterally altered without giving a notice of 21 days to the workers and the trade union. Similarly if an industrial dispute is pending before an authority under the Act, then the previous service conditions in respect of that dispute cannot be altered to the disadvantage of the workers without prior permission of the authority concerned. This has been identified as a form of rigidity that hampers competition in the era of the World Trade Organisation.

A permanent worker can be removed from service only for proven misconduct or for habitual absence or due to ill health or on attaining retirement age. In other words the doctrine of 'hire and fire' is not approved within the existing legal framework. In cases of misconduct the worker is entitled to the protection of Standing Orders to be framed by a certifying officer of the labour department after hearing management and labour, through the trade union. Employers must follow principles of 'natural justice', which again is an area that is governed by judge-made law. An order of dismissal can be challenged in the labour court and if it is found to be flawed, the court has the power to order reinstatement with continuity of service, back wages, and consequential benefits. This again is identified as an area where greater flexibility is considered desirable for being competitive.

Strikes and lockouts

Workers have the right to strike, even without notice unless it involves a public utility service; employers have the right to declare lockout, subject to the same conditions as a strike. The parties may sort out their differences either bilaterally, or through a conciliation officer who can facilitate but not compel a settlement, which is legally binding on the parties, even when a strike or a lockout is in progress. But if these methods do not resolve a dispute, the government may refer the dispute to compulsory adjudication and ban the strike or lockout. However in recent times the Higher Courts have deprecated the tendency to go on strike quite frequently. Furthermore, the Supreme Court of India has also held that government employees have no fundamental right to go on strike.

The Regulation of Contract Labour

The most distinct visible change in the time of globalisation and privatization is the increased tendency for outsourcing, offloading or subcontracting. The rationale is that the establishment could focus on more productivity in the core or predominant activity so as to remain competitive while outsourcing the incidental or ancillary activities.

The Contract Labour (Prohibition and Regulation) Act 1970 provides a mechanism for regulating engaging of contractor and contract labour. The Act provides for registration of contractors (if more than twenty workers are engaged) and for the appointment of a Tripartite Advisory Board that investigates particular forms of contract labour, which if found to be engaged in areas requiring perennial work connected with the production process, then the Board could recommend its abolition under Section 10 of the Act. A tricky legal question has arisen as to whether the contract workers should be automatically absorbed or not, after the contract labour system is abolished. Recently a Constitutional Bench of the Supreme Court has held that there need not be such automatic absorption.

Employment Injury, Health, And Maternity Benefit

The Workmen's Compensation Act 1923 is one of the earliest pieces of labour legislation. It covers all cases of 'accident arising out of and in the course of employment' and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. The younger the worker and the higher the wage, the greater is the compensation subject to a limit. The injured person, or in case of death the dependent, can claim the compensation. This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Scheme, which is conceptually considered to be superior to the Workmen's Compensation Act.

The Employees' State Insurance Act, 1948 provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class

localities. It facilitates both outpatient and in-patient care and freely dispenses medicines and covers hospitalization needs and costs. Leave certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining.

The Maternity Benefit Act is applicable to notified establishments. Its coverage can therefore extend to the unorganised sector also, though in practice it is rare. A woman employee is entitled to 90 days of paid leave on delivery or on miscarriage. Similar benefits, including hospitalisation facilities are available under the law described in the paragraph above.

Retirement Benefit

There are two types of retirement benefits generally available to workers. One is under the Payment of Gratuity Act, 1972 and the other is under the Employees Provident Fund Act. In the first case a worker who has put in not less than five years of work is entitled to a lump sum payment equal to 15 days' wages for every completed year of service. Every month the employer is expected to contribute the required money into a separate fund to enable this payment on retirement or termination of employment. In the latter scheme both the employee and the employer make an equal contribution into a national fund. The current rate of contribution is 12 percent of the wage including a small percentage towards family pension. This contribution also attracts an interest, currently 9.5 percent per annum, and the accumulated amount is paid on retirement to the employee along with the interest that has accrued. The employee is allowed to draw many types of loan from the fund such as for house construction, marriage of children, and education etc. This is also a benefit, which is steadily being extended to sections of the unorganised sector, especially where the employer is clearly identifiable.

Indian labour laws divide industry into two broad categories:

1. Factory

Factories are regulated by the provisions of the Factories Act, 1948 (the said Act). All industrial establishments employing 10 or more persons and carrying manufacturing activities with the aid of power come within the definition of Factory. The said Act makes provisions for the health, safety, welfare, working hours and leave of workers

in factories. The said Act is enforced by the State Government through their 'Factory' inspectorates. The said Act empowers the State Governments to frame rules, so that the local conditions prevailing in the State are appropriately reflected in the enforcement. The said Act puts special emphasis on welfare, health and safety of workers. The said Act is instrumental in strengthening the provisions relating to safety and health at work, providing for statutory health surveys, requiring appointment of safety officers, establishment of canteen, crèches, and welfare committees etc. in large factories.

The said Act also provides specific safe guards against use and handling of hazardous substance by occupiers of factories and laying down of emergency standards and measures.

2. Shops and Commercial Establishments

'Shops and Commercial Establishments' are regulated by Shops and Commercial Establishments Act which are state statutes and respective states have their respective Shops and Commercial Acts which generally provide for opening and closing hour, leave, weekly off, time and mode of payment of wages, issuance of appointment letter etc.

Statutory Regulation of Condition of Service in Certain Establishments

There is statutory provision for regulating and codifying conditions of service for an industrial establishment employing more than 100 workmen under the provisions of Industrial Employment (Standing Orders) Act, 1946 (this Act). Under the provisions of this Act every employer of an Industrial Establishment employing 100 or more workmen is required to define with sufficient precision the condition of employment and required to get it certified by the certifying authorities provided under Section 3 of this Act. Such certified conditions of service will prevail over the terms of contract of employment. In a significant judgment recently the Delhi High Court has held that a hospital even though employing more than 100 workmen is not covered under the provisions of this Act, as a hospital is not an Industrial Establishment as defined under this Act.

Distinctive Feature of Indian Labour and Employment Laws

A distinguishing feature of Indian Labour and Employment Laws are that in India there are three main categories of employees: government employees, employees in government controlled corporate bodies known as Public Sector Undertakings (PSUs) and private sector employees.

The rules and regulations governing the employment of government employees stem from the Constitution of India. Accordingly, government employees enjoy protection of tenure, statutory service contentions and automatic annually salary increases.

Public sector employees are governed by their own service regulations, which either have statutory force, in the case of statutory corporations, or are based on statutory orders.

In the private sector, employees can be classified into two broad categories namely management staff and workman. Managerial, administrative or supervisory employees drawing a salary of Rs.1600/- or more per month are considered management staff and there is no statutory provisions relating to their employment and accordingly in case of managerial and supervisory staff/employee the conditions of employment are governed by respective contracts of employment and their services can be discharged in terms of their contract of employment. Workmen category are covered under the provisions of the Industrial Disputes Act as already detailed above.

Voluntary Retirement Scheme and Golden Handshake

In the competitive time of globalization and liberalization the system of Voluntary retirement with golden handshake is widely prevalent both in public and private sectors in order to reduce the surplus manpower which for most of public sector undertakings is a major cause of losses.

The Unorganised Sector

Many of the labour and employment laws apply to the unorganised sector also. The unorganized sector can be defined as that part of the work force that have not been able to organize itself in pursuit of a common objective because of certain constraints such as casual nature of employment, ignorance or illiteracy, superior strength of the employer singly or in combination etc. viz. construction workers, labour employed in cottage industry, handloom/powerloom workers, sweepers and scavengers, beedi and cigar workers etc. Under this category are laws like the Building and Construction Workers Act 1996, the Bonded Labour System (Abolition) Act 1976, The Interstate Migrant Workers Act 1979, The Dock Workers Act 1986, The Plantation Labour Act 1951, The Transport Workers Act, The Beedi and Cigar Workers Act 1966, The Child Labour (Prohibition and Regulation) Act 1986, and The Mine Act 1952.

Women Labour and the Law

Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as labourers and cultivators. In urban areas, the employment of women in the organised sector in March 2000 constituted 17.6 percent of the total organised sector.

In addition to the Maternity Benefit Act, almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976,

providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of occupational hazards concerning the safety of women at workplaces, in 1997 the Supreme Court of India in the case of Vishakha Vs. State of Rajasthan [(1997) 6 SCC 241] held that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment (Standing Orders) Act, 1946.

Focus on Elimination of Child Labour

Elimination of child labour continued to be one of the major focus areas of the Labour Ministry. It took an initiative for framing an omnibus legislation prescribing 14 years as the minimum age for employment and work in all occupations except agricultural activity in family and small holdings producing for own consumption. The proposed legislation would also fix a minimum age of not less than 18 years to any type of employment and work which by its nature or circumstances is likely to jeopardize the health, safety or morals of young persons. As of date, employment of children has been prohibited in 13 occupation and 51 processes in the country bringing the total to 64. It is proposed to raise their number to 73 by notifying additional nine hazardous occupations and processes.

In 2006, the Central Government has amended the Child Labour (Prohibition and Regulation) Act, 1986 prohibiting employment of children below 14 years of age even in non-hazardous industry like restaurants, motels and also as domestic servants.

To further augment resources for elimination of child labour, the Ministry of Labour signed a Memorandum of Understanding with the ILO extending International Programme on Elimination of Child Labour (IPEC) in India for another two years. India under the ILO's IPEC programme has taken up 154 action programmes on child labour covering more than ninety thousand children with direct funding by the ILO/Area Office to the NGOs.

The Reforms and Labour Law

Reforms in Labour laws is being much talked in recent years. It is being advocated that all talk of liberalization is futile without squarely facing up to the imperative of labour reforms. These are an integral part of the economic reforms process itself. Other efforts at raising the standard of performance on the economic front to world

class are apt to stall if those managing enterprises find themselves hamstrung by outdated trade union laws and dilatory methods of adjudication of industrial disputes.

For instance, the unwieldy number of adjudicating authorities — conciliation officers, conciliation boards, courts of inquiry, labour courts, industrial tribunals and the national industrial tribunal — under the Industrial Disputes Act and the complex procedures are out of sync with the essential pre-requisites for the success and even the survival of companies in a globally integrated economy.

Productivity, customer service, cost-effectiveness, keeping to delivery schedules, technological up gradation and modernization have emerged as the criteria for judging the quality of management of companies, and labour reforms hold the key to increased competitiveness and investment flows in all these respects. The need for introducing labour market flexibility and simplifying labour laws has no doubt been emphasized by the President and Prime Minister of the country downwards from time to time.

The case for labour reforms could not have been argued better than in this extract from the Economic Survey of 2005-06: "... Indian Labour Laws are highly protective of labour, and labour markets are relatively inflexible. These laws apply only to the organised sector. Consequently, these laws have restricted labour mobility, have led to capital-intensive methods in the organised sector and adversely affected the sector's long-run demand for labour".

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