REGULATION OF LABOUR LAW IN INDIA-CHALLENGES FOR THE FUTURE

DISSERTATION

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ABBREVIATIONS

i.	SC	Supreme Court
ii.	AIR	All India Reporter
iii.	Art.	Article
iv.	Cons.	Constitution
v.	Edn.	Edition
vi.	Hon'ble	Honourable
vii.	PIL	Public Interest Litigation
viii.	v	Versus
ix.	Spl.	Special
x.	I.P.C	Indian Penal Code
xi.	Prof.	Professor
xii.	i.e	that is
xiii.	S.	section

TABLE OF CONTENT

1. CHAPTER-1

CHAPTER 1

Introduction

Labour Law means Employment Law, administrative rules and precedents which address in the legal rights of and restrictions on, working people and their organizations. Labour Law defines the rights and obligations as workers, union members and employers in the workplace. Labour law covers: Industrial relations – certification of unions, labour management relations, collective bargaining and unfair labour practices; Workplace health and safety; Employment standards, including general holiday, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay.

There are two broad categories of labour law as follows:

1. Collective labour law relates to the tripartite relationship between employee, employer and union. 2. Individual labour law concerns employees' rights at work Labour rights have been integral to the social and economic development since the industrial revolution. Labour law arise due to the demand of workers for better conditions and demand of employers to restrict the conditions keep the labour cost low.

Labour laws in India include Industrial Dispute Act, 1947; Workmen Compensation Act, 1923; Payment of Bonus Act, 1965; the Payment of Wages Act,1936; Minimum Wages Act, 1948; Equal Remuneration Act, 1976 etc. The labour laws are subject under Concurrent List in the Constitution of India. Both Central and state government have the power to make laws upon this subject but some matters are confined to the central government only. These laws have been made to generate employment opportunities and also to protect and benefit the workers, including the poor, deprived and underprivileged section of society to establish a healthy work environment for higher output and productivity. The focus of Government is on promoting welfare activities and providing social security to the labourers in both organized and unorganized sectors. So, these purposes can be achieved by enacting labour laws which governs the rules and regulations of service, wages, compensation, employment of workers. Both Central and State Government have their separate Labour Ministry which are governed by Central and State labour laws which ensures the working of their subordinate bodies.[1]

Labour law is also known as **labour law** or **employment law** mediates the relationship between workers, employing entities, trade unions and the government. Collective labour law relates to the tripartite relationship between employee, employer and union. Individual labour law concerns employees' rights at work also through the contract for work. Employment standards are social norms (in some cases also technical standards) for the minimum socially acceptable conditions under which employees or contractors are allowed to work. Government agencies such as the former US Employment Standards Administration enforce labour law legislature, regulatory, or judicial.

Purpose of Labour Law in India:

Labour Law is adapted to the economic and social challenges of the India. It establishes a legal system that facilitates productive individual and collective employment relationships and therefore a productive economy. By providing a framework within which employers, workers and their

representatives can interact with regard to work related issues. It provides a clear and constant reminder and guarantee of fundamental principles and rights at work.

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.** The earliest Indian statute to regulate the relationship between employer and his workmen was the **Trade Dispute Act, 1929 (Act 7 of 1929)**.

Labour law arose due to the demands of workers for better conditions, the right to organize, and the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour costs low. Employers' costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power – which some employers may oppose. The state of labour law at any one time is therefore both the product of, and a component of, struggles between different interests in society. International Labour Organisation (ILO) was one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I. In Great Britain, the Whitley Commission, a subcommittee of the Reconstruction Commission, recommended in its July 1918 Final Report that "industrial councils" be established throughout the world. The British Labour Party had issued its own reconstruction programme in the document titled Labour and the New Social Order. In February 1918, the third Inter-Allied Labour and Socialist Conference (representing delegates from
Great Britain, France, Belgium and Italy) issued its report, advocating an international labour rights body, an end to secret diplomacy, and other goals. And in December 1918, the American Federation of Labour (AFL) issued its own distinctively apolitical report, which called for the achievement of numerous incremental improvements via the collective bargaining process.
As the war drew to a close, two competing visions for the post-war world emerged. The first was offered by the International Federation of Trade Unions (IFTU), which called for a meeting in Berne in July 1919. The Berne meeting would consider both the future of the IFTU and the various proposals which had been made in the previous few years. The IFTU also proposed including delegates from the Central Powers as equals. Samuel Gompers, president of the AFL, boycotted the meeting, wanting the Central Powers delegates in a subservient role as an admission of guilt for their countries' role in the bringing about war. Instead, Gompers favoured a meeting in Paris which would only consider President Woodrow Wilson's Fourteen Points as a platform. Despite the American boycott, the Berne meeting went ahead as scheduled. In its final report, the Berne Conference demanded an end to wage labour and the establishment of socialism. If these ends could not be immediately achieved, then an international body attached to the League of Nations should enact and enforce legislation to protect workers and trade unions.
The British proposed establishing an international parliament to enact labour laws which each member of the League would be required to implement. Each nation would have two delegates to

the parliament, one each from labour and management. An international labour office would collect statistics on labour issues and enforce the new international laws. Philosophically opposed to the concept of an international parliament and convinced that international standards would lower the few protections achieved in the United States, Gompers proposed that the international labour body be authorized only to make recommendations, and that enforcement be left up to the League of Nations. Despite vigorous opposition from the British, the American proposal was adopted. The Americans made 10 proposals. Three were adopted without change: That labour should not be treated as a commodity; that all workers had the right to a wage sufficient to live on; and that women should receive equal pay for equal work. A proposal protecting the freedom of speech, press, assembly, and association was amended to include only freedom of association. A proposed ban on the international shipment of goods made by children under the age of 16 was amended to ban goods made by children under the age of 14. A proposal to require an eight-hour work day was amended to require the eight-hour work day or the 40-hour work week (an exception was made for countries where productivity was low). Four other American proposals were rejected. Meanwhile, international delegates proposed three additional clauses, which were adopted: One or more days for weekly rest; equality of laws for foreign workers; and regular and frequent inspection of factory conditions.

The Commission issued its final report on 4 March 1919, and the Peace Conference adopted it without amendment on 11 April. The report became Part XIII of the Treaty of Versailles. (The Treaty of Versailles was one of the peace treaties at the end of World War I. It ended the state of war between Germany and the Allied Powers. It was signed on 28 June 1919.) The first annual conference (referred to as the International Labour Conference, or ILC) began on 29th October 1919 in Washington DC and adopted the first six International Labour Conventions, which dealt with hours of work in industry, unemployment, maternity protection, night work for women, minimum age and night work for young persons in industry. The prominent French socialist Albert Thomas became its first Director General. The ILO became a member of the United Nations system after the demise of the League in 1946.[2]

Evolution of Labour Law in India:

The history of Labour law in India is interwoven with the history of British colonialism. It was enacted by the British were primarily intended to protect the interest of the British employers. The factories act was first introduced in 1883 because of the pressure brought on the British parliament by textile magnates.

[2] Sr. HR Manager, Bharati Vidhyapeeth Medical Foundation, Pune.

Thus, India 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

Discussion of Indian labour law and industrial relations is commonly divided into separate time periods, reflective vital stages within the evolution of the Indian state moreover as stages of economic development and policy.

Writing in 1955, Ornate recommended 3 key periods in the evolution of Indian labour law to it purpose of your time.

The earliest regulation was largely designed as labour management ,but this was eventually accessorial to by a sequence of factory-type regulation, providing for a few basic levels of protection, between the Eighteen Eighties and also the Nineteen Thirties. This legislation basically mirrored AN accommodation of types between the interests of British business, seeking protection for its domestic enterprises against low cost foreign labour, and Indian social reformers out to up what were thought to be sub-human working conditions in Indian factories. In the read of some commentators, this early amount of labour law reform was for the most part **formal or unimportant** constituting solely a minimum of interference with the operating conditions of labour and also the relationship between the leader and the worker.

A play (1937-1947), Ornate suggests, was additional inventive, and commenced with the emergence of Provincial Autonomy within the last half of the Nineteen Thirties, the main focus of the Indian Congress Party on worker's rights (including such matters as standards of living, trade union rights, the proper to strike so on), and also the introduction of bigger uniformity through the extension of geographic point regulation.

The playing period in Or natis analysis begins with the critical post-Independence legislation of the Jobs and staff in Asian nation

For example,

The Workmen's Breach of Contract Act 1859
The Employers and Workmen's Act 1860
The legal code 1860.[3]

Or natis analysis would counsel that there was nothing terribly eventful regarding early Indian labour law, however others have argued that there was vital progress created in labour legislation within the immediate post-World War One amount, inform specifically to the influence of many International Labour Organisation (ILO) conventions and also the Royal Commission on Labour within the Twenties as major advances.

[3] http://www.legalserviceindia.com/legal/article-1010-the-evolution-of-labour-law-in-india.html

For the needs of gift discussion we tend to propose to look at the evolution of labour law in India, and also the restrictive policy related to it, across six main periods.

Pre-1920s

In the terribly early stages of British colonial management, there was very little attention paid to the legal organisation of labour by the authorities. Labour organisation and also the production process remained, aside from a number of exceptions, a matter of family, land and cultural regulation .The earliest British rules associated with staff within the government service, as well as the military, and forced labour for the performance of structure.

However, as we've got noted in short higher than, from the Eighteen Eighties ahead there was a succession of legislative interventions by the colonial government, principally in relevancy the use of girls and kids, and regarding hours of labour, in factories and mines.

DEFINITION OF LABOUR LAW

Labour law is also commonly known as 'the law of employment'. The growth and development of labour laws can be traced back to the establishment of the International Labour Organisation, the only tripartite U.N. agency, in 1919. It brings together governments, employers and workers of 187 member States to set labour standards, develop policies and devise programmes promoting decent work for all women and men. It is devoted to promoting social justice and internationally recognized human and labour rights, pursuing its founding mission that social justice is essential to universal and lasting peace. India has been the permanent member of the governing body of ILO since 1922. This has been a major reason behind the progressive labour legislation in India.

Moreover, labour policy in India has been evolving in response to specific needs of the situation to suit requirements of planned economic development and social justice and has two-fold objectives, namely maintaining industrial peace and promoting the welfare of labour.[3] Labour law cover three aspects.

- Industrial Relations
- Workplace Health and safety
- Employment standards

Unions can negotiate for better pay, more convenient hours, and increased workplace safety. However, unions do not have limitless power. Leaders must treat all union members fairly and refrain from restricting union members' rights to speech, assembly, and voting powers.

Employers also must follow specific rules when dealing with union members. For example, employers may only negotiate with designated union representatives and must carefully any agreement between the union and the employer.

States are allowed to make their own laws concerning labour relations, but all of these laws must comply with the federal statute, known as the National Labour Relations Act.

Labour law can also refer to the set of standards for working conditions and wage laws. These laws, such as the Fair Labour Standards Act, prohibits child labour, and sets a minimum wage.

Labour law primarily concerns the rights and responsibilities of unionized employees. Some groups of employees find unions beneficial since employees have a lot more power when they negotiate as a group rather than individually. Unions can negotiate for better pay, more convenient hours, and increased workplace safety. However, unions do not have limitless power. Leaders must treat all union members fairly and refrain from restricting union members' rights to speech, assembly, and voting powers.

Importance of Labour Laws Compliance:

The scope of labour compliance is not limited to filing returns and maintaining statutory deposits and records by the employer but it covers the various other aspects as well. Here is the importance of Labour Law:

- It improves the relation between the employer and employees thereby minimising the industrial disputes.
- It is in the interest of the workers to prevent them from exploitation by their employees and management.
- It helps workers in getting fair wages.
- Reduction of conflicts and strikes etc.
- Promotes healthy environment conditions in the industrial system.
- Provides compensation to workers, who are victims of accidents.

Indian Labour Law consists of various acts covering every possible aspect for the protection of labour rights. The range of labour compliance is not restricted to filing returns and maintaining statutory deposits and records by the company. If the business or company, in any case, fails to make the industrial law compliance, there are strict penalties specified by the law.

Scope of labour laws:

Various labour enactments in India, it helps to employment security and social welfare measures.

Labour laws divided into four categories;

1. Labour laws relating to industrial relations
2. Labour laws relating social securities
3. Labour laws relating to wages

4. Labour laws relating to working conditions. These categories promote lot of labour and industrial relations matters, provides welfare amenities for health, safety and welfare measures, peaceful manner to solve industrial disputes.

Concept of labour laws:

Labour law is basically a social security mechanism designed to provide protection and benefits to employees so that the conduct of their employers be regulated. Given the profit making and highly competitive approach of employers, labour laws make sure that interests of employees are not ignored and they are not subjected to inhuman work conditions, exceptionally low wages and haplessness in case of accidents or other misfortunes of same kind.

Some laws like Trade Unions Act, Industrial Disputes Act etc are instrumental in providing platform to employees to raise their concerns and grievances and get them redressed through provided mechanism.

The employers, however, sometimes see the presence of plethora of labour laws as hurdle in ease of doing business for the obvious reason that these laws lean heavily towards the employees and impose huge, though not unnecessary, obligations over employers

Constitutional rights

In the Constitution of India from 1950, articles 14-16, 19(1)(c), 23-24, 38, and 41-43A directly concern labour rights. Article 14 states everyone should be equal before the law, article 15 specifically says the state should not discriminate against citizens, and article 16 extends a right of "equality of opportunity" for employment or appointment under the state. Article 19(1)(c) gives everyone a specific right "to form associations or unions". Article 23 prohibits all trafficking and forced labour, while article 24 prohibits child labour under 14 years old in a factory, mine or "any other hazardous employment".

Articles 38-39, and 41-43A, however, like all rights listed in Part IV of the Constitution are not enforceable by courts, rather than creating an aspirational "duty of the State to apply these[4] principles in making laws". The original justification for leaving such principles unenforceable by the courts was that democratically accountable institutions ought to be left with discretion, given the demands they could create on the state for funding from general taxation, although such views have since become controversial. Article 38(1) says that in general the state should "strive to promote the welfare of the people" with a "social order in which justice, social, economic and political, shall inform all the institutions of national life. In article 38(2) it goes on to say the state should "minimise the inequalities in income" and based on all other statuses. Article 41 creates a "right to work", which the National Rural Employment Guarantee Act 2005 attempts to put into

[4] Published in Articles section of www.manupatra.com

practice. Article 42 requires the state to "make provision for securing just and human conditions of work and for maternity relief". Article 43 says workers should have the right to a living wage and "conditions of work ensuring a decent standard of life". Article 43A, inserted by the Forty-second Amendment of the Constitution of India in 1976, creates a constitutional right to codetermination by requiring the state to legislate to "secure the participation of workers in the management of undertakings".

Contract and rights

Scope of protection

Indian labour law makes a distinction between people who work in "organised" sectors and people working in "unorganised sectors". The laws list the editors to which various labour rights apply. People who do not fall within these sectors, the ordinary law of contract applies.

India's labour laws underwent a major update in the Industrial Disputes Act of 1947. Since then, an additional 45 national laws expand or intersect with the 1948 act, and another 200 state laws control the relationships between the worker and the company. These laws mandate all aspects of employer-employee interaction, such as companies must keep 6 attendance logs, 10 different accounts for overtime wages, and file 5 types of annual returns. The scope of labour laws extends from regulating the height of urinals in workers' washrooms to how often a work space must be lime-washed. Inspectors can examine working space anytime and declare fines for violation of any labour laws and regulations.

Employment contracts

Among the employment contracts that are regulated in India, the regulation involves significant government involvement which is rare in developed countries. The Industrial Employment (Standing Orders) Act 1946 requires that employers have terms including working hours, leave, productivity goals, dismissal procedures or worker classifications, approved by a government body.

The Contract Labour (Regulation and Abolition) Act 1970 aims at regulating employment of contract labour so as to place it at par with labour employed directly. Women are now permitted to work night shifts too (10 pm to 6 am).

The Latin phrase 'dies non' is being widely used by disciplinary authorities in government and industries for denoting the 'unauthorised absence' to the delinquent employees. According to Shri R. P. Saxena, chief engineer, Indian Railways, dies-non is a period which neither counted in service nor considered as break in service. A person can be marked dies-non, if

- absent without proper permission
- when on duty left without proper permission
- while in office but refused to perform duties

In cases of such wilful and unauthorised absence from work, the leave sanctioning authority may decide and order that the days on which the work is not performed be treated as dies non-on the principle of no work no pay. This will be without prejudice to any other action that the competent authority might take against the persons resorting to such practises. The principle of "no work no pay" is widely being used in the banking industry in India. All other manufacturing industries and large service establishments like railways, posts and telecommunications are also implementing it to minimise the incidences of unauthorised absence of workers. The term 'industry' infuses a contractual relationship between the employer and the employee for sale of products and services which are produced through their cooperative endeavour.

This contract together with the need to put in efforts in producing goods and services imposes duties (including ancillary duties) and obligations on the part of the employees to render services with the tools provided and, in a place, and time fixed by the employer. And in return, as a quid pro quo, the employer is enjoined to pay wages for work done and or for fulfilling the contract of employment. Duties generally, including ancillary duties, additional duties, normal duties, emergency duties, which have to be done by the employees and payment of wages therefor. Where the contract of employment is not fulfilled or work is not done as prescribed, the principle of 'no work no pay is brought into play.

Wage regulation

The Payment of Wages Act 1936 requires that employees receive wages, on time, and without any unauthorised deductions. Section 6 requires that people are paid in money rather than in kind. The law also provides the tax with holdings the employer must deduct and pay to the central or state government before distributing the wages.

The Minimum Wages Act 1948 sets wages for the different economic sectors that it states it will cover. It leaves a large number of workers unregulated. Central and state governments have discretion to set wages according to kind of work and location, and they range between as much as ₹ 143 to 1120 per day for work in the so-called central sphere. State governments have their own minimum wage schedules.

The Payment of Gratuity Act 1972 applies to establishments with 10 or more workers. Gratuity is payable to the employee if he or she resigns or retires. The Indian government mandates that this payment be at the rate of 15 day's salary of the employee for each completed year of service subject to a maximum of ₹2000000.

The Payment of Bonus Act 1965, which applies only to enterprises with over 20 people, requires bonuses are paid out of profits based on productivity. The minimum bonus is currently 8.33 per cent of salary.

Weekly Holidays Act 1942

Beedi and Cigar Workers Act 1967

Health and safety

The Workmen's Compensation Act 1923 requires that compensation is paid if workers are injured in the course of employment for injuries, or benefits to dependants. The rates are low.[18][19]

- Factories Act 1948, consolidated existing factory safety laws
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 that seeks to protect and provides a mechanism for women to report incidents of sexual harassment at their place of work.

Pensions and insurance

The Employees' Provident Fund and Miscellaneous Provisions Act 1952 created the Employees' Provident Fund Organisation of India. This functions as a pension fund for old age security for the organised workforce sector. For those workers, it creates Provident Fund to which employees and employers contribute equally, and the minimum contributions are 10-12 per cent of wages. On retirement, employees may draw their pension.

- Indira Gandhi National Old Age Pension Scheme
- National Pension Scheme
- Public Provident Fund (India)

The Employees' State Insurance provides health and social security insurance. This was created by the Employees' State Insurance Act 1948.

The Unorganised Workers' Social Security Act 2008 was passed to extend the coverage of life and disability benefits, health and maternity benefits, and old age protection for unorganised workers. "Unorganised" is defined as home-based workers, self-employed workers or daily-wage workers. The state government was meant to formulate the welfare system through rules produced by the National Social Security Board.

The Maternity Benefit Act 1961, creates rights to payments of maternity benefits for any woman employee who worked in any establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery. On March 30, 2017 the President of India Pranab Mukherjee approved the Maternity Benefit (Amendment) Act, 2017 which provides for 26-weeks paid maternity leave for women employees.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, provides for compulsory contributory fund for the future of an employee after his/her retirement or for his/her dependents in case of employee's early death. It extends to the whole of India except the State of Jammu and Kashmir and is applicable to:

- every factory engaged in any industry specified in Schedule 1 in which 20 or more persons are employed.
- every other establishment employing 20 or more persons or class of such establishments that the Central Govt. may notify.

- any other establishment so notified by the Central Government even if employing less than 20 persons.

Equality

Article 14 states everyone should be equal before the law, article 15 specifically says the state should not discriminate against citizens, and article 16 extends a right of "equality of opportunity" for employment or appointment under the state. Article 23 prohibits all trafficking and forced labour, while article 24 prohibits child labour under 14 years old in a factory, mine or "any other hazardous employment".

- Caste Disabilities Removal Act 1850

Gender discrimination

Article 39(d) of the Constitution provides that men and women should receive equal pay for equal work. In the Equal Remuneration Act 1976 implemented this principle in legislation.

- *Randhir Singh v Union of India* Supreme Court of India held that the principle of equal pay for equal work is a constitutional goal and therefore capable of enforcement through constitutional remedies under Article 32 of Constitution
- *State of AP v G Sreenivasa Rao*, equal pay for equal work does not mean that all the members of the same cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service.
- *State of MP v Pramod Barativa*, comparisons should focus on similarity of skill, effort and responsibility when performed under similar conditions
- *Mackinnon Mackenzie & Co v Adurey D'Costa*, a broad approach is to be taken to decide whether duties to be performed are similar

Migrant workers

- Interstate Migrant Workmen Act 1979

Vulnerable groups

Bonded Labour System (Abolition) Act 1976, abolishes bonded labour, but estimates suggest that between 2 million and 5 million workers still remain in debt bondage in India.

- Domestic workers in India

Child labour in India is prohibited by the Constitution, article 24, in factories, mines and hazardous employment, and that under article 21 the state should provide free and compulsory education up to a child is aged 14. However, in practice, the laws are absolutely not enforced.

- Sumangali (child labour)

- Juvenile Justice (Care and Protection) of Children Act 2000
- Child Labour (Prohibition and Abolition) Act 1986

Child Labour:

Child labour has been a major concern in the world because it affects the children both mentally and physically and it also destroys the future of children. Child labour is one the serious issue not only in India but also in other developing countries. It is widely prevalent in developing countries because of poverty .it is a great social problem because children are the hope and future of a nation. There were many laws enacted to prohibit child labour but they are ineffective. According to 2017 statics India is one of the leading countries in Asia has a whopping 33 million children employed in various forms of child labour. Let me explain the major laws enacted to prohibit child labour and their impacts on society under the following sub heads.

Definition of Child Labour

"Child" as defined by the child labour (prohibition and regulation) Act 1986 is a person who has not completed the age of 14 years. As a layman we can understand that Child labour is the practice of having children engage in economic activity, on a part- or full-time basis. Every child is considered as a gift of god, it must be nurtured with care and affection with in the family and society. But unfortunately, due to the socio-economic problems children were forced to work in industries, leather factories, hotels and eatery. The child labour is not an isolated phenomenon it is coupled with socio economic problem of the society so in order to eliminate child labour first we should focus on socio economic issues of the society. It is in the hands of administrative. It should bring effective measures to eliminate child labour.

Causes of Child Labour:

Poverty

Poverty is one of the main causes of child labour. In developing countries poverty is one of the major drawback and the children were considered as helping hand to feed their families, to support their families and to support themselves .Due to poverty, illiteracy and unemployment parents are unable to send them to schools, instead the children were asked to help them in running a family so that the poor parents send their children for work in inhuman conditions at lower wages.

Debts:

The poor economic conditions of people in India force them to borrow money. The illiterate seek debt from money lenders during emergency situation .At later point of time they find themselves difficult in paying back the debts and interest, as a result the debtors were made to work for money lenders and then debtors drag their children too in assisting them so that the debts could be paid off.

Professional Needs:

There are some industries such as the bangle making industry, where delicate hands and little fingers are needed to do very minute work with extreme excellence and precision. An adult's hands are usually not so delicate and small, so they require children to work for them and do such a dangerous work with glass. This often resulted in eye accidents of the children.

Rights of Children Under International Law:

Universal declaration of human rights 1948 – stipulates under article 25 para 2 that childhood is entitled to special care and assistance. The above principles along with other principles of universal declaration concerning child were incorporated in the declaration of the rights of the child of 1959.

International covenant on civil and political rights under articles 23 and 24 and international covenant on economic, social and cultural rights - under article 10 made provision for the care of the child .

International labour organisation (ILO) - provides universal standards and guideline, a specialized agency of UN ,aims to provide guidance and standards for labour practices around the world .

Convention on the rights of the child, 1989 It is another international instrument which protects the child.

Rights of Children Under National Laws:

India has also taken effective measure under national level. In order to eliminate child labour, India has brought constitutional, statutory development measures. The Indian constitution has consciously incorporated provisions to secure compulsory elementary education as well as the labour protection for the children. Labour commission in India have gone into the problems of child labour and have made extensive recommendations. The constitution of India, too provides certain rights to children and prohibits child labour such provisions are as follows:

1. No child below the age of 14 years shall be employed in any factory or mine or engaged in any other hazardous work.
2. State in particular shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of the children are not abused and that citizen are not forced by economic necessity to enter vocations unsuited to their age or strength.
3. Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and the dignity and that childhood and youth are protected against exploitations and against moral and material abandon.
4. The state shall endeavour to provide, within the period of 10 years from the commencement of constitution, free and compulsory education for all children until they complete the age of 14 years.
5. The state shall provide free and compulsory education to all children between the ages of 6 to 14 years as such a manner as the state may by law determine.
6. Who is parent or guardian to provide opportunities for education to his child or the case may be, ward between the age of six and fourteen years.

There are wide range of laws, which guarantee the substantial extent the rights and entitlement as provided in the constitution and in the UN convention.

Some of them are given below:

1. The apprentices Act 1861
2. The child labour Act 1986
3. The child marriage restraint act 1929
4. The children (pledging of labour) Act 1929
5. Children Act 1960
6. The guardian and wards Act 1890
7.The Hindu minority and guardianship Act 1956
8.The Hindu Adoption and maintenance Act 1956
9. The Immoral Traffic (prevention) Act 1956
10. Juvenile justice Act 1986
11. The Orphanages and other charitable Homes (supervision and control) Act 1960
12. Probation and offenders Act 1958
13. Reformatory schools Act 1857
14. The women's and children's institutions (licensing) Act 1956
15. The young persons (harmful publications) Act 1956

Current Scenario of Child Labour:

*India is one of the leading countries in Asia has a 33 million children employed in various forms of child labour .It is shocking that world's largest democracy is yet to ratify the Minimum age convention 1973 (No 138) of the International labour organisation (ILO) that lays down ground rules for employment of minors across the globe.

*world day against child labour on June 12 is an ILO sanctioned holiday first launched in 2002 with the objective to raise awareness and activism to prevent child labour under the above convention .An estimated 150 million children are involved in child labour worldwide as per UNICEF data.

*On the other hand Article 2 of the Minimum age (industry) convention of the ILO, 1919 which has been ratified by India does not allow children under 14 to be employed in any public or private industrial undertaking, does not even apply for India.

* According to a Live mint report ,the government last year amended child labour laws to allow children below 14 to work in family businesses and the entertainment industry (excluding circuses) in order to create" a balance between the need for education for a child and reality of the socio economic condition and social fabric of the country".

*Not only that amendment also modified the definition of adolescents- to children between 14 and 18 years of age and barred them from working in any hazardous industries only.

Key Statistics of Child Labour:

*1 in every 11 children in India works to earn a living, according to statistics by action Aid India
*There are five states which are India's biggest child labour employers Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh and Maharashtra, as per data given out by save children NGO. National capital Delhi is responsible for a share of 1 million child labour alone.

*A recent analysis by CRY of census data in the country shows that the overall decrease in child labour is only 2.2 per cent year on year, over the last 10 years. Also it has revealed that child labour has grown by more than 50 percent in urban areas.

*There are 33 million child labourers between the ages of 5 – 18 years in INDIA as per census 2011 data and 10.13 million between the ages of 5- 14 years.

*Considering that there are 444 million children India under the age of 18, they form 37 percent of the total population in the country.

*Therefore the child labourer in the country in real figures boils down to 10,130,000 kids involved various occupations across the hazardous sectors and this is only data from six years ago.

Drawbacks:

The main cause of child labour is higher poverty level. These children have no choice other than working as a labour in the factories child labour for these children is survival. If they don't work, they will die of poverty and hunger. They are the future of India. None of these children have the privilege to going to school and being able to go to a house at the end of the day. The child labour is prevalent at a large scale in the country. In Punjab it is found in hotels, restaurant, tea stalls, for which the administrative authorities, parents, educationalist, police officials and employers of public authority is responsible. There is lack of implementations of child laws. Since politicians and other authorities ignore it and the various departments for the labour laws fails to implement the laws properly. Laws remain merely on the paper for which the lack of control of population and increasing unemployment are the major causes and politicians fear to tackle these problems in view of their vote banks.

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

Remedies:

The remedy is only in the hands of the government, it should take necessary steps to eradicate poverty through employment to the parents of the child labour. Necessary practical steps should be taken to educate the children. The government should allocate the necessary funds to educate and nurture the poor children. The violators of child labour laws should be punished accordingly.

HYPOTHESIS:

The primary source of this study is to conduct judicial analysis of the regulations and challenges for the future events which will occur in Labour Law and to suggest the legal measures to strengthen the provisions of the regulatory body of the labour law ministry to deal with the upcoming challenges for the future in a very prompt manner. The following hypothesis are formulated for the purpose of the study: -

Labour law (also known as **labour law** or **employment law**) mediates the relationship between workers, employing entities, trade unions and the government. Collective labour law relates to the tripartite relationship between employee, employer and union. Individual labour law concerns employees' rights at work also through the contract for work. Employment standards are social norms (in some cases also technical standards) for the minimum socially acceptable conditions under which employees or contractors are allowed to work. Government agencies (such as the

former US Employment Standards Administration) enforce labour law (legislature, regulatory, or judicial)

Review of Literature:

Literature survey indicates that there is a widespread concern at the present level of labour laws and ongoing reforms on organizational effectiveness and productivity in the view employees benefit of manufacturing units. Peru-Pirate (1996) observed that labour legislation is quickly evolving in order to take into account the impacts of technologies on working conditions and on human resources within firms. Traditional law, protecting the worker, is modernized in order to be more pre-occupied by today's employer's requirements and constraints concerning the hiring, redundancy, working hour's management and wage earners status. However, Gill (1999) took the traditional view and observed that trade unionism is influenced by growth of capitalism with its own specificities, the mediation of the state and initiatives by the trade union movement. The author further argues that at the moment trade unions are not displaying capacity to meet the challenge of attempt to review labour legislation; therefore, bold and new initiatives are needed to enable them to play their important role for employees. David G. (1999) examine specific provisions contained in the Health and Safety at Work Act (the Act) 1974, the primary domestic legislation governing health and safety in the workplace, as well as, the Management of Health and Safety at Work Regulations (MHSW) 1999. Are these statutes/regulations effective, and how have the courts Interpreted applied them. Samite palo, Nayantara pandit and Sweta pamgrahi (2000) has been reviewed the condition of labour worldwide through its international labour standards (ILS).The term labour standards has a descriptive as well as normative sense to it .descriptively it refer to the actual terms of employment quality of work and wellbeing of worker at any specific time and place, it implies the rights and responsibilities of both labour and employees. The reason is that the present system of developing and monitoring labour standards is not only inadequate but also fails to meet the growing regime of global trade liberalization. Aditya Bhalta Chasjea (2000) criticizes of recent empirical research on the research on the impact of labour regulation on industrial performance in India. It begins with the review of earlier studies that tried to infer the effects on manufacturing employment of amendments to the industrial dispute Act in 1976 and 1982, requiring Government permission for layoffs, retrenchments and closures and shows that their results are ambiguous. Ken Meyhew (2000) argues that there is still considerable divergence in labour market processes and outcomes across countries. Important among these are what is happening to the rights of people at work and how they should be protected. The Assessment goes on to discuss a variety of distributional problems related to joblessness and low pay, and evaluates policy interventions designed to tackle them. Richard A. Epstein (2001) talk about law reforms in New Zeland, which discuss on labour and employment law. The purpose was to persuade New Zealand political institutions to use liberalisation of their labour laws. The explicit assumption that New Zealand should remove most , if not all the regulations and collective bargaining from its current law . Sandrine Cazes (2002) emphasis to employment protection legislation (i.e. the limitations for employer to dismiss workers at will), other forms of labour market regulations are also considered, such as the unemployment benefit

systems, wage setting institutions, active labour market policies and taxes on labour The analysis deals with enterprises and workers in the formal sector, although the strong growth of the informal sector can be interpreted as part of the process. Labour market regulations are introduced with the objectives of improving workers' welfare through benefits or/and social security programmes. In the Indian context, research conducted by Upadhyaya (2003) in Garment & Hosiery industry of Noida points out that although The Factories Act, 1948 makes very elaborate and unambiguous provisions regarding the minimum welfare (also health and safety) standards to be followed, but laying down the standards alone is not enough. It is also to be ensured that these provisions are actually implemented. He found that facilities for first aid, washing, canteen, refreshment/tea, annual holidays, and intervals of rest were satisfactory; ambulance and lunch room facility were found to be inadequate in terms of implementation, provisions relating to welfare officer and storing and drying clothing were not found to be implemented even in a single unit covered under the study, none of the selected units had any provision for appointment on compassionate ground, majority of the respondents were working for more than 9 hours a day (average 10 hours of working per day). John Creedy, Melbourne (2005) examines the computation of welfare measures for use with labour supply models. This type of model is particularly popular in behavioural micro simulation modelling where predicted labour supply responses are calculated for policy changes. Milly Sil (2005) argued (especially by employers) that labour laws in India are excessively pro-worker in the organized sector and this has led to serious rigidities that has resulted in adverse consequences in terms of performance of this sector as well as the operation of the labour markets. There have been recommendations by the government to reform labour laws in India by highlighting the need for flexibility in Indian labour laws that would give appropriate flexibility to the industry that is essential to compete in international markets. Ahmad Ahsan (2005) study the combined economic effects of legal amendments on different types of labor regulation (de jure) as well as of the increasing use of contract labor (de facto) in India. Within de jure reforms, we distinguish between amendments in laws concerning the procedures for the resolution of labour disputes, and laws concerning job security. John Creedy , Guyonne R.J. Kalb (2005) examines the computation of welfare measures for use with Labour supply models. The standard method of computing compensating and equivalent variations does not allow sufficiently for the nonlinearity of the budget constraint in such models. An alternative method is suggested and applied to contexts in which individuals are allowed to vary their hours continuously and to contexts where only a limited number of discrete hours of work are available. Discrete hour's models have in recent years been used in view of the substantial econometric advantages when estimating the parameters of direct utility functions. This type of model is particularly popular in behavioural micro simulation modelling where predicted labour supply responses are calculated for policy changes. Mary E. Gallagher, Baohua Dong (2006) examines the evolution of Chinese labour and employment legislation, focusing on the initial drafting of the first National Labour Law in 1994, the subsequent changes in Chinese labour relations after the law, and the gradual buildup to new legislation in the form of the labour contract law as well as several other proposed future laws. Sarbajit Chaudhuri (2006) examines the aptness of labour market reform in a developing country. It finds that liberalization in the labour market may be desirable from the view points of both social welfare and unemployment problem and why labour market reform should be regarded as an integral component of the package of liberalized economic policies in the Countries in transition. Pierre

and Scarpetta (2006) drawing from harmonized surveys of firms around the world compared employer's responses with actual labour legislation and found that employer's concerns about labour regulations are closely related to the relative stringency of labour laws. Medium and large firms, as well as innovating firms, were those most negatively affected by onerous labour regulations. Anthony O'Donnell (2006) apparent distinction between the ‗employed' and the ‗unemployed' labour laws as an academic field in Australia in the second half of the twentieth century could largely ignore the regulation of the unemployed. Because social security was established as a flat-rate, needs-related payment, paid out of consolidated revenue, eligibility was not related to prior labour force participation nor was entitlement related to prior wages. In effect, social security appeared neither to be related to the contract of employment nor seen as a collective ‗industrial' issue as it did.. The institutional forms of the Australian welfare state established a fairly stark work-welfare divide. Wage-earners had certain ‗welfare' ends (minimum income, payment for sickness) secured through the industrial tribunals' determination of the living wage, and social security provisions were established as a residual measure for those standing outside work for socially legitimate reasons. This gave rise to a mid-century model of taxonomy and division (the wage earner, the unemployed, etc), with each category requiring its own distinct form of intervention (wages, welfare) and discrete regulatory domains (industrial tribunals, social security offices). Kaushik Basu (2007) Many countries have legislation which make it costly for firms to dismiss or retrench workers. In the case of India, the Industrial Disputes Act, 1947, requires firms that employ 50 or more workers to pay compensation to any worker who is to be retrenched. This paper builds a theoretical model to analyze the effects of such antiretrenchment laws. Sonja Fagernäs (2007) assesses the effects of industrial disputes legislation and the dispute settlement process on informal versus formal employment in India. It uses indicators of proworker court awards and court efficiency as well as amendments to the Industrial Disputes Act (IDA) at the level of Indian states. Bhavani and Bhanumurthy (2007) in their study observed that the economic policy reforms of 1991 were expected to in still competitive forces in the Indian industry. They emphasized that it is essential to revamp complex and comprehensive labour legislation to further competition. Papola and Pais (2007) resonates the same sentiments when they argue that reforming labour laws has become necessary to make Indian industry efficient, cost effective & internationally competitive in the face of globalization. However, Lucio Baccaro (2008) concluded in his study that there has been a considerable decline in unionization over the past two decades. Union density declined in almost all the 51 countries considered in the study. The decline was dramatic in Central and Eastern European countries. Sukhpal Singh (2008) This paper examine the nature and extent of practice of child labour and the gender dimension of labour use in hybrid cottonseed farming in the state of Gujarat. It examine the processes of seed production and labour supply chain in order to understand the dynamics of labour supply and labour use in cotton seed production under contract. Hina Sidhu (2008) Wage disparities among different categories of workers have widened substantially within and across the industry groups. By establishing the linkage between labour productivity and wage rate, it can be argued that labour productivity is an important determinant for the wage rate. This studies related to wage structure and the factors influencing wage rates are vital in the formulation of wage policies. Simon Deakin (2008) Standard economic theory sees labour law as an exogenous interference with market relations and predicts mostly negative impacts on employment and productivity. We argue for a more nuanced

theoretical position: labour law is, at least in part, endogenous, with both the production and the application of labour law norms influenced by national contexts, and by complementarities between the institutions of the labour market and those of corporate governance and financial markets. Carlo Dell'Aringa, Elena Cottini (2008) investigates the patterns of within establishment wage inequality in four European countries (Belgium, Ireland, Italy and Spain). Using matched employer employee data (ESES) we analyse the effects of work organization practices, pay policies, bargaining procedures and industrial relations arrangements on the pattern of wage differentials in the firm. The main findings suggest that employee's characteristics, firm size and work organisation practices are important determinants of within establishments wage dispersion. Advocate Kumar (2009) observes that "it is true that existing labour laws in India cannot be changed or removed by a flat as it could be easily done in China but the fact lies that unless the laws are changed drastically, it would not be possible to obtain desired results. Continuing to 'protect' a small aristocracy of industrial labour means hurting the prospects of prosperity for the mass of India's labour. It is time to repeal this imperial legacy." Thus, reforming labour legislation on working conditions is imperative for us in order to meet the demands of modern industrializing society. Deb kumar Das and Unajit Kalita (2009) attempts to address the issue of declining labour intensity in India_s organized manufacturing in an attempt to understand what constrains employment generation in labour intensive sector. Dr K K Singh (2009) focuses on awareness and implementation status of the statutory welfare measures under the factory act 1948 and Non statutory welfare measures in A.G.I.O. Paper & Industries Ltd. Dhekha, Bilaspur (C.G.). The area of study is A. G. I. O. Paper & Industries Ltd. Dhekha, Bilaspur (C.G.) is only single unit of paper mill in Bilaspur District (C.G.). 13 Officers, 174 company workers, 350 contract workers are serving in this unit. Meenakshi Rajeev (2009) Labour management is one of the most crucial tasks of an entrepreneur. In order to surpass the stringent labour regulations, the industry sector in India is largely resorting t o contract labourers, who are governed by the ―Contract Labour Regulation and Abolit ion Act of 1970‖. A primary survey carried out in Karnataka one of the most industrially developed state in India, reveals that many of the stipulations made in the Act to safeguard contract labourer are not followed in practice. It has also been felt by the workers that collusive agreement between the labour inspector, the protector of law, and the principal employer i.e., the manger or the entrepreneur (or the contractor) has aided the violation of law. This paper discusses some of the survey findings and considers a game theoretic model to show why it is economically optimal for an entrepreneur and a labour inspector to collude. It also examines whether any provision of reward for the labour inspector would help to protect the law. Though the paper is based on Indian experience, it has relevance for a number of economies in the Asian region. Richard Mitchell, Petra Mahy and Peter Gahan (2009) provide a broad overview of the development of labour law in India. The Indian system of labour laws is very extensive and dauntingly complex and is intended only to sketch out the broad parameters of Indian government policy in the regulation of employment relationships and labour markets. Shashank Shah (2010) Employees are the foundation for the superstructure of a corporate organisation. Without them, the organisation would not be able to achieve its identified and highlighted goals and objectives. While the employees are expected to do much for the organisation for the remuneration they receive, the organisation also needs to appreciate their honest and committed services. Employee and Labour

welfare needs to be undertaken by corporate organisations for genuine altruism and not for profit-making and goodwill building alone.

Research Methodology

Research in common parlance refers to a search for knowledge. It can also be defined as research as a scientific and systematic search for pertinent information on a specific topic. It is an art of scientific investigation. Research is an academic activity and as such the term should be used in a technical sense. According to Clifford Woody research comprises defining and redefining problems, formulating hypothesis or suggested solutions; collecting, organising and evaluating data; making deductions and reaching conclusions; and at last carefully testing the conclusions to determine whether they fit the formulating hypothesis. This chapter provides an outline of the research methodology employed in investigation of the relationship between labour law reforms and organisational effectiveness in the employees of manufacturing units of Greater Noida. The selection of the sample, measuring instruments, procedure for data collection and the statistical techniques utilised relating to the research.

Research Objectives

The purpose of the present study is to describe, analyze, and understand the impact for reforming labour legislation on organisational Effectiveness. More specifically, the study aims to achieve the following objectives:

· The main objective of the research is to study the various labour law reforms in the organization.

· To examine the current trends in labour jurisprudence in India

· To assessing the impact of labour law reforms on organisational effectiveness.

· The identify the underlying factors affecting organisational effectiveness

· To identify the opinion of employees about the labour law reforms.

· To find out the relation between labour law reforms and organisational effectiveness.

· To Develop and standardise questionnaire to measure labour law reforms and organisational effectiveness.

· To evaluate the difference in organisational effectiveness among different age group.

· To understand the nature of employment and tenure of service to measure the organisational effectiveness.

· To evaluate the job satisfaction and motivation level among the employees.

· To assessing the labour management relation within the organisation.

· To evaluate the employees productivity and employees retention to enhance the organisation effectiveness.

Research Design

The Research Design embodies the blue print for the collection, measurement and analysis of data related to the research questions. This is an empirical study for which both descriptive and exploratory research methodology was followed having qualitative and quantitative approach. The purpose of this study was to identify relations between labour law reforms and organisational effectiveness.

The study used both the quantitative and qualitative research approach. The qualitative method was used because it made it possible to answer to the questions of why, how and in what way. It also applied because an interview was conducted with the employees of manufacturing units to identify the impact of labour law reforms on organisational effectiveness. On the other hand quantitative approach was also equally important as questionnaires and surveys were used to collect the numerical or measurable data from employees.

Data Collection Method

The data used for this study was obtained from different sources. This ranged from questionnaires, personal interviews, observations and library search. However, this study involves use of questionnaires and schedules of interviews which were applied in obtaining information related to various labour laws and organisational effectiveness from employees in selected manufacturing units of Greater Noida. The data generated for the study comprise secondary (desk survey) and primary sources (company survey).

Primary data are those obtained directly from the originators or main source. The aim of

collecting them is to obtain first hand information about the labour laws applied in industries in proper manner and its impact on organisational effectiveness. The bulk of the primary data were obtained through interviews and questionnaires designed via use of information generated from secondary survey (desk survey) after taking due cognizance of the purpose and objectives of the study.

Questionnaires: There were two major questionnaires formed, one related to labour laws and other related to organisational effectiveness. The data required for this study were collected through actual visits and face- to-face distribution & administration of questionnaires from the four hundred (400) respondents of the four selected industries of greater 31nrol.

II. Face to face Interview: A structured face to face interview was conducted from employees of different departments of each industries to know their responses. For instance in a situation where the question administered through the questionnaire requires to be clarified or elaborated to the employees, were conducted.

The Secondary data collected from Internet, textbooks, government publications, unpublished research work and journals. Also, acknowledge authorities within the area of studies provided valuable materials for this study. The following locations were made use of in this study like libraries, archives, government departments and Internet.

Instrument for Data Collection

The main data collection instrument employed in this study was two questionnaires which include number of relevant question related to the study. The questionnaire design included close ended questions and asks to fill appropriate choice according to them. The questions were clear, simple and structured in a manner void of any ambiguity and technical details. Thus, most of the questions simply required respondents to tick against the appropriate response The both questionnaire was drawn to elicit information/data and consisted of two sections , The first section pertained to personal data; age, sex, level of education, and work experience and nature of job and second section which was the core of this study dealt with. On labour laws (related to wage and compensation , industrial relations , social security and

welfare) and organisational effectiveness (labour management relations, Job Satisfaction & Motivation, employee productivity , employee retentions) under study. The research population for this study is made 400 employees various departments of selected industries in Greater Noida

Sampling Techniques

The population considered in this study consists of manufacturing units of Greater Noida. A non-probability sampling design was used, based on the method of convenience. Nonprobability sampling does not involve elements of randomisation and not each potential respondent has an equal chance of participating in the research. Some of the advantages of utilising a non-probability sample lie in the fact that it is cost-effective and less time consuming. However, its associated shortcomings relate to its restricted generalisability, particularly in lieu of the higher chances of sampling errors (Sekaran, 2003). However, to overcome restrictions with respect to generalisability, Sekaran (2003) maintains that it is advisable to use larger samples.

Validity and Reliability of Questionnaire

Validity means ability of the research method to find accurate reality. If the research is said to be valid then it really means that what was intended to be measured has been measured accurately. Validity is quite important if the study was based on descriptive and exploratory. Reliability means to measure consistency in producing similar results on different but comparable occasions. If research is said to be reliable that means if it is replicated, similar or identical results will be shown. If researchers know that their research is reliable then there is less risk of their taking a chance pattern or trend exhibited by their sample and using it to make assumptions about the sample.

Biographical characteristic Questionnaire

A biographical questionnaire was complied information on respondent gender, age, qualification, year of service, nature of job with designation and department. The data with respect to these biographical questions were subsequently graphically presented and

discussed to provide an indication of the most salient findings with respect to these variables.

Labour Laws Questionnaire

Nature and composition of Labour Laws Questionnaire

The Labour Law Questionnaire was designed on close ended questions to measures various labour laws applicable in manufacturing units and its reforms at time to time. The LLQ was based on the basis of 5 scale parameter (Strongly Agree, Agree, Neutral, Disagree and Strongly Disagree)and consists of 33 questions which was categorised in to four headings of labour laws. The first heading was related to the laws applicable to employment Acts under which 3 categories of job (permanent, contractual and apprentices) was asked by employees the second Section was based on wage and compensation laws which consist 6 question under 5 Acts (The Payment of Wages Act, 1936, The Minimum Wages Act, 1948, The workmen Compensation Act, 1923, The Employee Provident Fund Act, 1952, The Payment of Bonus Act, 1965) , the another heading defined laws related to Social Security and Welfare laws (The Factories Act, 1947, The Employee State Insurance Act (ESI), 1948, The Maternity Benefits Act, 1961) which covered 20 questions under Health ,Welfare and Safety .

RESEARCH PROBLEMS

I. Explain historical background definition and evolution of labour laws with its scope, importance and purpose in India?

II. What is the feature of labour laws and how it is regulated in an unorganised sector & how it necessary for child labour and maternity benefits?

III. What is labour reforms and ease of doing business in India, what are its policies of new era and how labour reforms are criticised?

IV. What are labour rights and how it is constitutionally protected in labour law explain briefly while discussing with cases under Labour Law?

V. Comparsion of labour law in India and other different countries? What is stand of judiciary in the role of different system and explain the current situation in India?

VI. What issues and challenges the labour law will be facing in future exaplain briefly while discussing regarding child labour as a key point?

CHAPTER-2

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.

Indian labour laws divide industry into two broad categories:

Factory

Factories are regulated by the provisions of the Factories Act, 1948 (the saidAct). 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.

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.

Labour Regulation and Enforcement Climate:

Labour Regulation:

Under Article 246 of the Constitution of India, labour is a subject in the Concurrent List. India is a federal democracy wherein the Central (union) and State governments are competent to enact legislations. Due to joint jurisdictions, a large number of labour laws have been enacted to cater to different aspects of labour regulation. The central and state governments have powers to formulate rules to facilitate implementation of these laws. The industrial relation system is mainly governed by the Trade Union Act, 19263 the Industrial Dispute Act, 1947, the Industrial Employment (Standing Order) Act, 19464 and finally, the

Contract Labour Act, 19705. These laws are mostly applicable to firms in the formal sector, and the execution of labour laws varies greatly across Indian states.

Among several legislations, the IDA deserves special attention in this paper. The main objective of the Act is to govern industrial dispute resolution procedures, and provide employment protection in case of unjust retrenchment, layoffs and lockouts. The IDA applies to a variety of establishments and industries in India. The terms 'industrial establishment' or 'industries' are used in the widest possible sense. It brings together almost all economic activities within the ambit of the Act, and is most widely applied in Indian organised sector. It also establishes a three-tiered dispute resolution mechanism comprising conciliation, arbitration, and compulsory adjudication of labour disputes.

In the IDA regular workers layoffs and retrenchments are covered under Sections V-A and V-B respectively. Section V-A lays down regulations for establishments with 50 or more workers. For example, a retrenched worker is entitled to compensation equal to 15 days' average pay for each year of service and for layoffs; every worker is paid fifty percent of basic wages and a dearness allowance for each day that they are laid off (maximum of 45 days). Regulations in Section V-B cover all establishments with 100 or more workers. This section is more stringent and requires firms to take government permission to layoff or retrench a single worker. Closing down of establishments requires sixty days (Section V-A)

or ninety days (Section V-B) of prior notification to the government. Thus, both these sections of the IDA increase the costs of firing and compliance with the labour regulations. According to the IDA, contract workers are exempted from the application of severance[5] payment, mandatory notice, or retrenchment authorisation. This creates an incentive for the employer to hire contract workers differentially relative to the regular workers. Firms are free to hire and fire contract workers as market conditions change, without being subjected to the provisions of the IDA. (Rajeev 2010; Deshpande et.al. 2004) observed that in many Indian states, a large number of contract workers are being employed in work of a perennial nature,

and is mostly being done by regular workers. Moreover, they are being paid almost 45 percentage point less wages than the regular workers (Bhandari and Heshmati 2008). Therefore, excessive reliance on contract workers has become a prominent feature of the Indian organised sector.

Enforcement Mechanism:

India's employment protection legislation dovetails job, income security, and collective bargaining to regular workers in the organised sector. However, their effectiveness relies on how well these legislations are enforced. The present industrial relations system allows each state to amend and execute all labour regulations prescribed by the central government. There are forty five central government labour regulations (on which states can make further amendments), and in addition, hundreds of state level laws (Debroy 1997). This leads to a profusion of labour legislations, especially across states, and makes enforcement increasingly burdensome. Enforcement of labour regulations is decentralised at the level of states. At the

[5] The Trade Union Act of 1926 deals with the formation, and registration of trade unions by employers for the purpose of collective bargaining. Under this Act, trade union organizations are legally sanctioned and collective bargaining (at least nominally), strikes, and lockouts are regulated. 4 The Industrial Employment (Standing Order) Act, 1946 provides rules and regulations governing the general terms and conditions of employment between the employee and the employer. Under this Act, the employer and the employee must agree on a set of rules and regulations governing the contractual employer/employee relationship. This Act provides income and job security to workers and safeguards the interest of both parties in case of a breach of the employment contract.

state level, the enforcement capacity is low due to poor human resource capability and lack of financial resources in the state labour departments. Industrial relation system is designed in a way that every Labour Inspector, Commissioner and Zone-officer, working under state jurisdiction, is responsible for enforcing multiple laws. Consequently, there is a gap between the number of labour inspectors available for inspection and their demand in enforcing these myriad acts.

Since the 1990s, there has been an overall decline in the total number of labour inspectors as well as factory inspections at the state level. In this paper, the enforcement intensity measured in terms of human capacity is the number of labour inspectors per one thousand workers. The mean number of labour inspectors is 0.23 for one thousand workers across states. In the year 2000, the average number of labour inspectors was 0.25. This further declined to 0.19 in 2007 (Figure 3 & 4). In the central sphere for minimum wage legislation, the mean number of labour inspectors declined from 6.51 in 2000 to 4.17 in 2010 for ten thousand workers in the scheduled industries (Soundararajan 2013). This decline is partially associated with a paucity of government spending on the labour department personnel (Shyam Sunder 2007), and partly due to the growing incidence of collusive agreements (e.g. a bribe) between employers and inspectors, the latter turning a blind eye to the non-compliance of laws (Basu et.al. 2010 and Meenakshi 2010). Other institutional changes were adopted (adoption of 'New Industrial Policy') to curtail the power of the labour inspection system to attract foreign direct

investments and promote a business friendly environment. This change, however, exempts certain types of firms from inspections (such as firms located in special economic zones (SEZ's), small and medium size industries, and firms registered under the shops and establishment acts) and is also allowed to self-certify compliance. As a result, heterogeneity in enforcement intensity at state levels is primarily driven by the state's economic policy, changes in institutional configurations, and their pursuit for foreign direct investments (Soundararajan 2013).

Data Description:

This paper combines different data-sources: 1) Data on contract workers, value added and industry characteristics, 2) Data on labour regulation, 3) Data on Enforcement intensity, and 4) Data on state level indicators. The primary data source for this study is obtained from the Annual Survey of Industries (ASI) conducted by the Ministry of Statistics and Programme Implementation (MOSPI) of the Government of India. It is a state-industry level aggregate cross-sectional dataset on total output, value added, profit, employment (both regular and contract workers), capital stock, wages and so on, at the three-digit National Industrial Classification (NIC) industry level, and at the state level for the period 2000-2007. The ASI extends to the entire country. It covers all factories registered under Sections 2m(i) and 2m(ii) of the Factories Act, 1948, i.e. those factories that employ ten or more workers and use power; and those that employ twenty or more workers, without using power respectively. Our state-industry panel dataset contains data on twenty five states and six union territories (UT's) for almost sixty four three digit industries.

Data on the labour regulation index is drawn from the study by Besley and Burgess (2004). It is based on state-level amendments to the IDA for the period 1958-1992. This index captures the inter-state variation in labour regulation over time. The index on labour regulation takes values as follows: if there is no amendment, it scores '0'; if the amendment is pro-worker, it[6] takes the value of '1'; and finally, if the amendment is pro-employer then the score is '-1'. A pro-worker (pro-employer) amendment was one that decreased (increased) a firm's flexibility in hiring and firing of workers while a neutral amendment left it unchanged. The BB index codes a direction of change if there are multiple amendments in a given year for each state. The cumulated sum of these scores in all previous years would determine the state's labour

[6] The Trade Union Act of 1926 deals with the formation, and registration of trade unions by employers for the purpose of collective bargaining. Under this Act, trade union organizations are legally sanctioned and collective bargaining (at least nominally), strikes, and lockouts are regulated. 4 The Industrial Employment (Standing Order) Act, 1946 provides rules and regulations governing the general terms and conditions of employment between the employee and the employer. Under this Act, the employer and the employee must agree on a set of rules and regulations governing the contractual employer/employee relationship. This Act provides income and job security to workers and safeguards the interest of both parties in case of a breach of the employment contract.

regime in a particular year. The BB index on the composite labour regulation ends in 1992.

This paper reviewed the IDA, 1947 in a recent edition of Malik (2009) and collected almost nine state amendments that were enacted after 1992 – these are included in the appendix section of this paper. The BB index and its coding procedure was heavily criticised by (Bhattacharjea 2006). However, in later two studies, these criticisms have been used to correct the index (Ahsan and Pages, 2009, and Gupta et.al. 2009). Following Besley and Burgess (2004), and Gupta et.al (2009), this paper follows the method of cumulating the BB scores to categorise the states in three categories: pro-worker, pro -employer and neutral for each year. Based upon a revised measure, six states are classified as pro-employer (flexible states) viz. Andhra Pradesh, Karnataka, Uttar Pradesh, Rajasthan, Gujarat and Tamil Nadu. Another fourteen states are classified as pro-worker states (inflexible states): Assam, Bihar, Jharkhand, Delhi (UT), Goa, Haryana, Himachal Pradesh, Madhya Pradesh, Chhattisgarh, Maharashtra, Orissa, Punjab, Kerala and West Bengal. The remaining eleven states are classified as neutral states: Chandigarh (UT), Dadara Nagar Haveli (UT), Jammu &Kashmir, Manipur, Meghalaya, Nagaland, Pondicherry (UT), Tripura, Daman and Diu (UT), Uttaranchal, and Andaman and Nicobar (UT) (see Appendix 1).
In this paper, the enforcement intensity is measured in terms of human capacity: number of labour inspectors per one thousand workers. The data on the enforcement intensity corresponding to Annual Survey of Industry years are obtained from the appendix sections of Pocket book of Labour Statistics published by the Labour Bureau, Ministry of Labour and Employment of Government of India. To analyse the responsiveness of strict EPL, with

variable enforcement intensity, we categorise the enforcement intensity measure in two sub-indexes: high enforcement intensity, and low enforcement intensity at a state level (see

Appendix-1). If the mean number of labour inspectors for a given state is higher than the overall mean value (0.23) of labour inspectors in our sample, then that state is referred to as

having high enforcement intensity. For instance, the state of West Bengal has on an average 0.45 labour inspectors for one thousand workers making it a case of a state with a high enforcement intensity. In a similar vein, if mean number of labour inspectors is lower than overall sample mean of labour inspectors, then that particular state has been classified as low enforcement intensity. For instance, the state of Karnataka has on an average 0.19 labour inspectors, much less than the sample mean on enforcement intensity.
Finally, the data on control variables comes from the statistical abstracts of Indian states, various reports on Economic Survey, and the Annual Survey of Industries. We use the

following control variables at the state level: per capita state domestic product, per capita road lengths, per capita electricity consumptions, and per capita state development expenditure.

UNFAIR LABOUR PRACTICES

According to Sec.2 (ra) of the Industrial Disputes Act, 1947, unfair labour practices refer to "any of the practices specified in the Fifth Schedule to the Industrial Disputes Act, 1947.

According to Section 25T of the Industrial Disputes Act, 1947 no employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice.

Fifth Schedule to the Industrial Disputes Act, 1947 provides a list as to what constitutes an unfair labour practices:

Unfair labour practices on the part of employers and trade union of employers to interfere with, restrain from or coerce workmen in the exercise of their rights to organize,
from, join or assist a trade union, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, i.e.
a. Threatening workmen with discharge or dismissal, if they join a trade union,
b. Threatening a lock out or closure if a trade union is organized,
c. Granting wage increase to workmen at crucial periods of the union organisation, with a view to undermining the efforts of the trade union organization

To dominate, interfere with or contribute, support, financially or otherwise to any trade union, that is to say: -
a. An employer taking an active interest in organizing a trade union of his workmen and

b. An employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members where such a trade union is not a recognized trade union.
3. To establish employer sponsored trade unions of workmen.
4. To encourage or discourage membership in any trade unions by discriminating against workman, that is to say:-

Discharging or punishing a workman, because he urged other workmen to join or organize a trade union.
Discharging or dismissing a workman for taking part in strike (not being a strike which is deemed to be an illegal strike under this act)
c. Changing seniority rating of workmen because of trade union activities
d. Refusing to promote workmen to hire posts on account of their trade union activities
e. Giving unmerited promotions to certain workmen with a view to creating discord between other workmen or to undermine the strength of their trade union
f. Discharging office bearers or active members of the trade union on account of their trade union activities

5. To discharge or dismiss workmen-
a. By way of victimization
b. Not in good faith but in the colorable exercise of the employer's right
c. By falsely implicating a workman in a criminal case on false evidence or concocted evidence
d. For patently false reasons
e. On untrue or trumped up allegations of absence without leave
f. In utter disregard of the principles of natural justice.
g. For misconduct of minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading [7] to disproportionate punishment.
To abolish the work of a regular nature being done by workmen and to give such work to contractors as a measure of breaking a strike.
7. To transfer a workman malafide from one place to another under the guise of following management policy.
8. To insist upon individual workman who are on a legal strike to sign a conduct bond as a precondition to allowing them to resume work
9. To show favoritism or partiality to one set of workers regardless of merit.
10. To employ workmen as 'badlis', casuals or temporaries and to continue them as such for the years with the object of depriving them of the status and privileges of permanent workmen.
11. To discharge or discriminate against any workmen for filing charges or testifying against employer in any enquiry or proceeding relating to any industrial dispute.
12. To recruit workmen during a strike which is not an illegal strike.
13. Failure to implement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith with the recognized trade unions.

[7]

16. Proposing or continuing a lock out deemed to be illegal under this act.
If the employer of any establishment commits any of these acts then he will be liable for an offence of unfair labour practice.

Unfair labour practices on the part of workmen and trade unions of workmen

1. To advise or actively support or instigate any strike deemed to be illegal under the Industrial Disputes Act, 1947.
2. To coerce workmen in the exercise of their right to self-organization or to join a trade union or refrain from joining any trade union, that is to say-
a) For a trade union or its members to picketing in such a manner that non striking workmen are physically debarred from entering the work places
b) To indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognized union to refuse to bargain collectively in good faith with the employer.
a. To indulge in coercive activities against certification of bargaining representative.
b. To stage, encourage or instigate such forms of coercive actions and wilful 'go slow', squatting on the work premises after working hours or 'gherao' of any of the members of the managerial or the other staff.
To stage demonstrations at the residences of the employers or the managerial staff members.
4. To incite or indulge in wilful damage to employer's property connected with industry.
5. To indulge in the acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.
Punishment for committing unfair labour practice According to Section 25U of the Industrial Disputes Act, 1947, any person who commits any unfair labour practice will be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

LABOUR LAWS IN THE UNORGANIZED SECTOR

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/power loom workers, sweepers and scavengers, beedi and cigar workers etc. This sector is marked by low incomes, unstable and irregular employment, and lack of protection either from legislation or trade unions. The unorganized sector uses mainly labour intensive and indigenous technology.

Out of 440 million workers in India, 93% of the workers are in the unorganized sector. The contributions made by the unorganized sector to the national income, is very substantial as compared to that of the organized sector. It adds more than 60% to the national income while the contribution of the organised sector is almost half of that depending on the industry.

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. Many of the labour and employment laws apply to the unorganized sector also.

In India, only about 8% of workers actually get the benefits available under various labour Acts. The rest 92% work in the unorganized sector, and either are not eligible for coverage, or these Acts are just not implemented for them, with the result that these workers have insecure employments and low incomes. They have no coverage of social security, and have to spend out of their 44nrolm incomes for all contingencies such as illness and children's education; in their old age they are helpless.

This is so because the Acts as they exist today only apply to those workers who have a clear employer-employee relationship. 50% of India's workers are self employed like small and marginal farmers, artisans and street vendors, many workers work for contractors or have no fixed employer like agricultural labourers and home-based workers and also, employers have been decentralizing, hiring contract labour and divesting themselves of responsibility, so that even organized workers are becoming unorganized. Second, workers are not organized and hence have no bargaining power,
because of this, even when laws exist workers are too weak, too disorganized to demand them. Third, no social security system has been devised which would meet the needs of these workers. For example, many of these workers are migratory; others have no fixed income, and could pay at certain times but not at others. Fourth, the laws are supposed to be implemented through the Government bureaucracy which has neither the manpower nor the knowhow to reach the scattered crores of workers.

Purpose of the Unorganized Workers' Social Security Act of 2008

This Act builds a social security system for the unorganized workers. It does the following:
It redefines worker so as to include all types of workers, not only those who have a fixed employer. In so doing, it brings in all the self employed workers as well as casual, contract, home based etc.
It identifies each worker and gives him/her a unique social security number and social security card.
xiv. It offers a variety of social security benefits to the unorganized worker. These would include health insurance, maternity benefit and pensions. As these schemes become successful, the trust and participation of workers' builds up, and more funds come in, a variety of different benefits can be included such as children's education, housing, skill building etc.
It binds the Central Government to providing a minimum amount of benefits and funds. It creates a structure, an architecture that works with but does not rely solely on the Government system. It creates a participatory structure that builds on already existing civil society, government and semi-government organizations which have a good record.
It encourages the unorganized workers to organize around the social security structures and benefits, creating a voice and space for them.

Important provisions of the Act
'Unorganized Sector Worker" means a person who :
1. works for wages or income; and
2. directly or through any agency or contractor or who works on his own or her own account or is self employed; and
3. in any place of work including his or her home, field or any public place; and
4. who is not availing of benefits under the ESIC Act and the P.F Act, individual insurance and pension schemes of LIC, private insurance companies, or other benefits as decided by the Authority from time to time.
This includes all workers in all types of occupations including agriculture.

Functions of Worker Facilitation Centres

xv. Registration of workers and giving them unique identification social security numbers and identity cards.
b) Mobilization of workers to becomes members of the Scheme.
c) Securing the contribution of members to the funds
d) Delivery of benefits to the members.
e) Maintaining a database of members in such form as may be prescribed showing the details of employment of members registered with it. In addition, the centers may:
f. Give skill upgradation training to increase the skill of workers.
g. Maintain and provide information related to employment and marketing opportunities for workers. Training and assisting workers to form themselves into cooperatives, unions, federations and into any other appropriate form of organization.
h. Constitute employment exchanges for unorganized sector.
i. Create public awareness about schemes available for workers.
j. Collect statistics and information of workers engaged in the employments of the unorganized sector.
k. Conduct other activities as may be prescribed.

The Worker Facilitation Centres will be managed and run by a network of Facilitating Agencies. These agencies will be reputed organisations of all types which work directly with unorganized sector workers. They can include the following:
1. Self Help Groups or their Associations
2. Post Offices
3. All types of Co-operative societies
4. Micro-Finance Institutions
5. Trade Unions
6. District Panchayat
7. Village Panchayat
8. Existing Welfare Boards
9. Urban local body
10. Any other organization or agency dealing directly with unorganized workers, as may be identified by the Authority below.

Registration of workers will be through the Worker Facilitation center. Each worker will pay a

nominal sum and will obtain an unique social security card and number. The worker will then be a "member" of the Welfare Fund and eligible for schemes.

The Authority may notify the schemes as under, subject to sustainability of the Fund:-
xvi. Medical Care or sickness benefit scheme
ii. Employment injury benefit scheme
xvii. Maternity benefit scheme
iv. Old age benefit including pension
v. Survivor's benefit scheme
vi. Integrated Insurance Scheme
vii. Schemes for Conservation of natural resources on which workers depend for livelihood,
viii. Housing schemes
ix. Educational schemes
x. Any other schemes to enhance the quality of life of the unorganized worker or her family.

The Act will be executed through a Central Social Security Authority. The Authority will have a Supervisory Board with representatives of Central and State Government, of unorganized workers and of professionals. It will be run by a managing director and two directors appointed directly by the Union Government. The authority will be responsible for managing the funds and implementing the provisions of the Act. It will appoint the Facilitating Agencies as the implementing agencies on its behalf.

Challenges to Labour Law

All employers, workers, workshop and production, induction, industrial services and agricultural institutes shall be obligated to observe the provisions of this Law.

For the purpose of this Law, a worker is one who works in any capacity against receipt of remuneration including wages, salary, share of profit, and other benefits at the request of employer. All workers, employers, representatives thereof, and trainees and also the workshop shall be governed by provisions of Law. An employer is a natural person on whose request a worker works against the receipt of remuneration.

Employment Agreement

Employment agreement and basic conditions governing its conclusion-

An employment agreement is a written or oral agreement under which a worker performs a job for the employer against of remuneration for a definite or indefinite period. Employment agreement must obsever the following conditions –

 Legitimacy of the object of the agreement Specification of the object of the agreement Non prohibition under the law to perform the specific work

All employment agreements shall be legally binding and valid unless their nullification by competent authorities shall be established.

[8]

B. Suspension of employment agreement-

In cases where performance of obligations of any one of the parties shall be temporarily halted due to the reasons stated in the following articles, the employment agreement shall be suspended. After removal of such cases, the employment agreement shall be revived with due calculations of the previous service record.

C. Termination of Employment Agreement-

The employment agreement may be terminated in any of the following cases: Death of worker Retirement of worker Total disability of worker Expiry of duration of definite employment agreements Completion of work in the contracts Resignation of workers

Working Conditions

Emoluments

All official receipts collected by a worker by virtue of the employment agreement including the wages, salary, family allowances, and housing, food and transport expenses, bonus for productions increase are known as emoluments.

B. The duration of work

Working hours constitute the period during which a worker places his energy or time at the disposal of an employer for the performance of work.

C. Holiday & vacations

Job related to public services such as water, electricity, bus services, or in workshop where based on the type of work or mutual agreement of the parties, another day is regularly set as a holiday, such day shall be deemed as the weekly holiday.

[i]

Annual privilege vacations of the workers with full wages and including four Sundays. The period of sick leave shall be considered a part of the service records.

D. Working conditions of Women

[8] Published in Articles section of www.manupatra.com
Bharati Law Review, Oct.-Dec., 2015

The female workers 'maternity leave' totally comes to 90 days. The salary for the period of maternity leave shall be paid. The employer shall be obligated to allow half an hour to the mother for nursing the baby.

E. Working conditions for the Youth It is prohibited to employ individuals below 15 years of age. Medical examination of a young worker must be reviewed at least once in year. Daily working hours shall be half an hour less.

xviii. Safety & Labour hygiene-

In order to preserve the workforce and financial resource of the country, observance, of the instructions formulated by the High Council of Technical Safety and the Ministry of Health and Medical Education shall be binding for all workshops, employers, workers and trainees.

xix. Apprenticeship and employment

To provide creative and continuous employment to job seekers as well as to upgrade the worker's technical knowledge, the Ministry of Labour and Social Affairs shall be obligated to provide the essential training facilities. Basic training centres for imparting training to unskilled workers and job seekers.

The Ministry of Labour and social Affairs shall be obligated to set up employment service centres through tout the country. Theses service centres in the course of exploring the avenues for creation of jobs and planning employment opportunities, shall he required to register and introduce the jobless to the training centres and or refer them to the production, industrial, agricultural and services centres.

xx. Collective labour negotiations and contracts-

The goal of collective negotiations is to resolve the vocational or occupational problems of workers or to improve production conditions or welfare affairs. This goal shall be achieved through determining criteria for facing the problems, providing ground for the participation of the parties in resolving them or through determining or changing the conditions and their likes at workshops, vocations or industries with the mutual agreement of the parties. The demands set forth by the parties must be supported by necessary evidence and documents.

Welfare service to workers-

The government shall be under the obligation to provide health and medical services for the workers and farmers, subject of this law and also for their families.
[9]

[9] Published in Articles section of www.manupatra.com
Bharati Law Review, Oct.-Dec., 2015

The government shall be obligated to forge necessary cooperation by utilizing the bank facilities and resources of the Ministry of housing and Town planning municipalities and other organizations concerned.

Dispute settlement forums

Any dispute between an employer and a worker or an apprentice arising out of the enforcement of this Law and other Labour regulations training contract, workshop agreements or collective Labour agreements shall at theoutset be settled through a direct compromise between the employer and worker.

The dispute probe team stipulated in this Law shall be composed.

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 ancilliary 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.

Problems of Labour Market in India

- **Indian labour market is characterised by a sharp dichotomy.**
    - Organised sector is stringently regulated while the unorganized sector is virtually free from any outside control and regulation with little or no job security.
    - Wages are 'too high' in the organised sector and 'too low', even below the subsistence level in the unorganised sector. This dualistic set up suggests how far the Indian labour market is segmented.
- **Poor Social Security:**
    - Social security to organised labour force in India is provided through a variety of legislative measures.
    - Workers of small unorganised sector as well as informal sectors remain outside the purview of these arrangements.

- **Multiplicity of Archaic Labour Laws**
    - Labour Laws govern trade unions, industrial relations, and job security
    - Labour is a concurrent subject and more than 40 Central laws more than 100 state laws govern the subject.
- **Trade Union Issues:**
    - Trade Union Act, 1926 provide that any seven employees could form a union.
    - During the freedom struggle, Indian trade union contributed handsomely. It is now better organized.
    - **Frequent Strikes:** Industrial Disputes Act, 1947 aims at promoting good relations between employers and workmen, protecting workers against retrenchment and settling disputes through conciliation, arbitration or adjudication. However, industrial relations climate were far from satisfactory when trade unions resorted to militancy in the 1960s and early 1970s. Between 1972 and 1981, the average number of work days lost per year per employee in the manufacturing sector stood at 4.070. This figure went up to 5.736 between 1982 and 1992—a very high figure compared to other countries in the contemporary period.
    - Multiplicity of trade unions hamper dispute resolution.
    - Inter-union rivalry and political rivalries are considered to be the major impediments to have a sound industrial relation system in India.
    - Indian labour laws are highly protective of labour, and labour markets are relatively inflexible. As usual, these laws are applicable in the organised sector only.
- **Rigid Laws:**
    - India’s labour laws for the workers in the organised sector give workers permanent employment, of course, after a probation period ranging from 6 months to 2 years.
    - Job security in India is so rigid that workers of large private sector employing over 100 workers cannot be fired without government’s permission.
- **Unskilled labour**
    - Lack of enough skilled workers is a common concern raised by the employers in defence of their inability to hire more.
    - They resort to contract employment
    - They adopt hire and fire policy.
- **Gender gap**
    - Low female labour force participation

- 71% of men above 15 years are a part of the workforce as compared to just 22 percent women (Labour Force Survey)

- **Low labour Productivity:**
  - Promotions are based on seniority and thus workers get fixed annual wage increments unrelated to work performance.
  - The labour market policies followed in India in the past have led to serious problems due to low labour productivity even in the context of an economy where the firms were shielded from both international competition (by the very high import tariffs) and domestic competition (by the licensing policies).

This, in turn, created an inefficient and internationally uncompetitive industrial sector which eventually led to lower wages (for example, Indian wages in the manufacturing sector are only seventh the Singaporean wages), fewer jobs, and higher unemployment.

Labour market regulations operating since 1947 have tended to discourage both the growth of employment and productivity. Further, it has pushed many activities into the unorganised sector. This is evident from the fact that annual growth rate of employment in the unorganised sector was much higher (2.73 p.c.) than the organised sector (1.58 p.c.) during 1981-91.

CHAPTER-3

How Labour Reforms contribute to Ease of Doing Business

Introduction:

Discussions and debates on the amendments to the Indian Legal system and sudden imposition of the Digitalisation in the life of normal people, clearly elucidate the intention of our Government to develop our Economy on par with other economies. The World Bank's Ease of Doing Business is a stepping stone for us to realize our position when being compared with other developing economies. This has created a great impact on the rectification of major lacunas in the Legal system. Basically, it is a ranking system, established by the World Bank, which indicates how easy or difficult it is for an entrepreneur to establish a business when complying with relevant regulations. Every year the World Bank announces the survey report regarding the economies and their positions.

India and Ease of Doing Business (EODB):

Earlier India has always been considered as a place where doing business is complicated due to the multiplicity of applicable laws, compliance procedures, multiple levels of payments and

exorbitant delays in approvals/registration and also the plethora of authorities and departments to deal with, which demotivates many entrepreneurs to invest in India.

Credit goes to Ease of Doing Business (EODB), because of which the Indian Government is insisting us to transform to Digital mode. After understanding the complexities in the Indian legal system, the Government has taken various initiatives to simplify and rationalize the existing regulations and switch us to information technology to make governance and compliance more efficient and effective.

Due to India's overhauls on GST implementation, Insolvency and Bankruptcy Code, E-filing SPICE form for single incorporation and registration under Ministry of Company Affairs which automatically integrates with Tax department and most importantly the Codification of Labour laws, etc., have played a predominant role in promoting us to the 63rd best economy as per the EODB survey report 2020. In this context, the World Bank has specifically acknowledged India's remarkable development in legal and compliance system.

Labour Reforms in EODB:

The bold and diligent effort of the Government can be witnessed by the introduction and implementation of many major and crucial Labour reforms during recent times. The development in the Labour sector not only regulates and ease the compliance but also promotes transparency and cost-effectiveness. The ease of compliance as notified by the Government promotes setting up more enterprises catalyzing the creation of more employment opportunities. The recent developments are given below as a ready reckoner:

1. Ministry of Labour & Employment has notified "Ease of Compliance to maintain Registers under various Labour Laws Rules, 2017" on 21st February 2017 which has in effect replaced the 56 Registers/Forms under 9 Central Labour Laws and Rules made thereunder into just 5 common Registers/Forms to facilitate ease of compliance, inspection and for providing easy accessibility to the public through electronic means, reduction in the cost of compliance and thereby increasing transparency

2. Registration process for EPFO and ESIC are now fully online on a real-time basis

3. Common Electronic Return cum Challan for EPFO and ESIC

4. Common Registration Service for 5 labour laws (ESI, EPF, BOCW, ISMWA and CLRA) on the e-biz Portal of DIPP

5. A Unified Web Portal 'Shram Suvidha Portal' has been launched to bring transparency and accountability in enforcement of labour laws and ease the complexity of compliance. It caters to four major Organisations under the Ministry of Labour, namely,

a. Office of Chief Labour Commissioner (Central),

b. Directorate General of Mines Safety,

c. Employees' Provident Fund Organization

d. Employees' State Insurance Corporation.

6. Single Online Common Annual Return under 9 Central Labour Acts has been made operational on Shram Suvidha Portal from 24.04.2015

The Codification of Labour laws

A major drawback for the entrepreneur in establishing the business in India is the complexities involved in labour legislation and, its compliances. With hundreds of central level and state level labour legislation, it is the need of the hour to consolidate, amalgamate, simplify, rationalize and codify these laws. In this regard, the Government has succeeded in combining laws relating to the same subject matter under one umbrella. This is the biggest step towards promoting EODB. Thus the Government as part of labour law reforms has undertaken a drive to rationalize 38 Labour Acts by framing 4 labour codes viz *Code on Wages*, *Code on Social Security*, *Code on Industrial Relations* and *Code on occupational safety, health and working conditions*.

Amongst several steps to overcome the lacunas, the codification of labour laws has minimised the multiple definitions and authorities, without compromising on the basic concepts of employee welfare and benefits. In a way, it would be easier for employers to adhere to the compliances within the prescribed timeline and also for the labour authorities to enforce the laws. The decision of changing the nomenclature of 'inspector' to inspector-cum-facilitator is one of the best friendly initiatives undertaken by the Government to promote the amicable relationships between the Employer and Inspector-cum-Facilitator. Promoting digitalization through the introduction of web-based inspection scheme, calling of information electronically, the composition of offences etc. promotes a positive business environment.

On one hand, the Code emphasis on compliance mechanism and, on the other hand, it increases the cost of non-compliance and deterrent penalisation. Gone are the days, when employers could take it easy on non-compliances which hardly provided a deterrent with a paltry fine. At the same time, diligent employers who are willing to comply with the Code gets an opportunity to compound the offence. Thus the Code, embarked upon the simplest compliances and step forward in the direction of ease-of-business.

Of course, the enactment of a law is one thing and, its proper implementation is another thing. So, the major challenge faced by the Government is whether all these codifications of Labour law reforms shall reap positive effects from all related parties like an entrepreneur as well as Labour force. We shall await further Labour law reforms and its implementation.

NEED FOR LABOUR LAW REFORMS IN INDIA

Research done by several economists claims that labour reforms in India are a **necessity for achieving employment growth**.

We have a myriad number of labour laws. **There are over 200 laws related to labour in India.** We have 44 Central laws and more than 150 labour laws from the states.

These laws often have **overriding provisions** and facilitate inspector raj of the worst kind.

Moreover, **the labour laws are applicable only to the formal sector.** As a result, manufacturing companies prefer to **hire contractual workers** to get around inflexible labour laws. They limit their permanent workers to a minimum.

India has the largest proportion of employment in the informal sector (above 80 %). They remain outside the ambit of any law related to labour.

Moreover, in 2014-15, as much as 93.9% of the addition to the workforce in the formal manufacturing sector was hired through contractors.

These contractual workers do not have any security of tenure. Manufacturers do not invest in training of these workers as they are not permanent.

Labour laws also restrict the growth of small and medium sector enterprises. The SMEs do not increase the scale of their operations so as to not come under the ambit of these convoluted laws. This further restricts employment generation.

A recent report, 'Ease of Doing Business – An Enterprise Survey of Indian States' found that 85% of the firms operating in the apparel sector employed less than eight workers.

Hence, the tough labour laws ultimately lead to lower benefits to the labour class and affect the ease of doing business as well. These tools do not protect workers. They are instead used as a tool to harass businessmen.

SOME RESTRICTIVE LABOUR LAWS IN INDIA

Probably, the three most restrictive acts are the **Industrial Disputes Act (IDA)**, **the Industrial Employment (Standing Orders) Act** and **the Trade Union Act.**

The IDA requires firms with more than 100 workers to **seek permission** from their respective state governments **for retrenchment or laying off of workers.** This is seldom granted.

The Industrial Employment (Standing Orders) Act requires such firms to **ask for permission even for modifications in job descriptions.**

The Trade Union Act lets any **seven workers within a firm form a union, which leads to multiple labor unions.** In addition, this act provides each such union the right to strike and to represent workers in legal disputes with employers.

REFORMS IN THE LABOUR LAW IN INDIA

Even though labour laws do not benefit the poor, it is difficult to make any reforms in labour law because of the resistance by trade unions.

The Modi Government has been trying to reform labour laws by merging various laws into 4 codes. The four codes are wages, industrial relations, social security, and occupational safety, health & working conditions.

Labour law comes under the concurrent list of the Indian constitution. Hence, states like UP, MP, Gujarat, etc have considerably eased labour regulations in light of the coronavirus pandemic.

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 [10]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".

Are India?s labour law reforms only a gift for factories, or will workers benefit too?

The long-awaited labour law reforms by states may make it easier for factories and businesses to run efficiently amid the coronavirus-led economic crisis, but the relaxation in rules may also put at stake the interest of labourers and workers, with businesses getting a free hand. On one hand, the industry sought to assure that the rule changes will let businesses function and thus generate more employment; on the other hand, social experts said the move may further aggravate the crisis

for those who are worst affected. Given the unprecedented economic fallout from coronavirus, various industry bodies appreciated the labour law relaxations.

In tough times like these, brought about by the coronavirus pandemic, industries are facing challenges and there is a need to create an environment in which businesses can survive in the present and grow in the future. ?I do not see this as being pro-industry or pro-labour; this is a situation where business units need to survive because economic activity needs to grow; for which some changes in norms and regulations may be necessary over a specified time frame,? Niranjan Hiranandani, President, Assocham, told Financial Express Online.

If factories work, unemployed people will be put to work too

If more work opportunities come up as a result of these changes in norms and regulations, it will definitely benefit all stakeholders, including labour, business units and the Indian economy, Niranjan Hiranandani added. Businesses and factories are at a standstill due to the nationwide lockdown. The shutdown factories have directly made a severe dent on the employment condition of the country, CMIE said.

The unemployment rate rose to the highest level of 27.1 per cent in the week ended May 3, according to CMIE, while the small traders and wage labourers seem to be among the worst hit from the lockdown. More than 9 crore people within this section of the society lost their livelihood in just about a month. In this context, the increase in working hours is being seen as an opportunity to produce more even with the shortage of manpower.

Much needed reform, but watch out for pitfalls

Even as the reform in labour laws is something the industry and free-market experts have been calling for long, it needs to be ensured that the worker welfare is not compromised. ?The change in labour laws will be beneficial for both the industry as well as the labourers. These new reforms will promote ease of doing business in the state. However, it is crucial that companies safeguard the interests and wellbeing of the labourers,? Sumit Kumar, Vice President, National Employability through Apprenticeship Program, TeamLease, told Financial Express Online. Factories would need to judiciously ensure compliance to all labour laws, Sumit Kumar added.

?As far as the increase in working hours is concerned, this is due to a shortage of manpower, which is going to hit all sectors, especially the manufacturing sector. I feel change is important, but the change should come with a focus on worker wellbeing – working condition and living conditions,? Gayathri Vasudevan, Executive Chairperson and Co-Founder, LabourNet Services, told Financial Express Online.

However, the attention of employee health will be a deeper concern for the companies as the risk of Covid-19 will stay for the next two years. With the need of fumigation or sanitisation and physical distancing, there will be a marked improvement in occupational safety and health, which

was an area of zero focus earlier, added Gayathri Vasudevan, who was a former project officer at the International Labour Organisation.

The biggest concern: Exploitation of labour

Meanwhile, the new labour law changes are also seen as a bane for the workers desperately looking for a job to end their financial nightmare. Instead of providing protections to the most marginalised and vulnerable, as exposed by the covid crisis, and thus an opportunity to rectify the fractured economic system, these moves will further exacerbate the crisis for those who are worst affected by it, Trinanjan Radhakrishnan, Project Coordinator, Sustainable Development at Oxfam India, told Financial Express Online. It goes against the grain of transformative reforms, which is the need of the hour, in an effort to build back better and it rings the government's mantra of 'sabka Saath, sabka vikas' hollow, Trinanjan Radhakrishnan added.

Improve ease of doing Business

Initiatives taken by the Ministry of Labour & Employment for Ease of Doing Business

2. Shram Suvidha Portal: In order to bring transparency and accountability in enforcement of labour laws and ease the complexity of compliance, Ministry of Labour & Employment has launched a unified Web Portal 'Shram Suvidha Portal' on 16.10.2014, catering to four major Organisations under the Ministry of Labour, namely –

¬ Office of Chief Labour Commissioner (Central),
¬ Directorate General of Mines Safety,
¬ Employees' Provident Fund Organization; and
¬ Employees' State Insurance Corporation.

The Portal provides for allotment of a Unique Labour Identification Number (LIN) to establishments, filing of self-certified and simplified Single Online Common Annual Return by the establishments and also a transparent Labour Inspection Scheme through computerized system based on risk based criteria and uploading the inspection reports within 72 hours by the Labour inspectors.

• Launching of the Shram Suvidha Portal has facilitated in bringing transparency and accountability leading to better enforcement of the Labour Laws. Transparent Labour Inspection Scheme has reduced the discretionary powers of the Inspectors and brought transparency in the inspection system thus minimizing the harassment of employers.

• The facility of Online registration for allotment of Unique Labour Identification Number (LIN) and the Transparent Labour Inspection Scheme was started on the Portal with its launch on 16.10.2014 itself.

• Filing of Single Unified Annual Return for 8 Labour Acts (10 Central Rules) was launched on 24.04.2015. It has facilitated in easing the compliance burden of the employers. Returns under the Contract Labour (Regulation and Abolition) Act, 1970, Inter-State Migrant Workmen (Regulation of Employment and conditions of Service) Act, 1979; and Industrial Disputes Act, 1947, which were half yearly / annually earlier, now need to be filed by all employers annually only. This effort is an evidence of use of technology in order to enhance transparency and minimise harassment contributing to ease of doing business.

• Online Common Annual Return filing under the Mines Act 1952, has also been facilitated on the Portal since 09.03.2016.

• Common monthly return for EPFO & ESIC has also been facilitated on the Portal.

• In the process of taking States/UT's on board on the Shram Suvidha Portal so as to enhance the coverage, Haryana has become the first State to join the Portal by 31st March 2016.

• The Portal is multilingual, catering to 11 languages.

3. Common Registration Format on the e-biz Portal of DIPP: Ministry has launched on 9th March 2016 the Common Registration Format on the e-biz Portal of DIPP, for registration under 5 Central Labour Laws viz.

¬ The Employees Provident Fund & Miscellaneous Provisions Act, 1952
¬ The Employees State Insurance Act, 1948,
¬ The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996,
¬ The Contract Labour (Regulation & Abolition) Act, 1970, and
¬ The Inter-State Migrant Workmen(Regulation of Employment & Conditions of Service) Act, 1979

3. Simplification/ Reduction of Number of Registers to be maintained under various Central Labour Laws: After examination by the Expert Committee constituted in the Ministry, it was found that various establishments have to maintain about 79 Registers as provided under various Central Labour Laws. Further, the information to be maintained under various Registers can be rationalised and simplified by avoiding duplicity of information or deleting redundant fields from the formats of the Registers. Moving forward, on this concept, the common fields were amalgamated and some rationalised resulting in reducing 56 Registers to 5 Registers to be maintained by the establishments. A pre-publication Notification dated 04.11.2016 has been issued to amend the Rules of respective Labour Acts to modify the format of Registers to be maintained. Simultaneously, software is being developed to provide the facility of maintaining these Registers in digitised format for further reducing the efforts in terms of time, human resource and money of the establishments.

4. Registration process for EPFO and ESIC fully online on real-time basis: In EPFO the process of allotment of registration number to any employer is totally online with no manual intervention. Once an application is submitted successfully the registration number allotted is displayed

immediately within a few minutes. There is no visit of any personnel from the EPFO for collection of any documents as the required documents are uploaded by the employer at the time of application submission itself. Similarly, in ESIC, the registration under ESI Act is done online on real time basis without requirement of any inspection or physical documents. No human intervention/approval is required for registration of employer. Registration number is generated once the information is submitted successfully and Registration Letter can be printed from the same screen. The Registration letter and password is also sent to the email id of the employer instantly. It is also notified on the homepage of ESIC website www.esic.in and on the sign-up page a message displays that "no physical documents are required for registration of employer under ESI Act". Further, the condition of requirement of an existing bank account at the time of registration has been removed in ESIC with effect from 14th April 2016. In EPFO, the condition of requirement of an existing Bank account at the time of registration under EPFO will be removed very shortly. However, for the first return to be submitted to EPFO, the Bank Account will be required.

5. Start-Up India – Compliance regime based on self-certification: In order to promote the Start-Up ecosystem in the country and incentivizing the entrepreneurs in setting up new start-up ventures and thus catalyze the creation of employment opportunities through them, Ministry of Labour & Employment has issued on 12.01.2016 an advisory to the States/Uts/Central Labour Enforcement Agencies for a compliance regime based on self-certification and regulating the inspections under various Labour Laws. The advisory aims to promote setting of start-ups which are necessary for creating large employment opportunities. If such start-ups have furnished self-declaration, no inspection will take place under the specified 9 labour laws in the first year of setting up of the Start-up. This will allow start-ups to concentrate on their work. From the second year onwards, up to 3 years from the setting up of the units, such start-ups are required to furnish self-certified returns and would be inspected under these 9 labour laws only when credible and verifiable complaint of violation is filed in writing and approved by the higher authorities. This measure intends to avoid harassment of the entrepreneurs by restricting the discretion and arbitrariness in the matter of inspection of start-ups.

6. MSMEs – Compliance regime based on self-certification: In order to incentivize setting up of MSMEs to generate employment opportunities through them, Ministry of Labour & Employment has issued, an advisory to the States/Uts/Central Labour Enforcement Agencies on 19.02.2016 for a compliance regime based on self-certification and regulating the inspections of MSMEs under certain Labour Laws, through an Inspection Scheme. The advisory aims to simplify and ease the compliance burden of these MSMEs under 6 Labour Laws during their initial 3 years of establishment with an inspection scheme taking into account the self-certifying compliance with the 6 Labour Laws. MSMEs can self-certify compliance through a combined single self-certified return under these laws. For MSMEs which are less than 3 years old and have given a self-certified return mentioned above, the inspection scheme may provide that only a small percentage of such units shall be verified through a random risk based inspection system for compliance under the above mentioned laws. Further, the States/Uts may develop their self-declaration form to be furnished by the MSMEs during first year of establishment to decide the inspection criteria till the time the establishment files their first self-certified return.

Industrial Relations Code, 2019 – Will it increase 'Ease of Doing Business' in India?

India's effort to implement major legislative reforms has been recognized by the World Bank as India joins the list of top ten improvers in the 'Ease of Doing Business' rankings published by the World Bank for the third consecutive year. Major contributors to India's jump to 63rd place are reforms in insolvency law, starting business in India and the implementation of the 'Make in India' campaign. Having gathered some momentum, the Indian Government envisions to bring India within the top 50 countries in 'Ease of Doing Business' by 2021. A key focus area for achieving this goal is a much-needed overhaul of Indian labour laws.

One of the labour law reform measures proposed by the Indian Government involves codification of three critical industrial relation legislations under one code: The Industrial Relations Code, 2019 (**Code**). The Code consolidates Indian labour laws on trade unions, conditions of employment and industrial disputes. However, the Code has been met with strong opposition from the workforce. The Indian Government now faces a challenge of striking a balance between the demands of the workforce and providing freedom to companies to conduct their business efficiently.

Indian labour laws with respect to trade unions were enacted in 1926 to protect workmen from exploitation as it was the need of the hour, given the pre-independence market economy. Trade unions grew out of the compulsion of situations where an individual worker was unable to voice demands and had no bargaining power vis-a-vis his employer. Collective bargaining through trade unions emerged as an effective instrument for workers to improve their working conditions. Currently, the Trade Unions Act, 1926 does not provide for recognition of a trade union. Recognition of trade unions is governed by instructions and guidelines stated in the 'Code of Discipline', voluntarily accepted by employers and workers. The 'Code of Discipline' provides for two types of recognition: (i) a representative union for an industry (which requires support of at least 25% of workers in that industry); or (ii) recognition as a majority union in an establishment (which requires support of at least 15% of the workers of that establishment). Recognition bestows rights to recognized unions such as entering into collective agreements with employers as regards terms of employment, conditions of service of workers, conduct of discussions for prevention/ settlement of disputes etc. The Code proposes to provide for a 'negotiating union'/ 'council' for negotiating with the employer of the industrial establishment on prescribed matters. However, a trade union having the support of 75% or more workers of the establishment shall be recognized as the 'negotiating union'. Where a trade union cannot attain support of 75% or more workers, the Central Government/State Government will constitute the 'negotiating council'. This proposed amendment to the current labour laws has been met with strong opposition from the workforce, due to the strict 75% support requirement for recognition. The existing trade unions are of the view that the criteria of 75% support for recognition and government intervention on account of role of the government in constitution of the 'negotiation council' will dilute the powers of the workers to form their independent body. In 2018-19, the conciliation efforts of the Central Industrial Relations Machinery, an office of the Ministry of Labour and Employment averted 461 strikes out of 465 threatened strikes. Therefore, from the perspective of the employer, a change in the

mechanism of constitution of 'negotiating union'/ 'council' will improve the ease of doing business in India.

Another key highlight of the Code is that it seeks to redress the issue of redundancy of the existing multiple adjudicatory forums which deal with labour law disputes. Currently, disputes are adjudicated by the board of conciliation, courts of inquiry, labour courts, tribunals and national tribunals. Resolution of disputes under the Code will be streamlined to two forums: Conciliation Officer, Industrial Tribunal and National Industrial Tribunal. The Conciliation Officer will mediate and promote settlement of disputes relating to retrenchment, closure, interpretation of standing orders, grant of relief to workmen, illegality of strikes, lock-outs etc. Whereas, the National Industrial Tribunal will adjudicate disputes affecting States due to the nature of the industry and matters of national importance. In addition, the Code provides that the employer and workmen may refer disputes to arbitrator pursuant to an arbitration agreement. This reorganization of dispute resolution mechanism can be expected to regularize the resolution of disputes by eliminating multiplicity of claims before multiple forums and may also lead to reduction of timelines for dispute resolution.

One of the fears of workers in India is job permanency due to an increasing gap in skill and ability to integrate themselves with industrial advances driven by technology. The World Economic Forum expects 75 million jobs to be displaced due to automation, technological integration, and large scale unemployment. On 22 January 2020, India joined the World Economic Forum's Reskilling Revolution Platform which is an initiative to provide one billion people with better education, skills and jobs by 2030. In order to keep up with technological advancements, the Code requires setting up of workers' re-skilling fund by employers for training of retrenched workers. Employers shall be required to contribute to the extent of 15 days wages of retrenched workers', or such other days as maybe notified by the Central Government. The underlying rationale of requiring employers to contribute to the re-skilling fund is to skill retrenched workers so that they are employable and productive in the near future.

Further, the Code codifies the right of the employer to engage fixed term workers directly. A fixed term worker will be a worker who is engaged on through a written contract for a fixed period. An employer would be required to provide all statutory benefits to fixed term workers such as social security and wages at par with regular workers engaged in the similar field of work. This will benefit employers and workers alike as workers will be directly engaged by the employers as opposed to third party contractors.

The Code aims at balancing of rights between workers and employers which is essential for increased productivity. A 2019 study (Amirapu and Gechter, referred in World Bank Ease of Doing Business Report 2020) reveals that the restrictive labour laws in India add a 35% increase in a firm's unit labour costs. The key parameters of determining the efficacy of a country's labour legislations are flexibility in employment regulations. Labour laws in India are spread over various central and state laws for instance various states have implemented their own standing orders which govern the code of conduct of workers. Codification of these labour laws will also assist in bringing uniformity across various states in India assuming that the States will accept such changes without significant amendments. The Code aims to correct course for labour legislations taking

into account the emerging sectors in the Indian economy and the recent incentive for having a corporate structure for doing business in India. Therefore, what may be viewed as pro-employer reforms proposed to be introduced by the Code only seek to provide flexibility in the restrictive labour laws in India and in due course will facilitate ease of doing business in India.

Reforms- The Ultimate Challenge

The requirement in the Industrial Disputes Act that no factory employing more than 100 workers can resort to lay-offs without "prior permission of the appropriate government" — which is seldom granted — leaves companies with no incentive to maintain anybody on regular muster rolls. Instead, they find it expedient to limit the permanent workforce to below 100 and meet any additional labour requirements by hiring through contractors depending on the ebb and flow of the business cycle. Those taken on contract are paid less for doing the same work, denied provident fund and other benefits, and can be fired without advance notice or compensation.

Rajasthan has drafted laws to make it simpler to fire up to 300 employees without government permission. (After all, informal

[11]

employment is caused by such inconsiderate labour laws). Such changes to the Industrial Disputes Act have been discussed for two decades now. But, it is interesting to note that these are employment friendly but not employee friendly, per se.

The Rajasthan Government's planned labour law amendments could embolden companies to hire workers more freely, without being constrained by the requirement of seeking official permission for retrenchments .Reforming hiring and firing laws and the Factories Act, which, for instance, limits the amount of overtime workers can do to all of 50 hours per quarter.

Labour laws are on the Concurrent List, which allows states like Rajasthan to pass the necessary laws and forward them to the president for approval. If the other states and the Centre follow, India could make a late start at competing for labour-intensive jobs in garments, shoes and toys. Some of the jobs in these industries are exiting China – as its factory wages rise at double-digit levels – for destinations like Bangladesh, Vietnam and Indonesia, deemed more investor-friendly than India.

[11] Published in Articles section of www.manupatra.com

The changes to the Factories Act could also include increasing the penalties for breaking the law. India, with just 300,000 apprentices, lags badly behind South Korea and China (with 20 million). It should be made easier to hire apprentices.

Social security coverage should be given to even the unorganized sector workers. Children should not be allowed to work in inhumane conditions and in dangerous places like mines, hand weaving etc. They should instead avail their right to education as in Art 21A of the Indian constitution.

While what has been done by Rajasthan is a step forward, it still falls well short of addressing the real issue. What India needs is a modern labour law framework that induces firms to keep all workers engaged in core operations on their direct rolls, entitling them to uniform work-linked wages, provident fund, annual leave and other benefits. But this can happen only if it is combined with the flexibility to undertake lay-offs, subject to reasonable notice and payment of minimum termination benefits based on length of employment. It is for the Centre to introduce such genuinely pro-employment legislation; the new government has the required numbers to do this. There should be plans for a national multi-skill mission. We would then be poised to go [12]from Scam India to Skill India. India's advantages of demography demand and democracy must thus be reaped. What reforms see the light of the day is yet to be seen.

Labour reforms give India a chance to compete with a favourable destination like Vietnam

The Covid-19 pandemic is a black swan event in our lives. The novel coronavirus has put us through a never-seen-before lockdown. India is staring at a long road towards economic recovery and several reputed rating agencies have stated that an unparalleled global recession is underway, owing to the disruptions. Fitch has forecast India's GDP growth slipping to 0.8 per cent for the 2020-21 fiscal.

However, a crisis like this also brings with it opportunities to look inwards and make certain desirable changes. In this backdrop, state governments in Uttar Pradesh, Gujarat, Goa and Madhya Pradesh have undertaken labour reforms to attract investment. Their policy initiative has invited both criticism and praise.

In the post-Covid world, it will only be the survival of the fittest. Therefore, it was imperative that these labour reforms were undertaken. Industries operating in these three states will have the power to hire and fire; working shifts will be increased from 8 hours to 12 hours, and there will be a

[12] Published in Articles section of www.manupatra.com

sizeable reduction of compliance regulations. The three main stakeholders to benefit from these reforms are the workers, companies and the economy at large.

How it works for workers

Migrant workers who were employed in big cities are now heading back to their home states and many may not return, at least in the near future. These reforms will result in bringing jobs to the workers' doorstep. A major chunk of migrant workers who travel to big urban centres in search of livelihoods come from these states.

Nearly 90 per cent of India's estimated 47 crore workforce is not benefitting from the existing labour law provisions. In fact, these laws have served as a deterrent to newer businesses. The announced relaxations will not only incentivise but also create new industrial investment opportunities, resulting in more jobs for the workers at a time when the unemployment rate has hit a record high of 27 per cent.

How the companies benefit

There are as many as 40 central labour laws in India and states also have their own set of legislations governing the industry and labour. A majority of these labour laws were introduced in the years right after the Independence. The importance of these laws in that era cannot be understated, however, they have not stood the test of time. In 1991, even though India liberalised its economy, it failed to reform its labour laws.

These laws have proved to be a hurdle for investment in India, and can best be described as archaic. Scrapping such archaic labour legislations can provide India the investment push.

As a fallout of Covid, it is expected that several businesses will move out of China. India must take advantage of it. We need to introspect as to how India can become a more favourable option for the world, compared to a country like Vietnam, which has already implemented bold labour reforms. These reforms will give industries the operational freedom they require and they will not be subjected to the usual compliance rigmarole.

How the economy gains

The economy at large will be the biggest beneficiary of these reforms. If an industry is set up or expanded, it is not only the workers or the company which will benefit. The expansion will also lead to job creation across different sectors, which will result in a higher purchasing power of the people, and an increase in revenue for the government. Metros are the major engines of economic growth in India, but these reforms have the capacity to create new growth pockets in villages and small towns, too.

These labour reforms, to some, may come across as harsh measures, but we should also remember that the Indian economy currently is in doldrums, owing to the pandemic. The reforms undertaken are the need of the hour and we cannot fall into a trap, construing these measures as anti-labour. If

India is to gain a competitive advantage over other nations to transform itself as a manufacturing hub and become self-reliant, it is necessary that such steps are undertaken.

The International Monetary Fund in August 2018 had termed the Indian economy as an elephant starting to run. These labour reforms have the potential to allow the elephant to break the shackles and move forward leaps and bounds.

Meaning of Labour Reform:

Policymakers face several kinds of choice and, hence, trade-offs. They can emphasise on enforcing higher wages only but at the cost of low employment.

Higher growth at the cost of low wages is another option to the policymakers.

Again, job security of existing workers may be the concern for policymakers at the cost of encouraging employers to adopt labour-displacing techniques of employment.

Such trade-offs are bound to emerge when economic restructuring takes place and cause embarrassment to the government and the policymakers. A proper balance between choices is of utmost importance so that neither labour welfare is injured nor industrial peace is disturbed. Thus, labour reforms are of great important as the laws enacted in the labour market aim at regulating the market, protecting employment and ensuring social security of workers.

Labour reforms essentially mean taking steps in increasing production, productivity, and employment opportunities in the economy in such a manner that the interests of the workers are not compromised. “Essentially, it means skill development, retraining, redeployment, updating knowledge base of workers-teachers, promotion of leadership qualities, etc. Labour reforms also include labour law reforms” (INDIA 2006; p 601, Gol Publication Division). Labour laws are concerned with the trade union rights of the workers, industrial relations and job security and policies relating to wages, bonus and other incentive schemes.

Labour Policies before the Reform Era:

Before we move to the labour policy in the pre- reform era of 1990s, we must make one important observation of the Indian labour market. Indian labour market is characterised by a sharp dichotomy. Here one finds a small enclave of organised labour. This organised sector is fairly stringently regulated.

On the other hand, a large number of establishments operate in the organised sector where labourers cannot organise themselves to pursue their common interests due to various constraints. Most importantly, this sector is virtually free from any outside control and regulation with little or no job security.

This sector, thus, provides ‘too little to too many’. Further, wages are ‘too high’ in the organised sector and ‘too low’, even below the subsistence level in the unorganised sector. This dualistic set up suggests how far the Indian labour market is segmented.

Social security to organised labour force in India is provided through a variety of legislative measures. These are payment of compensation to workers in cases of industrial accidents and occupational diseases leading to disablement or death, provident fund, pension including family pension, health insurance, payment of gratuity, maternity benefit, employees' deposit-linked insurance scheme, etc.

A number of steps were taken in India to provide social security as back as 1923. The trend towards conferring benefits to the workers gained momentum only after independence. But considering the needs of the country, the present social security arrangements are inadequate. More than 90 p.c. of workers in India are outside the purview of the prevailing social security arrangements as workers of small unorganised sector as well as informal sectors remain outside the purview of these arrangements.

Another aspect about labour policies that influence labour market are labour laws relating to forming trade unions, industrial relations, and job security

As far back as 1926, Trade Union Act was passed. In India, any seven employees could form a union. During the freedom struggle, Indian trade union contributed handsomely. Today, the trade union is more widespread and has taken deep roots. It is now better organised and is now on a permanent footing. But at the same time, one finds same major defects in the Indian trade union movement.

It is alleged that trade unions in India are interested in the growth of capital thereby blunting the edge of a trade union which is a product of conflict between labour and capital. Often employers counter the moves of the workers to hit back the aggressiveness of workers' unions.

Since workers are not disciplined, leaders resort to strike and work stoppage even on flimsy grounds. Above all, inter-union rivalry and political rivalries are considered to be the major impediments to have a sound industrial relation system in India. It is also said that Indian labour laws are highly protective of labour, and labour markets are relatively inflexible. As usual, these laws are applicable in the organised sector only.

Prevention and settlement of disputes and benign industrial relations are the two important objectives of India's industrial relations policy. Industrial disputes are governed by the Industrial Disputes Act, 1947, that aims at promoting good relations between employers and workmen, protecting workers against retrenchment and settling disputes through conciliation, arbitration or adjudication.

However, industrial relations climate were far from satisfactory when trade unions resorted to militancy in the 1960s and early 1970s. Between 1972 and 1981, the average number of work days lost per year per employee in the manufacturing sector stood at 4.070. This figure went up to 5.736 between 1982 and 1992—a very high figure compared to other countries in the contemporary period.

India's labour laws for the workers in the organised sector give workers permanent employment, of course, after a probation period ranging from 6 months to 2 years. Job security in India is so

rigid that workers of large private sector employing over 100 workers cannot be fired without government's permission.

Above all, in the public sector, one author aptly remarked that 'workers here have enjoyed almost complete job security since independence'. Promotions are based on seniority and thus workers get fixed annual wage increments unrelated to work performance.

This really tells on the efficiency of the workers leading to low productivity in the manufacturing industry. Even the owners of sick industries are not permitted to downsize the establishments or to close them down. In view of this, one finds the tendency of Indian firms to employ casual or contract workers who are not protected by the country's labour laws.

Thus, the conclusion in the words of Pradeep Agrawal is; The labour market policies followed in India in the past have led to serious problems due to low labour productivity even in the context of an economy where the firms were shielded from both international competition (by the very high import tariffs) and domestic competition (by the licensing policies).

This, in turn, created an inefficient and internationally uncompetitive industrial sector which eventually led to lower wages (for example, Indian wages in the manufacturing sector are only seventh the Singaporean wages), fewer jobs, and higher unemployment.

P. Agarwal adds further that these labour policies, if pursued in the neo-liberal regime, will create variety of problems in the midst of growing domestic and international competition. It has been also observed that the so- called labour market regulations operating since 1947 have tended to discourage both the growth of employment and productivity.

Further, it has pushed many activities into the unorganised sector. This is evident from the fact that annual growth rate of employment in the unorganised sector was much higher (2.73 p.c.) than the organised sector (1.58 p.c.) during 1981-91.[13]

Labour Policies and the Reform Era:

Since protective labour policies and inflexible labour laws are not in the long term interests, flexible labour market policies gained legitimacy in the climate of economic liberalism so as to promote efficiency and productivity of labour and protect them against any hazards.

The Indian neo-liberal economic reforms introduced in mid-July 1991 paid rather little attention to employment generation. That is why one finds poor employment growth during the reform period—an adverse consequence of the reform process.

Before we start our discussion on the labour market policies in the reform era, one must say that the existing labour laws are commendable in paper but not in implementation. This is what the second National Commission on Labour set up in October 1999 observed in its Report presented on June 2002; "It can be said that our labour laws… have been criticised as being ad hoc, complicated, mutually inconsistent, if not contradictory, lacking in uniformity of definitions and

[13] Published in Articles section of www.manupatra.com

riddled with clauses that have become outdated and anachronistic, in view of the changes that have taken place after they were introduced many years ago."

The Government of India has in recognised the following rights of workers as alienable to every worker under any system of labour laws and labour policy.

These are:

I. Right to work of one's choice

II. Right against discrimination

III. Prohibition of child labour

IV. Just and humane conditions of work

V. Right to social security

VI. Production of wages including right to guaranteed wages

VII. Right to redress grievances

VIII. Right to organise and form trade unions

IX. Right to collective bargaining

X. Right to participation in management.

Along with these rights, workers need many forms of security, like labour market security, employment security, job security, income security, work security, etc. These are of critical importance in the globalised era as these people are exposed to increased risk of insecurity. Really, a pathetic condition prevails in the unorganised sector. That is why a National Commission for Enterprises in the Unorganised Sector headed by Arjun Sengupta was set up to provide some sort of social security to the unorganised workers. It submitted its report in August 2007.

Unfortunately, these may of rights of workers are rarely met or enforced. This is one of the most common and most effective criticisms of labour legislation in India.

Criticism:

4. Labour Market Reforms are Imperative:

India's experience of growth during the liberalised regime is rather stunning, but its overall impacts on employment in the organised sector, per worker productivity are not altogether rosy. As employment, during the period considered, grew slowly compared to the GDP growth rate the period has been described very aptly as 'jobless growth' or 'job loss growth'. Employment decelerated in all sectors in the post-liberalisation period.

Another disturbing aspect of the current employment growth is that both the shares of self-employment and wage labour both casual and regular have increased. One then observes

concentration of employment in the unorganised/informal sector. Earlier, this informal sector was considered as the 'employment of the last resort'.

Such informal as well as non-agricultural employment neither results in higher productivity nor better wages to the workers. Work conditions have been deteriorating gradually as employers of this sector prefer to employ workers on a contract basis.

However, the hiring of casual or contract labour is not peculiar in the unorganised informal sector in India. One can see the growing incidence of casualisations and contractualisation of the labour force even in the organised sector. Thus, protection or security of workers is rather a dream workers are at the discretion of the employers.

It is also observed that employment discrimination against women workers has increased substantially in the reform period though empowerment of women is considered an important avowed objective in India.

In addition to declining employment opportunities in the organised sector, we see that wages are not increasing in commensuration with the workload that the workers carry now. In other words, workers are exploited not only in the unorganised sector but also in the organised sector in spite of the legislation providing social security to these workers. Unfortunately, most of these legislations are dated and not adequate 'fit' in the current globalised-liberalised economy. In fact, labour market in India is now showing a great deal of inefficiency and a high cost structure economy.

Rigid institutional structures in the labour market need to be made flexible and transparent, It is commonly alleged that the employment growth in the organised sector is largely impeded by 'the prevalence of excessively rigid labour laws' (11^{th} Plan Document). It is found that in India there are 45 laws at the national level and close to 4 times that at the State levels (since labour falls in the Concurrent List) that monitor the functioning of the labour markets.

It is, thus, necessary to review the existing laws and regulations so that the (i) corporate sector can be induced to adopt more labour intensive sectors, and (ii) unorganised sectors which are traditionally labour-intensive sectors are encouraged to facilitate the expansion of employment.

(ii) Different Aspects of Labour Market Regulations:

Against the backdrop of current liberalised Indian economy, we can say that as changing labour laws is a sensitive issue it requires consensus among all the parties involved. The three issues involved in the labour market regulations are: (i) the wage setting process, (ii) the labour market conditions, and (iii) the hiring and firing process.

The issue of labour reforms has been a source of debate since the reforms era begun in 1991 when the State withdrew itself from intervening the labour market. Historically, the government had a 'social pact' with labour reflected in the labour laws of the country. Employers argue that the rigid labour laws are fetters to their development in the current competitive environment. Flexibility in the labour market is of urgent necessity.

But in the name of flexibility in labour laws, one must not ignore the interests of labour so that their jobs are not threatened. Thus, labour market reforms must ensure greater flexibility to our firms and employers in such a way that labour is adequately protected against any casualties.

A belated attention was made by the Government on the need for bringing about changes in the labour laws in 1999 when the Second National Labour Commission was constituted. The Commission was asked (i) to suggest nationalisation of existing labour laws applicable in the organised sector, and (ii) to suggest 'umbrella' legislation for insuring a minimum level of protection to workers in the unorganised sector.

The two aspects of labour reforms that have come to the surface in recent times are Chapter V-B of the Industrial Disputes Act and the Contract Labour (Regulation and Abolition) Act. Under Chapter V-B of the ID Act, all establishments employing more than 100 workers must obtain prior approval for closure, retrenchment and lay-offs from the appropriate Government authority.

It has been recommended by the Second National Commission on Labour that the provisions may be applicable to organisations employing over 300 persons. Some argue that the limit be raised to establishments employing more than 1,000 workers. Employers want the provision relating to 'prior permission' needs to be deleted. Another alternative is to pitch the compensation to be paid to workers in the event of closure, retrenchment or lay-offs be raised at a higher level.

The objective of the Contract Labour (Regulation and Abolition) Act is to abolish contractual employment in activities and processes in core production/service activities. However, contract workers must enjoy prevalent social security provisions and other benefits.

(iii) Unorganised Sector and Umbrella Organisation:

These are all about formal or regular employment. But an umbrella legislation is indeed of great importance so that the unorganised sector—where the majority of workers are engaged—is protected. It is necessary to take steps to improve quality of employment in the unorganised sector.

Any significant improvement in their incomes and the quality of employment is feasible if the 'institutional environment in the labour market makes it feasible for the formal sector to reach out to the workers of the unorganised sectors on a decentralised basis. This is also possible if provident fund, ESI and a variety of welfare funds are extended to the unorganised sectors. All these would give the workers a better deal in terms of wages, and security of all kinds.

Unfortunately, the quality of employment is far from satisfactory and the NSSO 61st Round (2004-05) shows, as usual, that as most of the workers do not have any (written) job contracts they are not eligible for leave and social security benefits, if any. Thus, what is needed is 'the creation of a formal relationship between the worker and the hiring establishment'.

- Labour reforms essentially mean taking steps in increasing production, productivity, and employment opportunities in the economy in such a manner that the interests of the workers are not compromised.

- Essentially, it means skill development, retraining, redeployment, updating knowledge base of workers-teachers, promotion of leadership qualities, etc. Labour reforms also include labour law reforms.
- Labour laws are concerned with the trade union rights of the workers, industrial relations and job security and policies relating to wages, bonus and other incentive schemes.
- Labour reforms are of great important as the laws enacted in the labour market aim at regulating the market, protecting employment and ensuring social security of workers.

Agenda for labour Reforms

- **Consolidation and simplification** of numerous States' and Centre labour laws
- **Streamlining of Minimum Wages** in the country and ensuring they reach the beneficiaries.
- **Introduction of fixed term employment**, to curb tendency for employing (socially insecure) contract labour.

Steps Taken by Government

- **Four Labour Codes aims at** simplification, amalgamation and rationalisation of Central Labour Laws
- **Child labour (prohibition and Regulation) Amendment Act, 2016** provides complete ban on employment of children below 14 years of age.
- **Maternity Benefit Amendment Act, 2017** has increased paid maternity leave from 12 weeks to 26 weeks

The **2nd National Commission of labour** had recommended simplification, amalgamation and rationalisation of Central Labour Laws. The central government is compressing of 44 central labour laws into four 'codes' or broad categories — wages, social security, industrial relations and occupational health and safety.

What reforms does it require?

Simplification of laws and removing most outdated ones and create a comprehensive labour law.

Allow employers to retrench employees if they run on losses without forcing them to keep the employees even at the cost of their industry.

Entry exist criteria for the employers should be simplified so that whenever they face loss they can leave the business and similarly it must be made simple to take up new business.

Some arrangement specifically should be done for the micro level enterprises. So that they can easily work and expand their business without worrying much about labour law compliance.

Monetary factor must be kept in mind.

Provisions should be made to provide insurance cover to employees in case they are retrenched from the organization if it faces loss or exits the business due to loss.

The inspector Raj must end. The way bureaucratic harassment happen in every now and then that creates an atmosphere of fear among the industries. At times compliance cost overshadows the cost of capital. So this must end.

The law must incorporate modern requirements and nullify age old practices e.g. present law can be used to fine an industry for using lady workers at night in call center. These kind of laws should be avoided

There must be a try to bring people from unorganized sector in the purview of labour law.

Why political parties are not able to do reform?

It is a tricky issue in terms of political implication. If any party dares to make changes in the law then it may so happen that the opposition party may blame it to be anti labour force and siding with industries. Therefore they are scared to do any reform.

The labour unions might oppose any change in the existing laws as retrenchment of labours can become more and more which doesn't suit its agenda.

The government is not ready to take risk and is not interested to annoy one of its biggest vote bank.

Can Modi do it?

I initially thought that Modi has got a full Mandate therefore, it will be able to do the reform. However, it was not to be. But, seeing the leftist dominance in the other political parties I believe BJP and Modi are the only party or PM who can do it. Other reforms which will be in his target are Land reform, legal reform along with labor reform. The reform in three L should be his focus and I believe in second term he will be able to do 2 from the list of the three mentioned.

CHAPTER-4

Labour rights

B.R. Ambedkar, a long-time advocate for the rights of labour, and who had been instrumental in the passage of an eight-hour working day a few years before, was writing as part of a long-standing intellectual and political tradition. Labour movements had been key to the successful freedom struggle, and indeed, the 1931 Karachi Declaration and Bill of Rights — a fore-runner to the Constitution — expressly placed labour rights on a par with ordinary civil rights such as the freedom of speech and expression. In its Preamble, it declared that "political freedom must include… real economic freedom of the… millions". These principles eventually found their way into the Indian Constitution in the form of "Directive Principles of State Policy", while a few of them were retained as fundamental rights. Prominent among these was the right against forced labour, guaranteed by Article 23 of the Constitution.

How do we understand the concepts of "force" and "freedom" in the backdrop of this history? A certain narrow understanding would have it that I am only "forced" to do something if there is a gun to my head or a knife at my throat. In all other circumstances, I remain "free". As we all know, however, that is a very impoverished understanding of freedom. It ignores the compulsion that is exerted by serious and enduring differences of power, compulsion that may not take a physical form, but instead, have a social or economic character that is nonetheless as severe. In such

circumstances, people can be placed in positions where they have no genuine choices left. As K.T. Shah, another member of the Constituent Assembly, famously wrote, "necessitous men are not free men".

Constitutional Protection On Labour Law's

In this project I have analyzed the main Articles of our Indian Constitution which protects , supports , and act as a guideline to various labour laws for their effective implementation and functioning. The main Articles are Art 14, 16,19(1)(c), 21, 23. 24, 35,38, 39, 39 A, 41, 42, 43, 43 –A , 46, 47, 32, 226,227.

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. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. As Dr. Jennings puts it: "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence" It only means that all persons similarly circumstance [14]shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards the subject-matter of the legislation their position is the same. Thus, the rule is that the like should be treated alike and not that unlike should be treated alike.

Cases

In **Randhir Singh v. Union of India**[1], the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39 (c) of the Constitution. This right can, therefore, be enforced in cases of unequal scales of pay based on irrational classification. The decision in Randhir Singh's case has been followed in a number of cases by the Supreme Court.

In **Dhirendra Chamoli v. State of U.P**.[2] it has been held that the principle of equal pay for equal work is also applicable to casual workers employed on daily wage basis. Accordingly, it was held that persons employed in Nehru Yuwak Kendra in the country as casual workers on daily wage basis were doing the same work as done by Class IV employees appointed on regular basis and,

[14] http://www.legalservicesindia.com/article/181/Constitutional-Protection-on-Labour-Laws.html

therefore, entitled to the same salary and conditions of service. It makes no difference whether they are appointed in sanctioned posts or not. It is not open to the Government to deny such benefit to them on the ground that they accepted the employment with full knowledge that they would be paid daily wages. Such denial would amount to violation of Article 14. A welfare State committed to a socialist pattern of society cannot be permitted to take such an argument.

In **Daily Rated Casual Labour v. Union of India**;[3] it has been held that the daily rated casual labourers in P & T Department who were doing similar work as done by the regular workers of the department were entitled to minimum pay in the pay scale of the regular workers plus D.A. but without increments. Classification of employees into regular employees and casual employees for the purpose of payment of less than minimum pay is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant of Economic, Social and Cultural Rights 1966. Although the directive principle contained in Articles 38 and 39 (d) is not enforceable by virtue of Article 37, but they may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination: Denial of minimum pay amounts to exploitation of labour. The government can not take advantage of its dominant position. The government should be a model employer.

F.A.I.C. and C.E.S. v. Union of India[4]- the Supreme Court has held that different pay scales can be fixed for government servants holding same post and performing similar work on the basis of difference in degree of responsibility, reliability and confidentiality, and as such it will not be violative of the principle of equal pay for equal work, implicit in Article 14. The Court said, "Equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of the right". Accordingly, the court held that different pay scales fixed for Stenographers Grade I working in Central Secretariat and those attached to the heads of subordinate offices on the basis of recommendation of the Third Pay Commission was not violative of Article 14. Although the duties of the petitioners and respondents are identical, their functions are not identical. The Stenographers Grade I formed a distinguishable class as their duties and responsibilities are of much higher nature than that of the stenographers attached to the subordinate offices.

In Gopika Ranjan Chawdhary v. Union of India[5] the Armed Forces controlled by NEFA were re-organized as a result of which a separate unit known as Central Record and Pay Accounts Office was created at the head quarters. The Third Pay Commission had recommended two different scales of pay for the ministerial staff, one attached to the headquarters and the other to the Battalions/units. The pay scales of the staff at the headquarters were higher than those of the staff attached to the Battalions/units. It was held that this was discriminatory and violative of Article 14 as there was no difference in the nature of the work, the duties and responsibilities of the staff working in the Battalions/units and those working at the headquarters. There was also no difference in the qualifications required for appointment in the two establishments. The services of the staff

from Battalions/units are transferable to the Headquarters.

In **Mewa Ram v. A.I.I. Medical Science,[**6] the Supreme Court has held that the doctrine of 'equal pay for equal work' is not an abstract doctrine . Equality must be among equals, unequals cannot claim equality. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of equal pay for equal work would not apply. Different treatment to persons belonging to the same class is permissible classification on the basis of educational qualifications.

In **State of Orissa v. Balaram Sahu**[7] the respondents, who were daily wagers or casual workers in Rengali Power Project of State of Orissa in appeal claimed that they were entitled to equal pay on the same basis as paid to regular employees as they were discharging the same duties and functions. The Supreme Court held that they were not entitled for equal pay with regularly employed permanent staff because their, duties and responsibilities were not similar to permanent employees. The duties and responsibilities of the regular and permanent employees were more onerous than that of the duties of. N.M.R. workers whose employment depends on the availability of the work. The Court held that although equal pay for equal work is a fundamental right under Article 14 of the Constitution but does not depend only on the nature or the volume of work but also on the qualitative difference as regards reliability and responsibility. Though the functions may be the same but the responsibilities do make a real and substantial difference. They have failed to prove the basis of their claim and in such situation to claim parity with pay amounts to negation of right of equality in Article 14 of the Constitution. However, the Court said that State has to ensure that minimum wages are prescribed and the same is paid to them.

Art 19 (1) (c) speaks about the Fundamental right of citizen to form an associations and unions.. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization. It as an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union,[8] 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.

In **Damayanti v. Union of India[**9], The Supreme Court held that "The right to form an association", the Court said, "necessarily 'implies that the person forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association".

In **Balakotiah v. Union of India,[**10] the services of the appellant were terminated under Railway Service Rules for his being a member of Communist Party and a trade unionist. The appellant

contended that the termination from service amounted in substance to a denial to him the right to form association. The appellant had no doubt a fundamental right to from association but he had no fundamental right to be continued in the Government service. It was, therefore, held that the order terminating his services was not in contravention of Article 19(1)(c) because the order did not prevent the appellant from continuing to be in Communist Party or trade unionist.. The right to form union does not carry with it the right to achieve every object. Thus the trade unions have no guaranteed right to an effective bargaining or right to strike or right to declare a lock- out .Right to life, includes right to the means of livelihood which make it possible for a person to live—The sweep of the right to life, conferred by Article 21 is wide and far reaching. 'Life' means something more than mere animal existence. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. 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. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. There is thus a close nexus between life and the means of livelihood and as such that, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right of life. [15]

In Maneka Gandhi's case the Court gave a new dimension to Article 21. It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Elaborating the same view the **Court in Francis Coralie v. Union Territory of Delhi[**11] said that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being.

In **State of Maharashtra v. Chandrabhan**[12] the Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistence allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violative of Article 21 of the Constitution.

In Olga Tellis v. Bombay Municipal Corporation,[13]popularly known as the 'pavement dwellers case' a five judge bench of the Court has finally ruled that the word 'life' in Article 21 includes the 'right to livelihood' also. The court said :"It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence,

[15] http://www.legalservicesindia.com/article/181/Constitutional-Protection-on-Labour-Laws.html

except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39((a).and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."

In **Delhi Development Horticulture Employee's Union v. Delhi Administration**,[14]the Supreme Court has held that daily wages workmen employed under the Jawahar Rozgar Yojna has no right of automatic regularization even though they have put in work for 240 or more days. The petitioners who were employed on daily wages in the Jawhar Rozgar Yojna filed a petition for their regular absorption as a regular employees in the Development Department of the Delhi Administration. They contended that right to life, includes the right to livelihood and therefore, right to work. The Court held that although broadly interpreted and as a necessary logical corollary, the right to life would include the right to livelihood and therefore right to work but this country has so far not found feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly therefore it has been placed in the chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same, "within the limits of its economic capacity and development".

In **D.K. Yadav v.J.M.A. Industries,[**15] The Supreme Court has held that the right to life enshrined under Article 21 includes the right to livelihood and therefore termination of the service of a worker without giving him reasonable opportunity of hearing in unjust, arbitrary and illegal. The procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and so it must be right, just and fair and not arbitrary, fanciful or oppressive. In the instant case, the appellant was removed from service. By the management of the M/s. J.M.A. Industries Ltd. On the ground that he had willfully absented from duty continuously for more than 8 days without leave or prior permission from the management arid, therefore, "deemed to have left the service of the company under clause 12(2)(iv) of the Certified Standing Order. But the appellant contended that despite his reporting to duty every day he was not allowed to join duty without assigning any reason. The Labour Court upheld the termination of the appellant from service as legal. The Supreme Court, held that the right to life enshrined under Article 21 includes right to livelihood and 'therefore' before terminating the service of an employee or workman fair play requires that a reasonable opportunity should be given to him to explain his case . The procedure prescribed for depriving a person of livelihood must meet the requirement of Article 14, that is, it must be right, just and fair and not arbitrary, fanciful or oppressive. In short, it must be in conformity of the rules of natural justice, Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. The Court set aside the Labour Court award and ordered his reinstatement with 50 percent back wages.

The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the

understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

In **State of Maharashtra v. Manubhai Pragaji Vashi,[**16] the Court has considerably widened the scope of the right to free legal aid. The right to free legal aid and speedy trial are guaranteed fundamental rights under Art. 21. Art 39A provides "equal justice" and "free legal aid". It means justice according to law. In a democratic policy, governed by rule of law, it should be the main concern of the State to have a proper legal system. The crucial words are to "provide free legal aid" by suitable legislation or by schemes" or "in any other way" so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. These words in Art. 39A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial vast number of persons trained in law are needed." Legal aid is regarded in many forms and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets. The need for a continuing and well organized legal education is absolutely necessary in view of the new trends in the world order, to meet the ever-growing challenges. The Legal education should be able to meet the ever-growing demands of the society. This demand is of such a great dimension that sizeable number of dedicated persons should be properly trained in different branches of law every year. This is not possible unless adequate number of well equipped law colleges are established. Since a sole Government law college cannot cater to the needs of legal education in a city like Bombay it should permit private colleges with necessary facilities to be established. For this, it should afford grants-in-aid to them so that they should function effectively and in a meaningful manner. For this huge funds are needed. They should not be left free to hike the fees to any extent to meet their expenses. In absence of this the standard of legal education and the free legal scheme would become a farce. This should not be allowed to happen. The Court therefore directed the State to afford grant-in-aid to them in order to ensure that they should function effectively and turn out sufficient number of law graduates in al branches every year which will in turn enable the State to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. Article 21 read with Art. 39A casts a duty on the State to afford grants-in-aid to recognized private law colleges in the State of Maharashtra, similar to the faculties, viz. Art, Science, Commerce, etc. The words used in Art. 39A are of very wide importance. The need for a continuing and well organized legal education is absolutely essential for the purpose. The State of Maharashtra had denied grants-in-aid of the private recognized Law Colleges on the ground of paucity of funds. The Court held that this could not the reasonable ground for denial of grant-in-aid to such colleges.

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 and dignity of the nation.

Articles 21, 23 and 24 form part of the Fundamental Rights guaranteed under Part III of the Constitution. Articles 38, 39, 39-A, 41, 42, 43, 43-A and 47 form part of the Directive Principles of State Policy under Part IV of the Constitution.

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. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral" or other purposes.[17]Though slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human being'. [16]Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing acts which result in traffic in human beings. Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and beggar and other similar forms of forced labour wherever they are found. Article 23 prohibits the system of 'bonded labour' because it is a form of force labour within the meaning of this Article. "Beggar" means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause, therefore, does not prohibit forced labour as a punishment for a criminal offence. The protection is not confined to beggar only but also to "other forms of forced labour". It means to compel a person to work against his will.

In **Peoples Union for Democratic Rights v. Union of India,[**18] the Supreme Court considered the scope and ambit of Article 23 in detail. The Court held that the scope of Article 23 is wide and unlimited and strikes at "traffic in human beings" and "beggar and other forms of forced labour" wherever they are found. It is not merely "beggar" which is prohibited by Article 23 but also all other forms of forced labour, "Beggar is a form of forced labour under which a person is compelled to work without receiving any remuneration. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and contrary to basic human values. The practice of forced labour is condemned in almost every international instrument dealing with human rights. Every form of forced labour "beggar" or other forms, is prohibited by Article 23 and it makes no difference whether the. Person who is forced to give his labour or service to another is paid remuneration or not. Even if remuneration is paid, labour or services supplied by a person would be hit By this Article, if it is forced labour, e.g., labour supplied not willingly but as

[16] http://www.legalservicesindia.com/article/181/Constitutional-Protection-on-Labour-Laws.html

a result of force or compulsion, this Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service. If a person has contracted with another to perform service and there is a consideration for such service. In the shape of liquidation of debt or even remuneration he cannot be forced by compulsion of law, or otherwise to continue to perform such service as it would be forced labour within the meaning of Article 23. No one shall be forced to provide labour or service against his will even though it be under a contract of service. The word "force" was interpreted by the court very widely. Bhagwati, J. said, 'The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

In **Sanjit Roy v. State of Rajasthan**,[19] has been held that the payment of wages lower than the minimum wages to the person employed on Famine Relief Work is violative of Art. 23. Whenever any labour or service is taken by the State from any person who is affected by drought and scarcity condition the State cannot pay him less wage than the minimum wage on the ground that it is given them to help to meet famine situation. The State cannot take advantage of their helplessness.

In **Deena v. Union of India** [20] it was held that labour taken from prisoners without paying proper remuneration was "forced labour" and violative of Art. 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the Court is under duty to enforce their claim.

Article 24 of the Constitution prohibits employment of children below 14 years of age in factories and hazardous employment. This provision is certainly in the interest of public health and safety of life of children. Children are assets of the nation. That is why Article 39 of the Constitution imposes upon the State an obligation to ensure that the health and strength of workers, men and women, and the tender age of the children are not abused and that citizens are not forced by economic necessary to enter avocations unsuited to their age or strength.

In **People's Union for Democratic Rights v. Union of India**,[21] it was contended that the Employment of Children Act, 1938 was not applicable in case of employment of children in the construction work of Asiad Projects in Delhi since construction industry was not a process specified in the schedule to the Children Act. The Court rejected this contention and held that the construction work is hazardous employment and therefore under Art. 24 no child below the age of 14 years can be employed in the construction work even if construction industry is not specified in the schedule to the Employment of Children Act, 1938. Expressing concern about the 'sad and deplorable omission', Bhagwati, J., advised the State Government to take immediate steps for inclusion of construction work in the schedule to the Act, and to ensure that the constitutional mandate of Article 24 is not violated in any part of the country. In yet another case the Court has

reiterated the principle that the construction work is a hazardous employment and children below 14 cannot be employed in this work.[17]

CHAPTER-5

Understanding Labour Contracts in China, India and Vietnam

Foreign companies expanding their operations into the Asia-Pacific need to be fully versed in the region's various hiring policies. While firms are permitted to hire both domestic and overseas employees, businesses will need to understand a unique array of considerations and challenges that do not exist in the West.

Within Asia, the laws that govern hiring procedures vary significantly from country to country, with numerous affiliated conditions and stipulations. Companies looking to establish a presence in more than one of the region's booming economies will not be able to do so under a single policy, as may be possible in other parts of the world. Rather, the procedures of each country will need to be individually interpreted, which will better prepare a company to decide which Asian jurisdiction best suits their operation.

Generally speaking, Indian employment contracts are less sensitive than those of China and Vietnam and can offer greater flexibility to the employer. Chinese and Vietnamese employment law tends to provide more protection to the employee and can force employers into unwanted contractual obligations if proper due diligence isn't paid.

[17] [1] AIR 1997 SC 3014.
[2] (1986) 1 SCC 627.
[3] (1988) 1SCC 122.
[4] AIR 1998 SC 32.
[5] AIR 1990 SC 1212.
[6] AIR 1991 SC 2342
[7] AIR 2003 SC 33.
[8] Kulkarni v. State of Bombay, AIR 1931 Bom 105.
[9] AIR 1971 SC 966.
[10] AIR 1958 SC 232.
[11] AIR 1978 SC 597.
[12] (1983) 3 SCC 387.
[13] AIR 1986 SC 180.
[14] AIR 1992 SC 789.
[15] (1993) 3 SCC 258.
[16] (1995) 5 SCC 730.
[17] Raj Bahadur v. Legal Rememberancer, AIR 1953 Cal. 522.
[18] AIR 1982 SC 1943.
[19] AIR 1983 SC 328.
[20] AIR 1983 SC 1155

Foreign enterprises in Asia generally opt to hire employees on a fixed-term basis in order to mitigate liability for unjust dismissal. In this section, we detail how these types of contracts are structured in China, India and Vietnam, outline the other main types of employment contracts available to employers, and provide practical guidance for maintaining compliance before and during an employment relationship.

China

In principle, a company does not have to be located in China in order to hire staff to work in China. However, unless the employment contract is entered into via an invested entity on the Chinese mainland, it will not be regulated by relevant Chinese legislation. As a result, the company won't be able to make mandatory benefit contributions to employees in China or deduct individual income tax before paying salaries, neither of which is likely to attract talent to one's operations.

The vast majority of employees hired in China's private sector are given fixed-term contracts. This type of contract creates an employer-employee relationship for a fixed length of time and can be used for both part-time and full-time work.

In China, a fixed-term contract can only be renewed once. When a contract is renewed for a second time, the employee must be given an open-term contract. This is why an employer needs to be careful when determining the contract length – if two successive short fixed-term contracts are offered and accepted, then the employee will automatically obtain an open-term contract, which makes termination far more difficult.

The employer needs to sign a written contract with the employee within one month, starting from the day the employee starts working at the company. If not, the employee will be entitled to double salary for each month that they have gone without a contract. If a year passes without a written contract, the employee's contract switches to open-term.

India

India, like others, has adopted varying measures to regulate the conditions under which employment contracts are written, applied and interpreted. Labour is a concurrent subject in the Indian Constitution, and is therefore subject to legislation from both state and central governments. The principal legislation governing employment relationships can be found in:

- *The Industrial Disputes Act 1947* (*ID Act*), which regulates the center's labor laws;
- *The Shops and Establishments Act 1953* (*SE Act*), which provides state-specific regulations; and
- *The Indian Contracts Act 1872 (IC Act)*, which regulates labor contracts.

In India, "workmen" are entitled statutory rights under the *ID Act*, but "non-workmen" have no such protection and are regulated via their specific employment contract and relevant *SE Act*. Indian labor law distinguishes between workmen and non-workmen type employees as follows:

- A workman is a person (including apprentices) employed in any industry undertaking manual, unskilled, skilled, technical, operational, clerical or supervisory work earning less than US$25.89 (Rs 1,600) per month
- A non-workman is a person employed in a managerial, administrative or supervisory capacity drawing wages in excess of US$25.89 (Rs 1,600) per month

Regardless of whether a person is employed on a permanent, temporary or part-time basis, employers should offer a written contract setting out the terms and conditions of the employment relationship. These must meet the minimum statutory requirements set out in either the SE Act of the state where the employee is based or the ID Act, depending on the employee's classification.

Written employment contracts usually include:

- The employee's position and duties;
- Remuneration rate, including benefits such as bonuses, provident fund contributions;
- Working hours, holidays and leave provisions;
- Term of employment and termination provisions;

Provisions for dispute resolution in relation to key employees.[18]

Fixed-term Contract

Like China, the majority of employees hired in India's private sector are given fixed-term contracts, primarily because this can assist with termination procedures. A fixed-term contract creates an employer-employee relationship for a fixed length of time and can be used for part-time, full-time or temporary work.

In India, there are no limits to the amount of successive standard fixed-term contracts that can be issued, nor is there a maximum cumulated duration of successive standard fixed-term contracts.

The employer should sign a written contract with the employee within one month of starting work at the company. However, unlike China, failure to do so after one year does not result in an open-term contract. While open-term contracts do exist in India – and create an employer-employee relationship for an indefinite length of time – they are not subject to the same stipulations as in China, and can only be established through mutual agreement.

Vietnam

Vietnam has strict laws relating to foreign companies' employment of domestic Vietnamese workers. When recruiting Vietnamese employees, foreign businesses must first submit a recruitment request to a Vietnamese recruitment agency. The agency is responsible for introducing

[18]https://www.asiabriefing.com/news/2015/04/understanding-labor-contracts-in-china-india-and-vietnam/

Vietnamese employees to the employer within 15 days of the request. If the agency fails to do so within this time period, the foreign company has the right to recruit Vietnamese staff directly.

Labour contracts in Vietnam are divided into three types by the country's *Labour Code*. As with China and India, fixed-term contracts are the most commonly used, but these are separated into "definite term contracts" and "seasonal contracts" under Vietnamese law, depending on the length of the contract. Open-term contracts also exist in Vietnam's *Labour Code*, but under the name of "indefinite contracts".

Written employment contracts must detail:

- Name and address of the employer;
- Name and personal details of the employee;
- Job title, job description, and term of the labor contract;
- Wage, form and deadlines of payment, wage-based allowances, and promotion and wage-raise regimes.

Definite Term Contract

A definite term contract can be anywhere between 12 and 36 months in length. Within 30 days of expiration, a new contract must be signed if the employer is still working. If no new contract is signed within this period, the contract will automatically become indefinite term.[19]

Similar to China, employers can only grant two definite-term contracts, following which an indefinite contract must be offered to the employee.

Seasonal/Work-Specific Contract

Seasonal/work-specific contracts can only be offered if the position is less than 12 months in length, except when temporarily replacing an employee who is on maternity or sick leave, military duty, recuperating from a workplace accident, or taking other temporary leave. Such contracts may not include probationary periods.

As with definite term contracts, the employee must be offered a new contract if they continue to work after the contract term expires. If no new contract is signed but the employee continues to work for 30 days following expiration, they must be offered a definite-term contract with a duration of 24 months.

The Rules Of Different Systems

Among the distinctive elements of labour law that reflect the political, socioeconomic, and legal differences among countries are variations in the relative importance of statutory regulation and collectiveagreements, the prevalence of national or industrial collective

[19] https://www.asiabriefing.com/news/2015/04/understanding-labor-contracts-in-china-india-and-vietnam/

agreements as opposed to company or plant agreements, the importance in certain countries of arbitral awards, and the extent to which labour law has been affected by a country's constitutional structure, especially with regard to judicial review of constitutionality of legislation and judicial interpretation of constitutional powers, limitations, and guarantees.

In the United Kingdom, for instance, the tradition has been to allow a maximum of initiative and freedom to employers' and workers' organizations in the regulation of their mutual relations and the determination of conditions of work. Most countries on the Continent, by contrast, have detailed legislative provisions on these matters.

In the United Kingdom, however, the reluctance to legislate is becoming less marked; there is now legislation concerning industrial training and discrimination in employment, formerly matters for collective agreement; and legislation concerning collective bargaining, safeguards against unfair dismissal, and certain trade union practices was enacted in the late 1970s and early 1980s. In virtually all the developing countries the absence of an established tradition of collective bargaining and the importance of the part played by the state in economic development have placed a premium on legislative action.

The coverage and scope, term of validity, and legal effect of collective agreements vary widely. In Sweden there has been a practice of national negotiations covering the whole of industry; in the United Kingdom agreements generally cover an industry or occupation in the country as a whole or a particular industrial area; in the United States and in Japan the unit of negotiation is generally the company or plant. The contrast may be less significant in practice than in principle, since an important company or plant agreement tends to set an industry-wide pattern of negotiation (e.g., in the automobile industry of the United States); nevertheless, the difference is important.

In Australia and New Zealand conciliation and arbitration tribunals determine matters normally dealt with in other countries by legislation or collective agreement, such as wages, hours, and conditions of work. The example has had some influence on systems of arbitration courts established in developing countries, notably in Asia and East Africa, but there is no tendency for it to be widely imitated elsewhere except as a device for avoiding deadlocks in negotiation, especially in essential public services.

In the United States and Canada the development of labour law has been affected by questions of constitutionality, which not only influenced its ultimate form but also retarded its development. In the United States the constitutionality of workers' compensation laws was much debated until it was favourably settled by the Supreme Court in 1917; child-labour and minimum-wage regulations were delayed by judicial decisions holding them to be outside federal competence and, in some cases, inconsistent with the constitutional guarantee against deprivation by the state of life, liberty, and property without due process of law (the guarantee here applying to the factory owner). The first attempt of the Franklin D. Roosevelt administration to regulate hours and wages by codes of fair competition during the Great Depression was also held to be unconstitutional as an improper delegation of legislative power by Congress to the executive branch (see National Industrial Recovery Act). But thereafter the temper of judicial review changed, and the validity of federal legislation guaranteeing free collective bargaining in private industry, regulating wages and hours, and establishing social securitywas upheld. In Canada, a pioneer in establishing a labour department, restrictive judicial interpretations of the powers of the federal government had a

similar effect, and only after World War II did federal-provincial cooperation afford a basis for achieving greater uniformity and more rapid progress.

International labour laws: In the late 19th century it was realised all over the world that there should be ways to promote international regulation of labour matters. In 1897, an International Association for the Legal Protection of Workers was set up in Basle.The activity of this private organisation led several governments to bring out changes and protect the rights of workers at international level. This section of the treaties provided for the establishment of an International Labour Organisation in 'Peace conference. The international labour organisation was proposed to hold meetings and conferences from time to time and would be attended by its member countries. Since then, the International Labour Conference has met regularly in general once a year, except during the Second World War. The most important entity which takes care of such protection of [20]rights and laws of labour at an international level is – the 'International Labour Organisation' (ILO)

Indian Labour Law: Since long time, India has also been active in implementing and amending acts and laws for the workforce of the organisations in India. Approximately, there are over fifty national laws and many more state level laws. Our country, India equally ensures that the rights of workers within the organisations of the country are higly protected. In one of the case, also known as Uttam Nakate case,the Bombay High Court held that dismissing an employee for repeated sleeping on the factory floor was illegal, a decision which was overturned by the Supreme Court of India. Moreover, it took two decades to complete the legal process (Source: Wikipedia, the free encyclopedia). The labour laws in India also highlights the importance of a better labour ecosystem with the help of better education and training, infrastructure, governance and the legal/regulatory structure and so on.

Judicial stand

In 1983, the Supreme Court understood this point. The Court was called upon to address the exploitation of migrant and contract labourers, who had been put to work constructing the Asian Games Village. In a landmark judgment, ***PUDR vs. Union of India***, the Court held that the right against forced labour included the right to a minimum wage. It noted that often, migrant and contract labourers had "no choice but to accept any work that came [their] way, even if the remuneration offered… is less than the minimum wage". Consequently, the Court held that "the compulsion of economic circumstance which leaves no choice of alternatives to a person in want and compels him to provide labour or service" was no less a form of forced labour than any other, and its remedy lay in a constitutional guarantee of the minimum wage.

The judgment of the Supreme Court in ***PUDR vs. Union of India***, and the constitutional history that it drew upon, provides us with an important perspective from which to understand basic ideas of freedom, especially in our present context. A market economy is sustained by a set of laws —

[20] https://www.britannica.com

the laws of contract, of property, and so on. This legal structure ensures that capital and labour do not face each other as equals across a mythical bargaining table. There is a structural inequality that enables the former, going back once more to B.R. Ambedkar's language, to "make the rules" for the latter. This amounts to a form of "private government", a situation in which there exists democracy in the political sphere, but unilateral term-setting in the context of the workplace. Of late, with the rise of the platform or gig economy, the rise of casualisation and precarious employment, and further fractures within the workforce, this inequality of power has only grown starker.

The purpose of labour laws, which arose out of a long period of struggle (often accompanied by state-sanctioned violence against workers), has always been to mitigate this imbalance of power. The shape and form of these laws has, of course, varied over time and in different countries, but the basic impulse has always remained the same: in B.R. Ambedkar's words, to secure the "rights to life, liberty, and the pursuit of happiness", in both the public and the private spheres. In some countries, the path chosen has been to give workers a stake in private governance, through strong trade union laws and mandatory seats for labour in the governing boards of firms ("co-determination"). In other countries (such as India), the path has been to create a detailed set of laws, covering different aspects of the workplace, and depend upon State agencies for their enforcement.

Unifying Tendencies

The range of possible solutions for similar problems often consists of variations of detail on a limited number of options, and certain common elements, often expressed in identical or almost identical texts, recur in the law of different countries. These elements derive partly from the legislation of other countries but increasingly from the influence on the law of the international standards evolved by the International Labour Organisation (ILO).

From the beginnings of modern labour legislation in the early 19th century, the law of certain countries has been extensively used by other countries as a model. For example, British factory legislation was widely copied at an early date, and German social-insurance legislation provided a prototype from the time of Bismarck's reforms. British legislation has continued to serve as a model for the basic legislation of many states that were formerly British dependencies and remains in force subject to modifications made since independence. Much of the French Labour Code became applicable through the 1952 Labour Code for Overseas Territories to the states that were formerly French dependencies and remains the basis of their labour law. The U.S. legislation of the period from the 1930s onward has been exported to Japan, the Philippines, Liberia, and other countries. The Mexican Labour Law of 1931, varied by elements derived primarily from European models, had considerable influence on the early development of labour law in a number of Latin American countries. Through quite another process, the labour law of the Soviet Union (until the country's dissolution in 1991) reshaped without replacing some of the earlier elements in the labour law of the other socialist states. On the whole, however, the national influences of particular countries and legal systems are declining.

During the mid-20th century the standards evolved by the ILO became the leading external influence upon the labour law of many countries. They had a far-reaching impact in virtually all the advanced countries except the United States and the erstwhile Soviet Union, where external influences were secondary. In much of the developing world they were of great importance even before independence, since much of the legislation sponsored there by the colonial powers was based on ILO standards.

The ILO, created in 1919 as an autonomous partner of the League of Nations and since 1946 a specialized agency associated with the United Nations, adopts international standards in the form of conventions and recommendations. Conventions when ratified become binding obligations of the member states ratifying them; recommendations are designed as guides for legislation, collective agreements, administrative measures, and so on. Elaborate follow-up arrangements, including examination of regular reports and commissions of inquiry into complaints, are provided to ensure that the obligations assumed are fulfilled. These standards, which already cover, in varying degrees of detail and at varied stages of development, virtually all of the more [21]important branches of labour law, are constantly amplified and revised at the annual sessions of the International Labour Conference.

Unification, or, as the process is often called, harmonization, of labour law is one of the professed purposes of a number of regional organizations in different parts of the world, but only in the Council of Europe, the European Union, and the Organization of American Stateshave tangible measures been taken, largely based on ILO standards. The more important instruments adopted are the European Social Charter, the European Social Security Code, the Social Security Regulations of the European Community, and the Central American Convention on Social Security for Migrant Workers. The Conferences of American and African Labour Ministers, sponsored by the Organization of American States and the African Union (formerly the Organization of African Unity), respectively, and the Conference of Asian Labour Ministers, which has developed without any comparable sponsorship, discuss matters of general policy and the coordination of action in the ILO rather than the formulation of specific standards. An Arab Labour Organization was created in 1970.

Occurance of Contemporary Tendencies

Labour law differs from the older branches of the law in that its history has been in some cases so much influenced by the ebb and flow of political change, its development so rapid, and its expansion on a world scale so recent that it is difficult to predict its future. But the trend is clear. In no place is labour law losing importance. While some types of protective legislation, notably special provision for the protection of women workers, are losing their importance, the tendency is toward more comprehensive legislation embracing a wider range of subjects and often dealing

[21] https://www.britannica.com

with matters previously left to collective agreement, individual contract, or the discretion of the employer.

The transition everywhere has been from a class law protecting the weakest segment of society to a community law designed to serve the common interest. This development is seen in the elimination of limitations and exceptions to the law and in the increasing emphasis given to matters of general interest, including full employment, equitable distribution of wealth, and community responsibility for the incidence of misfortune in individual lives.

Labour law must also be said to serve the social interest in promoting constructive industrial relations and reducing the occurrence of open conflict. This evolution of labour law is an important contribution to the evolution of the law as a whole, from a law for the propertied and trading classes with a special chapter for the working class to a common law for the entire community.

The importance of a body of law that has a dynamic and progressive impact rather than a restrictive influence is now widely understood, and the need for legal flexibility to facilitate economic and social development and change is increasingly appreciated. In addition, the value of delegated powers and procedures of consultation with interested groups and organizations to achieve such flexibility is more generally recognized. Social objectives remain [22] the test of the validity of economic policy, and labour law plays a major part in defining these objectives and ensuring that economic policy respects them in the interest of the whole community.

The current Indian situation

To be sure, India's labour law structure has been criticised on multiple counts. It is argued that it sets up a labour bureaucracy that is prone to corruption; that the adjudicatory mechanisms are inefficient; the rights that labour laws grant are effectively submerged in a creaking judicial system, thus providing no real relief; that the system creates an unconscionable tiered structure where a majority of the workforce, engaged in contract labour or informal employment, has very few rights, while those in formal employment have greater security, at least in theory; in a recent interview, it was even pointed out that many prominent labour unions prefer to arrive at an accommodation with the management, rather than represent the interests of their constituents.

These problems certainly call for a debate on the future of labour rights, especially in a world where the rapidly changing nature of work is already rendering old concepts of jobs and employments obsolete (courts around the world, for example, are struggling with how to classify platform workers such as Uber drivers). But this debate must be guided by B.R. Ambedkar's insights that remain relevant even today, the Constitutional guarantee against forced labour, and the understanding of force and freedom that takes into account differences in power. What is very clear, however, is that the steps being taken by various State governments, ostensibly under cover of the COVID-19 pandemic, are grossly unconstitutional: various State governments are in the

[22] https://www.britannica.com

process of removing labour laws altogether (for a set period of time). What this means, in practice, is that the economic power exercised by capital will be left unchecked. In his Note on Fundamental Rights, B.R. Ambedkar pointed out that this would be nothing other than the freedom to "increase hours of work and reduce rates of wages". Ironically, an increase in working hours and a removal of minimum wages are two proposals strongly under discussion. If the Constitution is to remain a charter of freedom, however, it must be equal freedom — and that must be the yardstick from which we measure proposed legal changes in the shadow of COVID-19.

CHAPTER-6

5 labor law compliance challenges in changing times

Labour law compliance is a big deal for businesses of all sizes.

When it comes to labor and employment laws, change is the only constant business leaders can expect. These ever-changing laws and regulations have always represented a potential quagmire for companies, and now is no different.

From paid family leave and hiring to safety and sick leave – and all the many points in between – federal, state and local governments are forever changing what constitutes a company's responsibility to its workers.

Furthermore, failure to keep up with these evolving rules can carry significant penalties and negative publicity, especially if an employee files a complaint claiming his or her rights have been violated.

That's why it's in your company's best interest to stay up to date and respond as quickly as possible when labor laws change. Here are some current trends in employment law you should know about.

3. Job application no-nos

California was the first state to protect those previously convicted or arrested for a crime by limiting companies' ability to ask about prior convictions and arrests on employment applications. The goal is to make it easier for this category of workers to find employment, which may help reduce the rate of recidivism.

Now, other states are following California's lead, with Connecticut, Hawaii, Illinois, Maryland and Minnesota adding such laws to their books. The District of Columbia, as well as many cities and counties, have also joined this trend.

Known as "ban the box" laws, these laws generally forbid private companies from asking about an applicant's criminal history in the hiring process.

This usually means that your employment application cannot include a checkbox that asks about criminal convictions or arrests, and you're not allowed to inquire about criminal history until after you've decided an applicant is qualified for the job.

In some states, this applies to companies with three or more employees; in other states, it's 10 or more workers. Some ban-the-box laws and regulations also limit how and when companies can conduct background checks and limit the use of information found during these checks.

Many states are also applying similar logic to questions about a candidate's previous compensation, instituting a salary history ban on job applications.

So, if your business doesn't operate in any of the current ban-the-box or salary-history-ban states, should you even be concerned with this legislation? Definitely – because, chances are, more states will follow this trend over time.

4. Mental health and medical claims

Most business owners are familiar with the Americans with Disabilities Act (ADA) and its requirement that workers who are differently abled be offered reasonable accommodations.

What's new is a growing trend for cases where an employee claims an emotional or mental health issue for which their employer failed to offer a reasonable accommodation. As more and more health care professionals advocate to reduce the stigma often associated with mental illness, this trend will likely grow.

Medical marijuana is another employer quagmire that may touch on ADA regulations, as well as safety regulations. Most businesses still have employee handbooks that prohibit drug use.

But it's not always so black and white.

For example, what about an employee who fails a drug test but also holds a valid prescription to use medical marijuana?

The current patchwork of states across the country with legalized marijuana (medical and recreational) is sure to cause headaches for employers. Many states already lay out these obligations.

5. Employment at will

The most common misconception among small business owners relates to "employment at will" regulations. Many company leaders assume such laws mean they can fire anyone at any time with no reason given.

However, in reality, any business can be sued for wrongful termination if the employee claims they are part of a protected class, such as national origin, gender or religion. In addition, more states and municipalities are adding LGBTQ persons to the list of protected classes of employees.

As a result, even the smallest business should protect the company by keeping proper records about performance issues and documenting progressive training and 94nrolment94g.

6. Employee classification

Wage and hour regulations are another area of frequent confusion among small business owners. Many small companies run afoul of the law when it comes to paying overtime properly and classifying employees as exempt or non-exempt.

That's why it's vital to keep time and attendance records accurate and current, per Fair Labour Standards Act (FLSA) rules and any similar state law, and properly document safety trainings and compliance per applicable federal and state Occupational Safety and Health Administration (OSHA) regulations.

7. Lawsuits for labor code violations

For California business owners in particular, the Private Attorneys General Act (PAGA) further complicated their navigation of complex employer legislation when it passed a few years ago. And recent legislation has further expanded its potential scope and impact.

PAGA essentially allows aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California, for labor code violations.

For a nominal filing fee, PAGA lets employees act as "private attorneys general." They're empowered to file claims against their employer not just on their own behalf, but also on behalf of other employees who have violations made against them, even if it's a completely unrelated type of violation.

This legislation means that California business owners especially need to stay current and on the up-and-up when it comes to properly documenting their company's adherence to local, state and federal labor and employment laws.

PAGA is just one example of how evolving employment laws can make compliance a challenge for business leaders in any state.

Failure to comply can be costly

Many small business owners don't know they're making compliance mistakes because they assume labor and employment laws apply only to larger organizations. In some cases, such as paid family leave, that assumption may be correct, depending on the state or states in which you operate.

However, small businesses are usually not exempt from regulations related to time and attendance, safety or discrimination.

In addition to the prospect of significant fines and legal fees, failure to comply with employer liability laws can cost your business significant time and headspace to fight a case.

Even more problematic long-term, wronged employees tend to spread the word among their community both offline and online through sites such as Glassdoor and Facebook. A reputation as a careless or uncaring employer, whether deserved or not, can make it harder for your company to recruit top talent.

Employment laws are always changing and will continue to evolve. When the playing field is constantly moving and changing, you have to stay agile and adapt – or risk compliance issues.

Your best defense is to be prepared and address any issues proactively to prevent potentially devastating consequences. A reputable professional employer organization (PEO) can provide you with the guidance and insight to help your business overcome even the most challenging obstacles.

8. responses to "5 labor law compliance challenges in changing times"

Employee handbook: 6 must-have policies for your manual

Don't think you need to hassle with creating a strong employee handbook? Think again.

As your business grows, an employee handbook is a manual for what your employees can expect from your company and what your company expects from them. So, unless you're your business's sole employee – or you're running a family business with only you, your sister and cousin as employees – you need an employee handbook.

Not having clear employee policies can mean big problems. Employees often look for loopholes when they try to justify behavior outside your expectations, and they look to your employee handbook to find them. Your employee handbook should provide guidance to reinforce your policies.

As you begin writing, or updating, your employee handbook, keep it simple, straightforward and relevant to your particular business. Outline the policies that affect your employees.

Here are six areas that can help you kick-start a strong employee handbook.

9. Code of conduct

Your business's code of conduct is the first place employees should look when they have questions about ethics and compliance. It's a roadmap of how they should act, and it speaks to your company culture.

Some of the basic information you'll want to include in your code of conduct includes:

- Code of ethics
- Dress code and grooming standards
- Workplace safety
- Attendance requirements

Spell it all out for your employees. Set expectations and establish the consequences for not meeting those expectations.

For example, if an employee is consistently late to work, you should be able to refer them to their handbook for specifics on their working hours, as well as the protocol you determine for excessive tardiness. Or, if male employees are expected to wear suits and ties, but a rogue employee insists on foregoing the tie, how willing are you to relax some rules?

Maybe you could offer casual Fridays as a compromise. Whatever you decide, you'll set you and your staff up for success by including this information in your employee handbook.

10. Communications policy

A clear communications policy may have been optional in the past, but it's more important than ever in the current technological environment.

Do you provide your employees with laptops, cell phones and other devices? Do you really know how those devices are being used? How often are your employees using company equipment to surf the net, make personal phone calls, store photos, text friends or post on social media?

Your communications policy should explicitly state your expectations of appropriate use of devices and behavior on those devices. Employees should have a clear understanding that when they use company equipment, they're acting as a representative of your company. Tell them, for example, that sending bullying texts to someone on company equipment can get them fired.

Make sure they understand that other company policies, such as anti-discrimination, anti-harassment and ethics policies extend to all forms of communication and all devices.

11. Nondiscrimination policy

This is a must for any strong employee handbook. You want employees to know that your organization will not tolerate discrimination or harassment in any way, shape or form.

State and federal legislation brought on by the civil rights movement of the 1960s protects employees from discrimination based on factors not directly related to the quality of their work. These include but are not limited to:

- Age
- Race/color
- Religion
- Pregnancy
- Disability

Laws prohibiting discrimination are enforced by the Equal Employment Opportunity Commission.

Keep in mind that discrimination isn't always overt or on purpose. Even good managers can slip and unintentionally discriminate among employees. Are employees complaining about the perfect, five-star rating one employee received on his review when no one else did? Maybe they believe it's because he and his supervisor are lunch buddies.

Chances are, the manager is just trying to help his friend get the annual salary increase – and doesn't realize he may be discriminating against the rest of his team. Regardless, this is a huge area for potential liability, and a strong handbook can be a good defense if charges are filed against your company.

In the meantime, good managers aren't born – they're made. Make yours aware of your policies and provide supervisory and leadership training on non-discrimination.

12. Compensation and benefits policy

Employees don't always remember all the perks you talked about during their interviews. You can use your employee handbook to remind them about employee benefits, including general information and vacation time.

You also want to cover your legal bases by explaining things like payroll deductions, overtime, the Family and Medical Leave Act and the workers' compensation policy.

Keep things simple and high-level, however. There are no absolutes in business, and a change in circumstances, benefits or policies will mean you need to update your employee handbook.

For instance, you might want to outline your benefit and compensation philosophy without naming specific carriers or plan options.

You can also outline how often employees will receive performance reviews without mentioning specific pay increases. You don't want to outline the specifics of yearly merit increases and then find you can't provide them because of business demands. Be careful about the details you include.

13. New hire and separation policy

Provide the basic terms of employment and what employees can expect if and when they terminate, including:

- Eligibility for benefits – is there a waiting period? How long?
- Frequency of pay periods – weekly, bi-weekly, monthly?
- Transfers and relocation – if employees quit or move, how much notice do you require? Do you provide relocation assistance for employees who transfer to another office within the company?
- Referrals – do you offer monetary rewards to employees who refer talent that you hire?
- At-will and discipline – do you have a progressive discipline policy? If employees are terminated by you, are they paid for vacation time (if not required by state law)?

14. Acknowledgment of receipt

Be sure your employees understand everything in your employee handbook, and require that they sign an acknowledgment of that understanding. Make two copies. Give one to the employee, and keep the other in their employment file – whether it's a hard copy or electronic document.

Consider available technology, and decide in advance:

- Will you accept an electronic signature?
- Is your employee handbook available online?
- Can the online version of the handbook be printed?

If an employee termination becomes contentious, and policies are being contested, having on file the employee's signed acknowledgment of receipt can be your strongest defense.

Putting it all together

Your employee handbook is a manual of information that your employees need to function within your organization. A good handbook will:

- Set the tone for your organization
- Summarize rules and policies that affect your company culture
- Provide a consistent message for your employees
- Strengthen your position when you need to terminate an employee

You don't have to include the kitchen sink, but be sure to cover the pertinent points that are relevant and applicable to your business.

For instance, a manufacturing firm may not have a critical need for a communications policy. Likewise, if you have employees who travel for business, address the issues surrounding that, e.g., per diems, expense reimbursement, etc.

In addition to policies, your employee handbook should include information about who to contact should an employee need to report policy violations.

Expect to update your handbook every one to two years. Be sure you include key state and federal policies, and realize that new laws and regulations mean revisions to your handbook to remain compliant.

Remember to always make sure your policies are clear and don't assume that everyone will read their handbook cover to cover. Try to keep your handbook to a maximum of 30 to 40 pages, if possible. If it's too long, it may not get the attention it deserves.

If you'd like to learn more about creating airtight policies and procedures for your business, download our free e-book, 7 most frequent HR mistakes and how to avoid them.

Child labour issues and challenges

Children are future citizens of the Nation and their adequate development is utmost priority of the country. Unfortunately, child labor engulfs children across the world. The world is home to 1.2 billion individuals aged 10-19 years. However, despite its menace in various forms, the data shows variation in prevalence of child labor across the globe and the statistical figures about child labor are very alarming. There are an estimated 186 million child laborers worldwide. The 2001 national census of India estimated total number of child labor aged 5–14 to be at 12.6 million.[1] Small-scale and community-based studies have found estimated prevalence of 12.6 million children engaged in hazardous occupations. Many children are "hidden workers" working in homes or in the underground economy.[2] Although the Constitution of India guarantees free and compulsory education to children between the age of 6 to 14 and prohibits employment of children younger than 14 in 18 hazardous occupations, child labor is still prevalent in the informal sectors of the Indian economy.[3] Child labor violates human rights, and is in contravention of the International Labour Organization (Article 32, Convention Rights of the Child). About one-third of children of the developing world are failing to complete even 4 years of education.[4] Indian population has more than 17.5 million working children in different industries, and incidentally maximum are in agricultural sector, leather industry, mining and match-making industries, etc.[5]

The term "child labor" is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical-mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children, and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work. The statistical figures about child workers in the world have variation because of the differences in defining categories of age group and engagement of children in formal and informal sector.[6]

Child labor continues to be a great concern in many parts of the world. In 2008, some 60% of the 215 million boys and girls were estimated to be child laborers worldwide. Major engagement was in agriculture sector, followed by fisheries, aquaculture, livestock and forestry. In addition to work that interferes with schooling and is harmful to personal development, many of these children work in hazardous occupations or activities that are harmful.[7] Incidentally, 96% of the child workers are in the developing countries of Africa, Asia and South America. With respect to the child workers between the ages of 5 and 14, Asia makes up 61% of child workers in developing countries, while Africa has 32% and Latin America 7%. Further, while Asia has the highest number of child workers, Africa has the highest prevalence of child labor (40%).

FORMS OF CHILD LABOR

Children are employed in both formal and informal sectors. Among the occupations wherein children are engaged in work are construction work, domestic work and small-scale industries. Incidentally, agriculture is not only the oldest but also the most common child occupation worldwide. Some of the industries that depend on child labor are bangle-making, beedi-making, power looms and manufacturing processes. These industries use toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos. Child labor is very harmful and wholehearted efforts to eliminate this should be done.[10]

THE CONSEQUENCES OF CHILD LABOR

The negative impact on the physiological and psychological levels of children includes specific concerns of child labor and its consequences on mental health. It is worth noting that one-third of children of the developing world are failing to complete even 4 years of education.[6] The analysis of factors leading to engagement of children in hazardous factors elucidated socioeconomic factors as one of the important determinants. Poverty is considered as one of the contributory factors in child labor.[11]

Mental well being is less frequently researched in child labor.[12] A retrospective cohort study in Morocco randomly examined 200 children working in the handicraft sector and found a high prevalence of respiratory, digestive and skin conditions, as well as mental health presentations such as migraines, insomnia, irritability, enuresis and asthenia.[13]

In a cross-sectional survey, urban Lebanese children aged 10–17, working full-time in small industrial shops, were compared with non-working matched school children. Majority of them had poor physical health, predominantly marked with skin lesions or ear complaints and social care needs.[14] Similarly, authors aimed to find out consequences in children in Lebanon exposed to solvents, and found significantly higher rates of lightheadedness, fatigue, impaired memory and depression compared with a non-exposed group.[15] A cross-sectional study in Addis Ababa, Ethiopia, used diagnostic interviews to assess prevalence of mental disorders in 528 child laborers and street workers, child domestics and private enterprise workers aged between 5 and 15 years. The prevalence of mental disorders was noted to be as high as 20.1% compared with 12.5% in the general population.[16] Further study to establish the association between labor-related variables

and mental health problems was carried out among 780 children engaged in labor (aged 9–18 years) in the Gaza Strip. Mental health problems of children in labor were likely to be associated with socioeconomic determinants as well as factors related to their underage employment.[17]

The physical and social consequences are deliberated by researchers; however, mental health area has not been explored so much. Studies are lacking even in Indian scenario regarding impact of child labor on mental health.[23]

INTERVENTION AND CHILD LABOR

Education is a very important part of development. Children who are drawn to child labor are basically driven because of economic deprivation, lack of schooling and engagement of family for daily needs. Studies have found low 101nrolment with increased rates of child employment. Schools are the platform for early intervention against child labor, as it restricts their participation in menial jobs. Hurdles in this approach are economic reasons. Unless economic change is brought about, the children will not be able to attend the school. Child labor can be controlled by economic development increasing awareness and making education affordable across all levels, and enforcement of anti-child labor laws.

The Government of India has taken certain initiatives to control child labor. The National Child Labour Project (NCLP) Scheme was launched in 9 districts of high child labor endemicity in the country. Under the scheme, funds are given to the District Collectors for running special schools for child labor. Most of these schools are run by the NGOs in the district. Under the scheme, these children are provided formal/informal education along with vocational training, and a stipend of Rs. 100 per month. Health check-up is also done for them.

Workers' rights at risk as Indian labour laws face post-lockdown challenge

Workers in India are set to face longer days and lower pay in a "race to the bottom", academics, activists and unions said, as six states plan to suspend labour laws to help industry recover from the coronavirus lockdown.

Despite a spike in COVID-19 cases this week, India is looking to ease its seven-week lockdown amid increasing pressure from business leaders and ordinary people who say the strict curbs have destroyed the livelihoods of millions of workers.

Labour specialists warn, however, that the decision of states to suspend federal and state labour laws enshrining workers' rights would push even more people into the informal sector, drive down wages and erode working conditions.

[23] https://www.mondaq.com

"It's not only regression, it's a deep slide into a bottomless pit and a race to the bottom of labour standards," labour economist KR Shyam Sundar, a professor at the Xavier School of Management, told the Thomson Reuters Foundation.

"Other states will imitate (the six states)," he added.

Under the planned labour law suspensions announced so far, working shifts in the six states would be extended from eight hours to 12 hours for a three-month period.[24]

They also want to suspend legislation guaranteeing minimum wages and the formation of worker unions for up to three years, according to state documents seen by the Thomson Reuters Foundation.

Social security benefits including welfare funds or provisions for the health and safety of women employees would also be waived in some states.

Officials in the six states say the measures will help local industries to bounce back and reverse losses incurred during the weeks of lockdown, and also lure new investment.

"This was done to improve investment and labour employment… We just want factories to restart," said one state labour official, speaking on condition of anonymity.

The federal labour ministry did not respond to a request for comment.

'NO INCOME'

Already, more than 90% of India's 450 million strong labour force works in the informal sector with low wages and no social security. They have been hard hit by the closure of factories, building sites and other workplaces.

Rahul Ahirwar, a construction worker in northern Haryana state – one of the six that plans to extend the working day, said he expected to work more hours for less pay when he returned to his job, regardless of the labour law suspension.

"We work 10 hours in any case," he said by phone.

"It's going to be difficult from here on. Our employers have had no income. How will they pay us?"

Trade union leaders said state governments had given businesses a green light to exploit workers.

"The new rules will create more conflicts and increase slavery," said Lenin Raghuvanshi, convener of non-profit People's Vigilance Committee on Human Rights.

Raghuvanshi, who has heard from workers being asked to work longer hours during the lockdown or being denied leave to go home, said states could have implemented softer measures such as overtime provisions instead of suspending labour laws.

[24] https://www.mondaq.com

‘BALANCED APPROACH’

India has eight million modern slaves, according to Australia-based Walk Free’s Global Slavery Index, and bonded labour is the most prevalent form of slavery in the country.

Economists say even factories and shop floors in the formal sector would start operating like sweatshops if staff were working 12-hour shifts without social security.

And for workers already enduring poor conditions prior to the lockdown, labour experts fear things could get far worse.

“In most of the unorganised sector, the work hours are by default 12 hours and now the employer will extend it to 15,” said Anoop Satpathy, faculty at the VV Giri National Labour Institute.

“This (suspension of laws) will push many to poverty,” said the former head of the labour ministry’s panel on minimum wages.

While India’s 28 states can make changes to the country’s labour laws, such moves can be challenged in courts, according to parliamentarian Bhartruhari Mahtab, chairperson of the federal government’s committee on labour.

“Some of the changes being proposed may not hold up in the courts,” he said. “No attempt should be made to trample the rights of the workers … industry does need to restart and therefore a balanced approach is the need of the hour.”[25]

[25] https://www.mondaq.com

SUGGESTIONS

• Certainly the archaic labour laws regime and its enforcement system need reform.

• The guiding principle has to be growth in both quantity and quality of employment and balancing the interests of enterprises and workers.

• While the ongoing measures attempt to enhance security of workers to some extent, efforts seem in to be more towards facilitating the use of flexible labour and reducing further the already weak collective bargaining system (increase in the threshold of trade Union recognition)

• Some important elements of reforms in labour regulation machinery may be: - Simplification, rationalisation and consolidation of labour laws which are important both in the interest of workers and enterprises. This is very time consuming but the ongoing exercise is largely in right direction. - In spite of weak empirical evidence, provision relating to prior state permission for closures is not rational; the threshold of number of workers also irrational; - But it needs to be accompanied by a much higher separation benefits and evolving a fair and machinery of adjudication transparent system and - Strengthening collective bargaining system (multiplicity of unions? Elected Workers' Council?)

• In view of emerging pattern of production requirements, use of contract workers may be allowed where requirements justified but discourage its use just for denying worker the benefits to which he is entitled to; important to provide contract workers same wages and other non-wage benefits as regular workers and making them portable; both contractor and principal employer should be jointly responsible for effective implementation of these measures.

• For reducing sharp dualism in the labour market, it is necessary to ensure a humanly acceptable working conditions as well a universal package of social security taking care of old age, sickness,

accident etc. Unemployment insurance scheme should also be gradually evolved. - Scattered measures have been taken by several state governments, but need is to evolve a minimum social protection floor including a Statutory National Minimum Wage.

• The social security measures, should not rely only on enterprises but a partnership with state wherever necessary should be done, particularly in case of small enterprises. India growing over 7% per annum and workers deserve to get benefits of growth in order to make it inclusive and even sustainable.

• Reforms in the labour market regulation regime should focus on both enterprises and workers and it needs to be a fair and composite deal for the both.

CONCLUSIONS

An industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employees' representative; usually a trade union, over pay and other working conditions and can result in industrial actions. When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurize each other. The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos.

It ensures harmonious relations through:

a) Monitoring of industrial relations in Central Sphere.
b) Intervention, mediation and conciliation in industrial disputes in order to bring about settlement of disputes.
c) Intervention in situations of threatened strikes and lockouts with a view to avert the strikes and lockouts.
d) Implementation of settlements and awards.

Industrial Tribunals are independent judicial bodies that hear and determine claims to do with employment matters. These include a range of claims relating to unfair dismissal, breach of contract, wages/other payments, as well as discrimination on the grounds of sex, race, disability, sexual orientation, age, part time working or equal pay. The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes. Despite the large and often-heralded labor cost savings from which a buyer could benefit by manufacturing in India, the difference may be paid for by other factors, such as labor productivity and organizational & logistical setbacks.

No two buyers are in the same situation. So it follows, each buyer must account for all factors that will affect their own specific product and circumstances, to determine the best location for manufacturing. Some major companies are already moving production to India, while others are finding that China continues to be the better choice for them. Only you can decide if manufacturing in India is the right move for you. Poverty is one of the important factors for this problem. Hence, enforcement alone cannot help solve it. The Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families. Many NGOs like CARE India, Child Rights and You, Global March Against Child Labour, etc., have been working to eradicate child labor in India. The child labor can be stopped when knowledge is translated into legislation and action, moving good intention and ideas into protecting the health of the children.. Focusing on grassroots strategies to mobilize communities against child labor and reintegration of child workers into their homes and schools has proven crucial to breaking the cycle of child labor.

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