

LABOUR LAWS

Recent Developments

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- The term Labour means productive work especially physical work done for wages.
- Labour Laws in India in olden days
 - In Arthashastra Chapter XIII of Book III, Koutilya says, the servant shall get the promised wages in proportion to the work done and the time spent in doing it.
- Labour Laws at the time of British Period
 - In 1883, British Government introduced Factories Act. In 1929, Trade Disputes Act introduced.
- Labour Laws in some other country
 - In America, labour laws are at will, they can terminate an employee for any reason which is not illegal. But in India it is not like that.
- Categories of Labour Laws in India is;
 - Labour Laws enacted and enforced by Central Government. For example the Employees Provident Funds Act
 - Labour Laws enacted by Central and enforced by both Central and State Government. For example ESI Act.
 - Labour Laws enacted by Central Government and enforced by State Government. For example Child Labour Prohibition and Regulation Act, Factories Act
 - Labour Laws enacted and enforced by state Government. For example The Tamilnadu Shops and Establishments Act

- Labour's life may be covered by four types of laws, When he was born his mother was regulated / protected by The Maternity Benefit Law, when he was child (upto the age of 14) he will be covered by The Child Labour (Prohibition and Regulation) Act, when he was trainee he was covered by The Apprentices Act, finally when he enter into the employment as a adult he will be covered by more than 40 laws. In India more than 40 laws are available for labour oriented matters.
 - When he joined the employment at his adult age, if it is a factory, then The Factories Act will be applicable for his employment health, safety and welfare, in his first month salary he knows about The Payment of Wages Act, and minimum wages act like wise, after that he is eligible for bonus, for savings and pension purpose he is covered by employees provident fund, for medical and sick benefit he is covered by employees state insurance act, if he injured or meet with an accident then he is covered by employees compensation act, if he is working on contract basis then the contract labour (regulation and abolition) act will cover.
 - If an employee work in any specific industry like newspaper, cineworker, mine worker then specific act will also applicable to that type of workers. In India, normally if any small company employees more than 20 employees then most of the labour acts will be applicable to that company. Even if the company is making any loss during this year most of the acts are applicable.
- Important Labour Laws in India:
- The Child Labour (Prohibition & Regulation) Act, 1948
 - The Apprentices Act, 1961
 - The Payment of Wages Act, 1936
 - The Workmen's Compensation Act, 1923
 - The Factories Act, 1948
 - The Industrial Disputes Act, 1947
 - The Employees PF and MP Act, 1952
 - The Employees State Insurance Act, 1948
 - The Maternity Benefit Act, 1961
 - The Payment of Bonus Act, 1965
 - The Payment of Gratuity Act, 1972

Now we can categorize labour laws into 4 types as follows;

I. Women & Child

1. Equal Remuneration Act, 1976
2. The Child Labour (Prohibition & Regulation) Act, 1986

II. Social Security

1. The Employees Provident Funds Act and Miscellaneous Provisions Act, 1952
2. The Employees State Insurance Act, 1948
3. The Payment of Gratuity Act, 1972
4. The Maternity Benefit Act, 1961

III. Wages

1. The Payment of Wages Act, 1936
2. The Minimum Wages Act, 1948
3. The Payment of Bonus Act, 1965

IV. Safety, Health & Welfare

1. The Factories Act, 1948
2. The Contract Labour (Regulation & Abolition) Act, 1970

I. Women & Child:

- As per census of 2011, female workers in India is around 15 crores, in this around 2 crore females only working in urban area, others are working in cultivation and agriculture (9 crores), house hold industry (80 Lakhs) and other working places. To provide safety, security and equality to the female workers equal remuneration act, 1976 enacted.

1. Equal Remuneration Act, 1976

- Section 4 says the employer to pay equal remuneration to men and women workers for same work or work of a similar nature. If there is any violation of this act, Penalties u/s Section 10 is Imprisonment of 3 months to 1 Year, and fine of Rs.10,000/- to Rs.20,000/- or both.

2. The Child Labour (Prohibition & Regulation) Act, 1986

- According to census report of 2001, 1.26 crore child labour in the age group of 5-14 are available in India, and there are 12 lakhs child labours are employed in Hazardous process. To prevent the child labour the above act enacted.
- It Prohibits the engagement of children in certain employments and regulate the conditions of work of children in certain other employment. Person who has not completed his 14th year of age is called child.
- No Child shall be employed or permitted to work in any of the occupations set forth Part A of schedule or any processes set forth in Part B of Schedule.
- Child labour can be appointed with some conditions like working hours totally 6 hours in a day with 1 hour rest in 3 hours, no work between 7p.m to 8 a.m No Over time, and weekly holiday one day. Notice to be given to the Inspector of Jurisdiction about child labour employment in your company.
- Display the Abstract of Section 3 (Prohibition of Child Labour) & 14 (Penalties) is mandatory to all companies. Maintenance of register of child labour with certificate of age with medical practioner is also compulsory.
- The Tamilnadu Child Labour (Prohibition & Regulation) Rules, 1994 enacted by the state government to implement this act.
- For violation of this act, Penalties are 3 months to 1 year imprisonment with fine of Rs.10,000/- to Rs.20,000/-.

II. Social Security:

The government's responsibility is to give social security to all the employees by the way of retirement benefits, medical benefits etc., To cover this type of social security the following laws are enacted and implemented.

1. The Employees Provident Funds and Miscellaneous Provisions Act, 1952

- This act gives social security by way of pension, insurance and retirement benefits. The Employees Provident Fund organization acting dual role of implementing this act as well as giving benefit to the employees.
- This act extends to the whole of India except the State of Jammu and Kashmir. The act applies to every establishment in which twenty or more persons are employed section 1(3)(a). Voluntary coverage is also available section 1(4). Coverage shall continue even the number of persons employed falls below twenty. Establishments include all departments, common provident fund with another establishment.
- “Basic Wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid to him, but does not include
 - Cash value of food concession
 - DA, HRA, OT, Bonus, Commission or any other similar allowance
 - Any presents made by the employer
- “employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person;
 - Employed by or through contractor in or in connection with the work of the establishment
 - Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961.
- Section 7A enquiry: Determination of moneys due from employers conducted by CPFC, ACPFC, RPF, APFC. Review of orders passed under section 7A as per section 7B within 45 days from the date of order u/s 7A. Determination of escaped amount u/s 7C is allowed upto 5 years from the date of 7A order.

- Employees' Provident Funds Appellate Tribunal – 75% of the dues shall be payable before appeal.
- Inspector has the power to enter and search any establishment or to ask any information – Section 13
- This act is not applicable to
 - co-operative societies registered under the co-operative societies act, 1912 and employing less than 50 persons without the aid of power and
 - any other employment belonging to or under the control of the central / state government and whose employees are entitled to the benefit of contributory provident fund
- The government may, by notification in the official gazette exempt any establishment for all or any of the provisions of any scheme with some conditions Section 17
- Special provisions in respect of International workers
- Registration & Returns
- As per gazette notification of August 19th 2014, from 01/09/2014 the monthly member pension payable to any existing or future member under this scheme shall not be less than one thousand rupees for the financial year 2014-15.
- As per gazette notification of August 22nd 2014, from 01/09/2014 wage ceiling of Rs.6,500/- increased to Rs.15,000/-
- Online registration and online Return
- Universal Account Number (UAN)
- Online view of member details will be available from 16/10/2014 and it will be introduced by the Honourable Prime Minister of India on that day. Out of 50 million members of the fund more than 20 million members details are updated. Out of 4.30 lakhs entities registered with EPFO, before 15th October 2014 every employer may update their employees bank account details with PAN.

2. The Employees State Insurance Act, 1948

- The Act provides certain benefits to employees in case of sickness, maternity period and employment injury. If any establishment covered under this act, then it is exempted to give benefit under The Employees' Compensation Act and as well as The Maternity Benefit Act.
- The act extends to the whole of India, the act applies to a factory or establishment in implemented area which is employ 10 or more employees with power and 20 or employees without power. This act is not applicable to any employees getting more than Rs.15,000/- per month salary.
- Some of the states are issued notification with 10 or more employees of all factory or establishments will be coverable under this act.
- As per the Government of Tamil Nadu Gazette Notification No.II(2)/LE/52/2013 dated 02.01.2013, the ESI Scheme is extended to the following classes of Establishments wherein 10 or more persons were employed are coverable under the ESI Act with effect from 02.01.2013, in the already implemented area.
 - Shops.
 - Hotels.
 - Restaurants.
 - Road Motor Transport Establishments,
 - Cinemas including preview Theatres.
 - Newspaper Establishment as defined in clause (d) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Central Act 45 of 1955).
 - Educational Institutions (including Public, Private, Aided or Partially Aided) run by individuals, Trustees, Societies or Other Organizations.
 - Medical Institutions (including Corporate, Joint Sector, Trust Charitable and Private Ownership, Hospitals, Nursing Homes, Diagnostic Centers, Pathological Labs).

- ESIC wage ceiling limit increased to Rs.25,000/- as decided by the ESIC Board but Government order is pending.
- Benefits – Medical benefit, maternity benefit, disablement benefit
- Exempted establishment – exemption for one year, every year renewable
- Contribution and benefit periods.
- Registration and Returns
- Implemented Area

3. The Payment of Gratuity Act, 1972

- Gratuity is a reward for long and meritorious service. Gratuity is a kind of retirement benefit like the provident fund or pension. The significance of this legislation lies in the acceptance of the principle of gratuity as a compulsory, statutory retirement benefit. (Lalappa Lingappa and others Vs. Laxmi Vishnu Textile Mill Ltd Sholapur)
- The Act applicable to
 - every factory, mine, oil-field, plantation, port and railway company and
 - every shop or establishment in which 10 or more persons are employed
- Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years.
- Provides for payment of gratuity @ 15 days' wages for every completed year of service or part thereof, in excess of six months.
- Maximum amount of gratuity payable under the Act was raised from Rs. 3.50 lakh to Rs. 10.00 lakh with effect from 24.05.2010
- No wage ceiling for coverage under the Act

4. The Maternity Benefit Act, 1961

- It applicable to any factory, mine, plantation etc.,
- She can get six weeks leave with salary before delivery and six weeks leave with salary after delivery, payment in advance for first 6 weeks, and after 6 weeks within 48 hours of delivery.
- The Act is not applicable to the employees covered under the ESI Act, 1948.

III. Wages:

1. The Payment of Wages Act, 1936

- The Payment of Wages Act was enacted during the British Rule in 1936 on the recommendations of the Royal Commission on Labour. The Act regulates the payment of wages to workers and ensures that they are disbursed by the employers within the stipulated time frame and without any unauthorized deductions.
- The Act lays down that the wage period exceeding one month should not be fixed and payment of wages must be made before the entry of specific day after the last day of the wage period. The specific day is the seventh day of a month where the number of workers is less than 1000 and tenth day in case the number of workers is one thousand or more. All wages must be paid in current legal tender. The wages can also be paid by cheque or credited to the bank account of the employed persons with the written authorization of the letter. The beneficiary under the Act are, however those who are in receipt of wages below Rs.18,000/- per month from September 2012.
- Enforcement of the Payment of Wages Act is primarily the responsibility of the State Governments. Inspectors are appointed under the provisions of the Act who conduct regular inspections to ensure that the employers pay the wages timely and correctly. The defaulting employers are advised to pay full wages in time. In case of non-adherence to the advice, there are provisions of prosecutions also. The Central Government is responsible to enforce the Act only in mines, railways, oilfields and air transport service by virtue of Section 24 of the Act.
- Section 15 of the Act provides that the wages of an employed person shall be paid to him without any deductions except those authorized under the Act. Deductions permissible from wages inter-alia relates to unauthorized absence from duty, deductions for house accommodations, recovery of advances and statutory dues etc. It also prevents the employers from

making any delay in the payment of wages. The employees can apply to the authorities prescribed under the Act for redressal, if deduction is made or there is delay in payment of wages. The authority after giving opportunity may direct the employers to refund the wages with compensation.

2. The Minimum Wages Act, 1948

- It extends to the whole of India and the act will be applicable to schedule establishments.
- Appropriate government can fix or review (within a period of 5 years intervals) minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule.
- Child can work for 4 1/2 hours in a day, and adult can work 9 hours per day. If he works more than 9 hours then OT shall be payable at twice the rate of wages.
- Wages may be made on before 7th of next month if employees are less than 1000, otherwise before 10th of next month.
- Weekly one day rest may be on Sunday or any other day with full wages for a day.
- Application can be made to appropriate officer on minimum wages disputes by any employee or group employees, after hearing the dispute will be settled.
- Maintenance of registers and records and Inspection.

3. The Payment of Bonus Act, 1965

- The payment of bonus is not the right and it is gift given by the employer. This is olden day's scenario. Firstly in Bombay cotton mill owners paid 10% of monthly wages as bonus. Afterwards it was increased to 15%. When the company not paying bonus due to adverse of business

circumstances, workers called for a strike. After very long fight government enacted this Payment of Bonus Act.

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- The payment of Bonus Act is applicable to every factory and every other establishment in which 20 or more persons are employed on any day during an accounting year excluding some categories of employees as contained in section 32 of the Act (i.e. employees in Life Insurance – Corporation, seamen, port and dock workers, universities, etc.).
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- Definition of an employee – An ‘employee’ means any person (other than an apprentice) employed on a salary or wage not exceeding ten thousand rupees.
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- Calculation of bonus w.r. to certain employees – where the salary or wage of an employee exceeds ten thousand rupees per mensem, the bonus payable to such employee shall be calculated as if his salary or wage were ten thousand rupees per mensem.
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- Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this act, provided he has worked in establishment for not less than 30 days. Bonus will be paid within a period of eight months from the close of the accounting year.
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- **MINIMUM BONUS** - Every employer shall be bound to pay to every employee in respect of the accounting year a minimum Bonus which shall be 8.33 % of the salary or wages earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year.
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- **MAXIMUM BONUS** - Where in respect of any accounting year, the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wages earned by the employee during the accounting year subject to a maximum of 20% of such salary or wage.
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- The employer whom this Act, applies, need not pay any Bonus for first five accounting year in which the Employer sells the goods produced or manufactured by him or render services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year

in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of the Act in relation to that year.

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IV.Safety, Health and Welfare:

1. Factories Act, 1948

- Regulates health, safety, welfare and other working conditions of workers in factories.
- The act will be applicable to a factory. Factory means whereon ten or more workers are working in which a manufacturing process is being carried on with the aid of power or twenty or more workers are working in which a manufacturing process is being carried on without the aid of power.
- The act is not applicable to Mine, railway running shed, hotel, restaurant or eating place.
- State government by making rules can approve, license and register any factories under its jurisdiction.
- The factories act concern about health aspects of cleanliness of factory, disposal of wastes and effluents, ventilation and temperature, dust and fume, artificial humidification, overcrowding, lighting, drinking water, latrines and urinals and spittoons.
- The factories act concern about safety aspects of fencing of machinery, employment of no young person on dangerous machines, etc.,
- The factories act concern about welfare aspects of washing facilities, facilities for sitting, first-aid appliances, canteens, rest rooms and lunch rooms.

2. Contract Labour [Regulation & Abolition] Act 1970

- Every principle employer who intends to employ contract Labor in his Establishment/Factory shall make an application in specified form to the concerned authority of the area in which the establishment sought to be registered is located.
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- Every application by a contractor for the grant of a Licence shall be made triplicate in specified form to the licensing officer of the area in which the establishment locates, In relation to which he is the contractor, and every application for the grant of a Licence shall be accompanied by a certificate by the principal employer in specified form to the effect that the Applicant has been employed by him as a contractor in relation to his establishment.
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- Every contractor shall apply to the licensing officer for renewal of the licence in specified form in triplicate and shall be made not less than thirty days before the date on which licence expires along with the prescribed fee.
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- Every contractor shall display the abstract of the Act, and rules in English and in the language spoken by the majority of workers in such form as may be approved by the labour commissioner.
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- Notices showing of the rate of wages, hours of work, wage period, dates of payment of unpaid wages shall be displayed in English and in the local language understood by the majority of the workmen.

The Bonded Labour System (Abolition) Act, 1970, abolished bonded labour u/s 4 of this act. Penalties for bonded labour employment is imprisonment upto 3 years with fine upto Rs.2,000/-

The Unorganised Workers' Social Security Act, 2008

- Unorganised Sector – An enterprise owned by individuals or self employed workers and engaged in the production or sale of goods or providing service of any kind, where employees less than 10 workers.
- Employees work under unorganized sector can register him with district administration for getting benefit under this act.
- They can contribute and get the benefits as per this act.

THANK YOU

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