

All you need to know about Labour Laws in India

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INTRODUCTION:

Labour law is important to any country's industrial growth, economic development and human development and it is in focus since the industrial revolution. Especially in western and democratic countries, the protection for the workers on labour issues around employee-employer interaction is given a huge importance. The Constitution of India 1950, under that Article 14, states that everyone is equal before the law, Article 15 states that non-discrimination against citizens and right of equality of opportunity for employment under the state; Article 19 (1) (C) provides everyone right to form associations or unions, Article 23 prohibits all trafficking and forced labour, whereas, Article 24 states prohibits child labor under 14 years old in a factory, mines or any other hazardous employment.

The Ministry of Labour and Employment seeks to protect and for the welfare of the workers in general and those who constitute the poor, deprived and disadvantaged sections of the society, with due to create a healthy working environment for higher production and productivity, and developing and coordinating vocational skill training and employment services. Government's attention is also focused on providing social security to the labour force both in the organized and unorganized sectors, in along with the process of liberalization. These objectives can only be achieved through the enactment and implementation of various labour laws, which regulate the terms and conditions of service and employment of workers.

India has a number of labour laws that govern almost all the aspects of employment such as payment of wages, minimum wages, payment of bonus, payment of gratuity, contributions to provident fund and pension fund, working conditions, accident compensations, etc. The Government has enacted certain central legislations, i.e. the Employees Provident Fund and Miscellaneous

Provisions Act, Employees State Insurance Act, Payment of Wages Act, Minimum Wages Act, Equal Remuneration Act, Maternity Benefits Act, etc.

In addition, at the State level, the State Governments usually have a separate Labour Ministry, which seeks to ensure compliance with State labour laws i.e. State Shops and Establishments Act, Labour Welfare Fund Act, etc through its Labour Department, which is generally operational at the district level.

Main important labour law acts are:

1. Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 has been enacted for the investigation and settlement of industrial disputes in any industrial establishment. The Act defines "Industrial dispute" as a dispute or difference between workmen and employers or between workmen and workmen, which is connected with employment or non-employment or the terms of employment or with the conditions of labour. Dismissal of an individual workman is deemed to be an industrial dispute.

The ID Act provides for the appointment of Conciliation Officers, Board of Conciliation, Courts of Inquiry, Labour Courts, Tribunals, and National Tribunals for settlement of disputes. Another method recognized for settlement of disputes is through arbitration. The Industrial disputes Act provides a legalistic way of settling disputes. The goal of preventive machinery as provided under the Act is to create an environment where the disputes do not arise at all. The ID Act prohibits unfair labour practices which are defined in the Fifth Schedule—strikes and lockouts (except under certain defined conditions and with proper notice). It also provides for penalties for illegal strikes and lockouts and unfair labour practices and provisions regarding lay off and retrenchment as well as compensation payable thereof.

The ID Act provides that an employer who intends to close down an industrial establishment shall obtain prior permission at least ninety days before the date on which he intends to close down the industrial establishment, giving the reasons thereof.

CASE LAWS:

- ***Oswal Agrouane Ltd. V. Oswal*** -Workers Union [2005(1) LLJ 1117-SC] under this case the issue were, as per sec. 25 N and 25 O, an employer who intends to retrench/ close down is required to apply for government

permission company without applying for government permission, entered into conciliation settlement with the workmen on the closure of the establishment is such a settlement is enforceable? The court held that the, any agreement opposed to public policy is null and void as per sec. 23 of the Indian Contract Act 1872, since the contract is void ab-initio, it is not enforceable by law.

- ***All India Bank Employees Association v. I.T.-*** The Supreme Court held, "the right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of article 19 but by totally different considerations." Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike. Under the Industrial Dispute Act, 1947 the ground and condition are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal.

2. Trade Unions Act, 1926

The Trade Unions Act, 1926 (the "Trade Unions Act") is enacted for the registration of Trade Unions in India and for the protection of the trade unions. Further, the Trade Unions Act also in certain respects defines the law relating to registered Trade Unions like mode of registration, application for registration, provisions to be contained in the rules of a Trade Union, minimum requirement for membership of a Trade Union, rights and liabilities of registered Trade Unions, etc.

CASE LAWS:

- ***Tata Electric Companies Officer's Guild V. Registrar of Trade Unions, 1994, Bombay HC-*** In this case the court held that, according to sec. 10 of the Trade Union Act, for a registrar to cancel the registration, willful neglect to the notice is a must. If the trade union sends the account statement upon notice of the registrar, the registrar cannot cancel the registration on the ground that the account statement was not filed earlier.
- ***Simpson & Group Companies Workers & Staff Union V. Amco Batteries Ltd. 1992-***In this case it was held that physical obstruction of movement of management officials, contractors, or vehicles carrying raw materials, is not a trade union right or a fundamental right under art 19.

Immunity under sec. 18 cannot be claimed for such activities. Right to protect is very intangible right and it extends only up to the right of free movement of others. The methods of persuasion are limited to oral and visual and do not include physical obstruction of vehicles or persons.

3. Minimum Wages Act, 1948

The Minimum Wages Act, 1948 provides for fixing of minimum rates of wages in certain employments. In terms of the provisions of the Minimum Wages Act, an employee means (i) 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; (ii) an outworker, 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; and (iii) an employee declared to be an employee by the appropriate Government.

The term "wages" has been defined to mean 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 work done in such an employment and includes house rent allowance but does not include:

- i. The value of:
 - a. Any house accommodation or supply of light, water and 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 personal 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.

Further, the Minimum Wages Act requires the employer to pay to every employee engaged in schedule employment wages at a rate not less than minimum rates of

wages as fixed by a notification without any deduction (other than prescribed deductions, if any).

4. Payment of Wages Act, 1936

The Payment of Wages Act, 1936 is an Act to regulate the payment of wages to certain classes of employed persons. The Payment of Wages Act seeks to ensure that the employers make a timely payment of wages to the employees working in the establishments and to prevent unauthorized deductions from the wages.

According to the Payment of Wages Act, all wages shall be in current coin or currency notes or in both. It is, however, provided that the employer may, after obtaining the written authorization of the employed person, pay him the wages either by cheques or by crediting the wages in his bank account.

CASE LAW:

- ***Mansukh Gopinath Jadav V. W.M. Bapat-*** In this case it was held that, there is nothing illegal in the action of the employer or the representative union in arriving at a settlement and the clause in the settlement providing for deduction of certain amount and paying it to the employee's union such settlement does not contravene of Sec. 7 of the act because this sec. permits deduction with the consent of the employees.

5. Factories Act, 1948

The Factories Act, 1948 lays down provisions for the health, safety, welfare and service conditions of workmen working in factories. It contains provisions for working hours of adults, employment of young persons, leaves, overtime, etc. It applies to all factories employing more than 10 people and working with the aid of power, or employing 20 people and working without the aid of power. It covers all workers employed in the factory premises or precincts directly or through an agency including a contractor, involved in any manufacture. Some provisions of the Act may vary according to the nature of work of the establishment.

Some Major provisions of the Factories Act are explained below:

- a. Section 11: of the Act provides that every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance. Section 13 of the Act focuses on ventilation and temperature maintenance at workplace.

Every factory should work on proper arrangements for adequate ventilation and circulation of fresh air.

- b. Section 18: of the Act specifies regarding arrangements for sufficient and pure drinking water for the workers.
- c. Section 19: further mentions that in every factory there should be sufficient accommodation for urinals which should be provided at conveniently situated place. It should be kept clean and maintained.
- d. Section 21: of the Act provides from proper fencing of machinery. And that any moving part of the machinery or machinery that is dangerous in kind should be properly fenced

CASE LAWS:

- ***V.P. Gopala Rao v. Public Prosecutor*** - The Supreme Court held that Sun cured tobacco leaves subjected to processes of moistening, stripping, breaking up, packing, with the view to transport them to Company's main Factory for their use in manufacturing Cigarette is a manufacturing process under the Factories Act.
- ***Tamil Manila Thozilalar Sangam v. Chairman TNEB*** - Where the statute casts an obligation to own a canteen in the factory, and the establishment runs a canteen through a contractor who brings the workers for the canteen would be part and parcel of the establishment and the canteen workers would be deemed to be regular employees of the establishment entitled to arrears of salary and other monetary benefits Case.
- ***J.K. Industries Ltd. v. Chief Inspector***- In this case according to sec, 2(n) the Supreme Court has held that only a member of Board of Directors of the Company can be occupier of the factory of the Company. The ultimate control of factory owned by company vests in Board of Directors. Ultimate control which vests in Board of Directors cannot be vested in any one else. Company owing factory cannot nominate its employees or officers except Director of the company as occupier of its factory. Therefore an employee of company or factory cannot be occupier.

6. *The Employee's Compensation Act, 1923 (formally known as "The Workmen Compensation Act, 1923")*

The Employee's Compensation Act, 1923 aims to provide financial protection to workmen and their dependents in case of any accidental injury arising out of or in course of employment and causing either death or disablement of the worker by means of compensation. This Act applies to factories, mines, docks, construction establishments, plantations, oilfields and other establishments listed in Schedules II and III of the said Act, but excludes establishments covered by the ESI Act.

The Act provides for payment of compensation by the employer to the employees covered under this Act for injury caused by accident. Generally, companies take insurance policies to cover their liability under the EC Act.

CASE LAWS:

- ***Superintending Engineer, T.N.S.E.B v. Sankupathy (T. M. T.)***- An Ardhanari was died when he was coming to his work under appellant. The court observed that "in the course of employment" talks about the point of time and place of accident and "out of employment" talks about a casual connection between the accident and the employment and which according to the court is very narrow interpretation giving the modern industrial set up. So doctrine of notional extension should be used and even if the workman did not reach the place of work the workmen should get compensation for accident.
- ***Union of India v. Mrs. . Noor Jaha***- a railway gangman was ordered by his employer to go to another place for cleaning and in the way from one place to another accident happened. Justice Sukla observed that the accident has occurred in the duty hour and when he was going to do his duty on behalf of his employer and he concluded that the accident has occurred in the course of his employment.

7. *Equal Remuneration Act, 1976*

The Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers for the same work and prevents discrimination, on the ground of sex, against women in the matter of employment, recruitment and for matters connected therewith or incidental thereto. This Act applies to virtually every kind of establishment.

CASE LAWS:

- ***Surinder Singh V. Engineer in Chief, C.P.W.D-*** this case was brought before the apex court by the way of writ petition. The main content was brought in this case was that the Petitioner was employed by the Central Works Department on daily wages and their wages were less than those who were employed by the Department on the permanent basis but they all did the same kind of work. The court held that, it could not say that the doctrine of “Equal Pay for Equal Work” was mere an abstract doctrine and that it was not capable of being enforced by law. The court said that on the point of being giving service on temporary or permanent basis. The doctrine was required to be applied to persons employed on daily wages and they were entitled to the same wages as the permanent employees.
- ***Lecturers Association V. State of Karnataka-*** in this the main subject matter was that the State government of Karnataka has ordered that the teachers which are appointed on the ad-hoc basis will get a fixed amount of salary which is less than the payable amount to the regular employees. Further, it was also said that such temporary appointment would be extent up to 3 months only. The Supreme Court held that the order which was passed by the State Govt. is void and held violate the art. 39(d) and also declared the payment of fixed salary to the temporary teacher was invalid, as it pays less than the regular employees.

8. *Maternity Benefit Act, 1961*

The Maternity Benefit Act, 1961 specifically enacted for the women workers who are working in factories or industries. It regulates the employment of women for a certain period before and after childbirth and provides maternity benefits and

certain other benefits including maternity leave, wages, bonus, nursing breaks, etc, to the women employees.

The Maternity Benefit Act, 1961 specifically applies to (a) a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; (b) every shops or establishments within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed on any day of the preceding 12 months.

Except for section 5A and 5B, the provisions of the Maternity Benefit Act shall not apply to the employees who are covered under the Employees' State Insurance Act, 1948 for certain periods before and after child-birth and for which the ESI Act provides for maternity and other benefits. The coverage under the ESI Act is, however, at present restricted to factories and certain other specified categories of establishments located in specified areas. Under the Maternity Benefit Act, an employer has to give paid leave to a woman worker for six weeks immediately following the day of her delivery or miscarriage and two weeks following a tubectomy operation. The maximum period for which a woman shall be entitled to maternity benefit shall be 12 weeks, of which not more than six weeks shall precede the date of her expected delivery.

A pregnant woman is also entitled to request her employer not to give her work of arduous nature or which involves long hours of standing, etc, during the period of one month immediately preceding the date of her expected delivery. When a woman absents herself from work in accordance with the provisions of the Maternity Benefit Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence.

CASE LAWS:

- ***Ram Bahadur Thakur (P) Ltd. v Chief Inspector of Plantation-*** A female worker employed at the Pambanar Tea Estate was denied maternity benefits on the grounds that she had actually worked for 157 days instead of the 160 days required to qualify for them. The Supreme Court, however, held that for the purposes of computing maternity benefits, all days including Sundays and unpaid holidays must be taken into consideration.

- ***Municipal Corporation of Delhi v. Female Workers' (Muster Rolls) and another,-*** The Municipal Corporation of Delhi stated that it granted maternity leave to its regular female workers but not to the daily wage ones, that is, the ones on the muster rolls. The respondents argued that the practice was unfair as there was hardly any difference in the work allotted to female workers who were regular and those who were on daily wage. Accepting the contention, the Supreme Court upheld the right of female construction workers to be granted maternity leave by extending the scope of the Maternity Benefits Act, 1961 to daily wage workers.

9. Child Labour (Prohibition & Regulation) Act, 1986

The Constitution of India also incorporates provisions to secure labour protection to children. It expressly prohibits the employment of a child below the age of 14 years in work in any factory or mine or engagement in any other hazardous employment.

The Government enacted the Child Labour (Prohibition & Regulation) Act, 1986 which prohibits the employment of children who are below the age of 14 like cinder picking, cleaning of ash pits, building operation, manufacturing or handling of pesticides and insecticides, and manufacturing of matches, explosives, fireworks, etc. In addition, the Child Labour Prohibition & Regulation Act regulates the working conditions of children in all employments, which are not prohibited under the Act. It also fixes the number of hours and the period of work and requires the occupiers of establishments employing children to give notice to the local inspector and maintain the prescribed register.

CASE LAW:

- ***MC Mehta v State of Tamil Nadu 10th Dec, 1996 6 SCC 756,-***

Supreme Court of India gave certain directions on the issue of elimination of child labour. The main features of the judgment are as under:

- i. Survey for identification of working children;
- ii. Withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions;
- iii. Contribution at the rate of Rs 20,000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose;

- iv. Employment to one adult member of the family of the child so withdrawn from work and if that is not possible a contribution of Rs 5,000 to the welfare fund to be made by the State Government;
- v. Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs 20,000/25,000 deposited in the welfare fund, as long as the child is actually sent to a school; and
- vi. Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer.