IN-DEPTH

Labour And Employment Disputes

INDIA

LEXOLOGY

Labour and Employment Disputes

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In-Depth: Labour and Employment Disputes (formerly The Labour and Employment Disputes Review) provides an incisive examination of the most salient aspects of the regimes governing workplace disputes across myriad jurisdictions worldwide. With a focus on the most consequential recent developments in law and practice, it covers key topics such as procedural considerations, forums, common types of dispute and an outlook for the future.

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India

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Summary

Introduction

The Constitution of India confers powers to state governments and the central (federal) government to enact laws on the subject of employment and labour, except for certain matters that are reserved for the central government.

A large number of labour laws exist on different aspects of labour, namely fixation and payment of wages, social security, occupational health and safety, women and child labour, industrial relations, resolution and adjudication of industrial disputes, and equal opportunities, including opportunities for disabled and transgender individuals.

Currently, over 50 separate laws concerning employment and labour law are in effect in the country. The existing labour and employment laws can be categorised into the following categories:

1. laws enacted and enforced solely by the central government;
2. laws enacted by the central government and enforced both by the central and state governments;
3. laws enacted by the central government and enforced by the state governments; and
4. laws enacted and enforced by the various state governments which apply to respective states.

Given the plethora of laws that exist on the subject of labour and employment, we have discussed the following key employment disputes and procedures that apply thereto:

1. termination of employees;
2. disputes concerning sexual harassment; and
3. other employment matters.

Classification of employees

Employees in India are broadly categorised into workmen and non-workmen. The Industrial Disputes Act 1948 (the ID Act) deals with settlement of industrial disputes, and provides statutory protection to workmen in certain matters, such as termination, transfers and closure of establishments. The ID Act, among other things, also deals with the transfer of business undertakings in relation to workmen.

Workmen

The ID Act defines a 'workman' as any person who is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, regardless of whether the terms of employment are express or implied. The following categories of employees are excluded from the definition of workmen:

1. persons employed in an administrative or managerial capacity; and
2. persons employed in supervisory work and earning more than 10,000 Indian rupees per month.

The definition of a workman is broad enough to cover all employees, except those performing managerial functions or those performing supervisory functions and earning more than the above-mentioned threshold.

It is common for an employee to be performing multiple roles, such as managerial or supervisory work as well as work that may be technical, skilled, unskilled or operational in nature. Several courts have ruled that where an employee performs multiple roles, the dominant nature of work performed by such employee in the usual course of their role should be considered while deciding whether the employee is a workman or a non-workman.

Generally, software employees and other white-collar workers performing technical work will fall under the category of workmen. That being said, classification of white-collar employees as workmen is a hotly debated (and frequently litigated) topic and courts in India are yet to conclusively prescribe clear parameters for such determination.

Non-workmen

All employees other than workmen, namely employees performing managerial and supervisory functions, will fall under the category of non-workmen.

Non-workmen are not covered under the ID Act and their employment is regulated by the employment contract and the state-specific Shops and Establishment (S&E) Acts.

Industrial disputes

Pursuant to the ID Act, industrial dispute means any dispute or difference among employers, employers and workmen, or among workmen that is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

Generally, disputes between an employer and an individual workman will not be deemed as an industrial dispute under the ID Act, unless such dispute is espoused by the trade union in writing at the commencement of the dispute. However, as an exception, disputes between an individual workman and their employer relating to termination, discharge or dismissal of employment will be considered as industrial disputes.

Labour courts and tribunals

Labour courts

Under the ID Act, the appropriate government has the power to constitute labour courts for resolving certain industrial disputes concerning dismissal or termination of employment, withdrawal of any privilege to workmen, and disputes concerning the service rules.

Industrial tribunal

The appropriate government can set up one or more industrial tribunals with wider jurisdiction than the labour court. The nature of disputes handled by the industrial tribunal concerns the following:

1. wages of employees;
2. bonus and provident funds that are provided;
3. working hours;
4. rationalisation;
5. leave and holidays;
6. service rules concerning maintenance of discipline among the employees; and
7. any other matter that may be considered to be heard and discussed.

National tribunal

A national tribunal is formed by the central government for adjudication of industrial disputes that are considered to be of national importance. If a dispute between two parties of an industry reaches the national tribunal, then both the labour court and the industrial tribunal lose their jurisdiction over the matter.

Year in review

The past year saw the adjudication of quite a few labour disputes in the courts, leading to significant legal developments. A summary of some of the major judgments passed by Indian courts in this field can be seen below.

The Management of Worth Trust v. The Secretary, Worth Trust Workers Union (Supreme Court of India)

This case[1] concerned the issue of whether a charitable trust that runs factories is required to pay statutory bonuses under the Payment of Bonus Act 1965 (the PB Act). The trust in question (which was initially established by the Swedish Red Cross Society) had been running a manufacturing unit for automobile parts and industrial machines since 1985 – activities that were profit-generating and commercial in nature. In 1998, the workmen employed at the trust raised an industrial dispute, demanding payment of statutory bonus under the PB Act, which was awarded by the labour tribunal at the rate of 8.33 per cent of their annual wages. This ruling was challenged at a High Court, where the tribunal's decision was upheld. As a result of the High Court ruling, the trust approached the Supreme Court under appeal.

The question at issue in this case was whether the trust was exempt from the PB Act, which exempts its applicability to employees employed by the 'Indian Red Cross Society or any institution of the like nature', and to non-profit institutions.

The Supreme Court held that in this case, the PB Act would be applicable as the units in question are 'factories' and the workers are 'employees' within the scope of the PB Act. The trust's commercial manufacturing activities and profits bring it within the statutory scheme. The Supreme Court rejected the aforementioned exemptions provided under the PB Act as the trust had severed links with the Red Cross and had been running profit-making factories for a substantial period of time. As such, the trust's appeal was dismissed, and the Supreme Court directed the trust to pay statutory bonus as applicable under the PB Act to the employees.

M/s Stesalit Limited v. Union of India and ors (Calcutta High Court)

This case[2] considered the question of payment of gratuity to employees while the company was undergoing an insolvency process. The company in question, Stesalit Limited, challenged an order of the Labour Commissioner directing the company to pay gratuity with interest to a former employee under the Payment of Gratuity Act 1972 (the Gratuity Act). The company claimed that the employee's gratuity claim was already considered in the company's insolvency resolution process under the Insolvency and Bankruptcy Code 2016 (IBC), and a payment had been made to the employee under the approved resolution plan.

The Court considered the question of whether the employee is entitled to gratuity payment from the company even after it has been liquidated and the insolvency resolution plan has been approved. The company argued that the IBC would overrule the Gratuity Act and the employee's claim had already been settled by way of the payment made under the insolvency plan. The employee's claim was that gratuity is a statutory right and protected from insolvency proceedings, and that the IBC specifically provides that gratuity and similar funds are not part of the company's assets to be shared with other creditors.

The Court examined previous judgements on the topic and held that gratuity falls outside the scope of the 'liquidation estate' (the assets of the company undergoing insolvency that are then paid out to the creditors as per the provisions of the IBC), and must be paid in full to the employee. The Court held that the Gratuity Act applies fully and overrides any other conflicting laws.

The Court dismissed the company's challenge and held that employees must receive their full gratuity, even in insolvency or takeover scenarios, and that these dues have priority over other creditors.

Rakesh Kumar Varma v. HDFC Bank Limited with HDFC Bank Limited v. Deepti Bhatia

In this case,[3] the Supreme Court considered whether exclusive jurisdiction clauses in employment contracts are valid under the Indian Contract Act 1872 (the IC Act). Two former employees of HDFC Bank (a leading Indian private sector bank), whose contracts contained clauses restricting disputes to Mumbai courts, had filed suits in two different cities (Patna and Delhi) challenging their termination. HDFC Bank sought dismissal of

those suits based on the jurisdiction clauses. Appeals against the orders of the Patna High Court (which ruled in favour of the bank) and the Delhi High Court (which ruled in favour of the employee) were brought to the Supreme Court and heard concurrently as they were connected matters.

The main question was whether Section 28 of the IC Act, which bars agreements in restraint of legal proceedings, prohibits exclusive jurisdiction clauses, especially in employment contracts where there may be unequal bargaining power between the employer and employee. The former employees argued these clauses unfairly restrict access to justice in their local courts.

The Court rejected this argument and held that exclusive jurisdiction clauses are valid so long as they do not completely bar access to legal remedies but only provide a reasonable forum for dispute resolution. The Court emphasised that contracts must be honoured regardless of relative bargaining strength.

It was also held that the Mumbai courts did have jurisdiction given the contracts were administered, executed and decisions for hiring and termination were taken in Mumbai. The Supreme Court upheld the dismissal of the suit in Patna and overruled the Delhi High Court's contrary decision, affirming the enforceability of exclusive jurisdiction clauses in employment contracts when reasonable and lawful.

Procedure

'At will' employment

Indian laws do not recognise the concept of 'at will' employment. Services of an employee can be terminated for a valid cause after an inquiry during which due opportunity is provided to the alleged employee to present their case having regard to the principles of natural justice.

The law permits employers to terminate employment in cases of redundancies after compliance with the applicable law. An employer is required to provide a prior advance notice and payment of severance compensation as per the applicable law.

Termination for workmen employees

Pursuant to the ID Act, termination of employment of workmen can be carried out for any reason, provided that all workmen who have completed one year of continuous service[4] under an employer are given:

1. notice of one month or payment of wages in lieu of notice; and
2. compensation equivalent to 15 days' average pay for every completed year of continuous service, or any part thereof over six months.

Furthermore, the employer will also be required to serve notice to the relevant labour authority about the retrenchment. The above conditions are not applicable in case of termination of employment as a punishment inflicted by way of disciplinary action.

Factories and mines employing more than 100[5] workmen will have to obtain prior approval of the relevant government authority, and also provide three months' prior written notice or payment in lieu of notice instead of one month's notice.

Prior permission of the relevant government authority will also be required for closure of establishments where 50[6] or more workmen are employed.

Procedures for settlement of termination under the ID Act

The ID Act provides for the appointment of conciliation officers, boards of conciliation, courts and tribunals for settlement of industrial disputes.

At the first instance, the dispute is referred to conciliation officers who work in the Department of Labour. Their role is to work with the parties to help them settle the dispute. The outcome of the conciliation proceedings is not binding on the parties.

The state government may also set up a board of conciliation to help settle a specific case or dispute. The board of conciliation is not a permanent body and is set up on an ad hoc basis for specific matters.

If the parties are unable to resolve their disputes through conciliation, the conciliation officer or the board of conciliation will submit to the appropriate government a full report setting forth the facts and circumstances leading to the dispute and steps taken for bringing about a settlement thereof, and its findings thereon, the reasons on account of which a settlement could not be arrived at, and its recommendations for the determination of the dispute. The conciliation officer or the board, as the case may be, is required to submit its report to the government within the prescribed time, which can be extended by the government.

The appropriate government may thereafter decide to refer the matter to the labour courts for judicial trial. The ID Act requires the labour courts to pronounce its judgments within a period of six months. However, practically, there is a significant delay in disposal of the cases.

Pursuant to the ID Act, a workman can make an application directly to the Labour Court for adjudication of termination-related disputes after the expiry of 45 days from the date when the workman made the application to the appropriate government for conciliation of the dispute.

A party aggrieved by the decision of a labour court may prefer appeal before the jurisdictional High Court followed by the Supreme Court of India.

Termination of non-workmen employees

Termination of non-workmen employees will be governed by the applicable S&E Act.

S&E legislation in many states, such as Karnataka, Andhra Pradesh, Delhi and Haryana, require that employees who have been in continuous employment for a certain specified

period should not be terminated except for reasonable cause and after providing prior notice of a specified period (generally of one month) or payment in lieu of notice.

Several courts have ruled that closure of the business due to contraction in the business, reduction of work, loss in business, financial constraints, action in the interest of efficiency and economy, and winding up of a business will be considered as reasonable causes for termination of employees. However, employers are required to provide proper reasons for termination of employment, and merely stating that an employee's services are no longer required will not suffice.

S&E legislation affords the impacted employee with a right to appeal to the concerned authority in cases where no reasonable cause has been cited by the employer.

Alternative remedies

Some employees (workmen and non-workmen) may also have the right to make a claim in the jurisdictional civil courts for termination-related disputes under the pretext of breach of the employment contract. However, an employee can either seek relief under the special legislation, namely the ID Act (for workmen) or S&E legislation (in the case of non-workmen), or from the civil court for breach of contract. An employee cannot make a claim in both the civil court as well as before the authority under the ID Act or S&E legislation, as the case may be.

Disputes relating to sexual harassment at the workplace

The POSH Act aims to protect female employees as well as female visitors to the workplace and contract workers.

The POSH Act requires employers to:

1. frame a policy on the prevention of sexual harassment of female employees;
2. set up an internal complaints committee (ICC) to deal with complaints relating to sexual harassment of female employees in cases where an employer is employing 10 or more employees;
3. organise periodic workshops to sensitise employees to prevent sexual harassment at the workplace; and
4. submit an annual report with the jurisdictional labour officer on the number of complaints received and the action taken by the relevant employer.

The ICC is responsible for the following:

1. receiving complaints of sexual harassment in the workplace;
2. initiating and conducting inquiries pursuant to this policy;
3. submitting findings and recommendations of inquiries;
4. coordinating with the employer in implementing the appropriate action;
5. maintaining strict confidentiality throughout the process pursuant to the POSH Act; and

6. submitting annual reports to the employer and district officer as outlined by the policy.

The complainant may file a written complaint of sexual harassment in the workplace to the ICC within three months of the incident or latest incident (in the event of multiple incidents). The complaint must be in writing and signed by the complainant. The ICC may extend the timeline by another three months if it is satisfied that genuine reasons prevented the lodging of the complaint within the prescribed period.

In cases where the aggrieved employee is unable to file a complaint on account of death, physical incapacity or mental conditions, the complaint may be filed by the aggrieved employee's relative, friend, co-worker, an officer of the National Commission for Women or State Women's Commission, or any person who has knowledge of the incident with the written consent of the aggrieved individual or the aggrieved individual's legal heir, as may be prescribed.

Within seven days of receiving the complaint, the ICC must forward the same to the accused for their response. The accused must submit their response along with supporting documents within 10 working days of the date of receipt of complaint. The ICC should conclude the hearing within 90 days of the date of receipt of complaint. The ICC is required to follow the principles of natural justice and hear both the complainant and the respondent. Legal representatives of the parties are not allowed to participate in the proceedings before the ICC.

If requested in writing by the complainant, the ICC may recommend that the employer provide certain interim relief, namely:

1. transfer the aggrieved employee or the accused to any other workplace;
2. grant leave of up to three months to the complainant; or
3. grant such other relief to the complainant as allowed by the POSH Act or the Rules, including restraining the accused from reporting on the work performance of the complainant.

The ICC will, after completion of the inquiry, submit its finding to the employer along with appropriate action to be taken against the accused as per the employer's policy, which could include the termination of the accused's employment.

Types of employment disputes

From a general employment perspective, the most common types of disputes that arise between employers and employees relate to:

1. unfair dismissal;
2. breach of contract pertaining to non-payment of non-statutory incentives;
3. harassment and bullying; and
4. non-payment of severance compensation.

Additionally, India also has several specific laws on other aspects of employment, such as payment of wages, bonuses, gratuity benefits, maternity benefits, social security, leave and holidays, and equal opportunities. Each of the specific laws provides for a specific authority that has jurisdiction to entertain disputes covered under the legislation.

For example, the Payment of Wages Act 1936 regulates the payment of wages of certain classes of employed persons. The authority appointed under the Act has jurisdiction to entertain applications relating to the following:

1. deductions and fines not authorised to be deducted from wages; and
2. delay in payment of wages beyond the wage periods.

The MB Act is applicable in respect of an establishment where 10 or more persons are employed, or were employed, on any day of the preceding 12 months. The Act requires employers to provide paid maternity leave of a specified duration to female employees expecting a child. A female employee is entitled to maternity leave only if she has worked for the employer for at least 80 days in the 12 months immediately preceding the date of her expected delivery.

Under the Act, a claim can be made before the jurisdictional labour inspector or authority appointed by the Act for:

1. non-payment of maternity benefits; and
2. termination of a female employee during or on account of her absence from work due to maternity leave.

The Payment of Gratuity Act 1972 is a social security legislation that requires employers to pay gratuity to employees on:

1. superannuation;
2. death or disablement due to accident or disease; and
3. retirement or resignation, provided the person has completed five years of continuous service with the employer.

For every completed year of service or part thereof in excess of six months, the employer has to pay gratuity to an employee at the rate of 15 days' wages that was last drawn by the employee concerned. However, the maximum gratuity payable under the Payment of Gratuity Act 1972 is 2 million Indian rupees or more, as agreed in the employment agreement.

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person so entitled, they can submit an application to the controlling authority appointed under the Act, who will hear the parties and issue a certificate for that amount to the collector, who shall then recover the same, together with compound interest thereon.

It is important to understand that more than one authority may seem to have overlapping jurisdiction over a particular matter, and it is important to ascertain the most appropriate authority before which a given claim can be made. For example, in respect of a workman who is covered under the Payment of Wages Act 1936, the claims relating to non-payment of wages during the wage period or unauthorised deductions can be made before the authority under the Payment of Wages Act. However, the issues relating to determination of actual wages can be the subject matter of industrial disputes under the ID Act over which appropriate industrial tribunals may have the jurisdiction.

Outlook and conclusions

In 2019, the Indian government introduced four Labour Codes (the Code on Wages; the Industrial Relations Code; the Code on Social Security; and the Occupational Safety, Health and Working Conditions Code) with a view to consolidating and amending the 29 major labour laws currently enacted in the country. The Codes are meant to facilitate a more streamlined procedure for compliance by employers and employees, and resolve conflicting definitions and provisions that currently exist due to the large number of laws covering overlapping topics. The Codes have been passed by both Houses of the Parliament and have also received the assent of the President.

These Codes have recently been notified. The central government and state governments are in the process of framing relevant rules under these Codes for their implementation. Most states and union territories have framed draft rules under these codes; however, these are yet to come into force.

The Indian government also passed its data privacy legislation – the Digital Personal Data Protection Act 2023 (the DPDP Act) in August 2023. However, the DPDP Act is currently not in force, and will come in force upon notification of the same by the government. Many of the procedural aspects of the DPDP Act are covered in delegated legislation, referred to as 'rules'. On 3 January 2025, the draft Digital Personal Data Protection Rules 2025 (the Draft DPDP Rules) were published by the government for a public consultation exercise, and feedback was invited before 5 March 2025. Reports suggest that the Draft DPDP Rules are close to finalisation and are expected to be notified in late 2025. It is expected that the DPDP Act will be enforced soon thereafter, and a compliance timeline may be provided to ensure that stakeholders have systems in place to ensure compliance.

The DPDP Act will have implications for employers in the processing of employee personal data, such as processing data for the purposes of employment as a 'legitimate purpose' under the DPDP Act as opposed to consent as the legal basis for processing (which is the status quo under the currently applicable law), ensuring that data subjects are provided with the rights they are entitled to, and putting in place adequate protections in contracts with data processors who are processing employee personal data on the employer's behalf.

Endnotes

1 *The Management of Worth Trust v. The Secretary, Worth Trust Workers Union* (Supreme Court of India), Civil Appeal 4717 of 2025. ^ Back to section

2 *M/s Stesalit Limited v. Union of India and others* (Calcutta High Court, WPA 532 of 2025). ^ Back to section

3 *Rakesh Kumar Varma v. HDFC Bank Limited with HDFC Bank Limited v. Deepti Bhatia* (Supreme Court of India), Civil Appeal 2282/2025 with Civil Appeal 2286/2025. ^ Back to section

4 A workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine, and 240 days in any other case. ^ Back to section

5 The threshold for the number of workmen could vary from state to state. ^ Back to section

6 The threshold for the number of workmen could vary from state to state. ^ Back to section

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