



REVIEW ARTICLE

AN OVERVIEW OF CHANGING LABOUR LEGISLATIONS ON SHOP-FLOOR RELATIONS FOR
COMPETITIVE ADVANTAGE

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ABSTRACT

India has developing economy where the economic progress is directly proportional to the industrial growth, which in turn is dependent mainly upon the relation between the employer and the employee. Industrialisation poses a challenge for an entrepreneur in the form of management of the resources. The management and effective and efficient deployment of the resources of the organisation is the factor which decides the profitability, sustainability and viability of any organization. Labour is one of the basic resources of factors of production any industry and has an important bearing on the performance and goals of the organisation. This relation is regulated by the labour laws, which mainly constitute protective and beneficial legislation among all the parties concerned. These laws govern the day-to-day practices, procedures, relations, rights and obligations of employers and employees. The first of the Indian labour laws were enacted by the British Colonial Government and are still more or less the same. Some of the provisions which were enacted a hundred years ago have no relevance today. For the effective and efficient management of labour in an industry or an organisation it is necessary to have a complete knowledge of the Laws, bye laws, regulations and ordinances applicable to the industry in general and to the company or organisation specifically. The laws and bye laws applicable to labour issues and interests provides for various compliances in accordance with procedures laid therein. This paper is an attempt to understand the need of change in these laws in order to give way to the progress and development of certain industries, and provides a brief insight into the Laws, bye laws, Regulations, notifications applicable to labour and labour issues.
"Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration", said Abraham Lincoln.

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INTRODUCTION

"Labour Legislations is the body of laws, administrative rulings, and precedents which address the relationship between and among employers, employees, and labor organizations, often dealing with issues of public law". Labour Legislations harmonize many angles of the relationship between trade unions, employers and employees. The goal of labour Legislations is to bring both the employer and the employee on the same level, thereby mitigating the differences between the two ever-warring groups. Corporate accountability is on everyone's mind today. A superior knowledge of the regulatory risks faced by the organizations and of the measures in place to guard against those risks can provide a company with a competitive advantage.

Business executives face significant pressure to comply with a steady stream of complex regulations. An effective compliance management program that embeds a culture of compliance throughout the organization can therefore be a business enhancer offering positive benefits to business. This focused attention on compliances with spirit and details of laws shall ensure extended protection to investors, shareholders and other stakeholders. The industrial law covers a spectrum of activities like manufacturing, trading, transporting, exporting, importing, storing, polishing, packaging etc.

Origin of Labour Legislations

The rapid Industrial growth passing through the stages of Laissez-Faire, individualistic liberalism, unsystematic collectivism and

socialism have brought about fundamental changes in the social order. The historic evolution of relationship of Master and Servant shows that the concepts, which governed the norms regarding the rights and obligations of the worker, had undergone drastic changes.

Ancient Period – Feudal System: Worker was then considered as a commodity and they were treated as slaves as the property of his master who purchased him or conquered him in some war. Therefore the relationship was Master-Slave type.

Medieval Period – Mercantile System: The growth of town and cities marked the decline the power of the feudal lords and growth in trade and commerce. As a result handicraft system developed. This system regulated the quality of materials and workmanship, set of prices and determined wages.

Doctrine of Laissez Faire: Means "Let Things Alone" – a state of economy where the individual is free to carry on his occupation, trade, business and to conduct himself with the minimum of state control. First this doctrine was introduced in USA and latter it moved to all other countries in the world. Demand and supply price are inter related to each other.

Modern Period: The Capitalized realized that the economy in production can be achieved through automation with new techniques. Invention and manufacture of power driven machineries in the late 18th century, where factories were provided installed with machineries, provided power, tools and equipment and thus employment offered in factories.

State Intervention Through Labour Legislations: The state, instead of leaving the society to take care of itself in all matters other than collection of Tax, maintenance of Law and Order and protection of external aggression, came forward to regulate various conflicting interests within the society. The commencement of modern industrialization gave rise to a new relationship of capital and labour. The state began to intervene to protect the worker from the evils of the old laws governing the common law rules in so far as they affected detrimentally the industrial labour. A number of laws forcing the employers to improve the working conditions of labour were also brought in.

Factors Influenced the Growth of Labour Legislations:

- a. Defects of Factory system
- b. The pressure from the working class
- c. Influence of the International Labour Organization
- d. Ideas of social Justice and welfare state

“To [secure] to each labourer the whole product of his labour, or as nearly as possible, is a worthy object of any good Government”, said Abraham Lincoln.

Evolution of Labour Legislations in India

The history of labour legislations in India is naturally interwoven with the history of British Colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for indenturing workers became necessary. This was obviously labour legislation in order to protect the interests of British employers. The important landmarks in the history of Indian Labour Legislations may be studied as follows-

- a. Early Period (1850-1918)
- b. First World War and after (1919-1938)
- c. Second World War Period (1939-1946)
- d. Post Independence Period (1947 and after)

The true history of Labour Legislations in India started since 1881, when Factories Act was enacted. Thus we received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. The changing functions of State may be broadly put into two categories: the regulatory and the service providing. Amongst the former are controls of the use of land, industrial processes, public health, road traffic, commercial activities, and general regulations of economic activities. Amongst the later are the provision of physical services such as roads, railways, gas electricity, telecommunications, water and administration of Justice.

India is a founding member of the ILO and has ratified a total of 39 ILO Conventions. Of the eight core ILO Conventions, India has ratified four: the Conventions on Forced Labor (No. 29), Equal Remuneration (No. 100), Abolition of Forced Labor (No. 105), and Discrimination (Employment and Occupation) (No. 111). India has not ratified the remaining four core conventions on Freedom of Association and Protection of the Right to Organize (No. 87), Right to Organize and Collective Bargaining (No. 98), Minimum Age (No. 138), and Worst Forms of Child Labor (No. 182).

Labour Law Reforms: Many observers believe that India's labor laws are antiquated and in need of reform. The second National Labor Commission (NLC), established by the government in September 1999, submitted its report in June 2002. It recommended reviews of Indian labor laws and the social security system and the strengthening of governmental programs to eradicate child labor. Although the NLC recommendations are not binding on the government, the Ministry of Labor has begun consulting various social partners on

their possible implementation. Unlike the previous NDA government, the UPA has not made labor law reform a top priority. Considering the lack of consensus within and outside the government to reform, most observers do not expect large-scale changes to existing labor legislation.

“India is also working towards implementing the commitment towards social progress, economic growth and increased engagement with nations around the world in a most effective and determined manner. We have pursued a strategy of seeking inclusive growth at home and inclusive globalization internationally that benefits the have-nots and reduces disparities. We have enacted laws that guarantee the Right to Employment and Right to Education. We now propose to introduce a legislation giving our citizens the Right to Food”, according to text of the Speech of Union Minister for Labour & Employment Shri Mallikarjun Kharge at the International Labour Conference 100th Session, 2011 in Geneva on Report of the Director General- A New Era of Social Justice

Growth of Administrative Law

The hallmark of administrative law is the power to the administrative authorities to make rules which would have the force of law. The reason for delegation of this kind of power to administration is the inadequacy of legislative process. Administrative adjudication is preferred due to the fact that the traditional type of judicial process is considered to be a satisfactory mechanism as far as controversies under the common law, private law or statute law are concerned, but it is not considered to be a satisfactory mechanism as far as controversies in the new social and economic order are concerned in which the element of public welfare is a significant factor. The regulatory powers exercised by the administrative agencies represent a combination of three types of governmental powers with little regard to the constitutional theory of separation of powers. It is believed that the regulatory powers cannot be exercised effectively under rigid separation of powers. The regulatory agencies therefore are made the repositories of three types of governmental powers i.e., the legislative, the executive, the judicial powers.

Government is working on streamlining labour laws: Voicing serious concern over cases of industrial unrest, Prime Minister Manmohan Singh said *“the government is working on streamlining labour laws for welfare of workers and it would move ahead only in those areas where consensus for reform is built”*. He underlined that *“healthy worker-management relations were fundamental to industrial development and both sides need to work in a spirit of collaboration and cooperation, without losing sight of the overall objective of progress”*.

Referring to labour reforms, the Prime Minister said his government was committed to do everything possible to ensure good industry-labour relations. *“There is a view that the labour laws are too rigid and are a constraint on our growth impulses. There is also a contrary view that the labour legislation needs to better protect the interests of workers, particularly in the unorganized and the contract labour sectors,”* he said.

Why labour legislations

Every employee is a Human element, Social element, Economical element and Legal element. Therefore labour legislations are considered as Specifications / Standards / Measuring Scale which has the specification to Judge and set the imbalances right and to maintain the industrial harmony. All the above it shows human touch, face to the deprived, humiliated employees and wiped up the tears. It is *unbiased and avoids unfair practices in the shop floor*. In those days where the laborers toiled hard for a pittance for the work they put in, the odds have always been stacked against them. The fact that they were illiterate, unsure of themselves and disunited did nothing to improve their situation. They were systematically exploited and

discriminated against by hordes of employers, for whom profits took precedence over everything else, including the health and welfare of a worker. Around this time, the government decided to impose some kind of order in this set-up. A number of laws were enacted in order to provide relief to workers and ensure the smooth working of the production process to ensure workplace harmony.

There are three reasons for articulating objectives of labour legislations. One is at the level of the legislature or otherwise the policy-making sphere, asking whether changes/additions to the law are needed. The second is at the level of the courts or otherwise the realm of applying the law, explanation. The third is at the level of the constitution, in case the law is challenged as unconstitutional. Labour adjudication is one of the means of settlement of dispute between an employer and employees. It involves determination of a question of fact or law arising out of a labour dispute judicially by trial through a court or a tribunal.

Labour Rights under the Indian Constitution

Articles 14, 19, 21, 23 and 24 form part of the Fundamental Rights guaranteed under Part III of the Constitution. Art 14 of the Indian Constitution explains the concept of Equality before law. The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. Equal pay for equal work is a concomitant of Article 14 of the Constitution. Article 19 (4) speaks about the Fundamental right of citizen to form an associations and unions. It thus includes the right to form companies, societies, partnership, trade union, and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union. The sweep of the right to life, conferred by Article 21 is wide and far reaching. An equally important facet of that right is the right to livelihood because; no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Article 23 of the Constitution prohibits traffic in human being and beggar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Article 23 prohibits the system of 'bonded labour' because it is a form of force labour within the meaning of this Article. No one can compel a person to work against his will. The Articles 21, 23, 24, 38, 39, 39-A, 41, 42, 43, 43-A and 47 of the Constitution, are calculated to give an idea of the conditions under which labour can be had for work and also of the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country.

Elements of Labour Law

The basic subject matter of labour law can be considered under *nine broad heads*: 1) employment; 2) individual employment relationships; 3) wages and remuneration; 4) conditions of work; 5) health, safety, and welfare; 6) social security; 7) trade unions and industrial relations; 8) the administration of labour law; and 9) special provisions for particular occupational or other groups.

Labour law has won recognition as a distinctive branch of the law within the academic legal community, but the extent to which it is recognized as a separate branch of legal practice varies widely depending partly on the extent to which there is a labour code or other distinctive body of labour legislation in the country concerned, partly on the extent to which there are separate labour courts or tribunals, and partly on the extent to which an influential group within the legal profession practice specifically as labour lawyers.

Workforce

In 2006, there are an estimated 496.4 million workers in the Indian economy. Only 7% of the work force is in the formal, organized sector. Employer organizations attribute this to the presence of labor laws that restrict downsizing. To circumvent such laws, private sector companies continue hiring workers on a contract basis. The informal sector, where the workforce generally does not enjoy legal protection, has witnessed more growth. Official statistics put the unemployment rate at 9.9%, but unofficial estimates suggest it could be as high as 20%. The South Indian states have experienced a generally peaceful labor situation with no major prolonged strikes in any sector. Regional state governments have initiated some significant labor reform measures. A majority of labor in India is employed by unorganized sector (unincorporated). These include family owned shops and street vendors. Above is a self-employed child laborer in unorganized retail sector of India. The unorganized sector has low productivity and offers lower wages. Even though it accounted for over 94% of workers, India's unorganized sector created just 57% of India's national domestic product in 2006.

India's National Sample Survey Office in its 67th report found that unorganized manufacturing, unorganized trading/retail and unorganized services employed about 10% each of all workers nationwide, as of 2010. It also reported that India had about 58 million unincorporated non-Agriculture enterprises in 2010. India's economy has been adding about 8 million new jobs every year predominantly in low paying, unorganized sector

Classification of Various Labour Laws

There are over 45 legislations on labour from the Central Government and the number of legislations enacted by the State Governments is close to four times that of the Central Acts. Labour Laws can be classified into the following eight categories:

1. Laws related to Industrial Relations
2. Laws related to Wages
3. Laws related to Specific Industries
4. Laws related to Equality and Empowerment of Women
5. Laws related to Deprived and Disadvantaged Sections of the Society
6. Laws related to Social Security
7. Laws related to Employment & Training
8. Others

On the other hand the labour enactments also can be broadly classified as follows to have better understanding for practicing purpose of the same

Regulatory Legislations

[Administrative agencies with executive branch of government designed to carry out the law. Administrative agencies carry out legislation in several ways, including enacting regulations to carry out what the agency believes is the legislative intent. Agencies generally formulate proposed regulations and then open up rule-making proceedings in which interested parties can testify and comment on them. The agency then issues a rule or policy that binds the agency in future cases just as statutory law does.]

- a. The Factories Act, 1948
- b. The Dock Workers (Regulation of Employment) Act, 1948
- c. The Plantation Labour Act, 1951
- d. The Mines Act, 1952
- e. The Contract Labour (Regulation and Abolition) Act, 1970
- f. The Motor Transport Workers Act, 1961
- g. The Shops and Establishments Act
- h. The Apprentices Act, 1961

Social Security Legislations

[Designed to provide benefits to employees and their dependants through their income for retirement, disability, and other purposes]

- i. The Employees' Compensation Act, 1923
- j. The Employees' State Insurance Act, 1948
- k. The Payment of Gratuity Act, 1972
- l. The Employees' Provident Fund & Miscellaneous Provisions Act, 1952
- m. The Payment of Bonus Act, 1965
- n. The Labour Fund Act

Preventive Legislations

[Designed to provide precautionary and defensive action to both employers & employees in terms of maintenance of Industrial Harmony and Organisational growth]

- o. The Inter-State Migrant Workmen Act, 1979
- p. The Minimum Wages Act, 1948
- q. The Payment of Wages Act, 1936
- r. The Industrial Employment (Standing Orders) Act, 1946
- s. The Maternity Benefit Act, 1961
- t. The Equal Remuneration Act, 1976
- u. The National and Festival Holidays Act
- v. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- w. The Confirmation of Permanent status Act

Curative Legislations

[Designed to provide therapeutic healing action to both employers & employees in terms of any disputes arising out of employment after exhausting all the possible solutions]

- x. The Trade Union Act, 1926
- y. The Industrial Disputes Act, 1947

Green Legislations

[Designed to provide Environment protection so as to ensure safe workplace to both employers & employees]

- z. Air (Prevention and Control of Pollution) Act, 1981
- aa. Water (Prevention and Control of Pollution) Act, 1974
- bb. The Hazardous Wastes (Management & Handling) Rules, 1986
- cc. Explosives Act, 1984
- dd. Petroleum Act, 1934 & Rules, 2002
- ee. Fire Services Act & Rules

There are also other labour laws enacted and enforced by the various State Governments which apply to respective States

Every enactment comprises with the sequence of its preamble, short title & applicability, definitions, laws (sections), central and state rules, forms, list of cases cited followed by notes. To have a better understanding and interpretation we can read through *preamble, forms, state/central rules, sections, definition, notes, short title & applicability and case laws*. Reading and understanding of definition clause is very important as certain important terms defined in different ways under different enactments *i.e., example 1, the components of wages differ from ever or other enactment*.

Employees Provident Fund and Miscellaneous Provisions Act, 1952;

The definition of 'Basic Wages' has been defined under Section 2(b) of the EPF & MP Act, 1952; Section 2 (b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the

terms of the contract of employment and which are paid or payable in cash to him, but does not include

- I. The cash value of any food concession;
- II. Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- III. Any presents made by the employer;

Employees' State Insurance Act, 1948;

Section 2 (22) "wages" means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes [any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and] other additional remuneration, if any, [paid at intervals not exceeding two months], but does not include

- (a) Any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- (b) Any travelling allowance or the value of any travelling concession;
- (c) Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- (d) Any gratuity payable on discharge.

The Factories Act, 1948;

Section 59 (1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. 1(2) For the purposes of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

The Minimum Wages Act, 1948;

Sec 2 (h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, [and includes house rent allowance], but does not include--

- (i) The value of-- (a) any house-accommodation, supply of light, water, medical attendance, or
- (b) Any other amenity or any service excluded by general or special order of the appropriate Government;
- (ii) Any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- (iii) Any travelling allowance or the value of any travelling concession;
- (iv) Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (v) any gratuity payable on discharge;

The Payment of Wages Act, 1936

Sec 2 (vi) "wages" means all remuneration (whether by way of salary allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes (a) Any remuneration payable under any award or settlement between the parties or order of a court;

- (b) Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) Any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) Any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;
- (e) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include -
- (1) Any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
 - (2) The value of any house-accommodation or of the supply of light water medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
 - (3) Any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
 - (4) Any travelling allowance or the value of any travelling concession;
 - (5) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
 - (6) Any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

Therefore, every enactment differs from each other in terms of what are the components to be considered for wages. The meaning of employee is also differs similarly from enactment to enactment.

Explanation on “Ordinary rate of Wages”

Also, it is pertinent to mention here that the wages paid for overtime work done is clear that “Ordinary rate of Wages” means Basic Wages + such allowances and does not include a Bonus and wages for overtime work. The test is such allowances and the entitlement to such allowances. The entitlement of allowances may be in terms of contract, settlement or award. Thus it means all allowances which a person is entitled to other than bonus and wages for overtime work will be included. All the components which include Basic, DA, VDA, HRA, Additional Allowance, and Conveyance Allowance & Flexibility Allowance since they are coming under the definition of “Ordinary Rates Wages”.

Washing Charges should not be included since it is in the nature of reimbursement. Same is the case for Medical Allowance. The condition precedent for a Medical Allowance is that bill should be produced for reimbursement. Therefore it is in the nature of a reimbursement subject to a ceiling and is not really an allowance. If, on the other hand it is a monthly allowance paid as Medical Allowance unlinked to any kind of requirements to produce bills or in the nature of reimbursement, then it shall be included under “all allowances”. Leave Travel Assistance is not attracted under the definition of “Ordinary Rate of Wages”. Leave Travel Assistance or allowance contemplates the person going on leave and that condition precedent is not fulfilled when a person work over time.

Attendance Bonus is coming under the exception since bonus of any kind is not included in the definition.

Incentive is linked with production. Hence it is also not included in the definition; Night Shift Allowance should not be included unless he works in the night shift. It is necessary to include all components of salary that a person is entitled for the time being, except washing charges, night shift allowance, LTA, medical allowance, Attendance Bonus & Incentive.

i.e., example 2, the definition of ‘workmen’, as provided in the Industrial Disputes Act, 1947 differs from other.

The Industrial Disputes Act, 1947

Sec 2 (s) “workman” means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.]

The Apprentice Act, 1961

“Worker “ means any person who is employed for wages in any kind of work and gets his wages directly from the employer but shall not include as apprentice referred to his clause.

The Factories Act, 1948

Sec “ Worker” means a person employed, directly or by or through any agency (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 but does not include any member of the armed forces of the Union .

The Employee's Provident Fund and Miscellaneous Provisions Act, 1952

Sec 2F Any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person- (i) employed by or through a contractor in or in connection with the work of the establishment; (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment

The Employee State Insurance Act, 1948

Sec 2(9) “Employee” Any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and- (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the

products of, the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment; but does not include- (a) any member of the Indian naval, military or air forces; or (b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month: Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the period;

The Minimum Wages Act, 1948

Sec 2I Any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes 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 also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union.

The Payment of Bonus Act, 1965

Sec 2(13) Any person (other than an apprentice) employed on a salary or wage not exceeding three thousand and five hundred rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied

The Payment of Gratuity Act, 1972

"Employee" means any person (other than an apprentice) employed on wages in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

The Maternity Benefit Act

"Woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

The Payment of Wages 1936

"Employed person" includes the legal representative of a deceased employed person;

The Industrial Establishment standing Orders Act 1946

"Workman" have the meanings assigned in (s) of section 2 of the Industrial Disputes Act, 1947

Further, every state government declares the quantum of minimum wages to be paid to the workmen at different time frames / time intervals like quarterly/half yearly basis with different components. There should be fixation of National level Minimum Wage for

simplicity and to avoid disputes. The rate of contributions towards the social security enactments also differs from one enactment to the other. Rate of contributions to EPF verses ESIC is different.

The Industrial Disputes Act, 1947 also sets conciliation, arbitration and adjudication procedures to be followed in the case of an industrial dispute. It empowers national or state governments to constitute Labour Courts, Tribunals, National Tribunals, Courts of Inquiry, and Boards of Conciliation. The government has the monopoly in the submission of industrial disputes to Conciliation Boards, Courts, Tribunals or National Tribunals. Contract workers and workers in casual, temporary (paid for 240 days or less in any 365 days period) and badli (substitute) are not considered workmen under the IDA and are exempted from the application of severance pay, mandatory notice or retrenchment authorization. From this perspective, labor laws create important incentives to hiring non permanent workers.

Besides, both Central and State Governments have formulated Rules to facilitate implementation of these laws. In a dynamic context laws need to be reviewed from time to time. Hence, review/updation of labour laws is a continuous process in order to bring them in tune with the emerging needs of the economy including attaining higher levels of productivity and competitiveness, increasing employment opportunities, attracting more investment for growth, etc.

Legislative Initiatives Recently Taken / Proposed to be Taken Review / updation of labour laws is a continuous process and changes are effected in labour laws from time to time by the Government in order to bring them in tune with the emerging needs of the economy and after detailed discussion with the stakeholders. The following Acts were amended recently:

Certain Acts Amended Recently

The Employees' Compensation Act, 1923 (earlier called 'the Workmen's Compensation Act, 1923) was amended w.e.f 18.01.2010 to, inter-alia:

- Increase the wage ceiling limit from Rs.4,000/- to Rs.8,000/- per month for the purpose of calculating compensation; thus Enhanced the compensation for death, disablement, funeral expenses;
- Allow reimbursement of the actual medical expenses on treatment of injuries caused during work without any ceiling; and make compensation gender neutral;
- Dispose cases of compensation within a period of three months from the date of reference. *The Payment of Gratuity Act, 1972* was amended through notification dated 31.12.2009 to
- Cover teachers in educational institutions w.e.f. 04.04.1997;
- Enhance the ceiling on gratuity from Rs.3.5 lakh to Rs.10 lakh w.e.f. 24.05.2010. *The Employees' State Insurance Act, 1948* was amended w.e.f. 01.06.2010 to:
- Improve the quality of service under the scheme;
- Enable ESI infrastructure to be used to provide health care to workers in the unorganized sector. *The Plantations Labour Act, 1951* was amended w.e.f. 01.06.2010 to:
- Provide safety and occupational health care to plantations workers. *The Industrial Disputes Act, 1947* was amended w.e.f.15.09.2010 to:
- Amplify the term 'appropriate government' defined under section 2A of the Act;
- Enhance the wage ceiling from Rs.1,600/- to Rs.10,000/- per month to cover workmen working in supervising capacity;
- Provide direct access for the workman to the Labour Court or Tribunal in case of disputes arising out of Section 2A of the Act;
- Establish Grievance Redressal Machinery;
- Empower the Labour Court or Tribunal to execute awards

New Bills Introduced

Two new bills have been introduced in the Parliament in March 2011. *The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment Bill, 2011* was introduced in the Rajya Sabha on 23.03.2011. The main proposals of the new Bill, 2011 are to:

- Change the definition of small establishments to cover 10-40 workers as against 10-19 workers in the Principal Act;
- Increase the number of Acts to be covered under the Principal Act from 9 to 16;
- Simplification and consolidation of returns to one form for very small and small establishments and maintenance of 1 register for very small establishments and 2 registers for small establishments.
- Maintenance of registers and returns in computer, floppy, diskette or other electronic media and return submitted through e-mail;

The Mines Act, 1952 Amendment Bill was introduced in Rajya Sabha on 23.03.2011 to make it more relevant and effective in the present economic scenario. The new Bill proposes to:-

- Impose heavier fines and increase terms of imprisonment for any violation of the provisions of the Act affecting the safety and security of workers;
- Cover the whole of India including areas coming under the jurisdiction of Territorial Waters, Continental Shelf, Exclusive Zones and other

Suggestions

- There should be amendment in the Payment of Bonus Act, 1965 to remove the ceiling.
- Labour laws should be applied universally and there should not be any categorization like applicable to 5-10 or 20 employees.
- Instead of having too many labour laws, these should be rationalized in 5-6 groups.
- There are so many definitions in the labour laws and all are different for different laws. Definitions should be one and applied to all laws uniformly.
- There is no Act for protecting the collective bargaining by workers and strikes have been declared illegal by the Courts.
- There should be a provision that if 2/3rd or 3/4th (or any such number as may be decided) of workers decide to go on strike, it cannot be declared illegal.
- The system of engagement of contract/casual labour in Government departments shall be abolished.
- Due to already overburdening of judicial system, a separate independent judicial system for labour issues may be created, instead of handing over power to Labour Department.
- There should be fixation of National level Minimum Wage for simplicity and to avoid disputes.
- The definition of 'workmen', as provided in the Industrial Disputes Act, 1947 should be applicable to all labour laws.
- No contract labor shall be employed wherever the job is permanent in nature.
- The small scale sector is the greatest source of employment so it must be ensured that the entrepreneurs are not harassed. Benefits for the workers should not be compromised.
- The Factories Act, 1948 new terms like 'hazardous substance', 'disability' etc., to be redefined certain other terms and provide for new provisions on Health, Safety,

Hazardous Process, Welfare, Working Hours for Adults, Employment of Young Persons, Annual Leave with wages and Penalties & Procedures including provision of flexibility in the matter of employment of women during night in factories.

- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 should make it gender neutral and for entitlement to social protection measures.
- For social security of workers, there should be only one Act then there has to be single rate of contribution.
- The "decent work" should be fundamental agenda of the Ministry of Labour to start with.
- Wage payments should be made through cheques and RBI should change its policy so that even zero balance in accounts can be maintained.
- Many laws like the Industrial Disputes Act 1947 have become archaic in the present scenario.
- Records should be maintained in electronic format.
- Equating the wages of contract labour with that of regular worker will not be appropriate, as the selection process for a contract worker and regular worker differ and also the quality and skill of both may be different.
- One law should take care of all whether it is organized or unorganized class of workers.
- There should be a provision for compounding of offences under labour laws as this will make the enforcement much quicker and effective.

Conclusion

- In the definition clause/section definition of certain terms such as "workmen, worker, wages, contributions, Ordinary rate of Wages, etc", are differ from one enactment to another, despite all the enactments talk about the same category of employees.
- No National Floor Level uniform common Minimum Wages is applicable to all employees of various employments working across Nation. The payment of floor level minimum wages differs geographically from each other.
- Contract labour employed in any industry performs the same or similar kind of work (much less perennial nature of job) as does the workmen (permanent) directly appointed by the Principal Employer. However, the contract labours are not paid wages nor provided with any welfare measures on par with the permanent employees on almost all the occasions.
- On many occasions the contract employees are deprived with rate of wages, holidays, hours of work, social security provisions.
- Current labour legislations are complicated with multiple layers of regulation and compulsions.

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