

# **Labour Laws**

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## **DCOM207**

**Edited by:**  
**Amit Kumar Sharma**



**L** OVELY  
**P** ROFESSIONAL  
**U** NIVERSITY

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# **LABOUR LAWS**

Edited By  
Amit Kumar Sharma

Printed by  
**EXCEL BOOKS PRIVATE LIMITED**  
A-45, Naraina, Phase-I,  
New Delhi-110028  
for  
Lovely Professional University  
Phagwara

# SYLLABUS

## Labour Laws

### Objectives:

- To familiarize the students with various aspects of Industrial Relations in India
- To have thorough knowledge of Labour Laws prevalent in India
- To develop an understanding of implications of Labour Laws on Industrial relations

Sr. No.	Topics
1.	<b>Introduction to Labour Legislation:</b> Philosophy of Labour Laws, Industrial Relations and Human Resource Management Labour Laws: Concept, Origin, Objectives and Classification.
2.	<b>Factories Act:</b> approval, licensing and registration: health, safety and welfare measures of employees; provisions regarding employments of adults, women and children in factories.
3.	<b>Industrial Dispute Act:</b> Definitions, Authorities and procedure to settle industrial disputes.
4.	<b>Payment of Wages Act:</b> Definitions, Methods for computing and fixing wages.
5.	<b>The Workmen Compensation Act, 1923:</b> Definition of Commissioner, Workmen, Disablement, Rules regarding Workmen's compensation, Defences available to employers, Amount and Distribution of Compensation, Enforcement of Act.
6.	<b>Payment of Bonus Act, 1965:</b> Definition of Accounting Year, Allocable Surplus, Available Surplus, Eligibility and Disqualification of Bonus, Computation of Bonus, Powers of Inspectors Offences and Penalties under the Act.
7.	<b>Trade Union Act:</b> Provisions, Authorities and Registration; amalgamation and dissolution.
8.	<b>Employees Provident Fund Act, 1952:</b> Definitions of Pension fund, Pension Scheme, Superannuation, Employees Pension Fund Scheme and Fund, Employees Provident Fund Scheme, Employees Deposit Linked Insurance Scheme. Determination and Recovery of money due from employer, Penalties under the Act.
9.	<b>The Maternity Benefit Act, 1961:</b> Objective, Coverage, Benefits, penalties The Employees' State Insurance Act, 1948: objective, scope, coverage, benefits, The role of ESI Corporation and ESI Hospitals.
10.	<b>The Payment of Gratuity Act, 1972:</b> Objective, Coverage, Employers' obligations, benefits.

## CONTENT

<b>Unit 1:</b>	Philosophy of Labour Laws <i>Amit Kumar Sharma, Lovely Professional University</i>	1
<b>Unit 2:</b>	Labour Laws, Industrial Relations and Human Resource Management <i>Amit Kumar Sharma, Lovely Professional University</i>	16
<b>Unit 3:</b>	Labour Laws: Concept, Origin, Objectives and Classification <i>Amit Kumar Sharma, Lovely Professional University</i>	27
<b>Unit 4:</b>	Factories Act, 1948 <i>Amit Kumar Sharma, Lovely Professional University</i>	43
<b>Unit 5:</b>	Industrial Disputes Act <i>Pooja, Lovely Professional University</i>	72
<b>Unit 6:</b>	Payment of Wages Act, 1936 <i>Pooja, Lovely Professional University</i>	93
<b>Unit 7:</b>	Definitions under Workmen's Compensation Act, 1923 <i>Pooja, Lovely Professional University</i>	109
<b>Unit 8:</b>	Rules Regarding the Workmen's Compensation Act <i>Pooja, Lovely Professional University</i>	125
<b>Unit 9:</b>	Payment of Bonus Act, 1965 <i>Pooja, Lovely Professional University</i>	142
<b>Unit 10:</b>	Trade Unions Act, 1926 <i>Gopika Juneja, Lovely Professional University</i>	160
<b>Unit 11:</b>	Employees' Provident Fund Act, 1952 <i>Gopika Juneja, Lovely Professional University</i>	179
<b>Unit 12:</b>	The Maternity Benefit Act, 1961 <i>Gopika Juneja, Lovely Professional University</i>	198
<b>Unit 13:</b>	The Employees' State Insurance Act, 1948 <i>Gopika Juneja, Lovely Professional University</i>	214
<b>Unit 14:</b>	The Payment of Gratuity Act, 1972 <i>Gopika Juneja, Lovely Professional University</i>	231

## Unit 1: Philosophy of Labour Laws

Notes

### CONTENTS

Objectives

Introduction

- 1.1 Approach to Labour Law and Labour Relations
  - 1.1.1 Basis of Labour Relations Law
  - 1.1.2 Purpose of Labour Legislation
- 1.2 Constitutional Directives and Limitations to Labour Law
  - 1.2.1 Constitutional Directives to Labour Laws
  - 1.2.2 Constitutional Limitations on Labour Laws
- 1.3 Social Justice and Labour Laws
- 1.4 Public Interest Litigation (PIL) for Enforcement of Labour Law
  - 1.4.1 Maintainability of the Writ Petition under Article 32
- 1.5 Industrial Adjudication
  - 1.5.1 The Adjudication Process
- 1.6 Summary
- 1.7 Keywords
- 1.8 Review Questions
- 1.9 Further Readings

### Objectives

After studying this unit, you will be able to:

- Explain approach to labour law and labour relations
- Discuss the constitutional directives and limitations to labour law
- Get an overview of social justice and labour laws
- Describe the public interest litigation (PIL) for enforcement of labour law
- Discuss industrial adjudication

### Introduction

In order to appreciate various labour legislation it is necessary to know the philosophy of Labour Laws. Over the years labour laws have undergone a change with regard to the object and scope. Early labour legislation was enacted to safeguard the interest of employers. It was governed by the doctrine of laissez faire. Modern labour legislation on the other hand aims at protecting workers against exploitation by employers. The advent of doctrine of welfare state is based on the notion of progressive social philosophy which has rendered the old doctrine of laissez faire obsolete. The theory of "hire and fire" as well as the theory of "supply and demand" which found free scope under the old doctrine of laissez faire no longer holds good. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the philosophy of labour laws.

## **1.1 Approach to Labour Law and Labour Relations**

Labour law seeks to regulate the relations between an employer or a class of employers and their employees. The access of this law is the widest, in that it touches the lives of far more people, indeed millions of men & women as compared to any other branch of law and this is the aspect which makes it the most fascinating of all branches of law and the study of this subject is of enormous dimension and of ever changing facets.

There has been a remarkable change in the approach to Labour law and industrial relations since the World War II Philadelphia Charter adopted in 1944 provided that "Labour is not a commodity" and that "poverty anywhere is a danger to prosperity everywhere". W. Friedmann and others who have tried to analyse the essential characteristics of the legal development in this branch of law consider 'social-duty' on the part of employer as the main bed rock on which this law is built. This is exemplified by the very approach of law makers to the construction of a wage packet of the working man in the post-second World War period, wage fixation and legislation relating to condition of work. The Indian Constitution lays down broad guidelines to be followed by State.



*Did u know?* The Supreme Court in D.N. Banerji v. P.R. Mukherjee, AIR 1953 SC 58 stated that the law as developed after the second World War, particularly in a welfare State has reversed the theories of Sir Henry Maine and now society progresses from contract to status and the post war world has seen considerable legislation laying down conditions of service and also ensuring by laws payment of minimum wages.

### **1.1.1 Basis of Labour Relations Law**

Otto Kahn-Freund in his book on Labour and the Law makes the following points:

- (i) The system of collective bargaining rests on a balance of the collective forces of management and organised labour. The contribution which the courts have made to the orderly development of collective labour relations has been infinitesimal. Collective bargaining is a process by which the terms of employment and conditions of service are determined by agreement between management and the union. In effect, "It is a business deal (which) determines the price of labour services and terms and conditions of labour's employment."
- (ii) The Law governing labour relation is one of the central branches of the law on which the very large majority of people earn their living. Nonetheless, law is a secondary force in human relations and especially in labour relations.
- (iii) Law is a technique for the regulation of social power. This is true of labour law as it is of other aspects of any legal system. Labour Law also seeks to lay down minimum standard of employment. It lays down norms by which basic conditions of labour are fulfilled such as maximum working hours, minimum safety conditions, minimum provisions for holidays and leave protection for women and children from arduous labour, prohibition of children below certain age from employment and provision for minimum standards of separation benefits and certain provision for old age.

### **1.1.2 Purpose of Labour Legislation**

Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three crucial roles:

- (i) It establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;



- (ii) By providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;
- (iii) It provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced.

But experience shows that labour legislation can only fulfill these functions effectively if it is responsive to the conditions on the labour market and the needs of the parties involved. The most efficient way of ensuring that these conditions and needs are taken fully into account is if those concerned are closely involved in the formulation of the legislation through processes of social dialogue. The involvement of stakeholders in this way is of great importance in developing a broad basis of support for labour legislation and in facilitating its application within and beyond the formal structured sectors of the economy.



Caselet

### **Airport Authority of India**

The writ petition was filed by the Airport Authority of India, challenging the impugned order passed by the authority under Rule 25 (2)(v)(a) & (b) of Contract Labour (R&A) Central Rules dated 27.04.2001, whereby it was held that the members of the second respondent in the category of Safaiwala/cleaner/sweeper under the contractor engaged by the petitioner are performing not the same, but similar work as performed by the corresponding category of directly employed workers of the petitioner. The provision contained under Rule 25(2)(v)(a) of the Contract Labour Act, 1971, makes it very clear that in a case where the contract workman performs the same or similar kind of work as the workmen directly employed by the Principal employer, then the benefits to such a contract workman shall be the same, as applicable to the workmen directly employed by the principal employer. Therefore the said rule mandates that the benefits shall be equal both to a workmen engaged by a contractor as well as the workmen engaged by the principal employer. The Court held that no distinction can be made against Contract labour. Contract labour is entitled to the same wages, holidays, hours of work and conditions of service as are applicable to workmen directly employed by the principal employer under the appropriate industrial and labour laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner. Thus the Court held that the order impugned is perfectly in order and no interference needs to be called for and accordingly dismissed the writ petition.

Source: <http://www.chadha-co.com/pdfs/C&Co-Labour-Law-Update-April-May-2012.pdf>

### **Self Assessment**

State whether the following statements are true or false:

1. Labour law seeks to regulate the relations between an employer or a class of employers and their employees.
2. Law is a technique for the regulation of political power.
3. Labour is a commodity.



## **1.2 Constitutional Directives and Limitations to Labour Law**

Following are the Constitutional Directives and Limitations to Labour Law:

### **1.2.1 Constitutional Directives to Labour Laws**

The people of India resolved, on November 26, 1949, to constitute India into a sovereign democratic republic and secure to all its citizens.

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity

They framed a Constitution which seeks to provide a frame work for the achievement of these objectives. The Preamble has been amplified and elaborated in Part IV of the Constitution, which deals with the Directive Principle of State Policy. The State has been directed to promote the welfare of the people by securing and protecting as effectively as may, a social order in which justice, social economic and political, shall inform all institutions of the national life. Further, the State has been directed to strive to secure, inter alia,

- (i) an adequate means of livelihood,
- (ii) the proper distribution of ownership and control of the, material resources of the community so that it may best subserve the common need,
- (iii) the prevention of the concentration of wealth and means of production,
- (iv) equal pay for equal work to men and women,
- (v) the health and strength of workers,
- (vi) right to work,
- (vii) right to education and to public assistance in cases of undeserved want, just and humane conditions of work and for maternity relief,
- (viii) living wage and decent standard of life to labourers
- (ix) higher level nutrition and standard of living and improved public health.

The Directive Principles spell out the socio-economic objectives of the national policy to be realised by labour; legislation as well as by other legislations. These are directives to the legislature, executive and the judiciary, which are committed to make, interpret and enforce law.

### **1.2.2 Constitutional Limitations on Labour Laws**

Although labour policy seeks to create high minimum standards of employment, the choice of the legislature in seeking to achieve the objective are not unqualified. Minimum standard legislation is subject to various limitations. To begin with, in order to guarantee the fundamental rights, the Indian Constitution imposes certain limitations on the legislations on the legislature and the executive. To the extent it is inconsistent with or derogatory to a fundamental right, the legislation is void. Fundamental rights are enforceable by the courts under Articles 32 and 226.

The fundamental rights are enumerated in Part-III of the Constitution. The whole object of Part-III is to provide protection for the freedom and rights mentioned therein against arbitrary action

by the State. Of particular relevance is Article 14, which provides that “the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India”. In addition to this, Article 16 guarantees equality of opportunity in matters of public employment. Further, Article 19 guarantees “the right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to practice any profession, and to cant’ on any occupation, trade or business.” These constitutional guarantees are of great practical significance in the area of labour law, including minimum standard legislation. Equal; protection constitutes a limitation on the legislative power to select or decide which business or industry must achieve minimum standards. The right to carry on trade profession or business limits the burden which the legislation may place on business in the interest of workers. The freedom of speech, assembly, association and unionisation protect workers in their efforts to achieve their objectives through self in organising, picketing or striking.

Article 21 provides protection of life and personal liberty. It provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 23 prohibits traffic in human beings and forced labour. It says (i) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Life, in Article 21, has been interpreted by the Supreme Court as including livelihood and the Court has held in several cases that any employment below minimum wage levels is impermissible as it accounts to slavery as understood in Article 23. Holding a person in bondage is a Constitutional crime. Article 24 places a ban on employment below the age of 14 in any factory or mine or engaged in any other hazardous employment.

### Self Assessment

State whether the following statements are true or false:

4. The Preamble has been amplified and elaborated in Part IV of the Constitution, which deals with the Directive Principle of State Policy.
5. The fundamental rights are enumerated in Part-III of the Constitution.
6. Article 19 provides protection of life and personal liberty.

### 1.3 Social Justice and Labour Laws

In the realm of labour laws there has been in reality continuous legislative activity by the Supreme Court ever since the Constitution was promulgated. The Supreme Court has performed a pioneering role in evolving first principles of industrial law which are so sound that they are largely still followed today despite the dynamic nature of industrial law.

The fundamental principle which was laid down by the Supreme Court in this respect was the principle of social Justice. In fact, other principles of labour law only flow from this basic principle, and hence we may consider it at some length. Social Justice connotes the balance of adjustments of the various interests concerned in the social and economic structure of society. It aims at promoting harmony in Industrial relations upon an ethical and economic basis, and its ultimate objective of peace in Industry. Thus, social justice is an objective of peace in industry. Thus, social justice is an application in the field of labour laws of the basic principle of sociological jurisprudence of harmonising conflicting interests. Social Justice recognised that workers are in a weak bargaining position vis-a-vis the employer, and it seeks to remedy this situation.



*Did u know?* In J.K. Cotton Spinning & Weaving Mills v. Labour Appellate Tribunal, AIR 1964 SC 737 the Supreme Court observed.

**Notes**

“The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasized the relevance, validity and significance of the doctrine of social, justice. The concept of social justice is not narrow or one-sided or pedantic. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities. Nevertheless in dealing with industrial matters it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It therefore endeavours to resolve the competing claims of employees by finding a solution which is just and fair to both parties with the object of establishing harmony between labour and capital, and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of the national economy, and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication.”

Social justice is not based on contract. In fact it is an abridgement of the freedom of contract. The days of hire and fire are gone and the Industrial Court has power to intervene if it is demonstrated that the contract of employment needs to be revised in the interests of social Justice. In fact the Industrial Courts enjoy immense wide powers which no civil court possesses, namely, to create new contracts, modify existing contracts and confer new rights and privileges.

However the principle of social justice does not permit the Industrial Courts to act as despots and do anything they please. The Industrial Court must follow Industrial law and decide the dispute on settled principles. The Supreme Court has struck a note of caution that the need of the hour is more production; consequently the Tribunal should not be unduly generous in the matter of granting leave. Similarly, an Industrial Court cannot grant housing accommodation to the workers for this would impose too heavy a burden on the employer.



*Did u know?* In Patna Electric Supply v. Workers Union, AIR 1959 SC 1036 the Supreme Court observed:

“Social Security for the weaker sections is of utmost importance. But then we cannot forget the limitations under which we are living. While we should not forget our social goals, our purpose may be defeated if we do not approach our problems in a pragmatic way. “

Thus, social justice requires the Industrial Courts to strike a balance between the conflicting claims of employer and worker. While the employer has a fundamental right to run his business, his right has to be adjusted with the employees’ right to social justice. The former pertains to the realm of fundamental rights in our Constitution, the latter to the realm of the Directive Principles. The Ultimate aim is to have peace in industry so that production may increase and the national economy may grow.

**Self Assessment**

Fill in the blanks:

7. The fundamental principle which was laid down by the Supreme Court in this respect was the principle of .....
8. The Industrial Court must follow ..... and decide the dispute on settled principles.
9. Social justice is not based on .....

**1.4 Public Interest Litigation (PIL) for Enforcement of Labour Law**

“Public interest Litigation”, in simple words, means, litigation filed in a court of law, for the protection of “Public Interest”, such as pollution, Terrorism, Road safety, constructional hazards etc. Public Interest Litigation, in Indian law, means litigation for the protection of public interest.

It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by courts through judicial activism.

Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and precede suo motu or cases can commence on the petition of any public-spirited individual.



*Notes*

The Supreme Court in *S.P. Gupta v. Union of India*, popularly known as the Transfer of Judges case AIR 1982 SC 149 formulated the principle of public interest litigation in the following words:

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction or writ or order."

In *People's Union for Democratic Rights v Union of India* (1982) 2 L.L.J 454 popularly known as *Asiad* case the Court found the view, which held that public interest litigation unnecessarily clog the dockets of the Court and add to the already staggering arrears of cases pending for years and should be discouraged, to be totally perverse, smacking of an elitist and status quo approach. On the contrary, the Court found that the doors of the courts were open for vindicating the right of the wealthy and the affluent and held that those who have decried public interest litigation did not seem to realise that courts were not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they existed also for the poor and the downtrodden. The Court accordingly treated the letter written to a judge to be a writ petition.

PIL represents the first attempt by a developing common law country to break away from legal imperialism perpetuated for centuries. It contests the assumption that the most western the law, the better it must work for economic and social development such law produced in developing states, including India, was the development of under develop men. The shift from legal centralism to legal pluralism was prompted by the disillusionment with formal legal system. In India, however instead of seeking to evolve justice- dispensing mechanism ousted the formal legal system itself through PIL. The change as we have seen, are both substantial and structural. It has radically altered the traditional judicial role so as to enable the court to bring justice within the reach of the common man. Further, it is humbly submitted that PIL is still in experimental stage. Many deficiencies in handling the kind of litigation are likely to come on the front. But these deficiencies can be removed by innovating better techniques. In essence, the PIL develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interests of the weaker elements in the community. We may end with the hope once expressed by Justice Krishna Iyer, "The judicial activism gets its highest bonus when its orders wipe some tears from some eyes".



*Caution* Public Interest Litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only "Public Interest" there are various areas where a Public Interest Litigation can be filed.

## Notes

**1.4.1 Maintainability of the Writ Petition under Article 32**

In *Asiad* case the Supreme Court examined whether there was any violation of fundamental right in this petition and observed:

“The complaint of violation of Art.24 based on the averment that children below the age of 14 years are employed in the construction work of the *Asiad* projects, is clearly a complaint of violation of a fundamental right. So also when the provisions allege non-observance of the provisions of the Equal Remuneration Act, 1976 it is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Art 14. Then there is the complaint of non-observance of the provision of the Contract Labour (Regulations & Abolition) Act 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and this is also in our opinion a complaint relating to violation of Art.21.”

Further it was added:

“Now the rights and benefit on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen. That leaves for consideration the complaint in regard to non payment of minimum wages to the workmen under the Minimum Wages Act, 1948. We are of the view that this complaint is also one relating to breach of a fundamental right and for reasons which we shall presently state, it is the fundamental right enshrined in Article 23 which is violated, by non-payment of minimum wage to the workmen.”



Task

answer.

Is it maintainable as a writ petition? Give reasons with support of your

**Self Assessment**

State whether the following statements are true or false:

10. Public Interest Litigation means litigation for the protection of public interest.
11. The shift from legal centralism to legal pluralism was not prompted by the disillusionment with formal legal system.
12. The court can itself take cognizance of the matter and precede suo motu or cases can commence on the petition of any public-spirited individual.

**1.5 Industrial Adjudication**

In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand

and the workmen's organisation on the other and the industrial tribunal has got to arrive at some equitable arrangement for averting strikes and lockouts which impede production of goods and the industrial development of the country. The tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. Adjudication is a procedure for resolving disputes without resorting to lengthy and expensive court procedure.

Disciplining a workman is one of the key methods of curtailing disputes amongst them and achieving maximum productivity.



*Example:* Accordingly, the Supreme Court of India ("SC") in *Hombegowda Educational Trust v. State of Karnataka*, stated that giving managers the power to punish a workman according to law, even if the punishment may result in some hardship is important. But, one needs to bear in mind that conducting disciplinary proceedings against a workman is most controversial and often lead to long drawn-out cases. Hence, the management of any industrial establishment must cautiously approach such proceedings and strictly follow the procedure laid down by judicial precedents. The present bulletin focuses on the requirements of holding a domestic enquiry with respect to indiscipline on part of a workman, the procedure to be followed thereunder and the impact of section 11A of the Industrial Disputes Act, 1947 ("the Act") on domestic enquiries.

### 1.5.1 The Adjudication Process

Following are the processes of Adjudication:

#### Commencement

The adjudication process begins when the party referring the dispute to adjudication gives written notice of its intention to do so. The Scheme for Construction Contracts provides that this Notice of Adjudication should briefly set out the following:

- a description of the nature of the dispute and the parties involved;
- details of where and when the dispute arose;
- the nature of the remedy being sought;
- names and addresses of the parties to the contract, including addresses where documents may be served.

The Notice of Adjudication is the first formal step in the adjudication procedure. Save for the minimum information set out above, there is no particular requirement as to the form of the document.

#### Appointment of the Adjudicator

Following service of the Notice of Adjudication, the next step is to appoint an adjudicator. The appointment of an adjudicator must be secured within seven days from service of the Notice of Adjudication. The parties can agree on an individual to act as the adjudicator or, if agreement cannot be reached, the party who referred the dispute to adjudication may make an application to an Adjudicator Nominating Body (ANB). This is usually done by completing a form and paying the required fee. On receipt of a request to nominate an adjudicator, the ANB should communicate their selection to the party who referred the dispute to adjudication within five days of the request. In the event that an ANB fails to do this the whole process must begin again.



Notes

**The referral notice**

The referral notice must be served within seven days of service of the Notice of Adjudication. This is the document that sets out in detail the case of the party who is referring the dispute to adjudication and it should be accompanied by documentation in support of the claim together with expert reports (if any) and witness statements. It is important to ensure that the referring party is in a position to serve this notice - there have been instances where the ANB has appointed an adjudicator 24 hours before the seven-day period expires, in which case the adjudicator will need the notice within a day. A copy should be sent to the other party at the same time.

**Timetable involved**

The Construction Act sets out a tight timetable of within 28 days of service of the referral notice for submission of a response and for the adjudicator's ultimate decision. However this may be extended with the consent of the adjudicator. The rationale behind the process was to obtain quick and cost effective results which are of a binding nature unless reviewed by litigation or arbitration. This relies on timescales being tight.

**Responding party's response**

This is essentially the other party's defence, and is required to be served within seven days of the Referral Notice. Requests for this to be extended to 14 days are usually agreed. The HGCRA does not demand a response or further submissions - the need for one is a matter for the adjudicator.

**The decision**

The adjudicator is required to reach his decision within 28 days of service of the referral notice. This period can be extended by a further 14 days if the party who referred the dispute in the first place agrees, or can be further extended if both parties agree.

The decision is final and binding, providing it is not challenged by subsequent arbitration or litigation. The parties are obliged to comply with the decision of the adjudicator, even if they intend to pursue court or arbitration proceedings. In the majority of adjudicators' decisions the parties accept the decision, however if they choose to pursue subsequent proceedings the dispute will be heard afresh - not as an 'appeal' of the adjudicator's findings. A party cannot adjudicate the same issue in further adjudication proceedings.

**Costs**

The Construction Act makes no mention of how costs should be dealt with. However changes to the Act which come into force on 1 October 2011 provide that any contractual provision which attempts to allocate the costs of adjudication between the parties will be invalid unless it is made after the adjudicator is appointed. This applies to agreements both as to the allocation of the adjudicator's fees and expenses and agreements as to who is to bear the parties' own costs. This provision seeks to prevent parties agreeing contractual terms which place all the costs risk on one party.

**Adjudicator's fees and expenses**

The parties will be jointly and severally liable to pay the adjudicator a reasonable amount in respect of fees for work reasonably undertaken and expenses reasonably incurred by him. This means that both parties can be pursued for these fees, or that either party may be pursued for the whole amount. The adjudicator may decide himself what sum is reasonable but, if there is any dispute, an application can be made to the court for determination. This provision applies only



to adjudications which contain the required adjudication provisions set out in the Construction Act, not to adjudications which rely on the provisions of the Scheme for Construction Contracts.

The Local Democracy, Economic Development and Construction Act provide that:

- the parties may agree, in the construction contract, to confer power on the adjudicator to allocate his fees and expenses between them - this agreement must be in writing;
- if the parties agree, in the construction contract, to allocate liability for their own costs of the adjudication that provision will be ineffective;
- the parties are free to agree liability for their own costs of the adjudication after the notice of intention to refer has been given - if they do so, this agreement must be in writing.

The Act does not address what will happen if a contract provision allocates liability for both the parties' costs and the adjudicator's fees and expenses. It is arguable that in such a situation the whole clause will be ineffective.

### Interest

The adjudicator can only deal with interest on sums awarded if the contract contains a provision dealing with interest, or alternatively if the parties agree.

### Self Assessment

Fill in the blanks:

13. .... a workman is one of the key methods of curtailing disputes amongst them and achieving maximum productivity.
14. The Construction Act sets out a tight timetable of within ..... days of service of the referral notice for submission of a response and for the adjudicator's ultimate decision.
15. The ..... can only deal with interest on sums awarded if the contract contains a provision dealing with interest, or alternatively if the parties agree.



#### Case Study Labour Unrest at Maruti

**M**aruti Udyog Ltd. (MUL) is one of India's leading automobile manufacturers and the market leader in the car segment, both in terms of volume of vehicles sold and revenue earned. It was established in February 1981, by Sanjay Gandhi, the younger son of then Prime Minister of India, Mrs Indira Gandhi. It was taken over by Govt. of India in February 1982. In October of the year 1983, Maruti entered into the collaboration with Suzuki Motors, by which Suzuki acquired 26% of the equity and agreed to provide the latest technology as well as Japanese management practices. The commercial production and sales began by the end of 1983. The introduction of the Maruti 800 in 1983 marked the beginning of a revolution in the Indian automobile industry. In Late 1990's the company had serious differences with Govt. over appointment of company's managing director. Suzuki referred the case for International arbitration and finally withdraws the case after an amicable settlement was reached between Suzuki and Government of India.

For most of its history, Maruti Udyog had relatively few problems with its labour force. The company trusts its employees to a greater extent and the employees in turn respond by being totally devoted to the company. Both the managers and workers of Maruti wore

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## Notes

the same uniform and ate at the same canteen even during the period of agitation. After recovering from the strike Maruti had a perceptible change in culture. A VRS scheme introduced soon afterwards increased the sense of insecurity amongst employees, but it was all for a good cause.

During the 1980s and early 90s the level of employee satisfaction at Maruti was comparatively higher than most manufacturing companies in the country as they received significantly higher salaries as compared to employees of other companies. Generally the Wage rates and earnings of workers at Maruti were result of a series of revisions based on bilateral negotiations. The pre-revised (before 2001 strike) labour cost per vehicle in Maruti at ₹ 2,696 compared unfavorably with ₹ 1,617 of its closest rival Hyundai. Worker's incentive earning had been equal to almost their entire basic and dearness. In 2000, the average basic and dearness allowance was ₹ 7,000 and the incentive earnings were around ₹ 6,500. With incentives accounting for a more than as usual and sizable proportion of the pay packet, workers badly needed the incentive scheme. Maruti's workers formed part of middle class, not working class. Over two-thirds apparently owned flats/houses and cars.

In MUL the control and power is mostly in the hands of management. During the workers strike in 2000 the management refused to agree to the workers demands. The officers ran the plant by supervising the operations of the plant and hiring contractual labour. This made it difficult for workers to sustain the strike. They had to call off the strike and were in fact forced them to agree to some changes laid down by the management. The power of Japanese has always been there in an implicit manner. The Japanese have acted as conflict resolvers whenever there have been any conflicts within or between departments. Many times the departments play politics with other departments by trying to use the referent power available due to closeness with Japanese management. With the increase in stake of Suzuki Motor Corp. the legitimate power of the Japanese management has further increased.

The car market in India become highly competitive in late 1990s with almost all major players entering the Indian market with manufacturing of various models. So company suffered a decline of market share. As Maruti's salary structure comparatively higher than most manufacturing companies, due to this competition and decline in profit, the company could not live up to the expectations of the employees. As a result worker unrest started to grow in the company.

In September 2000 the Maruti Udyog Employees Union went on an indefinite strike if their demands were not met. The employees were demanding a new incentive scheme, improved pension scheme, better work environment and filling up of supervisory vacancies. However the management refused to accede to these demands.

Production fell by around 40 % for a period of 3 months. During this period the engineers at the managerial positions manned the assembly lines to ensure that production does not stop completely. The top management of Maruti were under some pressure to negotiate with the workers. However, the government decided not to interfere directly and the management insisted that the workers stop the agitation and agree to adhere to the code of conduct specified by them.

The strike ended in January 2001 with the union members agreeing to by the code of conduct. About half of the employees (40) suspended/terminated during the course of the agitation were not taken back on duty. Thus the management retained the upper hand after the strike ended and the work culture at Maruti changed significantly after this. Some of the changes which took place were as follows:

1. The sense of job security that the workers enjoyed at Maruti diminished. In subsequent years a number of non-performers were asked to opt for a voluntary Retirement (VRS) and by introducing VRS, 1251 jobs were reduced.

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2. De-recognized Maruti Udyog Employees Union (MUEU) by dismissing the union members and the MUEU was not allowed to conduct a single general body meeting after the lockout and recognized new union called Maruti Kamgar Union and it was set up in December 2000 with 28 members.
3. The company started relying more on casual (contractual) labor to decrease its costs.
4. The proportion of variable performance based pay out of the total increased significantly.

**Questions:**

1. Study and analyze the case.
2. Write down the case facts.
3. What do you infer from it?

Source: <http://www.scribd.com/doc/44741654/Case-study-report-on-Labour-unrest-at-Maruti>

**1.6 Summary**

- Labour law seeks to regulate the relations between an employer or a class of employers and their employees.
- There has been a remarkable change in the approach to Labour law and industrial relations since the World War II.
- The State has been directed to promote the welfare of the people by securing and protecting as effectively as may, a social order in which justice, social economic and political, shall inform all institutions of the national life.
- The Directive Principles spell out the socio-economic objectives of the national policy to be realised by labour; legislation as well as by other legislations.
- The fundamental rights are enumerated in Part-III of the Constitution.
- Article 21 provides protection of life and personal liberty.
- The fundamental principle which was laid down by the Supreme Court in this respect was the principle of social Justice.
- The Industrial Court must follow Industrial law and decide the dispute on settled principles.
- Public Interest Litigation is the power given to the public by courts through judicial activism.
- PIL represents the first attempt by a developing common law country to break away from legal imperialism perpetuated for centuries.
- In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law.

**1.7 Keywords**

**Adjudication:** Adjudication is a procedure for resolving disputes without resorting to lengthy and expensive court procedure.

**Adjudicator:** An adjudicator is someone who presides, judges and arbitrates during a formal dispute

**Notes**

**Collective Bargaining:** Collective bargaining is the process in which working people, through their unions, negotiate contracts with their employers to determine their terms of employment, including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family and more.

**Constitution:** A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.

**Labour:** A social class comprising those who do manual labor or work for wages.

**Labour Laws:** Body of rulings pertaining to working people and their organizations, including trade unions and employee unions, enforced by government agencies.

**Labour Relations:** Labor relations encompasses all the interchanges between employers and employees

**Public Interest Litigation:** In Indian law, public interest litigation means litigation for the protection of the public interest.

**Regulation:** A rule or directive made and maintained by an authority.

**Social Justice:** Social justice is defined as justice exercised within a society, particularly as it is exercised by and among the various social classes of that society.

**Writ Petition:** A special request that the Court of Appeal grant immediate relief from a trial court order.

### **1.8 Review Questions**

1. What is the basis of Labour Relations Law?
2. Highlight the purpose of Labour Legislation.
3. Discuss the Constitutional Directives to Labour Laws.
4. Throw some light on the Constitutional Limitations on Labour Laws.
5. "The fundamental principle which was laid down by the Supreme Court in this respect was the principle of social Justice." Elucidate.
6. Do you agree with the statement that Social justice is not based on contract? If yes, give reasons.
7. Define Public interest Litigation.
8. Describe the maintainability of the Writ Petition.
9. What do you understand by Industrial Adjudication?
10. Explain the process of Adjudication.

### **Answers: Self Assessment**

- |                   |                   |
|-------------------|-------------------|
| 1. True           | 2. False          |
| 3. False          | 4. True           |
| 5. True           | 6. False          |
| 7. Social Justice | 8. Industrial Law |
| 9. Contract       | 10. True          |

- |                  |          |       |
|------------------|----------|-------|
| 11. False        | 12. True | Notes |
| 13. Disciplining | 14. 28   |       |
| 15. Adjudicator  |          |       |

## 1.9 Further Readings



### Books

Davidov, Guy & Langille, Brian (2011). *The Idea of Labour Law*. Oxford University Press.

Davis, Ja E (2012). *Labour Laws*. General Books.

Kumar, H.L. (2010). *Labour Laws*. Universal Law Publishing.

Rao, VSP (2008). *Industrial Relations & Labour Laws*. Excel Books.

Singh, B.D. (2009). *Labour Laws for Managers*. Excel Books India.



### Online links

<http://administrative.laws.com/adjudicated>

<http://psalegal.com/upload/publication/assocFile/Labor-Bulletin-Issue-VIII04072010050903PM.pdf>

<http://www.caaa.in/Image/19ulabourlawshb.pdf>

<http://www.law.fsu.edu/journals/lawreview/downloads/334/spector.pdf>

<http://www.lawyersclubindia.com/news/Labour-Courts-for-the-adjudication-of-industrial-disputes-13318.asp#.USinPR1HJc0>

<http://www.out-law.com/en/topics/projects--construction/adjudication/the-adjudication-process/>